

NAMIBIA

CONSTITUENT ASSEMBLY

DEBATES

21 November 1989 – 31 January 1990

VOLUME 1

LIST OF MEMBERS

SWAPO

J Nujoma	J Hoebebe
J G Geingob	J Ekandjo
Dr M Tjitendero	B U Uulenga
Rev H Witbooi	MMEKH Huebschle
O Meroro	J G Nathaniel
A Toivo Ya Toivo	R Kapelwa
M Garoëb	J Ya Otto
P Mweshihange	B Amathila
H Pohamba	H T Hishongwa
T-B Gurirab	Rev M Amadhila
Dr L Amathila	D P Botha
H Hamutenya	J W Wentworth
N Bessinger	Dr P Katjivivi
Dr Z Kameeta	A von Wietersheim
Dr E Tjiriange	H Ruppel
P Ithana	S P Wohler
N Iyambo	H Ausiku
P Schoombe	N Angula
M M Hausiku	Dr K Mbuende
Rev W Konjore	K Nauyala (until 10.12.89)
W Biwa	A P Tshirumbu (from 20.12.89)

DTA

M Muyongo	A Majavero
D F Mudge	G Kashe
B J Africa	N K Kaura
F J Kozonguizi	M Barnes
D Luipert	A N Matjila
P M Junius	H-E Staby
G Dan	A Gende
J M Haraseb	J W Jagger
L J Barnes	J Gaseb
C Kgosimang	A Nuule
C A C van Wyk	

UDF

J Garoëb	T Soroseb	(until 28.11.89)
R R Diergaardt	E Biwa	(from 29.11.89)

ACN

J M de Wet	W O Aston
J W F Pretorius	

NPF: M Katjiuongua

FCN

J G A Diergaardt (until 19.12.89) M Kerina (from 20.12.89)

NNF: V Rukoro

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CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
21 NOVEMBER 1989
10h00

THE ACTING CHAIRMAN takes the Chair.

ACTING CHAIRMAN: I have the honour to call the meeting of the members elected to the Constituent Assembly.

Honourable members of the Constituent Assembly, ladies and gentlemen. As Acting Chairman of this Constituent Assembly, in terms of Section 7(1)(a) of the Constituent Assembly Proclamation, 1989, I call the Assembly to order. In so doing I would like to welcome all elected representatives at this first and historic sitting of our Constituent Assembly. In terms of Section 4(b) of the Constituent Assembly Proclamation, 1989, our first order is to elect a chairman who will preside over this Assembly. I propose therefore that we proceed immediately to the election of this important official. I now have the honour to call on the members elected to the Constituent Assembly to nominate the Chairman of the Constituent Assembly.

ELECTION OF CHAIRMAN

MR BESSINGER: Mr Acting Chairman, honourable members of the House, I hereby propose Mr Hage Geingob.

MEMBER: I second.

MR MUYONGO: Mr Acting Chairman, I hereby propose Mr Andrew Matjila.

MEMBER: I second.

THE ASSEMBLY PROCEEDS TO THE VOTE.

ACTING CHAIRMAN: Honourable members, as you have just voted in terms of Section 4(b) of the Constituent Assembly Proclamation, 1989, I have the honour to announce the result of the election: Comrade Hage Geingob is duly elected as the Chairman of the Assembly.

I now have the honour to invite the Chairman, Comrade Hage Geingob, to take the Chair.

THE CHAIRMAN takes the Chair.

CHAIRMAN: Honourable members of the Constituent Assembly, I would like to thank this honourable House most profoundly

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for the trust deposited in me by electing me the chairman of this Assembly. I pledge to this honourable House that I shall execute my task dutifully and conscientiously.

Honourable members of the House, as Chairman I would like to remind us all at the outset that by electing us to this Assembly, the Namibian people have entrusted upon us a very heavy responsibility, collectively and individually. They have given us a mandate to hammer out and adopt in a spirit of compromise, a spirit of give and take a constitution that will launch our country and people into nationhood. This, I daresay, is a trust we dare not betray.

It is therefore my fervent hope and belief that all our actions will be guided by that all-important consideration. Our party-political differences, such as they are, should not blind us to what we are here for. Section 2 of the Constituent Assembly Proclamation, 1989 defines our task most distinctly, and I will quote:

- "1. To draw up a constitution for Namibia.
2. To adopt that constitution by a two-thirds majority.
3. To fix a date for the independence of Namibia."

In a spirit of give and take we should be able to discharge this noble duty as speedily as possible. Obviously there will be differences of opinion on very vital matters, but through debate and consultation we should be able to find solutions and move forward. As chairman I will try my level best to be as impartial as is humanly possible. Towards all the political parties I will endeavour to be courteous and expect that the same spirit will prevail in this House. Every member is therefore welcome to approach me on any aspect of our work.

Honourable members, our country, our people, indeed the whole world, is at the moment in a state of anxious suspense awaiting the outcome of our work. The future of a people that has clamoured for so long for freedom is in our hands. The issues involved call for great statemanship. The challenge to us all is clear. It is up to us to deliver Namibia from the bondage of colonialism. But let's remember, the people are waiting. I thank you very much.

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MR S NUJOMA: Thank you, Mr Chairman. Honourable Adv Louis Pienaar, Administrator General, Your Excellency Mr Martti Ahtisaari, Special Representative of the United Nations' Secretary General, honourable Judge President, Mr Justice Berker, Your Excellencies, members of the Diplomatic Corps, honourable members of the Constituent Assembly, ladies and gentlemen.

I would like to congratulate Comrade Geingob on his election as Chairman of the Constituent Assembly. I look forward to working with him. It is with great pride and humility that I take the floor to address this august body, proud because an occasion like this only occurs once in one's lifetime. Proud also because as a Namibian patriot I have been associated with the struggle that led to this auspicious occasion. Humility because I, Sam Nujoma, son of an ordinary person, has been greatly honoured by the people of Namibia to lead them into nationhood. For this honour I thank the Namibian people most. I also pay special tribute to those of our countrymen and women who laid down their precious lives to make this day a reality.

I would also like to take this opportunity to thank Adv Pienaar for the wonderful co-operation given to me and my organisation. Swapo wishes him an enjoyable stay in this country until the conclusion of the entire process, and promise him our co-operation as the majority party in the Constituent Assembly.

My thanks also goes to His Excellency Martti Ahtisaari, Special Representative of the United Nations Secretary General, and through him to His Excellency Javier Perez de Cuellar, United Nations Secretary General, for a job well done by Untag-personnel under trying conditions. The Namibian question has been pending at the United Nations for a long time, and I as one of its perennial petitioners did not anticipate that the United Nations, which was defied with impunity by South Africa for so long, will today preside over a success story scored by two adversaries of yesteryears. Without the majority and the commitment of the Namibians to peace and democratic principles of free and fair elections, we could not have scored this feat. Thus, especially the prize must go to the people of this country.

I would also like to congratulate the elected members from all political parties represented here and wish them success in their deliberations. I wish to pledge the co-operation of my party with their parties in the interest of securing early independence for Namibia and its people. As Namibians they will no doubt agree with me that our

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MR S NUJOMA

people have suffered and waited too long for their God-given right to freedom and independence. As their representatives therefore it is incumbent upon us to hasten the day of independence. We cannot and must not disappoint them.

As I have said time and again, Namibia is a huge country with a small population. Therefore all Namibians, regardless of colour, creed and places of origin, have a place in our beautiful country. It is only for us to reach out to one another and mould a new nation out of diversity. Through a cross-fertilisation of our diverse cultures we should be able to emerge with a national culture. As a nation we must work together to provide meaningful education to our young, to provide proper hospitals and medical care to the sick. Yes, to provide security to all Namibian families, for as a human race we desire the same thing, namely proper shelter, proper clothing, security in our homes and so on. We all want to see our children happy and having three meals a day. These basic things every family in Namibia is entitled to and ought to get, be it a family in Eros Park, in Katutura, in Khorixas, in Katima, in Epukiro, in Ondangwa or in Keetmanshoop.

Our noble task as founding fathers and mothers of the nation is to constructively contribute towards the adoption of a constitution and the formation of a government. That we will attempt to answer these many problems that beset our country and people.

I am fairly confident that you, honourable members, will properly execute the mandate entrusted to you and not let our people down. For my part I will do the best I can to realise the objectives that we have set ourselves to. May our proceedings be crowned with success. I thank you.

MR MUYONGO: Mr Chairman, honourable members of the House, let me join in congratulating you for having been elected to the chairmanship to preside over this august body. I would like to say through you, Mr Chairman, to all honourable members that the DTA is and will be prepared to co-operate constructively and make suggestions. The DTA of Namibia represents a broad spectrum of the Namibian people, and in this House the results are clearly being demonstrated of the recent elections held under the auspices of Resolution 435 of 1978 of the Security Council.

We therefore come to this honourable House with the full

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MR MUYONGO

knowledge that a great responsibility rests on our shoulders, to carry out the mandate that has been given to us by the people of this country. This responsibility is embodied in the 1982 Principles to which we were a party in the final acceptance. I hasten to add that all parties here today have accepted these principles and the framework of a future constitution.

Mr Chairman, I take the liberty to briefly once more re-emphasise these internationally prescribed principles as follows:

1. Namibia will be a unitary, sovereign and democratic state.
2. The constitution will be the supreme law of the land.
3. The constitution will determine the organisation and powers of all levels of government.
4. The constitution will provide for a system of government with three branches - an elected executive branch, a legislative branch and an independent judiciary.
5. The executive and the legislative branches will be constituted by periodic and general elections which will be held by secret vote.
6. There will be a declaration of fundamental rights.
7. It will be forbidden to create criminal offences with retrospective effect.
8. Provision will be made for the establishment of elected councils for local or regional administration.

Mr Chairman, hence the formation of a government can only be made possible upon acceptance of a constitution by a two-thirds majority of the members of this Assembly.

Mr Chairman, having said that, I can assure you, once again on behalf of the DTA, that we are here to give and take, that we are here as Namibians to try and find what is best for us. I think what is important is we have to be independent. We have been under colonialism for years. Now the time is about we should not delay it unnecessarily, but at the same time we must keep in mind that the people of this country have suffered for a long time, and therefore they need a democratic process that can give them a future, a good and prosperous life. Thank you.

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MR J GAROEB: Mr Chairman, honourable members of the Constituent Assembly, Your Excellencies Louis Pienaar and Martti Ahtisaari, members of the Diplomatic Corps, members of the press, ladies and gentlemen. Allow me first of all to congratulate you on your appointment as the Chairman of this august Assembly, called into being to perform the historic task of charting the destiny of our nation. It stands to reason that the success of this body 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 storms and to maintain in the Assembly at all times a climate conducive to a friendly, open and constructive debate, the only means through which we can address issues exhaustively and honestly.

Considering that our people, who suffered at the hands of successive colonial regimes for over an century, are looking upon this Assembly with high expectations, impatience and an intoxicating sense of hope to be delivered from the forces of racial alienation and disunity, we would do our utmost to accomplish the task in the shortest possible time in order to go down to the actual business of national reconciliation and reconstruction. To this end I can assure you, Mr Chairman, of my delegation's fullest co-operation. We would, however, like to be very categorical, that our support for what is at stake and co-operation with the Chair would first and foremost be determined by the dictates of diverse socio-political realities of our society.

Secondly, it is indeed a great honour and pleasure for me to address this supreme body founded on the will and aspirations of our people. The stage of political development which we are entering requires from all of us to exercise the utmost responsibility, political foresight and tolerance, hitherto unseen in our history. The time has come to move beyond narrow party-political interests and to face the challenges confronting the nation.

Despite the fact that very serious problems still remain unresolved, the UDF-delegation believes that the dawn has set for all of us in this country to turn a new page. It is undoubtedly true that it might still be very hard to reach our long cherished goal of national reconciliation if such serious problems, as I would indicate shortly, are allowed to cast a shadow of doubt and mistrust among us.

The recent election results are a clear expression of the

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MR J GAROEB

Namibians' approach to democracy. Of course, some objective factors inhibited the election results from giving a hundred percent reflection of the views of the electorate. The major factors were intimidation and unfair competition from the quarters who had psychological and physical advantages of institutions, resources and extra-territorial connections. This situation placed the rest of the parties at a serious disadvantage. The failure of the UN-plan to comply with the basic requirements of fairness, makes it a mockery of justice. It is our understanding that free elections mean that all Namibians must be enabled, without fear and intimidation, to exercise their long-denied inalienable right to vote. There is sufficient proof that many hundreds of Namibians, against their will and contrary to the provisions of UN Security Council Resolution 435, did not participate in the election process. Therefore it can be stated beyond any shadow of doubt that the process was not free. Hence our conclusion that the election was neither free, nor fair.

We would like to submit to you, honourable Chairman, and through you to the House, that as a point of departure and confidence building measure, this Assembly takes upon it the task of addressing all the unresolved problems of the earlier stage before getting down to scheduled work of the Assembly. The issues which we would like to address earnestly includes, firstly, the fate of the Namibians who have been tragically denied their inalienable right to participate in the independence process. Secondly, the exclusion of the 1982 Principles from the Proclamation. The Proclamation of the Constituent Assembly made a fatal omission by not incorporating it. We registered our dissatisfaction to the AG and the Special Representative of the Secretary General about the omission of these principles which form the cornerstone of the independence plan. The inclusion of these principles in the proclamation would have made them legally binding.

Mr Chairman, I would like to remind you that each delegation should see it as a legal and political obligation that the verdict of the Namibian people in favour of a multi-party democracy is adhered to. At their first and historical opportunity to decide on their future, the people of Namibia did demonstrate in a dramatic fashion their abhorrence for a one-party dictatorship. Therefore it would be a violation of the people's verdict and mandate for any party to contemplate forming dominating blocks, alliances or to absorb others which will facilitate one dominating the other.

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The UDF, with its minority position of four seats, sees itself possessing a remarkable bargaining power which it is not prepared to dispose of by tying itself permanently to one or another party or a block. We will, however, support specific issues acceptable to us, no matter from which quarter it may originate. Both the UN Resolution 435 and the Proclamation for the Constituent Assembly do not make specific provision for an additional election for a government. This matter is left to the discretion of the Constituent Assembly. While appreciating the time and cost involved in organising a second election, the UDF in principle supports the idea of a second election for a government.

The records of some political parties and their official position in the party-political system and public announcements made before and after the elections with regard to future restructurings have led to a serious crisis of confidence. However, we hope that our commitment to reconciliation, peace, constructive co-operation and nation-building will play its part in healing past wounds and restoring mutual confidence and trust.

Finally, on behalf of my delegation, I would like to congratulate all the members on their election to the Assembly and wish them good health, wisdom and success in their deliberations. I thank you, Mr Chairman.

MR J DE WET: Mr Chairman and honourable House, allow me in the first instance on behalf of my party to congratulate every successful party present in this honourable House today. I would like to express my gratitude in the manner the election was conducted. This is indeed a historic occasion, but it calls for goodwill, reconciliation, but real and sensible leadership.

There rests a great responsibility on the majority party, because they are going to play a major role in determining the future of this country, and if it is done in a spirit of give and take, I think there is a bright future for this country, and I do think reconciliation will be achieved within days from now on.

Having studied the Constituent Assembly Proclamation, and after having taken legal advice and considered the matter further, we have reached a conclusion that the proclamation lays down four definite powers which the Constituent

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Assembly can exercise and no other. In the first instance, to draw up a constitution. Secondly, to adopt a constitution as a whole by a two-thirds majority of all its members. Thirdly, to declare South West Africa/Namibia independent on a certain date, on which date the constitution comes in force, such date to be determined after seeking the views of the Administrator General. Lastly, to establish a government for the independent state.

Whilst we have certain reservations about the validity of the provisions of the proclamation in regard to paragraph (c), or the third point above, we have decided to abide thereby in the interest of obtaining independence as soon as possible, and without laying any unnecessary obstacles in the way of the proceedings of the Constituent Assembly. To this end we will render our best endeavours to facilitate the functions of the Constituent Assembly by making a positive contribution as circumstances will permit. We do so on the express understanding that the Constituent Assembly will be permitted to perform these functions laid down in the proclamation and no other, and in particular will not employ its powers and functions in order to either legislate for the Territory or endeavour to govern the Territory without the concomitant responsibility.

We do also, on the express understanding that the constitution to be drawn up will be based on and incorporate those principles laid down in Resolution 435 of 1978, the principles laid down in the letter S/15287 of 12th July 1982, as approved by Resolution 632 of 16th February 1979 and generally known as the 1982 Principles. It is our contention that those principles should form the cornerstone of any constitution to be drawn up by the Constituent Assembly and our belief has further been strengthened by statements to this effect, inter alia by the Special Representative of the Secretary General of the United Nations Organisation and the Administrator General, as contained in an exchange of letters between them on the 3rd November 1989 and an independent statement to this effect by the Special Representative and similar statements by members of the international community.

We wish to give the assurance therefore that whilst we will participate in the proceedings of the Constituent Assembly as actively and positively as possible, we will at all times do our utmost to prevent the watering down, or worse, exclusion of these principles.

Mr Chairman, allow me also a few words in Afrikaans, because English is not the official language up to now.

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Dit is vir my party 'n voorreg om deel te wees van hierdie Grondwetskrywende Vergadering. Dit sal vir ons 'n voorreg wees om 'n bydrae te kan lewer tot 'n land en mense wat saamwerk, in vrede saambly en hierdie land die moeite werd maak om in te bly. ACN, as 'n party wat baie van u dink suiwer daar is om die blanke se posisie alleen te handhaaf, wil ek dit vandag verklaar in hierdie Huis, is nie so nie. Ons sien onself as deel van die politieke omgewing, as deel van die inwoners van hierdie land en sal graag so wil aanvaar word, en ons sal ons graag so wil aanpas by veranderde omstandighede. Ons het aanvaar Suidwes-Afrika, soos ons hom geken het, sal nie meer bestaan nie, ons beweeg in 'n nuwe era in. Ons beweeg in 'n Suidwes/Namibië - en heelwaarskynlik net Namibië - en ons is deel van hierdie nuwe land, ons is deel van 'n nuwe bedeling, ons sal graag dit waaroor ons beskik in terme van ondervinding, in terme van kennis, in terme van vermoëns, dit bied aan hierdie land en sy mense mits ons aanvaar word as deel van hierdie land.

Ek wil vir hierdie Raad alle sukses toewens en vir u sê dat die besluite van vandag en môre gaan bepaald 'n invloed hê op hoe ons vorentoe gaan beweeg. Ek bid God's rykste seën op hierdie Huis en al sy werksaamhede. Dankie.

MR M KATJIUONGUA: Mr Chairman, distinguished representatives, fellow Namibians. I am pleased to be here in the Landesrat for the second time. History has its own strange way of repeating itself.

The NPF, the National Patriotic Front of Namibia and I, extend to you, Mr Chairman, our sincere congratulations for the confidence this distinguished House has given to you to direct its deliberations in tackling the monumental, but exceptional historic task facing our country at this point in time. It is our sincere hope that you, Mr Chairman, will prove a deserving recipient of the confidence given to you. Of all of us here the challenge to you is the greatest and the task the most complicated. You simply cannot afford to fail, you simply cannot afford to become a disaster.

Mr Chairman, I would like to capitalise on this opportunity to congratulate all the parties that were successful in obtaining representation in this distinguished Assembly, and in this connection we extend a particular word of good wishes to the parties that obtained the biggest number of votes in the election. It is our sincere hope that these

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parties will have the wisdom and the capacity to convert these big numbers into quality performance. As we congratulate ourselves here, we cannot forget those other parties that had the moral courage to participate in this unique democratic exercise, although they could not get elected. There is always a tomorrow - môre is nog 'n dag. Hopefully this is not the last democratic election.

As far as the NPF is concerned, we sincerely believe that one voice of reason in the Namib Desert is far better than millions of unsubstantial, flimsy voices in the Atlantic Ocean. I trust that at the end of the day my contribution here will not be judged against the size of my delegation, but in terms of the relevance and lucidity to the constitutional process. I have come here in the spirit of optimism and constructive co-operation. We may have lost a couple of backers in the election campaign, but we maintain that the war for a democratic and prosperous Namibia continues. In any case, the show must go on.

As you all know, the NPF and I bitterly disagreed many times with Untag and the Administrator General concerning the manner in which they were sometimes doing their work, but it is a fact that I never criticised them in a negative manner, and today I must say: Mr Ahtisaari and Adv Pienaar and your personnel, despite the twists and turns, despite the outstanding question of detainees, you have accomplished your mission successfully. Thank you and congratulations. I hope you never regarded me as your enemy. You played your part and it is now up to the people of Namibia what to do with the end-product of your efforts.

Fellow Namibians, it is only the day of the declaration of independence that will exceed this day in its emotional and historic significance to this nation. Therefore, this day affords the politicians assembled here with an exceptional opportunity to demonstrate strong leadership qualities by clearly indicating to a watchful, hopeful and nervous nation what we intend doing, where we stand on the great issues facing this country. In this connection it is particularly important for the leader of Swapo, as the majority party in this Assembly, to reassure the nation that they are in safe hands and need not worry about tomorrow, about the safety of their lives and the security of their jobs, while we are seated here debating the constitutional future of Namibia.

The business community needs a strong and unequivocal statement from Mr Nujoma that no policies are contemplated which will wound the economy of Namibia, and that nothing will be done or said that will frighten investors both here

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at home and abroad. It is now the time to put a definite end to the practices of making contradictory statements and providing double signals about matters that can help build or destroy this country. It is now the time to be more consistent. It does not make sense to talk about national reconciliation and forgetting the past, while at the same time you are calling your political opponents all kinds of derogatory names. Keep in mind, this political muck-slinging is by definition a two-way traffic. It is a source of concern to say one day that the whites are fellow Namibians, and to call them settlers and guests the following day. It is totally inconsistent to declaim from a platform in Ovamboland peace and reconciliation with the South West Africa Police, and later to call for the investigation and rehabilitation of members of the Force from somewhere in Wanaheda. It is to invite instability and incompetence in the Public Service to tell the civil servants one day that they should not worry about their jobs and pensions, and the next day to insinuate that many of them can be replaced by retainees for political reasons. The point I want to make here, Mr Chairman, is that double signals create confusion, uncertainty, uneasiness and fear. It should be kept in mind that the major responsibility of responsible politicians is to get the country going and to make the people have a peace of mind. It should be kept in mind, for example, that those who call for the investigation and rehabilitation of the SWA Police, or Koevoet for that matter, should remember that there are many people in this country who would like the same things to happen to Plan and Swapo Security. The voting pattern is clear evidence of this national dilemma.

So, ladies and gentlemen, please do not press red and green lights simultaneously, and keep in mind the old adage: Those who live in glass-houses should not throw stones.

Mr Chairman, the experience of our country and its special characteristics, as exemplified by the outcome of the election, tell us that we must be extremely careful when we are writing the constitution of an independent Namibia. The urge for independence now should not blind us to the realities of our country. We should not drive the kombi of independence too fast, only to overturn before we reach the destination of a free Namibia or to regret our work when it is too late to make corrections.

What the outcome of this election tells us is that our future constitutional structures must necessarily create a

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balance between population figures, geographic and economic factors and the skills and the expertise of our people as a whole. That balance must find its reflection in the process of dialogue, bargaining and the policy, as you said, Mr Chairman, of give and take in the national interest, to avoid civil strike, break-away tendencies and political apathy.

Our system of government must include these checks and balances which are necessary for a national feeling of interdependence amongst our people. I am here to contribute our share to that process. I thank you.

MR J G A DIERGAARDT: Mr Chairman, honourable House, this is my first opportunity to say my congratulations to Swapo as the major party in this Constituent Assembly, and I also want to congratulate you as the Chairman of this House. Because of the fact that you are the major party, you have a great responsibility and obligation to lead the people of this country not only into independence, but to lead them into peaceful independence. Because of the diversity of the people of this country you have that big responsibility to lead them into a nation, not only to people that are living in this country, but to make them a nation of this country. If you do that, Mr Chairman, I can assure you that you will have the co-operation of my party and myself. I will help you to do that.

The people of this country have been looking for independence for a long time and also looking for upliftment and development. Now you have the opportunity of doing that, and if you create a constitution that is acceptable to all the people of this country, it is easy for you to bring all the people together. But if you are going to have a constitution that is only suitable for Swapo, you will have some problems in bringing the people together in this country.

Mr Chairman, we are all looking out for independence, all of us are looking for a peaceful situation in our country. We want to live together. We want to live in prosperity. You now have the opportunity for doing so. Please, do it, and if you do that, you will have the co-operation of my party as well as myself and we will stand with you to uplift the people of this country, because they need it. I thank you.

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MR RUKORO: Mr Chairman, distinguished guests, members of the Diplomatic Corps, honourable members, ladies and gentlemen, I do not have a long speech.

First of all, on behalf of my party, the Namibian National Front, I would like to extend my sincere congratulations to you for your election to the chairmanship of this august body. Secondly, I wish to state that my party and myself are deeply conscious of the historic responsibility that has been enplaced and entrusted on each and every one of us here to shape the destiny of the nation, to act as the founding fathers and founding mothers of one nation. We are here to make our very modest, but make no mistake, very decisive contribution in shaping the quality of life of our people so that their sacrifices and the years of struggling would not have been in vain. We are here in the spirit of co-operation.

I do not belong to any voting blocks, I am here to contribute and to support all sensible measures and proposals, whether proposed by the majority party or by my fellow opposition parties. I am also here to vigorously oppose any unworkable solutions, any designs to try and go back to the old era of failed policies and designs. We are here conscious that the politics of the past are no more. We are about to enter a new era, an era that calls for maximum national unity, meaningful national reconciliation and we are here to contribute to the creation of a new Namibia. That is why I say you will have our support in drawing up a sensible constitution for our country. We intend to move expeditiously in drawing up the constitution so that our people can attain independence at the earliest possible time.

We therefore appeal to our entire nation to move forward as one people, to take each other by the hand in a true spirit of national reconciliation, in a true spirit of brotherhood and sisterhood and move forward to create a new Namibia.

Lastly, but not the least, I would like to congratulate each and everyone of you who won a seat in this honourable House and in particular the winning party, Swapo of Namibia, whom we believe has a very serious responsibility to determine the future of this country. We look forward to a constructive and healthy relationship in the road ahead. Thank you very much.

CHAIRMAN: I thank Mr Rukoro for his speech and all those

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who expressed nice things about me. I once more state my readiness to co-operate with all of you, for the spirit of co-operation must start in this House. To the spirit of co-operation in this House I am pledging myself.

BUSINESS SUSPENDED and RESUMED AT 14h15

NOMINATION OF MEMBERS ON THE COMMITTEE
ON RULES AND STANDING ORDERS

CHAIRMAN: The following members will constitute the Committee on Rules and Standing Orders:

Swapo: Mr Geingob (chairman) Dr Tjiriange, Mr Ruppel, Mr Hamutenya, Mr Gurirab, Dr Ithana, Dr Iyambo, Dr Tjitendero, Mr Angula, Dr Katjivivi, Mr Bessinger and Dr Amathila.

DTA: Mr Gaseb, Mr Junius, Mr Staby and Mr Matjila.

NNF: Mr Rukoro

FCN: Mr Diergaardt

NPF: Mr Katjiuongua

ACN: Mr Pretorius

UDF: Mr R R Diergaardt.

MOTION ON THE ADOPTION OF THE
1982 CONSTITUTIONAL PRINCIPLES

MR T-B GURIRAB: Thank you, Mr Chairman. My intervention at this stage is necessitated by this morning's session, particularly with reference to the 1982 constitutional principles. Much has been said about these principles, particularly during the course of the election campaign, and by people who really had, at the very least, little to do with these principles, or at best, came around later to accept them.

A wrong impression was created as if somehow Swapo was

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opposed to these principles. I know it very well, as you do, because I was intimately, personally involved with the 435-negotiation process. Swapo is the only party around this table that actually participated in the negotiations.

In 1981 a new negotiation process was started following the election of a new administration in the United States. We had three-phased negotiations.

MR D F MUDGE: On a point of order, Mr Chairman. We don't have any rules and I think this must be completed and I think whatever Mr Gurirab has to say, he will have the opportunity to say at the appropriate time, because if he is allowed to speak now, other members would want to respond and then we will have a debate without rules. So, Mr Gurirab, I plead with you, let us adjourn the debate until Monday.

MR T-B GURIRAB: I can assure Mr Mudge that he will like what I am saying, if he will just give me three minutes. I want to make a formal proposal, indeed a formal motion, that the Constituent Assembly in this sitting adopt the 1982 constitutional principles as the framework for the constitution that we are going to draft. That is my formal motion.

CHAIRMAN: The reason I allowed the member to speak is because after this morning's debate we thought it would be good that this could be adopted, so that all of us can be guided by those principles. What is being proposed is that we, the Assembly on its historic first sitting, adopt the 1982 constitutional principles as principles to guide us during our course of action.

MOTION ADOPTED UNANIMOUSLY.

ASSEMBLY ADJOURNED

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMGER
WINDHOEK
27 NOVEMBER 1989

The House met pursuant to the adjournment.

THE CHAIRMAN took the Chair and read Prayers.

TABLING: FIRST REPORT 1989:
COMMITTEE TO DRAFT STANDING RULES AND ORDERS

DR TJIRIANGE: Mr Chairman, I lay upon the Table:

First Report, 1989 of the Committee to draft
Standing Rules and Orders.

ADJOURNMENT OF ASSEMBLY

On the motion of the Chairman, the Assembly adjourned at
14h28.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
28 NOVEMBER 1989

The Assembly met pursuant to the adjournment.

CONSIDERATION: FIRST REPORT, 1989:
COMMITTEE TO DRAFT STANDING RULES AND ORDERS

CHAIRMAN: Does any member move that the report now be considered?

MR DE WET: Mr Chairman, before I move, may I draw the attention of the Assembly to page 11, clause 51. If I may read the clause it says:

"The Assembly may, by resolution after notice, direct that any motion submitted and any resolution or other vote, shall be expunged or discharged from the order paper."

To me it sounds a little dictatorial. Can't we insert just after "notice", debate? Then it will read as follows:

"The Assembly may, by resolution after notice and debate, direct that any motion submitted and any resolution or other vote, shall be expunged or discharged from the order paper."

That sounds a little more democratic, if I may say so. I would like to make this suggestion to the Assembly and especially to the Committee.

AGREED TO.

MR PRETORIUS: Mr Chairman, Section 10(2) reads as follows:

"Save where otherwise provided in the Proclamation, all motions and questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting."

This is a deviation from the proclamation. Article 8(1) of the Proclamation reads:

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"The Assembly may make rules and other orders with respect to the order and conduct of its business and proceedings; and

Unless and until the Assembly by any such rule or order provides otherwise;"

and then (c):

"Except as provided in Section 2(1)(b), the determination of all other questions in the Assembly shall require the favourable vote of at least 37 members."

So, I only want to ask the question whether this is a deviation, and if so, I want to say thank you, because I think it will be to the advantage of the minority parties.

MR RUPPEL: Mr Chairman, the quorum is fixed at 37 members at any time. That is a sitting. Without 37 members there is no sitting, and the concern of the honourable member Mr Pretorius in regard to 10(2) is therefore taken care of on a proper construction of clause 10(1) and 10(2) read together.

MR PRETORIUS: Meneer die Voorsitter, dit is nog nie besluit dat Afrikaans nie gepraat mag word nie, maar ek sal dit nou maar in Engels sê omdat ek besef wat die probleem is.

Mr Chairman, I want to thank you and the Committee in public and to express my appreciation on behalf of, I believe, quite a number of honourable members in this House for your undertaking that adequate provision for translation will be made as soon as possible, because I believe that the other members, and even myself, have a lot of very good arguments which we can only really express in our mother-tongue, in Afrikaans, and if we are not allowed to do so, then you will not have the privilege to hear it. Thank you.

MR KATJIUONGUA: Thank you, Mr Chairman. I refer to Section 66: Subject to the provision in the preceding para-

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graph and save for questions and motions concerning procedural matters of the Committee, no voting shall be permitted in a committee.

Mr Chairman, with an eye to the speedy work of this Assembly to finish the constitution, I think it is important that we should consider how efficient we can get the work done. Those of us who are one-man delegations - and I am not trying to smuggle somebody through the backdoor, I am only trying to find out, through you, Mr Chairman, if I am the only one in one committee and we are divided into many committees and they are meeting simultaneously, I might have a problem to attend all of them at the same time, and when the work of the committee is brought here, I might delay the speedy discussion of this report because I may have to go through every paragraph because I was not present. Is there a possibility, a consideration, can you take a resolution here to allow people in the committees who might not be members who represent parties or me or some of the colleagues here, just for the purpose of speeding up the work of the committee. Is such a possibility being considered? Thank you.

MR CHAIRMAN: The non-voting procedure in a committee is in favour of the one-man delegations. Of course, all members are free to debate the issue when it comes to the House and the House can always vote. When the report appears in the full House, the members are free to amend and make contributions.

MR KATJIUONGUA: So, Mr Chairman, in lieu of trying to have somebody else there, I can still discuss the matter here, even if I may delay the proceedings.

MR J GAROËB: Mr Chairman, I refer to Clause 12 on page 4 to 5. The subclauses 2, 3 and 4 stipulate circumstances under which a seat shall be considered vacant. Now it is my view that a very important circumstance has been omitted, that of when a particular registered party decides to withdraw a member. Therefore I would like to propose that an additional subclause be added which would read as follows:

"The member is withdrawn by virtue of a decision by a registered party by whom the member was nominated as a candidate."

Thank you.

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MR RUKORO: Mr Chairman, this question was considered by our subcommittee and we have no problem with it for the simple reason that that aspect is more than adequately covered by Clause 12(1), namely that the seat of a member shall be considered vacant if the member no longer represents the registered party in the Assembly by which the member was nominated, and downwards it is provided further that the chairperson of the Assembly shall be informed forthwith of a member's vacation of his seat under these circumstances by the registered party concerned. That, in very simple English means, if a particular party has decided as part of its own constitutional arrangements that it wants to withdraw one of its members and substitute him by somebody else, they can do so under this clause.

MR J GAROEB: I was only afraid that according to the rule of law, if you specify some circumstances and omit those, then it implies that those which are omitted, are not legally binding. That was what I was afraid of. Thank you.

CHAIRMAN: We read this paragraph 12.1 to cover all circumstances.

REV WITBOOI: I want to refer to page 3, 10.4:

"Subject to the provisions contained in the Rules, the voting in the Assembly shall be by show of hands or rising of the members, as the Chairman may from time to time determine, or, in the event of the request of a member, by secret ballot."

Honourable Mr Chairman and the House, I thought that voting by show of hands and rising of members might infringe on the personal freedom or democracy of someone, because someone might be exposed too much, someone who might have supported the idea. So, if we could put it the other way around, secret ballot should be the priority and then when requested, that the voting should be by show of hands or by the rising of the members.

CHAIRMAN: I can assure the honourable member that all these methods of voting are democratic. Of course, there are some minor issues, not serious matters, where one can vote by a show of hands or getting up, but since only one

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member is required to request a secret ballot, I think it is adequately covered. The moment I do not feel at ease, I can request a secret ballot.

MR MUDGE: Mr Chairman, I will not oppose this paragraph, but I want to put it on record that every member of this House was elected by the people of Namibia and is responsible towards the people of Namibia, and this explains why the debate will be open to the public, open to the press, and not only the debate, but also voting is part of the debate. I think the public is entitled to know not only what point of view a person takes and the opinions he will express, but I think the public is also entitled to know where that person votes and whether that person still represents the electorate.

As already said, I will not oppose this paragraph, but I can only hope, and I will appeal to this House, that only on very special occasions we will resort to secret ballot. We should have nothing to hide, Mr Chairman, to the public. I think this is, as far as I am concerned, part of democracy. I just wanted to put that on record. Thank you.

MR KATJIUONGUA: Mr Chairman, I would have liked to support the proposal by the honourable member Rev Witbooi. It is true that maybe if you are a one-man delegation there is no fear of defections, but there is also the question of people voting according to conscience and sometimes they might fear victimisation by their organisation. That is the only problem.

REV WITBOOI: Page 10, point 38. I have nothing against rising to address this House, but Mr Chairman, I see the microphones in front of us, I don't know what purpose they serve. If you stand, maybe they don't serve their purpose. So, I was wondering whether it is possible to sit down and use the facilities which are there when addressing the meeting. I have nothing against that, but it is only a question.

CHAIRMAN: The microphones are very sensitive and they will record your voice even if you stand up. If you want to

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remain seated, members are allowed to do that.

MR KOZONGUIZI: I just want to point out some typing mistakes. On page 4, 12.1: ".... provided that the validity of a decision of or any proceedings in the Assembly shall not be effected.." It should be "affected." And then on page 10, point 39: "When a member rises to speak, the member shall be called by the Chairperson, and if more than one member rises.." It should be "rise".

MR STABY: Mr Chairman, as far as I am aware, this House will have to appoint, in terms of these Rules, a Standing Committee on Standing Orders, not only because there are very likely matters that will arise in future that will have to be dealt with, but also because we have reached, as far as I am concerned, a gentleman's agreement in the sub-committee to deal with situations as they arise. You will recollect, Mr Chairman, that all the parties are agreed to prepare, table and agree a set of rules and standing orders as very soon as possible in order to enable the honourable House to proceed with the work which it has to do.

I would therefore suggest, Mr Chairman, that the incoming committee on Standing Orders takes note of the points raised here today, that if necessary it redebates these points and in due course resubmits them to the honourable House. I would also like to mention in passing that I believe it is necessary for the whips of the various parties to inform their delegations as far as is humanly possible about the discussions, but that is just in passing.

I would therefore like to propose that the debate on these rules be closed and that the rules be accepted as they stand. Thank you.

AGREED TO.

APPOINTMENT OF MEMBERS ON STANDING COMMITTEE
ON STANDING RULES AND ORDERS AND INTERNAL ARRANGEMENTS

CHAIRMAN: In terms of Rule 63 of the Standing Orders, I

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have appointed the following members to serve on the Standing Committee on Standing Rules and Orders and Internal Arrangements. The members are as follows:

Messrs Amathila, Angula, Bessinger, J G A Diergaardt, R R Diergaardt, Gaseb, Gurirab, Hamutenya, Mrs Ithana, Dr Iyambo, Mr Junius, Dr Katjivivi, Messrs Katjiuongua, Matjila, Pretorius, Rukoro, Ruppel, Dr Tjiriange, Dr Tjitendero.

NOTICE OF MOTIONS

MR MUYONGO: Mr Chairman, honourable members of the House, I give notice that tomorrow, Wednesday, 29th November 1989, I shall move:

That this Assembly -

Cognisant of the historic responsibility of this Assembly concerning the drafting of a constitution for a free and independent Namibia;

In compliance with the desire of the people of Namibia to achieve internationally recognised independence for Namibia as soon as practically possible without undue delay;

In re-affirmation of the need for lasting peace and reconciliation;

In compliance with the "Basic Principles of a constitution for an independent Namibia 1982" and the "Constituent Assembly Proclamation 1982";

Resolves to -

1. Collectively and in a spirit of give and take, draft a Constitution acceptable to the vast majority of the people of Namibia and to be adopted by two-thirds of the membership of this Assembly.
2. Draw on the research undertaken, experience gained and documents produced by the parties represented in this Assembly.
3. As the first step towards agreement, rationalise the deliberations of the Assembly by debating and

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reconciling the diverging proposals of various parties in relation to the following basic provisions of a constitution:

- 3.1 The interpretation of the 1982 Principles for the Constitution for an independent Namibia and to deliberate specifically the following cardinal issues of the Constitution;
 - 3.2 The powers and functions of the President of an independent Namibia;
 - 3.3 A single- or bicameral legislature;
 - 3.4 Powers and functions of
 - (a) Regional Councils and
 - (b) Local Authorities
 - 3.5 A Bill of Fundamental Rights;
 - 3.6 The administration of justice;
 - 3.7 The principle of proportional representation.
4. Appoint committees for further deliberations only after a general debate of the above issues has taken place in the Assembly.

MR DE WET: Mr Chairman, I give notice that tomorrow I shall move:

That this Assembly -

- (1) mindful thereof that the recent election in South West Africa/Namibia in terms of UNSCR-resolution 435/1978 has been certified as a free, and democratic election in accordance with the provisions of that resolution;
- (2) mindful thereof that this honourable Assembly has been constituted in accordance with the provisions of the said Resolution 435/1978;
- (3) mindful thereof that, resulting from the aforementioned, the Assembly is regarded and accepted as representative of the people of South West Africa/

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Namibia and vested with certain powers in the interest of the people of the territory;

- (4) mindful thereof that, in order to realise the expectations of the voters in South West Africa/Namibia and to act in the interests of the territory and its people;
 - (5) regards it of the utmost importance that economical activities in South West Africa/Namibia should not only be maintained but that such activities should be promoted and extended;
 - (6) assures the economically active community in the territory that a free market system with a mixed economy shall be maintained in South West Africa/Namibia;
 - (7) is of the opinion that the aforementioned will contribute to greater prosperity for the people of South West Africa/Namibia and to the creation of more job opportunities;
 - (8) resolves that, in order to create a favourable economic climate, the Security Council and the General Assembly of the United Nations, as in particular those countries presently imposing sanctions against South West Africa/Namibia, be requested to immediately lift those sanctions instead of waiting till after the territory's independence to do so;
 - (9) resolves that, in order to increase South West Africa/Namibia's Treasury Revenue from the territory's resources, the international community be requested to immediately acknowledge and respect the territory's 200 nautical mile fishing zone;
 - (10) resolves that existing trade relations and trade agreements be maintained;
 - (11) resolves that further trade relations be established and extended;
 - (12) resolves that favourable conditions for foreign interest in the form of capital- and expertise investments should be instituted.
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MR NAUYALA: Mr Chairman, I give notice that tomorrow I shall move:

That this Assembly -

taking into account the wishes of the people of Namibia, rejecting the imposed colonial status and the name of South West Africa - which is a mere geographical expression;

And taking into account that this wish has been accordingly accepted and respected internationally by the world community;

therefore resolves that our beloved country be henceforth called and referred to as Namibia.

MR STABY: Mr Chairman, I give notice that tomorrow I shall move -

That this Assembly appoints a committee to deliberate upon and submit proposals concerning -

1. The Seal of State
2. The Flag
3. The National Anthem
4. Any other related matters.

NOTICE OF QUESTION

MR KATJIUONGUA: Mr Chairman, I give notice that on Thursday, November 3rd, I shall ask the Chairman of the Assembly the following question:

It has been reported over the national radio, SWABC, that a multi-party delegation, representing this Assembly, attended a meeting of the Joint Monitoring Commission on invitation. On whose authority did this delegation go and why were members of some of the parties here neither consulted nor informed about this development?

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ADJOURNMENT OF ASSEMBLY

The Chairman adjourned the Assembly at 15h15.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
29 NOVEMBER 1989

The Assembly met pursuant to the adjournment.

VACANCY IN THE ASSEMBLY

CHAIRMAN: Honourable members, a vacancy has occurred in the Assembly after Mr Theophelus Soroseb has vacated his seat in terms of Section 3(1) of the Proclamation.

In terms of Section 4(b) of the Proclamation I hereby declare Mr Eric Biwa of the United Democratic Front to be a duly elected member of the Assembly with effect from 29 November 1989.

TABLING: FIRST REPORT, 1989: STANDING COMMITTEE
ON STANDING RULES AND ORDERS AND INTERNAL ARRANGEMENTS

MR JUNIUS: On behalf of the Chairman I lay upon the Table:

First Report, 1989 of the Standing Committee on Standing Rules and Orders and Internal Arrangements.

NOTICE OF MOTIONS

MR ANGULA: Mr Chairman, I give notice that tomorrow I shall move:

That this Assembly resolves that -

1. Registered parties represented in the Assembly shall submit their constitutional proposals or ideas, if any, to the Acting Secretary of the Assembly by not later than 10h00 on Wednesday, 6 December 1989.
2. The Standing Committee on Standing Rules and Orders and Internal Arrangements ("the Standing Committee")

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be and is hereby mandated and instructed:

- 2.1 To receive and consider with appropriate urgency the proposals and ideas from registered parties in the Assembly regarding the future constitution for Namibia;
 - 2.2 To identify and formulate working categories for a future constitution or areas of material disputes in the various proposals submitted by the registered parties, appropriate regard being had to paragraph 3.1 of the Notice of Motion by the honourable member, Mr M Muyongo, and the Notice of Motion by the honourable member, Mr H-E Staby, both dated the 28th November 1989; and
 - 2.3 To make proposals for establishing committees to deliberate and negotiate on the matters referred to in paragraph 2.2 above and to suggest terms of reference and the method of operation of such committees.
3. The Standing Committee shall report back to the Assembly during its sitting on Monday, 11 December 1989.

MOTION ON BASIC PROVISIONS OF A CONSTITUTION

MR MUYONGO: Mr Chairman, I move the motion. (Page 24 of these Debates/Page 5 of the Minutes)

MR MUYONGO: Honourable Chairman, honourable members of the House. Mr Chairman, this is not the first time that the DTA has been involved in the drafting of a constitution for Namibia together with the other parties. It is, however, the first opportunity to co-operate with the South West Africa Peoples Organisation in this regard. It is also probably the first time that Swapo takes part in such a collective exercise inside Namibia. Mr Chairman, this leads immediately to the purpose of our motion, it being to negotiate the co-operation of the Assembly in this combined effort. I would even call it a national effort in writing a constitution for Namibia.

I accepted the fact that most, if not all the present par-

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ties, have done their research over a period of time on constitutional proposals. So, it is understandable that every party would like its own constitution adopted, seeing that a lot of effort has gone into drafting and redrafting of the prospective parties' constitutions. But this approach would be unreasonable and maybe even, if I may say so, senseless. If we would not go about our task in a spirit of give and take, the product will not pass the test of time. We are deeply grateful to have taken note of the willingness of all participating parties to take part in the process in this spirit. If we were to be confronted by half a dozen of complete constitutions in the next few days, for example, by bringing four more motions to the table, then this Assembly will find itself in an impossible position. We then have to prepare ourselves for months of negotiations to follow.

Mr Chairman, if, furthermore, we would fall into the trap of bickering over past political differences, and if we would try to wear each other down with verbal rhetoric, then we will all be tied up for a long time to come. Take my word, enough terrible things have happened in the past to keep us occupied for months. I am not asking anybody to forget anything or to approve of past incidents, but the sole purpose of this Assembly is to write a constitution and nothing else. There will be ample opportunity in a future government to take each other to task on the past and to prove our competence as orators. Our main and immediate task now is to write a constitution and to gain independence for our country.

Mr Chairman, surely there will also be those who occupy the time of the Assembly with motions which do not bear directly on the constitution. Although we shall have to discuss certain important administrative and economic issues, I am convinced that it is more important at this stage to become independent and to reach finality and clarity with regard to our political future. Finalising the constitution is the first major step towards this goal.

Mr Chairman, we are very fortunate to have the wealth of ideas from the various constitutional proposals at our disposal. What we need now is to find a way of attaining the highest possible degree of consensus, or at least, to muster the support of two-thirds of the members of this House. Consequently, Mr Chairman, it is the DTA's point of view that the fundamental principles and issues concerning the constitution need to be identified, especially those over which differences of opinion exist. The Assembly will have to reach an agreement on these first.

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The DTA has identified the following stipulations and principles on which an understanding need to be reached and I name them:

1. The interpretation of the 1982 Constitutional Principles;
2. The powers and authority of the President, whether he will be an executive president or not;
3. The composition of the legislative authority, especially the issue of bicameral parliament;
4. Decentralising of power to regional authorities and the question whether they will have original or delegated powers;
5. The contents and the status of a Bill of Fundamental Rights;
6. The principle of proportional representation;
7. The administration of justice.

Mr Chairman, this motion is an effort to rationalise discussion in this House, and draws the attention to cardinal issues. It certainly is not an attempt to patronise or further party interests. It is merely a humble effort to ensure rapid progress by preventing the debates to fall apart because of senseless bickering which will divert our attention from the many important issues.

My colleagues in my party will discuss the respective points which we have identified. They will state our party's case and give a clear indication of our interpretation and our viewpoint.

Allow me to make a few remarks in regard to one of the fundamental issues listed in our motion, and that is the 1982 Principles concerning the future constitution.

Despite the far-reaching significance of the principles and despite the spontaneous and unanimous acceptance thereof by this Assembly, there is still considerable confusion and misunderstanding about them in Namibia. In an effort to bring more clarity on this issue, I will now briefly discuss the 1982 Principles with specific reference to Part B.

Part B of the document provides that:

"The Constituent Assembly, irrespective of how it is

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composed, will be bound to adopt a constitution providing for a multi-party democracy, with regular elections, an executive authority responsible to the legislature and a bill of fundamental rights guaranteeing basic freedoms, enforceable against the state in favour of an aggrieved individual by an independent judiciary."

In addition there is to be no expropriation without just compensation, no recrimination of activity with retrospective effect, equal access by all to the public service and elected councillors for local and all regional administrations. There can be no doubt that the principles require that a multi-party democracy be guaranteed by the Constituent Assembly. The document provides firstly that the constitution shall be consistent with the principles governing the election for the Constituent Assembly, in other words that it will itself guarantee universal suffrage and that all parties shall be free to campaign and put up candidates for elections.

Secondly, the Bill of Rights is to guarantee the right of freedom of association, including specifically, the right to form and to belong to political parties and trade-unions.

The argument occasionally put forward by our brothers in Swapo, that whereas the election for the Constituent Assembly had to be conducted on a multi-party basis, the people will decide thereafter whether the constitution will make provision for one or many parties, is thus not consistent with the principles.

Mr Chairman, it is a matter of some regret that so much emphasis has been placed on the provision that a two-thirds majority is required to secure passing of a constitution in the Assembly, while so little attention has been devoted to the provisions governing the form and contents of the constitution itself. Not everyone has ignored the principles. However, the Bill of Fundamental Rights and Objectives, formulated and unanimously adopted by the parties in the Multi-Party Conference in 1984, was entirely consistent with the letter and the intent of the 1982 Principles. Likewise the draft constitution submitted by the majority in the Constitutional Council in 1987 was carefully drafted to meet the needs of one national society within the framework laid down by the principles. We in the DTA have long realised the importance of these principles. Accepting the 1982 Principles document involved no effort or concession for us. We were championing the democratic principles contained therein long before we succeeded in having them com-

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mitted to paper by the Western Contact Group. They were indeed part of our manifesto for the 1978-elections.

Mr Chairman, it is surely obvious that those parties which believe in a democratic future for Namibia will readily implement any guarantees which will ensure that this goal is realised. Parties which grasp at any excuse that such guarantees not to be implemented, prove only that their commitment to democracy is no more than empty rhetoric.

The DTA of Namibia is committed to implementing the 1982 Principles, because they embody political values, liberty, democracy, pluralism, the separation of powers, supremacy of the constitution for which we have fought for more than a decade. We needed no additional reasons to give effect to the values which characterise our party.

But Mr Chairman, to those who have some hesitation about sharing these values, we offer the following practical thoughts for consideration:

In order to decrease our economic dependence on South Africa, Namibia will, at least in the short term, need investments and major financial assistance from other countries. As the Eastern Bloc is not known for its generosity in terms of development assistance, we must count on the West, which now, more than ever, in the face of the decline of Marxism-Leninism in the Soviet Union itself, is tying its willingness to provide aid to the establishment and maintenance of multi-party democracies in the recipient countries.

The West German Government has already made it clear that if the new Namibian Government expects financial assistance from that source, it must institute the guarantees contained in the 1982 Principles. The United States and the British Government, who share these ideas towards the 1982 Principles as the West Germans, are taking a similar position, seen entirely practically. Moreover, the nations around the world whose economic performance is a source of envy, are not the one-party states of the Soviet Bloc or the military dictatorships of Africa or that in America. They are the multi-party democracies of the First World. Surely we are able to learn something from that simple fact.

My colleague, Mr Kaura, discussed the central issue of the multi-party democracy in a speech earlier this year and made the following remarks:

"The attributes of democratic statehood, state

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sovereignty and the constitutional limitation of state power, co-exist in a condition of dynamic tension. A democratic state confronts the simultaneous requirements that power be sustained and checked, mobilised and inhibited, legalised, legitimised and divided. A chronic imbalance between these requirements will result either in the collapse of the state or the destruction of democracy. Neither outcome meets the standards we Namibians are setting ourselves at the dawn of our nation."

Mr Chairman, state sovereignty or state power defines and regulates the way in which every social good is allocated and distributed. Throughout most of human history state power has been obsolete and concentrated in a single person or a small dominant group united by kinship or religious or economic interest, and dedicated to maintaining control in every distributive sphere. Democracy by contrast is a philosophy and a system of governance preceeding from the premise that state power derives ultimately from the consent of the government. The locus and source of power of a state is the people themselves. In a modern democracy, although the whole population cannot be consulted on all questions of a government, the principle that sovereignty resides in the people is maintained. The government elected by the people is simply their agent charged to undertake certain programmes for a limited period within a policy framework endorsed at a prior election and to give account to the electorate at the expiry of that period, so that sovereign people may either extend their mandate or terminate it and replace one government with another.

Mr Chairman, constitutional democracy therefore seeks firstly to reconcile the need for governmental authority as a necessary functional attribute of state power, with a system of accountability and choice, thereby returning ultimate sovereignty in the hands of the people, usually the adult citizens of the state. This implies regular elections and the right of the people to form political parties to contest them.

Constitutional entrenchment of a prohibition of the right to form political parties - the one-party state model - is therefore not consistent with the basic promise of democracy, the principle of sovereignty of the people. It is no good arguing that the people have the democratic right to participate in the structures of the state and the political decision-making process through the party if their basic right to form other parties, if they so choose, and to vote for those other parties in the election is denied them. To limit this right in this way is to transfer

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sovereignty from the people to the party, thereby violating the first principle of democracy. This deviation leads inevitably to an excessive centralisation of power in the hands of the party elite, and it is exercised by state officials accountable not to the people but to the handful of persons who control the party. This consequence leads in turn to a distortion of the distributive process in the economic and social spheres with party membership and loyalty as defined by the party elite, becoming a prerequisite for access to desirable goods and services.

Mr Chairman, attempts to dignify this type of ideological oligarchy with names like "people's (or popular) democracy" are nothing short of intellectual fraud. True democracy, as we then see it, places limits on the possibility of concentration of power within the state. Even as a proper accountability and choice are the leit-motiv of democracy, so the separation or fragmentation of state power through a system of constitutional checks and balances is its distinguishing feature.

Allow me to conclude by saying at this juncture, if the Chairman allows, that I ask my colleagues to join me on specific issues of our constitutional proposal and I will conclude by saying we are trying to provoke a debate here of naming major issues concerning the constitution that we should debate here, more especially the ideas that we differ on, so that we will be able to produce a document that the people of this country can live with. Thank you.

MR RUPPEL: Honourable Mr Chairman, on a point of order and in view of the motion in respect of which notice was given earlier today by the honourable Mr Nahas Angula, I want to move that this honourable Assembly postpone the further debate on the motion which had just been introduced by the honourable member Mr Muyongo, as well as the motion and the debate thereon of the honourable Mr Staby, which had been given notice of yesterday and which is on today's Order Paper to tomorrow, to facilitate a debate on the three motions to which I have referred simultaneously, principally because all three of the motions substantially direct themselves at the same issues. Where there is a substantial difference is in the method proposed by the motion in respect of which the honourable member Mr Angula gave notice and the other two motions referred to earlier.

It is in view of this, and in accordance with Rule 29(e) of the Standing Orders, that I accordingly hereby move that

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this Assembly postpone the motions by the honourable Messrs Muyongo and Staby until tomorrow. Thank you.

MR STABY: Mr Chairman, on a point of order. It does not appear to me, in terms of the Rules, to be feasible to discuss three motions simultaneously. With all due respect to the honourable member Mr Ruppel, I don't think that is possible. However, in order to facilitate a sensible debate, I would suggest, and more than suggest I cannot do, through the leadership of the various parties to perhaps consider on an informal basis an attempt to reconcile these motions, prior to the normal Standing Orders being pursued tomorrow, in the event that that proves to be impossible.

CHAIRMAN: Presently the proposal is to adjourn the debate on the motion of honourable Mr Muyongo. That is the issue.

MR MUDGE: Mr Chairman, I will support the motion by the honourable member that the debate be adjourned, but then it must not include any other proposal. If that is the case, we will support it.

AGREED TO.

Debate adjourned.

MOTION ON ECONOMICAL ACTIVITIES

MR DE WET: Mr Chairman, I move the motion. (Page 25 of these debates/Page 6 of the Minutes)

MR ASTON: I second.

MR DE WET: Mr Chairman, an independent SWA/Namibia will face the difficult task of reconciling urgent popular expectations and idealistic policy goals with the historic, ecological, economic and other realities which it inherits. Control over the political kingdom does not automatically furnish the economic means to realise these goals and expectations. Even in the best of circumstances these means are limited. Any post-independent government will have to face both short and long term demands. Over the short term the following will have to be faced: Immediate attention must be given for new job creations; the return of 40 000 refugees, the demobilisation of thousands of Plan-members, SWA Territorial Force, ex-Koevoet members and the thousands of organisers employed by the different political parties during the election campaign. All these people will be without income within the next weeks and this demands

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working opportunities.

Secondly we must take notice of the deficit on the 1989/90 budget of R200 million. Thirdly, as in all newly independent countries in Africa, the demand is there for a significant expansion of educational facilities, health and welfare services, agricultural development and settling of farmers.

The significance of these problems becomes clearer when one examines the productive and related structures on which any rising standards of living for the population will depend. The most outstanding feature of the economy of this country is its fragility. It is vulnerable on both the natural and economic grounds. For example, recurrent droughts. We have experienced that over the years in this country of ours. Fluxuating markets for our export products like diamonds, uranium, beef, karakul pelts and fishery products, and on the other hand, the limited purchasing powers of our small population. These are all facts that we should take into consideration.

This country has an open economy, i.e. a large portion of our total production is destined for export market, while a significant part of the domestic demand is met through imported goods. Therefore any change in the prevailing economic activities must be done gradually, otherwise this country will also become a basket-case, like so many other countries, after independence.

The above outline can leave us no doubt that in independent Namibia, Namibia's economy, economic management and policy must be of high order and acceptable to the international money-sector. It is also clear that out of our own resources this country cannot generate enough income to meet all our obligations over the short term. We cannot even meet our budget deficit which leaves us nothing for development aid or development funds. Therefore we must look at the exploitation of our own resources, and I think it is of the utmost importance that we look immediately to our marine resources and demand immediate action and recognition.

Regarding foreign aid, I hear of this, I read of this. We must also be mindful of the following negative indicatives, and that is that at the moment we experience that there is a donor fatigue regarding African help. Secondly, the Eastern Bloc's economic and social collapse has serious implications for us, because the donor countries' perception is that aid to the Eastern Bloc is of greater significance and efficiency than to Africa.

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Thus, over the short term there is need for foreign aid to obtain development and to give us the necessary aid to meet the expectations of the people of this country. But on the other hand we will have to prove that our aim over the long term is to be self-sufficient in financing at least our own budget, and that all development aid shall be tied to programmed structural programmes.

We must realise, therefore, that this Assembly must come forward with a sound and acceptable economic approach and policy, even before independence. While we are busy hammering out a constitution, the administration and the economy and all economic activities must proceed, otherwise we won't meet our budget and we won't meet the expectations.

Therefore, Mr Chairman, mindful of the importance of my motion to ease the minds of the economic active communities and to prove our sincerity to donors that we are going to explore all avenues regarding our own resources, and that this motion is absolutely clearly defined, I move that this Assembly adopt this motion without further deliberation. Thank you.

MR M GAROEB: Mr Chairman, I beg to move a motion for the postponement of the consideration of the motion by the honourable member Mr Jannie de Wet, pursuant to Section 29(e) of the Rules and Standing Orders of this honourable Constituent Assembly. Thus I move -

That this honourable Constituent Assembly

- mindful thereof that the recent election in Namibia in terms of United Nations Security Council Resolution 435/78 has been certified as being free, fair and democratic in accordance with the provisions of that resolution;
- mindful thereof that this honourable Assembly has been constituted ...

MR MUDGE: On a point of order, Mr Chairman. The honourable member can move the adjournment of the debate, but he cannot propose a new motion. That is not possible.

MR M GAROEB: Mr Chairman, this is a motion for postponement. According to the rules I have the right to propose this motion at this very point in time. May I proceed?

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CHAIRMAN: You must give notice of the motion.

MR M GAROEB: This is a notice not of a motion for the next day's consideration. This is a direct response to the motion that has been tabled to propose the postponement of this particular motion, not a motion. I believe I am in order.

CHAIRMAN: Rule 29: "Every motion requires notice except a motion for the postponement or discharge of an order of the day."

MR M GAROEB:

- mindful of the enormous responsibilities which have been entrusted to this honourable Assembly by the Namibian people and of the need to act responsibly...

MR BARNES: On a point of order. With all due respect, the honourable member just has to move that the debate be adjourned, but not address the House.

CHAIRMAN: You may move to postpone the debate, an adjournment, but you may not deliver a speech.

MR M GAROEB: Mr Chairman, the honourable members must be patient. I am trying to introduce what I am proposing under the relevant rules here. May I proceed?

- mindful of the enormous responsibilities which have been entrusted to this honourable Assembly by the Namibian people and of the need to act responsibly in carrying out the mandate bestowed upon it by the recent election;
- mindful thereof that this honourable Assembly is specifically charged - repeat, specifically charged - with the task of drafting and adopting the constitution and fixing a date for the independence of Namibia;

therefore considers the matters raised in the motion before this honourable Assembly are best discussed at the appropriate time in the framework of discussions on the relevant aspects of the constitution.

Now therefore resolves to postpone discussion on the matters raised in the motion before it until such time as the Assembly had the benefit of considering various constitutional proposals to be submitted to it by the political parties represented in this honourable House. Thank you.

AGREED TO.

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Debate adjourned until 6 December 1989

MOTION ON THE NAME, NAMIBIA

MR NAUYALA: Mr Chairman, I move the motion. (Page 27 of these Debates/Page 8 of the Minutes).

MR ANGULA: I second.

MR NAUYALA: Mr Chairman, this motion, in my humble view, is very simple, patriotic, and straightforward to the point, the argument being that the name, South West Africa, or even SWA/Namibia is meaningless as it was foreign and colonially given and imposed on our country, besides being a mere geographical expression. There is no country with two names. On the other hand, the name, Namibia, originated from the word, "/Namib/", in one of our languages meaning a "protective shield". It is from this very meaningful word that the western desert of our beautiful country derived its name, "/Namib/" or Namib Desert. That is to say, the shield that protected the territory and the inhabitants, the people on or in it from foreign encroachment and occupation for at least some time.

It is very well-known, Mr Chairman and honourable members, that it was not easy or, in other words, it took quite some time - a long time indeed - for foreign invasion to penetrate deep into the hinterland of our beautiful homeland. As I have stated in my notice yesterday, Mr Chairman, it was, it has been, it is the wish of the people of this country to change the colonial status and name South West Africa to an African Namibian name, i.e. Namibia.

Having so resolved, the people of Namibia urged Swapo and other patriotic forces of this country to solicit and galvanise acceptance and recognition of their wish by the international community through the United Nations Organisation. This wish was accordingly accepted and respected by the United Nations General Assembly in 1967/1968 and thereafter the name Namibia has not only been a household name throughout the breadth and length of this territory, from the Kunene to the Orange River and from the east to the west, but it is also on this basis that Namibia Day has been internationally marked and celebrated worldwide.

Having given this humble explanation, Mr Chairman, it is my sincere hope that the honourable members of this Assembly will find no difficulties whatsoever in agreeing with my

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motion to do what is right at the right time, that from today onwards the territory formerly known as South West Africa or SWA/Namibia, be known and called Namibia. I thank you.

MR KAURA: Mr Chairman, allow me a little bit of sentimentalism, because when I look back 21 years ago, I remember that you, as the representative of the South West Africa Peoples Organisation at the United Nations, were instrumental in getting this Namibia accepted as a reference for South West Africa, and you have had it accepted at the United Nations at that particular juncture. I am happy at this particular point in time that when we are discussing the future constitution of our country, and in particular this name, Namibia, you are the chairman of this august body. But regardless of all that, Mr Chairman, and with the enthusiasm to adopt this name as speedily as possible, which has become normally used in all our daily activities, I would like to state that the terms of reference as set out in the Proclamation on the Establishment of the Constituent Assembly, 2(1), states explicitly that our task is to draw up a constitution for SWA/Namibia and to adopt the constitution as a whole. It is my belief that the name, Namibia, would be part of the whole package of the adopting of the constitution, and I think we will go outside the frame of reference if we adopt the name now prior to the adoption of the whole constitution.

In view of the proposal that was made by the honourable member Mr Angula that the debate on Mr Muyongo's motion must be postponed until such time that all the loose ends are tied together, so that we can come up with a complete package, I feel at this particular juncture this proposal of the honourable member must be postponed until such time that a full package is laid before this House and it is accepted with a two-thirds majority. I thank you.

MR N ANGULA: I think the honourable member who just spoke is mixing up two things. I think we should be clear about what the motion is all about. The motion is to delete South West Africa and just keep Namibia. The name exists already. The purpose of the motion is not to define whether it is going to be a republic or a federal state, socialist state or anything like that. That is the kind of thing which you have to write in the constitution. The idea now is just to delete one of the names, namely SWA.

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MR N ANGULA

CHAIRMAN: The proposal is that we postpone the debate with other proposals until 6th December.

AGREED TO

Debate postponed until 6th December 1989

MOTION ON SEAL OF STATE, FLAG AND NATIONAL ANTHEM

MR STABY: Mr Chairman, I move the motion. (Page 27 of these Debates/Page 8 of the Minutes)

MR BARNES: I second.

MR STABY: Mr Chairman, I am grateful indeed that you allow me to motivate this particular motion, even though it would appear to me that there was an attempt to postpone this as well earlier on.

I see no reason why this request of mine that a committee be appointed to deal with certain issues should be postponed. I am not arguing for or against any particular aspect or characteristic of either the Seal of State, the Flag, the National Anthem or, for that matter, any other related issue. I am not debating that at all, I am merely trying to point out to all the members of this House that the design of the Seal of State and the Flag, the composition of a National Anthem and whatever goes with it, is a process that cannot be handled by the honourable members of this House, because quite frankly, none of them qualify as a heraldic expert or even as a graphic artist. So, therefore it is going to be quite a long drawn-out process. I suggest that this House agrees to the appointment of a committee, that the various parties in due course announce the members whom they wish to serve on this committee - incidentally, I believe it should be on a pro rata basis and that this committee then gets on with deliberating about the process of how to fulfil its mandate, and that is all I have to say to it. I don't believe it is controversial, I don't believe a long debate need take place about this issue at all. I propose.

MR RUPPEL: I do not want to take issue with the honourable member, Mr Staby, on what he said on the uncontroversial nature of this motion. All I suggest - and I do the same

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line it and to facilitate various matters which will, in the end, mean various committees, to be discussed and settled in one go and not piecemeal. Therefore I suggest that this matter stands over as I had moved initially and as I had thought was accepted initially.

MR KATJIUONGUA: Mr Chairman, I support the proposal by Mr Staby for the following reasons: His proposal may require that we involve the public by way of a competition to make proposals about a National Flag, a Seal and things like that, and to do that takes a bit of time. Therefore the time is not there. Some of my colleagues are saying we should be independent by December, some say before Untag goes home. So, the time is not there, and if we have to invite the public by way of a competition to make proposals, then the time is not there, and therefore I support Mr Staby's proposal.

MR RUKORO: Mr Chairman, honourable members, I am not sure, but I detect some kind of contradiction here in the two motions submitted by the DTA, one by Mr Muyongo and the one by Mr Staby, in the sense that I was going to be a supporter of Mr Muyongo's motion, especially where it says that first of all we need a general debate in this House on the constitution to state our philosophical positions and so forth, before specific topics of the constitution will be referred to specific committees, and I would have thought the question of a name for this country or the question of a seal, a flag, a national anthem and so on are undeniably constitutional aspects which ought to be referred to committees after a general debate has taken place in the House. After all, it is only then that these committees will have an idea of the feelings of the honourable members.

Therefore I tend to agree with the sentiments expressed by the honourable member Mr Ruppel that this motion should simply suffer the same fate as the other constitutional aspects.

CHAIRMAN: In the view of the Chair I think this motion falls, as the last speaker said, into the same category as for instance the proposal for a name, which was postponed until 6th December, and therefore I think this must also be postponed until 6th December.

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MR STABY: Mr Chairman, may I be granted the opportunity to react to what the various members have contributed towards this debate?

I am somewhat amused by the process which is taking place here. I think in civvy language they refer to it as "jockeying". It seems to me that the parties are attempting to jockey themselves into a more favourable position. I don't think it is terribly important at this stage, I must grant you that. I cannot quite agree with the honourable member Mr Rukoro when he believes there should be a debate about the seal of state and so forth. I have proposed this motion in the genuine conviction that it will take a long time, but accepting the bona fides of the honourable member Mr Ruppel, I will withdraw this motion and resubmit it at a stage at which I consider it to be pertinent. Hopefully that is going to be within the next few days, after having had internal discussions with the various parties represented here. Thank you.

MOTION WITHDRAWN

ADJOURNMENT OF ASSEMBLY

The Chairman adjourned the Assembly at 15h15

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
30 NOVEMBER 1989

The Assembly met pursuant to adjournment.

CONSIDERATION: FIRST REPORT, 1989: STANDING
COMMITTEE ON STANDING RULES AND ORDERS AND
INTERNAL ARRANGEMENTS

FIRST ORDER READ:

Consideration of First Report, 1989 of the Standing Committee on Standing Rules and Orders and Internal Arrangements.

MR JUNIUS: On behalf of the Chairman, I move -
That the Report be now considered.

AGREED TO.

MR JUNIUS: On behalf of the Chairman, I move -
That the Report be adopted.

AGREED TO.

MOTION ON BASIC PROVISIONS OF A CONSTITUTION:
RESUMPTION OF DEBATE

SECOND ORDER READ:

Resumption of debate on basic provisions of a constitution.

CHAIRMAN: When this debate was adjourned yesterday, the Question before the Assembly was a motion by the honourable member Mr Muyongo. (Page 24 of these Debates/Page 5 of the Minutes).

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MR RUPPEL: Mr Chairman, after the adjournment yesterday, the Chief Whips of at least the major parties were locked into discussions. Unfortunately it seems that the discussions were not concluded or brought to a satisfactory conclusion for the purpose of this meeting now, and I think it would not require more than 15 minutes to wrap things up. I think that it will be in the interest of everyone if this House would just adjourn for another fifteen minutes to enable the parties to see whether an agreement can be reached on streamlining the various motions before this honourable Assembly, so that a sensible discussion can take place today. I accordingly move that the House adjourns for fifteen minutes.

BUSINESS SUSPENDED AT 14h20 and RESUMED AT 14h35

MR RUPPEL: Honourable Chairman, I regret to inform the House that the parties were not able to reach agreement, and that the position is accordingly that the motion of the honourable member, Mr Muyongo, is properly on the Order Paper for today for debate.

May I just add that, as a matter of a special request, parties ensure in future that the Whips, during negotiations, are properly authorised and mandated to avoid unnecessary debates between Whips. It is quite an effort to get everybody together and go back to caucus every time. We have made a great effort to do exactly that, and we have now been informed that, so it seems, the honourable Whips were not fully briefed about the negotiations. Thank you.

MR MUDGE: Mr Chairman, in an effort to solve this problem, and to demonstrate our party's co-operation in finding a solution to this and other problems, I want to make a suggestion.

The honourable member, Mr Ruppel, indicated yesterday that he wanted to postpone or adjourn this debate until, I think, the 5th or 6th December - I can't remember, but it doesn't really make a difference. He indicated that he wanted to adjourn the debate, which actually happened. In the meantime we took note of a motion, introduced by the honourable member, Mr Angula, which we can unfortunately not support in its present form, because it does not make

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provision for a debate. But Mr Chairman, we feel strongly that there must be a debate. Should this motion, however, be amended, as I understand was envisaged by the honourable member, and should that be done without any conditions and any restrictions placed upon members, then I think we will not be stubborn from our side.

Mr Chairman, you will allow me, and I want to repeat that what I have in mind is to see if we cannot reach a compromise and not waste too much of our time on matters of procedure. So, please allow me a few comments at this stage.

The election we had was, I think, one of the most expensive and maybe one of the best supervised elections ever held anywhere in the world and in modern history, and I think the successful outcome of the election was applauded, and now we must not stop this process, we must not delay this process. I have no other option now, Sir, than to speak on the motion introduced by the honourable member Mr Muyongo, but I am going to do it in such a manner that we might come to an agreement, and that we might be able to come to an agreement as far as Mr Angula's motion is concerned. However, I cannot at this stage discuss Mr Angula's motion.

I say the successful completion of this ambitious plan was applauded by people and leaders from all over the world, and it is now for this Assembly to be worthy of that praise. Now this Assembly has been in session...

MR M GAROEB: On a point of order. Can the Chair clarify to the House what exactly the business is at this moment?

CHAIRMAN: The motion on the table is the one by the honourable member Mr Muyongo.

MR MUDGE: Mr Chairman, I have accepted your ruling that the motion on the Order Paper be discussed and I am in fact discussing the motion. But I also indicated that I want to, in my remarks, maybe offer the solution.

I said this body has been in session for more than a week now, and every motion so far tabled was either postponed or the debate was adjourned, and we cannot blame people outside if they now start asking questions about this body and whether we are now prepared to do our job, namely to draft a constitution.

Mr Muyongo's motion was a point in case. I am not going to elaborate on that. At the time when the honourable member proposed the adjournment, the reasons that he gave was, I think, maybe a little premature, because Mr Angula at that

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point in time had not yet introduced his motion. Mr Chairman, I want to make it clear that our motion is not an attempt to delay the process, and our motion is not an attempt to look for confrontation. It was simply an attempt to get the process going and to get to the points where we might differ as soon as possible, in view of sorting out those problems, and if we could do that, I think the people outside, the voters, the inhabitants of this country will feel that they are also part of the process. The press will be informed, and I think we would definitely antagonise them when we immediately go to committees and have our discussions in camera.

The principle of referring the drafts to committees was also accepted by us. We do believe that we must make use of committees. It is necessary that smaller committees should tackle the problems, especially the technical problems and that we should not continue with political bickering in this House for days and days, wasting time. But at least, Sir, we thought that a discussion in this House could give direction to the committees. At least we could identify certain issues which we can refer to the committees. But, Mr Chairman, we believe that in this discussion many of the practical problems will even fall away.

Mr Chairman, I was made to understand - and maybe I am wrong, but I was made to understand that the honourable member Mr Angula was prepared to bring an amendment, to propose an amendment to his original proposal, namely that parties will be allowed time to explain their policies, to explain their constitutions. Unfortunately there was a condition added to that, and that is that no debate should be allowed. I don't think if you give my parties 100 minutes or 70 minutes to explain our policy, that we will use that time to attack other parties. I think we will make the best use of that time to explain our policy and our views. But Sir, in the name of democracy I cannot allow any restrictions to be placed upon my party as to what we can say and what we cannot say, and for that reason....

MR RUPPEL: On a point of order. I think the amendment had not been moved, it is not before this House, and I think it is not correct to address the amendment.

MR MUDGE: Should that be the case, then I might have been misinformed, I accept the ruling of the Chair. Then I will put it this way, should Mr Angula favourably consider proposing an amendment which will make provision for a debate, at least, should his amendment make provision for the opportunity for parties to explain their policies and their

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constitutional proposals, in that case our party might consider withdrawing our motion. I said we are doing that to demonstrate from our side that we are prepared to co-operate, and in view of that, I now want to propose that this debate now be adjourned to allow for a discussion on that particular point. Then we can go back and we can discuss it and I hope that the information that we have received that there is indeed a preparedness on the side of Mr Angula to amend his motion, that we at least consider that possibility and then we can come back tomorrow and continue the discussion. I think that is about as far as our party is prepared to go.

I only want to repeat, Mr Chairman, we do not want to delay the process, we want the process to proceed as fast as possible, but Sir, I speak on behalf of the DTA when I say we have no secrets, but absolutely no secrets for the people who voted for us in this House. Whatever we have to say, we are prepared to say in this House, and wherever we want to vote, we are prepared to put up our hands so that anybody can see where we are voting. And for the rest you can rely on the fullest co-operation of our party.

I now move that this debate be adjourned until tomorrow.

AGREED TO.

Debate adjourned

MOTION ON CONSTITUTIONAL PROPOSALS

MR N ANGULA: Mr Chairman, I move the motion. (Page 29 of these Debates/Page 10 of the Minutes)

MR M GAROëB: I second.

MR N ANGULA: Honourable Mr Chairman, I have a special motion which has been discussed before it was moved, but in any case, honourable members, I am going to go ahead to explain the background of my motion. Therefore at the very outset I would like to describe the background against which I move the important motion which is on the table.

It is generally agreed by all honourable members that considerable work has been done in respect of the type of society we want to mold for ourselves and our descendants. Parties represented in this august Assembly have at various

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occasions made their sentiments known in this regard: Manifestos have been issued, declarations have been made and principled positions have been demonstrated. More importantly, this Assembly at its first sitting accepted unanimously to adopt the so-called Constitutional Principles for a constitution of Independent Namibia, which Swapo helped to negotiate internationally and have them accepted by all parties represented here.

Swapo of Namibia has been instrumental to international negotiations which led to the eventual holding of free and fair elections which led to the establishment of this Constituent Assembly. In other words, Swapo has a fountain of experience as how to negotiate, craft and adopt successful, workable and fair agreements. Swapo has no illusions that in order to achieve such agreements, proper methods of work, goals and objectives, as well as time schedules need to be properly planned and defined. More importantly, a working atmosphere, free from political posturing or media show, is a prerequisite to achieving positive results, results which the people of Namibia, whom we represent, expect from us within the shortest possible time.

Moreover, this Assembly must be sensitive to the feelings, expectations and yearnings of the people of this country. Undeniably there is a sense of power vacuum in this country. This vacuum has allowed certain unruly elements to engage in terror campaigns, especially in the northern areas. People are being killed and property is being destroyed. People had high hopes that the elections would have brought peace to our troubled country.

Peace is still out of reach to many of our citizens. People now believe that perhaps peace will only come once Namibia is independent. They are, therefore, looking to us, this Assembly, to deliver them from insecurity and terrorism which exists now. The more we come here, stand up and make the same general political statements, the more the public becomes irritated and disillusioned about our sense of priority, responsibility and understanding of the prevailing situation in Namibia.

Equally important is the fact that our economy needs policy directives in order to give business confidence and direction to our economic managers. This could only happen if Namibia is independent, and executive authority is in place.

Our task is undeniably a daunting one. We are, therefore, required to define our priorities very carefully, use our time economically and deploy our human resources in the

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most productive manner. It is against this background that we on this side of the House feel that the Assembly seems bent in turning itself into a time-consuming, unproductive talking shop at best, or an unco-ordinated press galore akin to a soap opera, at worst. The honourable opposition seeks to do this purportedly to hasten the proceedings. What they would in fact achieve, is however exactly the opposite, namely to slow down the work entrusted to us by endless speeches and political rhetoric. In my view we have sufficiently explained ourselves to our citizens. That is why they were able to elect us to this august body. What our people now expect from us - as a matter of pressing urgency - is a concrete product, namely, a constitution for independent Namibia. It is for this reason that my motion requires this Assembly to resolve today that:

1. registered parties represented in this Assembly shall submit their constitutional proposals or ideas, if any, to the Acting Secretary of the Assembly by not later than 10h00 on Wednesday, 6th December, 1989.
2. The Standing Committee be and is hereby mandated and instructed -
 - 2.1 to receive and consider with appropriate urgency the proposals and ideas from registered parties in the Assembly regarding the future constitution for Namibia;
 - 2.2. to identify and formulate working categories for a future constitution or areas of material disputes in the various proposals submitted by the registered parties, appropriate regard being had to paragraph 3.1 of the notice of motion by the honourable member, Mr Muyongo;
 - 2.3 to make proposals for establishing committees to deliberate and negotiate on matters referred to in paragraph 2.2 above, and to suggest terms of reference and the method of operation of committees;
3. The Standing Committee shall report back to the Assembly during its sitting on Monday, 11th December, 1989.

Mr Chairman, this is my humble submission. I commend it for adoption by the honourable members of this Assembly as a matter of priority. I would like, therefore, to thank you all in anticipation of your support. I thank you.

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MR RUKORO: Thank you, Mr Chairman, members of the House. I would like to propose an amendment:

That all the words after "that" be deleted and substituted by the following:

1. Registered parties represented in the Assembly shall submit their constitutional proposals or ideas, if any, to the Acting Secretary of the Assembly by not later than 11h00 on Wednesday, 6 December 1989.
 2. That each of the registered parties represented in the Assembly shall have the right to introduce their constitutional proposals by way of statements to the Assembly, on Monday, 4 December 1989.
 3. The Standing Committee on Standing Rules and Orders and Internal Arrangements ("the Standing Committee") be and is hereby mandated and instructed:
 - 3.1 To receive and consider with appropriate urgency the proposals and ideas from registered parties in the Assembly regarding the future constitution for Namibia;
 - 3.2 To identify and formulate working categories for a future constitution or areas of material disputes in the various proposals submitted by the registered parties, appropriate regard being had to paragraph 3.1 of the Notice of Motion by the honourable member, Mr M Muyongo, and the Notice of Motion by the honourable member Mr H-E Staby, both dated the 28th November 1989; and
 - 3.3 To make proposals for establishing committees to deliberate and negotiate on the matters referred to in paragraph 3.2 above and to suggest terms of reference and the method of operation of such committees.
 - 3.4 In order to meet its terms of reference, the Committee be empowered to co-opt experts.
 4. The Standing Committee shall report back to the Assembly on or before Tuesday 12 December 1989.
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MR MATJILA: Mr Chairman, I would like to participate in the discussion on this motion by the honourable member Mr Angula, but at this stage I find that I am not prepared to do so. I would therefore like to propose that the debate on this motion be adjourned until tomorrow. Thank you.

MR ANGULA: Mr Chairman, due notice was given yesterday of the motion which I intended to move in this House, which I did, and in fact, it was discussed before I moved it by certain members, which means they were prepared to discuss it. Right now we have an amendment on the table which I accept fully, because it only explains more clearly the motion. Naturally when parties move their motions to introduce their constitutions they will have the right to explain their constitutions. So, the amendment only explains the text of my motion.

My contention is that members had sufficient time to look at the motion and they could, if they so wished, have prepared themselves to address the motion, rather than to be subjected to the continual process of adjournments and delays.

MR BARNES: On a point of order, Mr Chairman. My honourable colleague, Mr Matjila, could not anticipate the amendment yesterday. Obviously he wants to prepare himself on the amendment and the motion.

CHAIRMAN: Honourable members, the question we have is that the debate on this issue be adjourned. Is there any objection to that?

MR KATJIUONGUA: Mr Chairman, does the House accept the amendment to the motion before us?

CHAIRMAN: The question was not put, the question was to adjourn the debate.

MR RUPPEL: I object to the request for an adjournment and I move that the House takes a vote on the request for an adjournment.

HOUSE PROCEEDS TO THE VOTE.

CHAIRMAN: The debate continues.

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MR MUDGE: Mr Chairman, I would have supported the amendment, but I can see no reason why this discussion should only take place on the 6th December. We have been wasting this country's money for a week now. If we now adjourn this debate for another week until the 6th, we will be wasting this country's money for another week, because there will be nothing left on the order paper. What are we going to do from now until the 6th? We cannot discuss the constitutions, we cannot refer the constitutions to the committees, because the constitutions are not yet available, because even in terms of Mr Angula's motion, parties will have time until the 6th to present their constitutions. In other words, Mr Chairman, what we will then in fact decide, is that this House goes into recess for another week.

If we are so concerned about the constitution to be adopted speedily, why can't we start tomorrow? Why can't those parties who are ready start tomorrow explaining their constitutions? Should there be a party that needs another week - maybe some of them still have to write a constitution, I don't know. Mr Chairman, I have a constitution, we have it ready, we can start tomorrow explaining that constitution. Sir, I cannot defend it if Mr Rukoro - and I very much appreciate his effort to make it possible for us to debate or at least explain our constitutions. I want to ask, please, can't we get together and come to an agreement to start immediately with the process with which Mr Angula apparently has no problem, because he said he has no problem with the principle, he is prepared to accept what Mr Rukoro has proposed, because he considers it to be in line with his proposal. So, if that is acceptable, the only point where I differ, is why on the 6th December and why not tomorrow? That is the only point where I differ, and I just don't know how to proceed from here.

I think if I could get an indication from the House that that would be possible, or that we can adjourn the meeting - and I hate to support an adjournment, I have supported too many adjournments over a week's time now - and if we can come to an agreement that we adjourn for the purpose of sorting this problem out, then I will stand up and I will support an adjournment until tomorrow. But Sir, please, let us continue with the job. If we go on adjourning meetings, I am sure we will get nowhere. Maybe I can get an indication from the other parties whether they are prepared to do that.

CHAIRMAN: The December 6th proposal was made yesterday and there was no objection to that. But in the interest of consulting instead of adjourning, I will agree that we

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adjourn for 15 minutes to solve this problem.

BUSINESS SUSPENDED

BUSINESS RESUMED:

CHAIRMAN: Is the honourable member Mr Mudge ready to continue?

MR MUDGE: No, Mr Chairman, I don't think I can continue now. I think there was a proposal by the honourable member Mr Rukoro, and I think we should allow him to say whether they have reached an agreement. I hope that will be in order, Sir.

MR RUKORO: Mr Chairman, I think the reason for the adjournment was that the parties consult with a view to reaching agreement on what appeared to be the bone of contention or the point of dispute, namely whether the date set in the honourable member Mr Angula's motion, namely Wednesday, 6th December, should be retained or whether, as indicated in honourable member Mr Mudge's statement, the debate should commence tomorrow. The general agreement reached between the parties is that we could settle down for Monday, 4th December.

In other words, my amendment, as it was, remains, except that we substitute Wednesday, 6th December by Monday, 4th December.

MR KATJIUONGUA: On the motion by Mr Angula, point 3, "the Standing Committee shall report back to the Assembly during his sitting on Monday, 11th. I suppose Monday, the 11th is not a holiday? That has to be changed.

CHAIRMAN: It will read Tuesday, 12th. Does the honourable member Mr Angula wish to reply?

MR ANGULA: Thank you, Mr Chairman. I just want to ask the House to be a bit clear about the terms of my motion.

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The first requirement is that the parties submit their constitutional proposals to the Acting Secretary by the 6th. If you want to make it by the 4th, that is fine to me. You can even do it tomorrow, because I said not later than. You can even today, if you so wish, submit your constitutional proposal to the Acting Secretary.

Then the honourable member Mr Rukoro's amendment comes in, that after those constitutions have been submitted to the Secretary, the House will be ready to debate them and they will be ready to be introduced by the respective parties by the 4th December.

Then we go on to instruct the standing committee to do the necessary work in order to plan and programme our activities in terms of setting up committees and their terms of references, committees which, I believe, will deal with specific disagreements within the specific areas of constitution, and reach understanding and agreement in order to compile one composite document which will be the constitution for Namibia.

So, I just wanted to clarify the order of action as far as my motion is concerned. Thank you.

AMENDMENT AS MOVED BY MR RUKORO PUT AND AGREED TO.

MOTION, AS AMENDED, PUT AND AGREED TO.

MR RUPPEL: I am not quite clear what the position is with the motion of the honourable member Mr Muyongo, which seems to have been postponed earlier in the sitting today. There seems little point in preparing further argument and debate on that particular motion in view of the adoption of the motion by the honourable member Mr Angula. Perhaps it could be clarified with the opposition whether they want to withdraw the motion in view of the adoption of the motion of Mr Angula.

CHAIRMAN: On that motion the debate was adjourned, but there is a question by honourable member Mr Ruppel that in view of the motion just adopted, whether the honourable Mr Mudge has something to say?

MR MUDGE: Mr Chairman, you are correct there, the debate has been adjourned, and I suppose it will then again appear on the Order Paper. I have indicated that if an agreement is reached on Mr Angula's motion, we will then

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consider withdrawing our motion, but that will then only happen on Monday. We have to discuss it, because I can't discuss a motion now which is not on the Order Paper.

LEAVE OF ABSENCE

MR ANGULA: Honourable Chairman, I would like to ask, through you, that the House gives me leave of absence under Rule 29(g) to attend to certain urgent matters related to the education of our children outside this country.

ADJOURNMENT OF ASSEMBLY

On the motion of Mr Kaura the Assembly adjourned at 15h40.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
4 DECEMBER 1989

The Assembly met pursuant to the adjournment.

THE CHAIRMAN took the Chair and read Prayers.

NOTICE OF MOTION

MR KATJIUONGUA: Mr Chairman, I give notice that tomorrow, December 5th, I shall move -

That this Assembly -

mindful of Human Rights Day on 10 December 1989 -

1. Requests the political parties represented in this Assembly not to have individual gatherings in competition with one another on that day;
2. Requests that, in the spirit of national reconciliation and give-and-take, a joint gathering of all parties represented in the Assembly and the general public be held at the cemetery in the "Old Location" on Sunday, December 10, between 08h00 and 12h00; and
3. Requests the Chairman of this Assembly to consult the parties represented here with a view to setting up an inter-party Committee to do the necessary organisational and co-ordination work for the occasion.

MOTION ON BASIC PROVISIONS OF A CONSTITUTION:
RESUMPTION OF DEBATE

FIRST ORDER READ:

Resumption of debate on basic provisions of a constitution.

CHAIRMAN: When this debate was adjourned on Thursday, 30 November 1989, the Question before the Assembly was a motion by the honourable member Mr Muyongo.

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MR MUYONGO: Mr Chairman, in view of the understanding reached, I would like to withdraw my motion since what I wanted to put across has been taken care of in the new motion. Thank you.

MOTION WITHDRAWN.

INTRODUCTION OF CONSTITUTIONAL PROPOSALS

CHAIRMAN: Is there any member who, in terms of paragraph 2 of the motion adopted on Thursday, 30 November 1989 by the Assembly, wishes to introduce his party's constitutional proposals?

DR TJIRIANGE: Mr Chairman, I rise to introduce the constitutional proposals of Swapo in accordance to the motion which we have adopted.

Honourable Chairman and honourable members of the Assembly, allow me, on behalf of Swapo, to introduce our constitution for an independent Namibia. It will be recalled that when the President of Swapo, who is also an honourable member of this Assembly, Comrade Sam Nujoma, finally opened the Constituent Assembly on the 21 November 1989, he pledged the co-operation of our organisation with other parties with a view to ensuring early independence for Namibia and its people.

He further emphasised that it is incumbent upon every honourable member of this Assembly to hasten the day of independence by constructively contributing towards the adoption of the constitution. On our part, Mr Chairman, we have endeavoured to accommodate the concerns expressed by a cross-section of our society, with a view to achieving unanimity in adopting our constitution. Indeed, we are proud to say that our constitution represents the deepest commitments of the Namibian people, namely to build a new society through genuine reconciliation, based on principles of unity, democracy and social justice, equality, dignity of human-being, protection and enforcement of fundamental human rights, economic and social prosperity, total eradication of all discriminatory practices, the emancipation of women in socio-economic life, the effective emancipation of the people in the government decision-making process, and control of activities of public officials. All these aspirations have been incorporated in our constitution.

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All the specific issues in the constitution, due to the importance which our organisation attaches to the democratic constitution, our constitution contains 99 articles divided into fourteen parts. The following are the fundamental issues contained in the constitution:

1. The total and uncompromising rejection of apartheid, and I repeat, the total and uncompromising rejection of apartheid and colonialism from which the Namibian people have suffered for so long and so deeply. This principle finds expression through this constitution, asserting and reasserting the recovery of lost dreams, and provision is made for rendering apartheid and the practice of racial discrimination a criminal offence, consistent with international proclamation which has declared apartheid to be a crime against humanity. It is amplified by the following articles: The 4th to the 7th paragraph to the Preamble. Then article 6, paragraph 3, article 14, paragraph 3, article 16 paragraph 4, article 17, paragraph 40, article 57, paragraph 3(h) and article 68(k).

In the expression of these principles Swapo has been guided not only by the deep and agonising experience of the people themselves, but also by the emerging consensus of the civilised world, which has in the last quarter of the Twentieth Century identified apartheid as the most shameful and the most disgraceful of the pathologies which have been inflicted on human-kind.

2. The second principle on which the constitution rests is the principle of democracy. That principle is given expression in the structure of the government without any cunning manipulations to impede or frustrate the plain, simple truth: every Namibian citizen, who has reached adulthood, is entitled to free and equal vote in the election of his law-makers. Swapo has proceeded on the premise that the right to elect and to be elected are inalienable rights flowing from the very condition of a man himself. The ultimate foundation of all tyrannies rests in the denying the citizens of the country the fullest participation in the choice of law-makers. Effective tyrannies rest on improvised structures which retain the form of the suffrage but transplant thereon such cunning manipulation and divisions as to render the substance of the suffrage.

It would not be consistent with the integrity of Swapo-leadership or the clear terms of its mandate to permit itself to be manipulated into any compromises with the plain and simple meaning of the universal adult suffrage based on one man, one vote. Swapo, for this reason, rejects the suggestion of any election based on proportional represen-

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tation and Second House of Parliament based on the same mechanisms, because it dilutes and compromises the simple principle of a vote of equal value for each citizen based on adult universal suffrage. This commitment to democracy finds expression in the provisions of the constitution dealing with the composition and the election of the National Assembly and the President, inter alia in the following articles: Article 30, paragraph 3, article 31, paragraph 2, article 34, paragraph 2, article 35, paragraph 5, article 36, article 38, paragraph 1, article 38, paragraph 3(a) and (b), article 48, article 62, paragraph 1 and article 98, paragraph 2.

3. The third principle on which the Swapo-constitution for Namibia is based is the proposition that every human being, by virtue of his humanity alone, has certain fundamental rights which government, however powerful, which no executive, however determined, and which no judiciary, however well-meaning, might dare to invade. This is a principle of modern constitutional law which the emancipated people of Namibia are privileged to share with the civilised world, and Swapo therefore makes no apology for drinking from the fountains of foreign constitutions' wisdom and articulating of those fundamental rights in our constitution.

It is for this reason that the draft constitution seeks to entrench the fundamental rights echoed in the United Nations Declaration for Human Rights.

4. The fourth principle on which the draft constitution for Namibia rests is in the acceptance of the independence of the judiciary, not only for the purpose of ensuring justice between men and men, but also to regulate relations between man and his government. The constitution and the law is the ultimate arbiter in all conflicts and not even the president of the country is given the option of ever averting or avoiding fidelity to the majesty and the sovereignty of the constitution and the law.

5. The fifth principle on which the constitution is premised is that it must articulate not only the enforceable rights of the subject, but also the dreams, the aspirations of the nation, so that our children can understand that the chief of state is not merely strong and durable in troubled waters, but that it has a destiny to which it proceeds. A nation without dreams and without vision, ultimately traps itself into a sterile and blindness which the Namibian society does not deserve after so many years of unremitted suffering. These ideals are sought to be articulated in article 23 of the constitution, which will place Namibia among the forerunners of compassionate, wise and civilised

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democracy.

6. Recognising the truth that encouragement of honest intellectual dissent is the life-blood of a virile democracy, the draft constitution of Swapo seeks not only to protect these rights, but to create conditions to enable it to flourish so that Namibians, oppressed by fears and insecurities in the past, are able to overcome these inhibitions by the free exchange of political ideas. To freely and honestly express, conquers both fear and insecurity and enables a nation to find a new strength in a loving reconciliation and a single-minded expression of truth.

7. Consistent with the need to have a strong executive which implements the ideals of our nation with vigour and resolution, the draft constitution makes provision to enable the president to act decisively, but tempered by a mechanism which would ensure that the president, whoever becomes insensitive to the will of the people expressed through the National Assembly, is made subject to the risk that he may be voted out of office.

As already stated, our constitution aims at the following objectives: To bring about orderly economic development, to protect and defend fundamental human rights, to guarantee human dignity, to tame and control excessive governmental power and to prevent its abuse. To punish the transgressors and help to prevent dictatorship and to protect and assist the disadvantaged citizens of our country.

In conclusion, honourable Chairman, it is only us, the people of Namibia, who must decide on our genuine independence. This sovereign power rests in the Constituent Assembly. By adopting our constitution, it is only through this process that we will hasten the day of our genuine independence. I appeal that we should not indulge ourselves in political manoeuvres, trying to score points. Our people have been subjected to colonialism for a long time, they are waiting for us to get independence now, and they are looking to all of us here. Swapo has tried to accommodate the ideas of everybody across the board, and we would like to appeal that we have to make the independence of this country a reality by coming to the point and adopting the constitution as soon as possible.

I don't know whether from this side of the House there is any colleague who wants to add to what I have said. Thank you.

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MR MUYONGO: Honourable Chairman, I would like to start off by saying we are going to table our constitutional proposals, they are documented, and all I would try to do is to highlight certain aspects that are very dear to us, and that we would like to share with all the honourable members in this House.

Mr Chairman, if you will allow me, I will start off by saying the DTA declares its acceptance of the 1982 Principles unconditionally, and regard it as an international prescribed principle for the drafting of a future constitution of Namibia and a condition for statehood. The DTA declares that it accepts the 1982 Constitutional Principles and interpret these principles in the manner that they are accepted by democratic government systems in the free world, if at all there is what is called a free world.

The DTA hereby declares itself to be bound to the traditions of the democratic world. The DTA declares, in particular, that it understands the 1982 Principles as follows and will ask their inclusion in the constitution of Namibia.

Mr Chairman, Namibia will be a unitary, sovereign and democratic state. What do we understand by a unitary state? A unitary Namibia is a state that abides by the principles of territorial integrity and rejection of secession.

What do we understand by a sovereign state? As a sovereign state Namibia will be free and will act independently with the governments of the world, sign treaties, join international organisations and resist any form of external intervention.

We want it to be a democratic state. The essence of a democratic state, as the DTA understands and promotes it, is that the people are governed by its elected representatives. The elected representatives are responsible for the people and must subject themselves to free and fair elections. The people's representatives are elected as representatives of political parties and the people must have the free choice of their political representatives. A multi-party system is the essence of democracy and cannot at any stage be changed by people, as some of the parties pronounce or like to refer to some of the constitutions of the world, the Constitution of West Germany and, of course, other democratic based states.

The constitution will be the supreme law of the state. It may be amended only by designated process involving the legislature and/or votes cast in a popular referendum.

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This principle emphasises the principle of constitutional law. Following on this principle, all state power is defined and enshrined in the constitution. It follows that all state action, legislative or administrative, is subject to the constitution and all such actions that are contrary to the constitution will be null and void.

Mr Chairman, the courts are the protectors of the constitution and must declare any state action that contravenes the constitution to be null and void. It also follows that the constitution can be changed only in an entrenched manner, and such change will only come into force after a referendum has been held amongst the people of the various regions who so decide. In this regard the DTA declares that certain fundamental characteristics pertaining to the nature of Namibian statehood cannot be changed or removed, for example, the democratic system of the state.

The DTA further declares that particular individual rights of freedom and equality may not be altered or removed by constitutional changes. The constitution will determine the organisation and powers of all levels of government. The DTA emphasises its standpoint that any form of government for Namibia must be determined by the constitution. Should the Constitutional Assembly decide at the time of independence to form a government of consolidation or an implementing government for a certain interim period, it follows that such a government will be described and determined in the constitution.

Furthermore, Mr Chairman, the constitution will provide for a system of government with three branches - an elected executive branch, which will be responsible to the legislative branch, a legislative branch to be elected by universal suffrage, which will be responsible for the passage of all laws, and an independent judiciary which will be responsible for the interpretation of the constitution and for ensuring its supremacy and authority of the law.

Mr Chairman, in regard to this principle the DTA underlines the doctrine of separation of powers which entails the following:

1. The legislative power of the legislator.
2. The prohibition of a system of government that provides authoritarian powers to the executive body.
3. The prohibition of a system that makes provision for nominated members of the legislative or executive bodies.

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4. The principle of a free mandate, whereby elected members of the legislative or executive powers are not subjected to a party-dictatorship.
5. The rule of law, which is guaranteed and enforcable by an independent judiciary.

In an independent judiciary, in the sense that it cannot be prescribed to nor influenced by any external body and whose decisions and orders will be obeyed by the government. The executive and legislative branches will be constituted by periodic and genuine elections which will be held by secret vote. Executive and legislative bodies who will be elected in free and fair elections. Such elections cannot be considered free and fair, nor true, unless sustained by a multi-party system.

Mr Chairman, the DTA supports the principle that the Universal Declaration of Human Rights be incorporated in the Bill of Human Rights. This support does not exclude that there are other acceptable bills of human rights of other nations that should be examined, such as that of the United States, the Federal Republic of Germany and others, as well as the African Charter on Human Rights.

The DTA also supports, as in the last-mentioned charter, the principle that the responsibilities of the individual, as well as collectivities, be contained in a bill of human rights.

The aggrieved individuals be entitled to have the courts pronounce on their state and enforce these rights. The testing rights of the courts are emphasised by this principle, as well as the duty of the government to act upon the decision and orders of the courts.

Furthermore the DTA declares that it is in favour of the appointment of an ombudsman and the provision of legal aid.

Mr Chairman, it will be forbidden for criminal offences to be put into effect retrospectively, or to provide for increased penalties with retrospective effect. This principle is fully supported by the DTA and the DTA reaffirms its commitment to -

1. a fair penal system and humane prison institutions;
2. a state of emergency regulations which will limit the emergency powers in relation to the actual circumstances. Arbitrary use of these powers will be limited and subject to judicial control.

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Provision will be made for the balanced restructuring of the Public Service, for the Police Service, the Defence Services and for equal access by all to recruitment to these services. The fair administration of personal policy in relation to these services will be assured by appropriate independent bodies.

Mr Chairman, the DTA is unconditionally in favour of an extension of the Civil Service at all levels, and a greater participation or incorporation on the basis, non-discrimination and affirmative action. The DTA is a proponent of an independent civil service commission with its own powers to expand the service and to make it more accessible. The DTA is strongly opposed to a system of nomenclature where one political party controls the appointments to the civil service. The civil service must never become the extension or tool of a political party.

Provision will be made for the establishment of elected councils for local or regional administration. The DTA supports the principle of elected government bodies on both local and regional administration.

As a result of Namibia being so vast and its differences in development, as well as education, health and social requirements, the DTA strongly supports the principle of elected regional government bodies and regional autonomy. The DTA wishes to prevent the Central Government by one or other means to deprive any region of its needs and interests through over-emphasised central control. Therefore the DTA proposes as an essential element of its constitutional proposal that elected regional authorities be effectively represented in the executive and legislative bodies and that powers be given to those regional representatives to ensure that regional interests and needs are catered for in the Central Government.

The DTA most strongly proposes that any government that rules Namibia after independence will rule by virtue of powers vested in it by the constitution. If the Constituent Assembly should decide to turn itself into a government for an independent Namibia, such a government must have its powers invested through the constitution. Any adjustment in the constitution to make provision for a different day of implementing an independence government must be contained and prescribed in the constitution itself.

The electoral system will be consistent with the principles in A(1) of my other papers. Universal adult suffrage with-

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out discrimination or intimidation to vote, to recruit and to stand as a representative. Secret votes should also have a provision made for voters who cannot read nor write.

Full opportunity to people and political parties without distinction of their political convictions to organise and take part in the process.

Full freedom of speech, assembly and movement and freedom of the media. I am not using "press", because these days the press seems to be very limited. In the modern world we have television, so I am saying freedom of the media.

An electoral system that ensures reasonable representation to political parties in the representative bodies. In this connection the DTA declares its unequivocal commitment to an electoral system on the basis of proportional representation.

A multi-party system that represents as closely as possible the support of the voters.

In our proposal there will be the Declaration of Fundamental Rights, which will include the rights to life, personal liberty, freedom of movement, freedom of conscience, freedom of expression. These include freedom of speech and free media, as I said earlier, freedom of assembly and association, including political parties and trade-unions, equality before the law. The protection from arbitrary deprivation of property without just compensation and freedom from racial, ethnic, religious or sexual discrimination.

Mr Chairman, the DTA declares that these fundamental rights form the basis of its Bill of Human Rights and in particular these rights will under no circumstances be changed or in their essence be encroached upon by changes in the constitution or emergency regulations. These rights and freedoms may not be violated by a popular vote at any given time. Therefore the DTA rejects, for example, the stand-point proclaiming that the multi-party system can be abolished by a popular vote at any given time, just as the population cannot by popular vote take away the right to life or personal freedom. So, a democratic state cannot by a popular vote remove the multi-party system.

Mr Chairman, the Declaration of Rights will be consistent with the provisions of the Universal Declaration of Human Rights.

Mr Chairman, if you will allow me, I will ask my colleagues

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to add to what I have said. I thank you.

MR MUDGE: Thank you, Mr Chairman. After listening to the honourable member, Mr Tjiriange, of Swapo, I must say that there seems to be a lot of common ground. As we go we might find that there are differences, and I hope we will be able to sort those out and reach consensus.

I consider this to be a privilege to stand up to support the leader of our delegation, by so doing demonstrating the co-operation that has developed over a number of years between the white and black people of this country - if I then must refer to colour - to demonstrate that we have gone a long way towards reconciliation, and that this Constituent Assembly will be just another step on the road to national unity, a situation to which all of us are looking forward.

Mr Chairman, seeing that the honourable members that I have referred to did not go into any detail as far as their constitution is concerned, I am also not going to go into any detail. My vice-president has pointed out and made it very clear that we stand by the 1982 Principles. From my side I want to refer briefly to the philosophy behind our constitution, and I hope, Mr Chairman, you will bear with me if I refer to some developments which took place over the past fifteen years. Not that I want to talk about the past, Sir, I prefer to talk about the future, but I want to remind you that we in the DTA have participated in several attempts over the years to write a constitution. We have done so under different and changing circumstances, but one thing did not change over the years and that is that we remained under colonial rule, and that this government was, in the final analysis, being ruled as part of South Africa, and we were not hundred percent free to do what we wanted to do.

But Mr Chairman, we have tried on more than one occasion to change the situation in Namibia, and I want to bring this to the attention of - and I use the word deliberately - the brothers and sisters in this House, because they are in fact our brothers and sisters. We might differ on certain technical aspects, but you have to accept, Sir, and if you go back into our past you will find that over the past one and a half decades the DTA has fought for the total scrapping of any apartheid law in this country. In those cases where we did not succeed, it is not because we did not try.

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At least, Mr Chairman, it seems as if we agree on that point. It seems that we agree that we want this country to become independent. It seems that we agree that it must be a unitary state. It seems as if we agree that it must be a democratic system on the basis of one man, one vote. It seems as if we agree that fundamental rights should be respected in Namibia.

Mr Chairman, when we started the DTA in 1978 we did so because we could not any longer associate ourselves with political separation. Although we admitted that we have different languages in this country and different cultures, we insisted that when it comes to political development, political parties, that there should be no separation on the grounds of ethnicity. It is for that reason that the DTA was formed twelve years ago, because we could not associate ourselves with political parties for different ethnic groups.

Looking back at the election, I think the red light is still going on, and I am not blaming any political party, and I am not referring to any specific political party. All of us know what has happened, and the one thing which is clear to all of us is that whatever the reasons might have been for parties based on ethnic groups, the danger is still there, the tendency is still there and it must be wiped out as soon as possible.

Mr Chairman, we can speak from experience, we in the DTA are even prepared to admit that we have made mistakes. If there is a party in this House who has not made a mistake I would like to meet them. We were part of several systems, one of them being the one of first, second and third tier governments. I can say today that system failed, don't ever try it again. We would have changed it long ago if the South African Administrator General would have allowed us to do so. We have tried everything in our power to get away from a system of ethnic governments. Don't let us ever try that again, it doesn't work.

Our party has rejected apartheid in every form. We even tried to integrate schools, without success unfortunately. We were opposed to every form of racial discrimination, and we will never support it in future. We must get away from racial prejudice. Namibians must be accepted as Namibians, regardless of the colour of their skin, and we must stop making derogatory remarks about either black people or white people and accept each other as Namibians. This is the philosophy behind the DTA's constitutional proposals.

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Mr Chairman, nowhere in this constitution will you find any provision made for ethnic governments, for any form of apartheid or discrimination. Nowhere will you find it here. Of course, we believe in fundamental human rights, and Sir, when I talk about fundamental human rights, I am talking about the fundamental rights of the human being and not of the fundamental rights of groups or so-called minority groups, because we maintain that the individual is the smallest conceivable minority. The individual is the minority that must be protected, and that is what we stand for and have stood for over the years.

Mr Chairman, I will later come back to fundamental rights and say a few words about fundamental rights, and I will also speak about the right to language and culture, and the right to promote and protect those rights. I will say a few words about that, because I feel convinced that in the Bill of Fundamental Rights there is sufficient protection for minority rights, and you don't need ethnic authorities or second tier governments to do that.

We in this House will have to hammer out a constitution, and I think we will be able to move ahead rapidly if we would not become engaged in political squabbles and if we do not give too much attention to side-issues, but if we should concentrate on the fundamental issues. Against this background I would try and identify possible differences.

After I have listened to the honourable member, I have a feeling that in the first place we disagree on the issue of an executive state president. We in the DTA feel strongly that the first duty of a state president, a head of state, will have to be to unite the people of all political persuasions and not to represent only one political party. In our country we have at this stage quite a number of political parties. We would prefer, if at all possible, to see the state president above party politics, and I think this is one of the issues that we will have to discuss when we come to that stage, probably when various committees are being appointed.

Secondly, Mr Chairman, it appears as if we disagree on the question of proportional representation. We support the system of proportional representation in spite of its shortcomings. May I just quote the following from a document that I have picked up the other day about proportional representation. It says:

"Proportional representation is an electoral system aimed at ensuring that an equal number of votes is required to elect each representative to any elected

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body, and this requires the use of a formula that treats each voter equally in relation to all others, and each party and candidate on the same basis as all its rivals. Proportional representation eliminates tactical voting and allows the widest possible choice of parties and candidates, while ensuring that each party achieves representation in proportion to the percentage of votes cast for it. It allows minorities their fair and proper representation, yet prevents minority government. The system produces broadly based majority government with real popular support and thus fosters national stability as the government elected in this way is truly beholden to its parliament and constituents."

Mr Chairman, it is said that not all democratic governments are elected this way. Of course, it is true. Critics argue that proportional representation fractionalises the political spectrum and thus it beats the formation of governments. They criticise the fact that coalition governments are often necessary. "A minority party with a few seats may be able to hold the rest of parliament to ransom. Hence the influence of minor parties in parliament may be disproportionate to the extent of their support in the country." It is suggested that democracy functions better in a two-party system, with the available political talent being forced to choose between the two major parties before the election, rather than forming a variety of small parties which then have to form alliances in order to govern after the election. Critics also say that proportional representation causes parties to opt for frequent elections instead of serving full four or five year terms.

Mr Chairman, the main deficiency of single member constituency systems - and this I want to point out - such as the Westminster-system applied in the United Kingdom, is that representation secured by the political parties in parliament is disproportionate to the percentage of votes that each has won at the polls. This results in over-representation of some parties and under-representation of others. In extreme cases a party may have a majority in parliament and form the government, despite the fact that only a minority of voters cast their votes for it. This is a fact that we cannot ignore, and for that reason I would appeal to the members of this Constituent Assembly to very seriously consider the system of proportional representation. I am not asking this because it suits the DTA or any other minority party in this House, I am addressing the principle. I am talking about the principle which might be for the common good, which might be the most democratic system at this particular point in time.

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I got the impression that we also differ as far as a bicameral system is concerned, and I am, of course, prepared to discuss this. I would want to hear from the other honourable members their objections, their problems with the bicameral system. But, Sir, let us look at the present situation in Namibia, and again I want to make it very clear, I am not accusing anybody, I am not looking for excuses for only getting 21 seats in this Constituent Assembly, I want to address the problem.

It could be said that a large part of this country - I am not talking about population - is not properly represented in this House. It could be said that the supporters of a winning party mainly comes from a particular area in the country. Of course, you can react by saying: "Let us then resort to constituencies," because in a way that may solve part of the problem. It might even be used as an argument against proportional representation. But Mr Chairman, in many parts of the world it has been proven that the bicameral system has an advantage, not only making the government more representative, but also building in some checks and balances in the government, making it a little more difficult for legislative assembly to make laws. Of course, parliamentarians don't particularly like that, they don't want to be checked, they want to be free to go ahead, they want to be free to make laws.

MR MBUENDE: The honourable member was asked to complement the DTA constitutional proposal, but he seems to be indulging in debate, which means that this is provoking the rest of us to get into a debate, and if I understood the procedure correctly, we are not supposed to debate now.

CHAIRMAN: The understanding of the Chair is that each party was given 70 minutes today to introduce and talk on their documents. I understand he is talking on the document. Swapo is free to use its time to talk on a document, to supplement what the other one has said.

MR MUDGE: I thank you very much, Mr Chairman, for the opportunity to continue. I think, Sir, the more we have the opportunity to speak our minds, the sooner we will get to know each other and understand each other. We must not be impatient with each other, this is the way democracy works. People must be allowed to speak their minds, and I am not accusing and I am not attacking, and I haven't so far made any derogatory remarks. What I am trying to do is to give you a feeling of the philosophy behind the DTA's policy, and Sir, if at the end of the day we find that we agree on more things than we disagree, then we can all say thank God for that.

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Mr Chairman, I feel and I am convinced that a bicameral system should seriously be considered. It might in many ways be a nuisance, it might in many ways be a nuisance. In some countries it is taken too far, but I do believe in the bicameral system as a way to somehow restrict the absolute freedom of movement of the government.

Mr Chairman, I want to conclude by saying something about fundamental human rights. You will find in our constitution that we have devoted a chapter to fundamental human rights, and I want to give the assurance to those people who are concerned about minority rights, to those people who are concerned about their language, their culture, who are concerned about their properties, etc., that the DTA will see to it from our side that the fundamental rights will never be ignored. INTERJECTION.

May I, on behalf of this party, thank the Chairman and praise him for his impartiality. On the other hand, I think the Chairman must also admit that I was immediately prepared to do what the Chair asked me to do, but seeing that I have a few more minutes, I wanted to say something about fundamental human rights.

In this country there are those people who are concerned about their so-called minority rights, whether these are language rights, cultural rights, economic rights or whatever. I have experienced over a number of years that the minority can best be protected by the majority. There is no way a minority can protect itself, and once we have reached the stage in Namibia where the majority will have regard and appreciation for the rights of the minorities, only then will we have peace in this country, and I am hundred percent sure that this is going to happen. The fact that you read your prayer in Afrikaans was a demonstration of that, and I thank you for doing it. This is the spirit in which we must proceed, this is the spirit in which we must tackle the problems of our country, and I am sure, after having listened to many of your leaders and the statements made by them, I am absolutely convinced that when it comes to fundamental human rights we need not be afraid. But should any party attempt to violate fundamental human rights, Sir, then they must know that the DTA will, with all the powers at our disposal, fight against it. We will not allow that fundamental human rights be violated in this country.

I am not going to talk about the economy, the honourable members have referred to it, we also have a paragraph in here, but I think the one mistake we must not make, we must not, because of our statements of the past, try to prove

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that something which is wrong is right. I think we must put our heads together and find the solutions to our different problems.

Mr Chairman, we have a draft constitution ready. This will be handed to the Secretary today, whenever you want it to be done. This is our contribution towards the hammering out of a final constitution. We are not going to be difficult, we are not going to quarrel about minor details. You might find that from time to time we might even support amendments or deviations from our original draft, especially when it comes to the powers of the regional councils, the way they will be elected, etc. So, don't take this as something which cannot be changed. In a spirit of give and take we will have to meet each other halfway, and I am sure it will be possible. I thank you.

MR GURIRAB: Mr Chairman, I, as you might recall, grew up around the United Nations and there we are known for being long-winded, we can match anybody in that. I rise to make a contribution, I will not dwell on history. We sort of agreed that we will leave the past for our historians and other students of social sciences to sort out for us how it was, who was where, when and how we got to where we are here now. I want to, however, say that yes, it is true that we do not know one another, but we know of one another quite a bit. We are politicians of long standing, we have been engaged in speech-making over the years, we have occupied positions, sometimes in so-called governments, and we have a record, if you will. People know us and therefore if we rise to make statements, there is also something called integrity, credibility. There is a lot of grandstanding, and probably we are beginning to together inaugurate a culture of our own about parliamentary debate. Fine, I am for it. We want to be in the press. As we speak, we look up, as I am doing now, to see whether I will recognise some faces. I will be looking for my picture in the newspapers tomorrow, try to see my face on television. That posturing, grandstanding, play for the gallery, we had seven months to do that in the election campaign. Fine, we should talk about why we believe in the things we believe in, whether we call them the philosophies we live by, ideals we subscribe to and uphold, but we should also try to be true to the mandate that brings us together here, that is to draw up and adopt a constitution for a future independent Namibia. It is in that sense that Swapo-leadership and experts spent time to prepare a constitution containing 99 articles dealing with almost everything that

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constitutions are about, establishment of the State of Namibia, citizenship, fundamental rights, responsibilities and guarantees, economic system and institutions, the presidency, legislature, cabinet or council of ministers, administration of justice, local government, that wonderful institution called Ombudsman, Public Service Commission, police, prisons, finance, all that are covered in this draft constitution.

We talked about minority rights, about ethnicity. Unfortunately that is the legacy of our country. That is what apartheid defines itself to be. The homelands-policy, bantustan-philosophy, these are all evils that live to haunt us as a consequence of apartheid colonialism we lived through. Some of us totally rejected this and therefore refused to have anything to do with apartheid colonialism. We spent years abroad, struggled in many ways to end that system. We are happy that we have come back home, waged an election campaign and our people, who know who we are, what we stood for, elected us to form a government for independent Namibia. We are very proud of that.

But we also recognise that we are here as seven political parties. We have been brought together by our people, each one of us as a leader carrying a mandate of at least those who elected us, but together shouldering that responsibility to draft a constitution, not only for ourselves today, but a constitution for generations of Namibians to come.

So, we will try to move away from our political preferences and try to do what is best for our people in our country. It is in that sense that I would want us to spend less time playing for the gallery and to devote our time to produce ideas. I listened to specific categories identified where there might be disagreement, differences. We have agreed we will submit the draft proposals to a committee to sort the differences out, but at the same time I also believe that we have a responsibility to consult in a manner that we would actually know what these differences are. In this sense, Mr Chairman, your good offices, I know, are available to all of us for consultations.

At the end I hope that we will be able to present to our people this year as a Christmas-gift a finished document that will be the constitution of an independent Namibia, and I am sure the rest of the team on this side is committed to that proposition that we will speed up the process of constitution-making and finish the job before Christmas. Thank you.

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MR HAMUTENYA: Mr Chairman, I rise to make a few points in support of my colleagues from this side of the table who just made contributions.

First of all I would like to underline the appeal made by honourable Mr Tjiriange to this House for us to avail ourselves time in order to closely study and scrutinise the documents here presented today, in order for us to make constructive contributions to the work of the Assembly.

I would also like to reinforce the point made by honourable Theo-Ben Gurirab that we must avoid engaging ourselves in posturings and playing for the galleries. But Mr Chairman, as was the case last week, we continue to witness the intensification of these types of posturings. Last week the honourable Mudge accused us of time-wasting and wasting of the money of the Namibian tax-payers.

Some of us refrained from taking the floor in order to respond to that accusation. But surely, Sir, those who pontificate about time-wasting, stand accused of spending a whole decade, if not more, filibustering, engaging in useless neo-colonial resolutions, one after the other, and indeed in that decade wasted not only the time of the Namibian people, but also caused loss of lives and precious blood, spent millions and billions of rands in attempts to prolong colonialism and to block the independence of Namibia. Surely, Sir, we cannot be lectured therefore on this score. It serves no purpose whatsoever to pontificate on this question of wasting of time and money by those who indeed stand accused by history and their own records.

Today again we were being told about the wonders and the beauties of the ideas of democracy and institutions of certain countries. One honourable member of this House told us about the beauty and the wonder of the democratic constitutions of West Germany and the USA. Another member of the same party told us that an executive president is no good. The USA has an executive presidency, and if its constitution and political system is so wonderful, why then should the DTA find it difficult to have a constitution with an executive president? If some people cherish and adore the constitution of the USA and the political system based on that constitution, then it is inconsistent and illogical to pick and choose parts of that system.

We were also told - I refer to the wasting of money - that we need a constitution which embodies a bicameral system of parliament or legislature. We have a small country in terms of population, and I have never heard of a small country of Namibia's size with a bicameral political system

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anywhere in what we are told is the free world, whose wonders and achievements we must emulate.

So, I need some kind of reconciliation of positions here. If indeed the political system emanating from the constitution of the USA is wonderful, then so should be an executive presidency and other western countries who have executive presidents. I thank you, Mr Chairman.

BUSINESS SUSPENDED AT 15h40 and RESUMED AT 16h00

MR BARNES: Mr Chairman, something has happened just before our adjournment for tea, that we on the side of the DTA was trying at all cost to avoid. Sir, it would be wrong of the DTA to remain silent on accusations, to remain silent on things that are said that - I am sure you will agree with me - at this point in time are neither relevant nor in the interest of what we have to do in this honourable House, or will ...

HONOURABLE MEMBER: The motion by Mr Angula that was adopted on Thursday, does not make provision for this type of contribution. It specifically states that policy statements only shall be made at this stage.

CHAIRMAN: We gave each party through the Whips seventy minutes to talk on the constitutions. Within that there are variations, but I would like to allow each party 70 minutes. The people have been asking for debate on the constitutional principles.

MR BARNES: Thank you, Mr Chairman, for your impartiality again. If the member was absent that he did not hear the remarks and comments made from his party, I will excuse him. Obviously he did not know, with due respect, what was going on in the House.

To come back to the discussion on the presentation or policy statement of our constitution, I would like to repeat, with respect, that we on this side of the House were hoping to avoid accusations, to avoid remarks that could break down what we have set out to do, inter alia national reconciliation. I salute the members on the other side of the House that from day one the emphasis was on national reconciliation, but does national reconciliation exclude political reconciliation? Does that exclude accepting the

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fact that not one party, as my honourable colleague Mr Mudge said, in this House can claim that it is without political faults?

Mr Chairman, if I look at the preamble of your latest constitution - and with due respect again, I am not belittling your effort - there has been consistent changes even in that constitution and that constitution does refer to history, it does refer to the past. The mere fact that the honourable member Mr Tjiriange consistently in his statement referred to colonialism, as far as we on this side of the House are concerned colonialism is something of the past. Colonialism, as far as the DTA is concerned, is out, not only today, not only tomorrow but forever, Sir. Isn't that something of the past. And if we have to go about starting with references such as certain members made in the House, I can only caution at this early stage that that would destroy the very thing that the other side of the House is propagating - national reconciliation.

I have, with your kind permission, to answer to certain allegations while addressing the statement of the constitution as presented by the honourable member Mr Mishake Muyongo.

It was a beautiful moment when the honourable member Mr Tjiriange started by saying that Swapo is committed to constructive contribution to drafting a constitution. If that is the attitude of every party in this House, the people that voted for us outside have no fear, because we are not sitting here without their mandate, but that we will apply ourselves to that mandate to the best of our ability.

Referring to the honourable member Mr Hamutenya - and I certainly hope that both the honourable members Mr Hamutenya and Mr Gurirab did catch the eye of the media, because to accuse us on this side that we are playing for the gallery, to accuse us on this side that we are playing for the media, there is no need for us to be in the newspaper, you cannot keep a good thing down and the DTA is good.

Mr Chairman, the honourable member Mr Hidipo Hamutenya referred to the wasting of money of the Namibian tax-payer. He made mention of the fact of spending a whole decade - and I quote - in useless efforts. Our constitution has the very elements to eliminate further waste, and if the development that the honourable members found when they returned to our beloved country was a waste of effort and time, then the DTA is guilty. The DTA pleads guilty for under difficult circumstances - and we made no secret, the honourable member Mr Mudge made mention that we wanted to

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do so much more, but at no stage were we the power. It was at all times the illegal regime of Pretoria - to con a phrase from the opposite side of the House.

Mr Chairman, I would like to appeal: Mr Theo-Ben Gurirab made mention of the fact that the United States has an executive president and everybody seems to praise the United States government system or their constitution, and so it can be said of various other countries, including our immediate neighbour, South Africa, that has an executive president. But Mr Chairman, are we here to look at all options to find out what is the best form of government in a constitution for Namibia, or do we have to follow examples of other countries? Not that we cannot learn from those countries, not that we cannot learn from what has happened in Africa, and the DTA at all stages said that it wants to make a meaningful contribution to the mandate of this House.

The honourable member Mr Mudge made mention of the fact that there is no hard and fast rule as far as the DTA is concerned. We have certain principles that we are convinced are in the best interest of the country and its people, but to accuse us that there are eleven ethnic groups in this country and it is the fault of the DTA that it has accepted that, is stretching the imagination a bit too far.

With due respect, Mr Chairman, I would like to reply to one particular thing. If we should start today referring to sins of political parties, we will succeed in bringing about a spirit of discontent, a spirit of further division and I think it was every party's effort from day one to start with national reconciliation in this House. There are so many things I can say about other parties, and at the same time there are so many things that other parties can say about the DTA or any of the other parties present here, but is that in the interest of Namibia and its people? Will that contribute to a peaceful solution for this country and its people? I say no, Sir, and that is why I want to appeal to the honourable member Mr Gurirab. His opening remark was about his years at the United Nations, he knows about speaking in public. I grant him that. I trust that the honourable member will avail himself of the opportunity of availing that experience to this country and all its people, and if he does that, he has my respect and my appreciation. The same applies to the honourable member Mr Hidipo Hamutenya. The DTA does not need to play the gallery, Sir. We are in any case of the first team as far as politics are concerned. I mean, there can be no dispute, we will make a constructive contribution. We will make a contribution on the basis of give and take, but give

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and take is not a one-way traffic. Give and take is not a one-way traffic. We will have to consider each and every party's political, constitutional proposals - and I use the "political", because it is the origin of the proposals that will be tabled here today.

Mr Chairman, the DTA came in all sincerity, the DTA has tried and tested every comma, every point in that constitution, and if we differ, let us at least differ with understanding and respect. Let's not start by trying to show each other how many political points we can achieve against the next one. That is not going to help our country and its people, and this is why I appeal to the major party - and the DTA has accepted the result of the election, we have accepted the fact that that was a mandate, but if a member gets up here and makes the following remark, that we stand accused if you just look at the history. I for one will admit and reiterate and confirm that mistakes were made in this country. I would like to repeat that: I would like to admit that mistakes were made in this country, but despite the errors, and despite the fact that the DTA continuously tried to bring about changes, there is some credit for some good that has been done by the DTA and that can be said for every party. If that is a sin, if that is an offence, Swapo can make out an excellent prima facie case against the DTA. But the beauty of democracy is that we will have the right to make out a prima facie case against Swapo. Let's not reach that stage. I appeal to everybody in this House, let's not reach that stage where we are going to go into history and find fault. Fault-finding is not going to solve the problems of our country. Fault-finding is not going to get South Africa out of this country and the DTA is desirous, the sooner the better.

At a stage I said that I want to be afforded the opportunity that when the AG leaves, he must not put the South African flag in his satchel, I want to see it under his arm to make sure it leaves our country.

But Mr Chairman, we can go on accusing, we can go on trying to play for the art gallery or what gallery, the fact of the matter is that we have got to sit down, identify our differences in a constitution, give and take, find out which is in the best interest of our people and this country, and once we have reached that, I have no doubt that we will have a balanced constitution that will not only be written on paper, that will not only be drafted on paper, but that will be written in the hearts of men, that they will accept that constitution, respect that constitution. They will be prepared to live and die for that

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constitution. That is our major mandate, and all I am asking this House is to consider the DTA's constitution. Look at it with an open mind, look at it with the interest of Namibia at heart, and if it is in the best interest of this country, and the DTA has made that proposal that we should have a president in this country that can be a binding factor, because it is common cause, we have suffered under divide and rule, we have suffered under all sorts of things. Don't make me go back in history. We have to find a factor that can bring about true national reconciliation and it is the DTA's considered opinion in the best interest of this country and its people that a president without executive powers can fill that role. But at no stage, Mr Chairman, did the DTA say that it was not prepared to consider other proposals. This was not said by the honourable member, the leader of the DTA in this House, Mr Muyongo. This was not said by the honourable member Mr Dirk Mudge, and I am reiterating that very firm undertaking: The DTA is prepared to look objectively, constructively and with the interest of Namibia at heart at every constitutional proposal that is submitted. If we are refused then, we will plead guilty, and that is the very thing I ask of the other parties.

Mr Chairman, let's get down to the real thing. The DTA has shown its goodwill for constructive contribution by withdrawing a motion, and I am not going to address that matter lest you rule me out of order. What I am saying is that the DTA is committed to make a contribution in the interest of this country and all its people.

If we can accept the things we cannot change: We cannot change that we have a diverse composition of people. We have to accept the things we cannot change, but we have got to have the courage of our conviction to honestly change the things we can in the interest of this country, and I can only pray that this honourable House will have the intelligence - with due respect - to know the difference. I thank you.

DR MBUENDE: Thank you, Mr Chairman. I was moved this afternoon when honourable Mr Muyongo withdrew his motion, because I thought that we are getting away from an approach to constitution-making which, in our opinion, is time-consuming. Unfortunately the rather piecemeal approach that characterised that motion tends to reappear again in some of the contributions. Things seem to be taken out of their context.

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My two colleagues, namely honourable Comrade Hamutenya and Comrade Gurirab, have made contributions to the debate, but the response to that was, as usual, also selective, characterising their contribution as fault-finding. Again, this particular approach is being seen that we cannot redo history, we cannot get away from the fact that in this country we have eleven population groups.

Mr Chairman, ethnic groups is not the only social division in society. What is thus ethnicity has primacy over other social divisions. We are told that there are eleven ethnic groups, we are not told how many religious groups are in this country, we are not told how many classes there are in society. Why should ethnicity have primacy over class, religion and other social divisions? Obviously it doesn't have to, and because there are also other processes that change the composition of ethnic groups, intermarriages, etc., again this is that particular way of selecting things out of their social context.

Mr Chairman, I cannot otherwise than conclude that we seem to have two fundamental opposing philosophic outlooks, as it was suggested in the proposal tabled here by the honourable Mr Muyongo and reflected by some of the contributions from that side of the table. We are told that the DTA constitution was discussed. In fact, our approach is that we cannot discuss a constitution at this stage, and my colleagues certainly did not discuss the constitution. My colleague Comrade Hamutenya simply pointed out that there are contradictions coming from that end of the table, by saying that the one is praising the wonderful American Constitution and then denouncing another aspect. It was simply pointing out the contradiction coming from that end, but certainly not a discussion of the constitution, and therefore our approach is that we go to committees and discuss the various issues in the constitution.

I am told that colonialism is something of the past. I thought we are in the process of decolonialisation. Are we independent? I thought that our independence is still pending and I am told colonialism is something of the past. I think I have to go and redo my history in which I am in fact a participant.

Mr Chairman, the policy of national reconciliation does not mean that we have to be blind to the past. We have to say in fact, "this was the past, but we forget it now and move forward", and in fact, we did not make reference to the past, it was others who were boasting of the past, of what they have done in the past to come where we are, and it was merely in response to that. And to talk about the record

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of the past, and to talk about the interest of the people of Namibia, is in fact an abuse to those people who were involved in the struggle for so many years. One can simply say, "well, it was in the best interest of Namibia", but the very act in fact does contradict the interests of the people of this country. The people of this country have passed their verdict. They know who their representatives are. We have been struggling for them, and it is against that background that we are gathered here.

Now of course, we cannot talk about the outcome of this election, because all of us have things to talk about. We knew how it were, especially on the farms, some of us coming from the farming areas, but that is not something to talk about, about the fairness or the unfairness of the election. What is clear is that the people have made their choice and they have bestowed their confidence in Swapo.

Mr Chairman, I am sorry that we have to go on with this playing for the gallery for which, of course, my party is not responsible, as we stated clearly we have to go to committees to try and reconcile the divergent issues. On the issue of the president we are told the president should be above everything, he shouldn't be an executive president. We are saying that we accord that status to the constitution and not to the president. The president is elected, representing a particular political party to which the people of this country entrusted their fate. Thank you.

MR J GAROEB: Mr Chairman, I move -

That the debate be adjourned until tomorrow.

AGREED TO.

Debate adjourned.

ADJOURNMENT OF ASSEMBLY

On the motion of Mr Garoeb, the Assembly adjourned at 16h35.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
5 DECEMBER 1989

The Assembly met pursuant to the adjournment.

LEAVE OF ABSENCE

MR WENTWORTH: Mr Chairman, I move without notice that leave of absence be granted to Mr Kapuka Nauyala who is at present in the Conradie Hospital as a result of injuries sustained in a motor car accident on the 2nd December.

AGREED TO.

INTRODUCTION OF CONSTITUTIONAL PROPOSALS:
RESUMPTION OF DEBATE

FIRST ORDER READ:

Resumption of debate on Constitutional Proposals.

MR J GAROEB: Thank you, Mr Chairman, honourable House. I am pleased to present to this honourable House our proposed principles for a constitution.

Mr Chairman, we all have been called upon by this honourable Assembly a few days ago to table our constitutional proposals by not later than yesterday. In our respectful submission it is impossible to have a constitution drafted in such a short period which complies with all legal requirements and is otherwise legally in order. The impossibility of undertaking such a comprehensive task becomes clearer if one bears in mind that the constitution of a country usually comprises of a package consisting of at least six laws, namely -

- (a) a constitution itself providing for the constitutional system for the declaration of the country to be an independent, unitary and democratic state, for its national anthem, symbols, for a bill of rights, for the constitution and powers of head of state, its legislature and its executive; for a system of local

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government and for the continuation of certain laws;

- (b) an electoral act providing for the registration of political parties, voters and, if necessary, the delimitation of constituencies;
- (c) a Citizenship Act;
- (d) an Ombudsman Act;
- (e) a Supreme Court Act; and
- (f) an Interpretation of Laws Act.

It would therefore, in our opinion, be an operation in futility and a waste of manpower, energy and money to have each and every party to draft a full, complete constitution before this Assembly has decided, by the requested majority, on the principles which should be embodied in the constitution. We believe that it would be conducive to a speedy completion of our task to draft a constitution if clarity could be obtained on those principles beforehand.

It is therefore suggested that before the parties are required at all to table properly drafted constitutions, this Assembly should resolve the principles which should be embodied in the constitution, whereafter proposals as to the manner in which those principles can be embodied in the constitution can be considered.

In these premises the United Democratic Front of Namibia moves that the following principles, which we believe are fair, workable and acceptable proposals, be embodied in our constitutional system. We believe that this country should, in accordance with the 1982 Principles be an independent, sovereign, unitary and democratic state and that it should be governed in the form of a republic under the name, the Republic of Namibia.

Coat of Arms, National Flag and National Anthem: We believe that it is the right and duty of this Assembly to decide upon the design of the Coat of Arms and the National Flag of the Republic of Namibia and upon the nature and contents of its National Anthem. It is a matter which cannot and should not be left to the government or legislature of the independent Republic of Namibia to decide upon. What would this country look like if on the date of its independence there is no national flag to be hoisted, no national anthem to be played, and no coat of arms to be displayed or to be used for execution of executive actions.

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Mr Chairman, the Republic of Namibia can, in our respectful submission, not be born without a proper coat of arms and a national flag having been designed and a national anthem having been determined by us, the duly elected representatives of the people of Namibia.

Citizenship: We believe that provision should be made in the constitution, or preferably in a separate law, in the first place for the following persons to be citizens of the Republic of Namibia, namely persons born in Namibia before or after the date of independence, excluding a person so born whose father was a person who enjoyed or is enjoying diplomatic immunity under any law relating to diplomatic privileges or a person whose father or, if born out of wedlock, his mother, was at the time of his birth a prohibited immigrant. Secondly, persons not so born in Namibia whose father or mother was a person born in Namibia before or after the date of independence, or was on or after independence a citizen of the Republic of Namibia by naturalisation. Thirdly, persons naturalised by virtue of their permanent residence in Namibia any time before or after its independence for a period of at least five years.

In the second place, a procedure and requirements in terms of which persons can become citizens by naturalisation on the ground of their permanent residence of at least five years in Namibia.

In the third place, for the renunciation or deprivation of citizenship. A person who, on the date immediately before the date of independence, is a South African citizen by virtue of his birth in Namibia at any time before the date of independence, may at any time on or after independence renounce in writing his Namibian citizenship conferred upon him by the constitution or other law if he wishes or deems it necessary to do so.

Official languages: Mr Chairman, we believe that English should be the only official language of the Republic of Namibia, provided -

1. that instruction in schools may also be provided in a mother-tongue other than English;
2. that no person shall be denied the right to communicate with any governmental authority, including any court, in his mother-tongue;
3. that laws and notices of public importance shall be published also in Afrikaans, provided that in the event of an ambiguity, the English text shall prevail;

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4. that any governmental or semi-governmental authority may, in addition to the official language, use any other language in so far as it may consider it useful and desirable in the public interest.

The Bill of Rights: We believe that the constitution should contain in an entrenched provision a Bill of Rights which shall be binding upon the legislature, the executive and its administration, the judiciary and all other bodies established by or under any law whose actions, including the laws of the legislature shall, in the event of a breach of fundamental rights, be justifiable by a court of law. We believe that the Bill of Rights should include -

- (a) a right to life;
- (b) a right to liberty, security of person and privacy;
- (c) a right to equality before the law;
- (d) a right to fair trial;
- (e) a right to freedom of expression, of opinion and of conscience and religion;
- (f) a right to assembly;
- (g) a right to freedom of association;
- (h) a right of participation in political activities and in the government;
- (i) a right to culture, traditions, language and religion;
- (j) a right to freedom of movement and choice of residence;
- (k) a right to property;
- (l) a right to education and to establish and maintain private schools.

The Bill of Rights should, however, not be construed -

- (a) as being breached if any of the rights and freedoms aforesaid is abolished, diminished or derogated from the extent to which it is necessary to ensure that in the exercise of that right the security of the state or the maintenance of public order, health or morals are not endangered;

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- (b) as excluding any obligation to undergo military service in the defence of the country, and the prevention of all suppression of terrorism, internal disorder or in preservation of life, health or property or the maintenance of essential services;
- (c) as prohibiting the imposition of any compulsory education.

The President: We believe that the President elected by parliament or an electoral college, consisting of members of the National Assembly and the Senate, should act as the head of the state for ceremonial purposes and in so far as it may be conferred upon him by the constitution or any other law, the execution of certain executive powers on the advice or with concurrence of the Cabinet.

The Legislature. We believe:

Firstly, that the legislative powers of the Republic of Namibia should vest in parliament consisting of two Houses, namely a National Assembly and a Senate.

Secondly, that the National Assembly should consist of 72 members elected in terms of an electoral law to be drafted by this Assembly by the registered voters by general, direct, free, equal and secret ballot every five years according to the principles of proportional representation and on party-lists.

Thirdly, that the Senate should consist of three persons nominated by each regional council referred to below, from amongst its members or otherwise.

Fourthly, that political parties should be regarded as essential for purposes of the constitution of the National Assembly.

Fifthly, that all bills passed by the National Assembly, excluding bills imposing taxation or appropriation bills, which are rejected by the Senate, should be referred back to the National Assembly for reconsideration and in the event of such bills being again passed by the National Assembly in an unamended form, that such bills should be considered by both Houses at a joint sitting, whereafter it may, if passed at such a joint sitting, be referred to the President for his assent.

Sixthly, that the Supreme Court should be empowered to enquire into and pronounce upon the validity of any law in so far as any rights contained in the Bill of Rights is

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abolished, diminished or derogated from.

Seventhly, that this Assembly should convert itself into the First National Assembly, with powers to act as if it were both Houses of Parliament for a limited period until such time as the Senate can be properly constituted and the other provisions of the constitution, relating to elections and the establishment of regional councils can be implemented.

The Executive: We believe that the executive government of the Republic of Namibia should vest in a Cabinet consisting of -

- (a) a prime minister elected by the National Assembly; and
- (b) as many ministers, nominated by the prime minister and appointed by the president, as the prime minister may deem necessary to administer the various departments of state established by him, of whom not more than four may be persons who are not members of the National Assembly or Senate.

Regional Councils: We believe -

1. that due to the vast expanse of this country, regional councils should be established in order -
 - (a) to exercise or perform on a regional basis all powers and duties delegated to it by the Cabinet;
 - (b) to advise the Cabinet on any matter referred to it by the Cabinet;
 - (c) to make submissions on its own accord in relation to any matter peculiar to the region concerned;
 - (d) to be consulted in connection with all intended legislation and to make recommendations in connection therewith;
 - (e) to be consulted by government departments in connection with submissions to the Cabinet and to make recommendations in connection therewith;
 - (f) to make, for the purposes of preparing of a budget, recommendations to the Treasury in so far as they relate to matters concerning the particular region.
2. that the country should, for purposes of the establish-

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ment of regional councils, be divided by a delimitation commission, to be appointed by the Cabinet, into at least six and not more than nine regions, none of which should be larger than 140 000 square kilometers;

3. that each regional council should consist of at least nine members plus a number to be determined in accordance with a formula in which regard it has to be the number of registered voters in a particular region, and the number of registered voters in all the region delimited by the commission;
4. that the members of the regional council be elected by registered voters in the region concerned on a basis of proporsional representation.

Now, Mr Chairman, I wish to tackle the fig in the political history of Namibia, namely the communal land. We believe that almost all parties represented in the Constituent Assembly are aware of the importance and the sensitivity of the issue of communal land, but most of them have until now skilfully evaded or side-stepped the issue, for obvious reasons of course, because nobody had the courage to take the bull by its horns and address the issue.

The UDF wishes to address this issue because we want this honourable House to be cognisant of the fears and concerns of the traditional leaders and the vast majority of the people living on communal land.

We know that by doing it now, the UDF will be accused of all sorts of things, and called all kinds of names, but it is in the interest of the majority of the inhabitants of Namibia who live on communal land that their future should be spelt out clearly in the constitution of an independent Namibia.

Mr Chairman, we thus believe, in the first place, that in respect of every tribe occupying communal land, a trust should be established which will be a juristic person. Secondly, that the affairs of each trust should be administered by the traditional authority of that tribe. In the third place, that the ownership of the communal land occupied by the tribe concerned, should be transferred from the government of the territory to the trust established for that tribe.

Fourthly, that all powers, rights, duties, obligations and functions which vested on the date immediately before the date of independence in the Administrator General in rela-

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tion to the acquisition, alienation, letting, grant, transfer, occupation and possession of such communal land, should be transferred to the traditional authority concerned as a trustee.

In the fifth place, that a Communal Land Development Fund should be established under the control and authority of the Cabinet, into which should be paid all monies collected in connection with alienation, grant, letting, occupation and possession of communal land and from which shall be paid all expenses incurred in connection with the acquisition and development of communal land.

In the sixth place, that the Cabinet should, as soon as possible, take the necessary steps to cause the land of each tribe to be surveyed and issue to and register in the name of the trust established for the tribe concerned a deed of grant.

In the seventh place, that the Cabinet should, with the concurrence of the traditional authority, cause the land transferred to be surveyed in due course into economic units, but without infringing existing occupation rights.

In the eighth place, that the Cabinet should, for the purposes of resolving any dispute concerning the boundaries of any tribal area, refer any such matter to an arbitration in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965).

Local Government: We believe that apart from regional councils, there should exist a system of local government consisting of -

1. municipalities in respect of urban areas which will be governed by municipal councils of which the members should be elected by all rate-payers resident within the area of the municipality concerned and empowered to make by-laws not disallowed by the Cabinet; and
2. a peri-urban development board in respect of rural areas, consisting of persons appointed by the Cabinet and an elected advisory committee for each development area to be determined and declared by the Cabinet.

We believe that the existing laws governing municipalities and the Peri-Urban Development Board should be allowed to continue in its existing form in so far as they do not contain discriminatory provisions, until such time as it is repealed or amended by the legislature and that all acts done thereunder should be maintained.

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The Judiciary: We believe that the judicial power of the Republic of Namibia should be vested in an independent Supreme Court, consisting of an appellate division and a general division to which independent judges should be appointed who will be subject to the law. That the existing laws governing the Supreme Court and Lower Courts should be allowed to continue until such time as it is repealed or amended by the Legislature, and that all acts done thereunder should be maintained.

The Civil Service: We believe that there should be an independent, impartial and competent Government Service Commission with duties and powers to ensure an adequate and efficient Government Service which has merit as a basic principle and ensures equal protection for all. That all existing laws governing the Government Service should be allowed to continue until such time as it is repealed or amended by the Legislature, and all appointments made thereunder be maintained.

The Ombudsman: We believe that an independent Ombudsman should be appointed with power to enquire into and report to parliament on any matter laid before him and in respect of which he has reason to believe -

- (a) that any decision taken by or under the authority of the state, a governmental institution or local authority or any act performed or omission to act by any person in the employment of the state, governmental institution or local authority abolishes, diminishes or derogates from any fundamental right;
- (b) any law or matter which is administered by or under the authority of the state, a governmental institution or local authority in a manner which is not in the public interest;
- (c) that the powers, duties or functions which vest in the state, a governmental institution or local authority or any person in its employment are exercised in a incompetent, dishonest or irregular manner, or are not exercised or performed at all;
- (d) that moneys forming part of the funds of the state, a governmental institution or a local authority, received or held on behalf of the state, a governmental institution or local authority or its other property are being or have been dealt with in a dishonest, irregular or improper manner;
- (e) that any person, either directly or indirectly, has

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been or is being enriched or has received or is receiving any advantage in an unlawful or improper manner through, or as a result of any act or omission in connection with the administration of the affairs of the state, a governmental institution or local authority.

That the existing laws governing the Ombudsman should be allowed to continue until such time as they are repealed or amended by the Legislature or/and that all acts performed thereunder should be maintained.

The Auditor General: We believe -

- (a) that an independent Auditor General should be appointed to investigate, examine, audit all accounts of the state, governmental institutions and local authorities and to report thereon to parliament;
- (b) that the existing laws governing the Auditor General should be allowed to continue until such time that they are repealed or amended by Legislature and that all acts performed thereunder should be maintained.

Financial Matters: We believe that for the sake of continuity the Central Revenue Fund should be continued and that no money should be withdrawn from that Fund except in accordance with an act of parliament.

Entrenched Matters: We believe -

- (a) that no provision of the constitution, relating to the Bill of Rights, should be amended in such a way that any fundamental right contained therein is abolished, diminished or derogated from;
- (b) that no provision of the constitution, except a provision relating to citizenship, should be amended other than by a decision taken by a two-thirds majority of all the members of the National Assembly and the Senate during separate sittings of those Houses.

Continuation of Laws:

- (a) we believe that all existing laws relating to constitutional matters which are of discriminatory nature, including the Representative Authorities Proclamation, 1980, (Proclamation AG 8 of 1980) should be repealed and expressly by the constitution;
- (b) that all existing laws, which are of discriminatory

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nature and which do not relate to constitutional matters, should not be allowed to continue after independence;

- (c) that all other existing laws, including the laws governing municipalities and Peri-Urban Areas Development Board, the Supreme Court, the Government Service, the Ombudsman, the Auditor General and the Central Revenue Fund should be allowed to continue until such time as they may be amended or repealed by the Legislature of the Independent Republic of Namibia, and that all acts done thereunder should be maintained.

In conclusion, Mr Chairman, it must be stressed that the United Democratic Front of Namibia is prepared, if required by this Assembly to do so, to table in due course a draft constitution containing proposed clauses in which the principles for which we stand are embodied. In such an event, Mr Chairman, it is however suggested that all expenses incurred by all the political parties having such a draft prepared should be defrayed by the State.

Mr Chairman, if any member of our delegation wishes to add to what I have said, I believe they are free to do so. We present these principles of ours as a contribution to this honourable House in good faith and not as a blueprint. We are willing and we will be willing to negotiate on issues. I thank you.

MR R R DIERGAARDT: Mr Chairman and colleagues, please allow me the opportunity of making a few comments in order to briefly sketch to you the background against which we table our constitutional principles.

The constitutional proposals which have just been tabled by the President of the United Democratic Front of Namibia on behalf of that Front, reflects realism and our honest endeavour to hasten the liberation of the oppressed masses that have long since suffered under the hated system of racial discrimination.

Mr Chairman, while the UDF is also in favour thereof that the whole process of constitutional development and independence be expedited, we do not believe that this should be brought about at any cost. Because of the sensitive nature of the assignment of this honourable House, it is imperative that the matter be dealt with with the utmost circumspection. We fully realise how much depends on that

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with which we are working at present, since the country obviously cannot gain independence without a constitution. We should therefore like to give you the assurance of our full co-operation in your efforts to give further momentum to the process. We believe, however, that you will nevertheless appreciate our cautious approach, especially in view of the fact that so much is at stake.

There are those who are beginning to get impatient and to regard the slow beginnings of the proceedings as a waste of valuable time. The UDF, however, does not see the matter in that light. On the contrary, in the preceding days members have had the opportunity of getting to know one another better and many an informal discussion was able to be held in the corridors of this honourable House. We believe that these discussions will be able to play a useful role in our deliberations. The UDF therefore supports the concept that the business of this honourable House be referred to smaller committees where the various leaders will be more inclined to consider the viewpoints of the others in a more relaxed atmosphere, without the constant scrutiny of the press.

In saying so, we do not suggest that public debate be avoided. Not at all. On the contrary, it is our view that public debate must continue, because without that we will not reach a final solution. It must also be borne in mind that the suspicion and mistrust which have been prevalent as a result of a tough and merciless election campaign is still uppermost in the minds of most. The success of this honourable House, Mr Chairman, is however dependent on whether we will be able to rise above these less important hindrances in order to best serve the interests of our country and all its inhabitants. What makes our task more difficult is the wide spectrum of ideas, most of which can, however, be reconciled, as most of them result only from the difference of approach which exist in this honourable House. We plead that there be understanding for this, since it must be borne in mind that those who have been traditionally suppressed must sit at one table with the oppressor.

The UDF, however, believes that the table which is now being shared by the previous slaves with the former slave-owners, can be a table of brotherhood and that the discord of the past, which was beset with dissension, hate, exploitation and suppression, can be converted into a symphony of love, unity and reconciliation.

A lot has recently been said about reconciliation, Mr Chairman. Many people understand thereby an opportunity to

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conceal guilt and the wrongdoings of the past. The UDF, however, regards reconciliation as a total expunging of that which is wrong and therefore such reconciliation is often accompanied by pain. Christ had to endure bitter pain and suffering on the Cross in order to bring about reconciliation between God and the world. We also, therefore, should be prepared to make sacrifices, however painful they may sometimes be, if we truthfully and honestly intend bringing about such reconciliation. If we therefore refer to the past, we do not do so in order to belittle others or on account of hate, but we do so in an endeavour to ensure that the mistakes of the past are not repeated. We must guard against our hate for and anger against apartheid forming the basis of our struggle against this ungodly viscious system.

The UDF full-well realises what damage the system of racial discrimination has done to our people, and we therefore envisage a new Namibia, one undivided country where the individual can develop to the full capacity of his capabilities without any form of prejudice or bias.

Seeing that a number of aspersions has in the last few days been cast in this House, please allow me to briefly comment thereon. Not one party in this House can afford to make accusations, Mr Chairman. The history of our oppressed country testifies of bloodshed and violence. There are those in this House who were involved in this war because it was seen as a means whereby liberation was to be achieved. Others were involved by supporting the system of compulsory military service. In this manner a senseless and useless war was continued, which served only the interest of others beyond our country's borders.

Today we look back upon the destructive results of this war and we ask ourselves whether it was really necessary, especially if we bear in mind the tremendous loss of life and property that our beloved country had to suffer. And furthermore, if we take into consideration that this wave of destruction of lives originated in the ridiculous concept in the minds of people that they are better than others purely by virtue of the colour of their skin, before we therefore turn to accusations in the future, let us remember the lesson of the Great Master, namely, "let him who is without sin cast the first stone."

Mr Chairman, please allow me to also briefly refer to the role of the media in this critical period. The first and foremost priority of the media is surely to keep the public informed of the course of events in this House. In many instances, however, the media acts prescriptive. I fully

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appreciate that where a newspaper is the mouthpiece of a particular party or parties, that such newspaper will do everything in its endeavour to improve the image of its party. Such endeavour should not and must not, however, clash with the national interest. Furthermore, in their efforts to build such images, the newspapers often compromise the leaders of the parties to certain principles or viewpoints by implication, and politicians find that it is in those circumstances very difficult to make concessions, since that may be seen as a deviation from declared policy. For instance, many people still find it difficult to accept the election results, as these went against their expectations. Some newspapers presented a biased picture during the election campaign, purely in order to present their party as the victors. Such disinformation often creates misconception which could have catastrophic results.

I sincerely hope that this passing remark is not taken amiss by the press and considered presumptuous of me. It is my sincere hope that the press will take note and use its privilege and influence for a greater cause.

The election campaign is now behind us and the long and weary process of building a nation must commence, which is only possible if our leaders here are prepared to inspire and motivate their followers outside the House. For this they will require real statemanship.

We are surely aware of the fact that the youth of our land, which comes from an era of great uncertainty and confusion, look to this honourable House for guidance. They furthermore look to us to provide them with new meanings and content in their lives and their aspirations and expectations which we should not frustrate. We must change the present system of upbringing whereby the overwhelming majority of our youth is merely prepared for its subordinate role to a very small minority, to such an extent that it affords everyone, and even that small majority, a vision of a new Namibia, a land where everybody is equal and treated as such - their fatherland. If we can succeed in giving our youth something for which they are prepared to die, their lives become worthwhile and in this manner we can build a new Namibian nation.

Furthermore, Mr Chairman, the hope of our old and aged, who had to endure so many humiliation, is fixed on this honourable House to inspire them to at least live their last days in peace, so that the sacred cause of freedom for which so many of them made many sacrifices is not in vain. Where we therefore stand on the threshold of independence, we

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remember with pride all the brave sons and daughters who were prepared to make the highest sacrifice for our freedom and we salute them. This honourable House should take into account and appreciate all those who contributed to the process, and in saying so we do not for one moment ignore the considerable contribution made by our comrades in Swapo, because that would be churlish. At the same time, however, we acknowledge the contribution made by every other inhabitant of our beloved country. In order to make these sacrifices and the loss of life and property worthwhile, and in an endeavour to also make a contribution, however small, the UDF promises its full co-operation if this is seen to be in the national interest. But we wish to stress that any concessions made in such endeavour, are not to be seen as weakness.

Finally, the UDF wishes to direct a friendly warning to our honourable colleagues not to convert this honourable House into a talking shop. Let us please remain aware throughout of our terms of reference and let us confine ourselves to the task at hand. Let us resist the temptation to abuse this platform in order to bolster the image of our parties. If we should surrender to this temptation, we will surely fail in this very important task and the prophets of doom will rejoice. Let us keep alive this new hope which is prevalent amongst our people after the relatively successful election, and thereby convince those amongst us who are still doubtful of our confidence in the future. I thank you.

MR DE WET: Mr Chairman, it is a privilege indeed to be a member of this Assembly, but there also rests a great responsibility on each of us. We do experience a unique process of democracy where the majority party does not enforce its constitution on us, where we, the other parties, are allowed to negotiate a constitution before independence. We wish to express our gratitude regarding this attitude.

In the spirit of national reconciliation I am going to address this Assembly regarding our constitutional proposals, and may I say, in contrast to some of the unnecessary accusations that was made by the honourable member Mr Diergaardt.

My party believes it is in the interest of our country that in drafting a constitution it must be conducted in such a manner that the greatest possible consensus be reached. Therefore we advocate the procedure being conducted and

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negotiated in committees, that controversial issues not be raised in this Assembly until such time as opportunities had been given to the relevant parties to reconcile the different draft constitutions.

In drawing up a constitution we must take all relevant realities into account: the diversity of the geographic composition, the diversity of our population, the diversity of political systems, the diversity of our needs, aspirations and fears.

Over the centuries the indigenous inhabitants of this country have developed their own political systems. These systems ruled the societies. Then followed the colonial era, but some of these systems were not destroyed. To a certain extent they were subject to the colonial authority. Some of these authoritative structures are still to be found, especially in the communities living on communal land. We still find in our country chiefs and headmen. These leaders and their bodies of jurisdiction are still recognised.

On the other hand we have a western governmental structure responsible for the administration of the entire country and also authoritative over the population. We have the private ownership, on the other hand a communal system; the tribal system of law and the modern judicial system. These are only a few of the contrasting examples, but are indicative of the multiplicity of the differences and problems.

The only method and way to successful national reconciliation and lasting peace on our way to independence and nationhood would be to respect and accommodate the diversities in the constitution. The desire of ACN is to achieve unity in this diversity with common loyalties to a single state.

Taking into account the abovementioned, it is of the utmost importance that the committee should give preference to the drafting of a declaration of fundamental rights in accordance with the prevailing realities and also Clause 5 of the 1982 Principles for a Constitution for an Independent Namibia.

Meneer die Voorsitter, ACN is deel van hierdie proses. Ons het deelgeneem aan hierdie verkiesing, ons wil ook graag 'n positiewe bydrae lewer. Ons het deelgeneem aan hierdie verkiesing as 'n bepaalde bevolkingsgroep, nie met die doel om ons te isoleer nie, maar met die doel om die blankes te aktiveer en te motiveer om wel deel te wees van hierdie land en sy totale politieke omgewing. Ons sien ons as deel

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van hierdie land en al sy mense. Baie van ons is reeds hier vir vier geslagte, ons is nie meer kolonialiste nie, ons is deel van hierdie gemeenskap. Ons wil graag ons deel hier doen.

Maar daar is ook in hierdie land sekere basiese realiteite, verskillende kulture, verskillende tradisies, verskillende tale, verskillende godsdienste en ook verskillende wyses van besittingsreg. Daarom wil ek vir u sê dat ons het ingehandig 'n werksdokument. Ons het 'n konstitusie wat beskou kan word as 'n werksdokument. Aansluitend by dit wat mnr Garoëb gesê het, dien dit as 'n werksdokument en dien dit nie as 'n finale dokument van ons kant af nie. Maar 'n hand- ves van fundamentele regte is vir ons van geweldige groot belang, en ek wil dit sê dat baie van ons voel dat indiwiduele regte genoegsaam beskerming verleen. So sterk as wat mnr. Garoëb voel oor die erkenning en die akkommodering van kommunale gronde, sô sterk voel ons oor die erkenning van die groep of groepe se regte - groepe wat daar is by wyse van vrye assosiasie.

The ACN believes and advocates the following clauses as a preamble that can serve as a guideline for a Bill of Fundamental Rights:

Whereas we are united in the belief that all men are born free and equal and endowed by their Creator with human dignity and inalienable rights;

Whereas we wish to build finally conquered independence on the principle of freedom, collectivity, unity, democracy and justice;

Taking into consideration the virtues of our historical traditions and the values of our civilisation which should inspire and characterise their reflection on the concept of individual and collective rights;

Taking into consideration that lasting peace, stability and progress depend on the recognition of, and respect for the rights of all in the prevailing cultural, traditional, linguistic and religious diversity of our society;

Considering that the employment of rights and freedoms also implies their reasonable limitations and the performance of duties on the part of everyone;

Convinced that it is essential to pay particular attention to the right to development and that civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universa-

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lity, and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of our duty to achieve the total elimination of all forms of discrimination, particularly those based on race, colour, sex, language, religion or political opinion;

Now therefore the ACN wishes to promote the following individual and collective fundamental rights:

General Principles:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Declaration, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status;

Corporate entities, communities, as well as any autonomous public institution, shall enjoy such rights and be subject to such duties as are accorded to them in this Declaration or otherwise compatible with their nature.

Every individual shall be equal before the law.

Every individual shall be entitled to equal protection of the law.

The fundamental rights embodied in this Declaration shall not exclude any other common law, right or rights resulting from legislation or any applicable principles of International Law.

The individual and collective fundamental rights and duties embodied in this Declaration shall be directly applicable and enforceable and binding on the Legislator, the Executive and the Judiciary, as well as all other organs of the State or public institutions.

Individual and collective fundamental rights and duties may be limited by act of parliament or in terms of such delegated powers as may be granted in an act of parliament and strictly in so far, and for the purposes only as expressly provided for in this Declaration.

By declaration of a state emergency in terms of the constitution, those fundamental rights and duties specifically mentioned in such a declaration of emergency, may be suspended, but only to the extent as directly required for the

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countering of the emergency prevailing.

Limitations of an individual or collective fundamental right or duty in any individual case, including during a state of emergency, must satisfy the requirements of proportionality by being strictly necessary for the upholding of any or more other individual or collective fundamental rights or duties of equal importance, so as to achieve an optimal balance between and possibly conflicting interests between fundamental rights and related fundamental duties, and between individual or collective freedoms, on the one hand, and the duty of the State to uphold and protect the constitutional values and goals of the nation as a whole.

Everyone shall have access to the courts to enforce the individual and collective fundamental rights and duties affecting him directly. A special fundamental rights appeal to the Constitutional Court shall apply in terms of law.

Everyone shall have the right and the duty to resist any measure or order that infringes individual or collective fundamental rights and duties directly affecting him, including by the use of ... if and when no other reasonable resource is available.

Whoever advocates violence or abuses any individual or collective fundamental right or duty by attempting to deny or curtail another person's fundamental right or to overthrow the constitutional democratic order, shall forfeit his rights and privileges in that particular instance.

The forfeiture of any rights in terms of the foregoing section and the extent of such forfeiture, depends upon the pronouncement thereof by the Constitutional Court on application by the Attorney General.

Individual Rights:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

All forms of exploitation and degradation of man, particularly inhuman or degrading punishment and treatment, shall be prohibited.

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Every individual shall have the right to liberty and to security of his person. No one may be deprived of his freedom, except for reasons and conditions previously laid down by law in the interest of public order and security. In particular no one may be arbitrarily arrested or detained.

Everyone shall have the right to freely develop his personality, and to use his skills, capabilities, inclinations to the best of his abilities and for economic gain, subject only to the due fulfilment of his fundamental duties, to the rights of others and those limitations of the law which are necessary in the interest of all for the upholding of the individual and collective fundamental rights and duties and the principles of constitutional democracy.

Everyone shall have the right to enjoy personal security and security of his possessions and property against criminal acts. No one shall be subject to interference with the privacy of his home, correspondence, communications or own data recordings, except as provided for by the law for reasons of public welfare, national security or the defence of the constitutional democratic order.

Freedom of Conscience:

The profession and free practise of religion shall be guaranteed. No one may, subject to law and order or the rights of others, be submitted to measures restricting the exercise of these freedoms.

Every individual shall have the right to free association of any kind, provided that his purposes are neither violent nor criminal or to promote racial hatred.

Subject to the obligations of community solidarity provided for in Chapter 3 hereof, no one may be compelled to join an association.

BUSINESS SUSPENDED AT 15h40 and RESUMED AT 16h00

MR DE WET: Mr Chairman, the law may provide for the prohibition and compulsory liquidation of an association which promotes the violent overthrowing of the constitutional democratic order, subject to declaration to this effect by the Constitutional Court on application of

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one-fifth of the members of any chamber of parliament, the prime minister or state president.

Every individual shall have the right to assemble freely and peacefully with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Every Namibian citizen shall have the right to participate freely in the government of his country and to dissent from political ideas either directly or through freely chosen representatives in accordance with the provisions of the constitution and the law.

Every Namibian citizen shall have the right of equal access to the public service of his country.

Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Every individual shall have the right to freedom of movement and residence within the borders of the state, subject only to those limitations imposed in the interest of public order, crime prevention, health and collective rights of communities.

Every individual shall have the right to leave the country, including his own, and to return to his country.

Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.

The right to own, dispose of and acquire any kind of private property, including by way of inheritance and individually or in association with others, shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest or the interest of a community, and in terms of the applicable expropriation laws which must provide for fair and proper compensation which, in the case of non-nationals, must be paid in freely convertible currency.

The law may exclude specific national resources, specific industries or types of economic activities from private ownership in the interest of social justice, national independence or to give effect to the social responsibility of property.

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Every individual shall have the right to the protection of his work or established professional activity and shall be entitled to equitable and satisfactory working conditions as to judicial recourse in the event of labour disputes.

Every individual shall have the right to education. Every individual may freely take part in the cultural life of the community.

The promotion and protection of morals and traditional values, recognised by the community, shall be the duty of the State.

Every Namibian citizen, as a member of the Namibian community, shall have the right in community with the other members of his ethnic, traditional, religious or linguistic group, to enjoy their own culture, to profess and practise their own religion or to use their own language.

Collective rights:

Associations shall enjoy the right to their own name and good reputation, and may pursue their objectives freely without interference by any public authority, provided their aims and purposes are neither criminal, nor to advocate racial hatred or political violence or the unconstitutional overthrowing of the democratic order.

All cultural and ethnic communities shall be equal. They shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a community by another. All communities shall have the right to exist. They shall have the unquestionable and inalienable right to cultural and ethnic recognition. All communities shall have sufficient economic autonomy, the right to impose own levies and to receive own revenue as well as a fair share of the national income. In case of spoliation the dispossessed shall have the right to the lawful recovery of its property as well as to an adequate compensation.

The autonomy of communities shall be exercised without prejudice to the obligation of each community of promoting the national economic interest, based on mutual respect, equitable exchange and the principles of constitutional democracy.

The State shall dispose of its national revenue with a view to strengthening national unity and solidarity.

All communities shall have the right to their economic,

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social and cultural development, with due regard to the freedom and identity and in the equal enjoyment of the common heritage of all Namibians.

All communities shall have the right to a general satisfactory environment favourable to their development. The State shall have the duty to ensure the exercise of the right to development in every community.

The communities shall exercise their personal and, where applicable, territorial jurisdiction entrusted to them in terms of the legislation establishing the community, but will, in any event, have jurisdiction over all cultural, traditional, customary law and leadership matters pertaining to that specific community.

Communities will be governed by an elected community council. The right of the communities to have own legal personality, to sue and be sued in their own right, and to be represented in the chamber of communities of parliament is guaranteed as a collective fundamental right.

The rights to self-government and autonomy of local municipal and provincial authorities shall be guaranteed in terms of the relevant laws.

Fundamental duties:

Every individual shall have duties towards the family and society. The State and the communities have other administrative institutions. Every individual and every collectivity of individuals shall have the duty to respect and consider his fellow-being without discrimination and to maintain relations aimed at promoting, safe-guarding, reinforcing mutual respect and tolerance.

The individual shall also have the duty to preserve harmonious development of the family and to work for the cohesion and respect of the family, to respect his parents at all times, to maintain them in case of need; to serve this national community by placing his physical and intellectual ability at its service; not to compromise the security of the State whose national or resident he is; to preserve and strengthen social and national solidarity, particularly when the latter is threatened; to preserve and strengthen the national independence and the territorial integrity of his country, and to contribute to its defence in accordance with the law; to work to the best of his abilities and competence and to pay taxes imposed by law in the interest of the society; to protect and preserve the national environment and public facilities; to preserve and

strengthen positive cultural values in his relation with other members of the society; in the spirit of tolerance, dialogue and consultation, and in general to contribute to the promotion of the moral well-being of society; to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of the unity of Namibia.

The foregoing Declaration of Rights is herewith proposed by the ACN as a basis upon which true self-determination and national unity after independence may be built. The ACN wishes to promote the fraternity of all Namibians and Namibian communities in a firm commitment to the following five foundations of our future:

Personal freedom; collective freedom of our cultural and ethnic communities; national unity, democratic government, distributive social justice. Hence our slogan is: "Freedom, collectivity, unity, democracy and justice." I thank you.

MR PRETORIUS: Mr Chairman, I have not prepared a speech, in the sense that I have not prepared a written speech, but I have made a few notes and I hope you will allow me to make a few remarks.

After listening to the honourable member, I also came to the conclusion that we have much in common, and now you must listen carefully, I did not say that "we are in common with "Mudge", I said that we have much in common. I feel at liberty to say a few things straightforward, because I believe that in every debate you must have some salt and pepper to add to the taste of the debate, and we hope to fulfil that role also in future, because although we are glad to have much in common, I think there are still differences which we must talk about and which I shall prefer to talk about in the committee stages. Apparently the provision for translation is not ready yet, otherwise I can assure you that if I could have made my remarks in Afrikaans, there would have been reconciliation before Christmas, according to the wishes of the honourable member Mr Gurirab. But now I am afraid it will not be this year's Christmas, but definitely before next year.

Mr Chairman, I said I felt at liberty to say a few things, because the spokesmen of the major parties, especially yesterday, emphasised one very important thing. The honourable member Dr Tjiriange, for example, talked about life-blood and the creation of conditions to enable us to overcome, inter alia, fears by free exchange of political ideas.

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The honourable member Muyongo spoke about full freedom of speech, and even the honourable member Mr Mudge said that we must not be impatient with each other. He also said that the minority can best be protected by the majority. So, I want to address the majority this afternoon as a minority.

Mr Chairman, we in ACN are not ashamed to say that we are the advocates, the champions who are propagating the whole idea of achieving a balance between individual and group rights. We are perhaps stressing minority rights too much, but that is in an endeavour to get the necessary balance, because we believe that our point of departure is that our whole concept about minority rights is historically, juridically and morally based. Because we are now heading towards the end of a mandate period, we are heading for independence, and we in ACN are also trying to contribute in a positive way to achieve that as soon as possible, but then we feel that we must not forget about how all this started, because the main goal of the mandate was the protection of minority rights. For example, the President of America said on the 31st May 1919:

"We are trying to make a peaceful settlement."

Perhaps you will say America is still trying to make a peaceful settlement.

"We are trying to make a peaceful settlement to eliminate those elements of disturbance as far as possible which may interfere with the peace of the world, and we are trying to make an equitable distribution of territories according to the race, the ethnographical character of the people inhabiting those territories and then state the rights of minorities. Nothing I venture to say is more likely to disturb the peace of the world than the treatment that might in certain circumstances be meted out to minorities."

That was a quotation from what President Wilson said in 1919. In 1931 the League of Nations referred this whole question of the conditions under which a mandated territory could become independent to the Permanent Mandates Commission and they submitted their recommendations. So, certain conditions were adopted in November 1931 by the League of Nations and I want to read it to you out of the League of Nations document:

"The Commission suggests that a guarantee is to be furnished by the new state before the mandate can be

brought to an end. It should take the form of a declaration binding the new state to the League of Nations or of a treaty or a convention of some instrument formally accepted by the Council of the League as equivalent to such an undertaking.

The Commission suggests that without prejudice to any supplementary guarantees which might be justified by the special circumstances of certain territories or their history, the undertakings of the new state should ensure and guarantee -

(a) the effective protection of racial -

and since then the terminology was changed to "ethnic" -
linguistic and religious minorities.

(b) freedom of conscience and public worship and the free exercise of the religious, educational and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality and effective administration;

(f) rights of every kind legally acquired under the mandate regime."

Mr Chairman, that is why I said it is historically, juridically and morally based. In 1982 we had some difficulties with the proposals of the Western Five, the so-called 1982 Principles, and we put our objections in written form and it is a pity to say that up to this date we have not received any reaction, not from South Africa, not from the Western Five, not from the international community. But, Mr Chairman, since 1984 in the Multi-Party Conference we were even prepared to accept those principles as the framework for a constitution, and we are now positively working in that direction.

So, I have taken the liberty to submit already a draft constitution to the Secretary which we will deal with in the committee stages. But Mr Chairman, to summarise, I want to say that our approach is that if forced segregation is wrong, then forced integration is even as wrong, and while everyone is looking for a settlement, America even since 1919, we are looking for a solution, because we think that will be the best for the inhabitants of this country, not a settlement but a solution with which we can live in future, and we are convinced of the fact that the solution is based on the whole concept of free choice or free association, even to its consequences of constitutional structures and even in the electoral system.

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I don't want to elaborate on our draft constitution, but just as an example, we are also proposing only one national assembly, but chosen on a dual electoral system. For example, article 28 reads:

"The 72 members of the National Assembly shall be elected in such a manner that 36 of its members are elected by means of proportional representation and that 36 of its members are designated by the various Group Councils."

That only as an example. Mr Chairman, to conclude, Dr Dhlomo - I don't know whether he still is, but he was the secretary of the Zulu Inkatha-organisation in South Africa - once said that he likes to negotiate and speak to Afrikaners, but he said that he only liked to negotiate with and speak to Afrikaners who really represent the feeling of their people, otherwise, he said, they are meaningless negotiators. I want to emphasise the fact that the ACN is prepared to play our positive role, we are prepared to contribute, to try and reconcile in this country, but we shall always try to represent our people's real wishes, real fears, real ideals and real needs. We will not be ashamed to stress it whenever necessary, because we don't want to be meaningless negotiators. Thank you.

MR KATJIUONGUA: Thank you, Mr Chairman for the opportunity and indeed the privilege to be able to put before this House the basic constitutional ideas and proposals of the National Patriotic Front of Namibia, the NPF.

Mr Chairman, honourable members of this Assembly, fellow Namibians. We are taking part in the current constitutional process - and therefore in the exercise of writing this country's Independence Constitution - in the hope that this will be a permanent constitution, fairly rigid, amended only when it is in the national interest to do so or for the sole purpose of good government for our country.

It is our fervent hope that the constitution we will adopt here will not at some stage become a victim of political manoeuvres and instability, but will give this country the opportunity to feel proud one day - say, after 200 years - and say: We, Namibia, have the oldest constitution in Africa!

The NPF wants a constitution for Namibia which reflects the needs and characteristics of our country and our society and which includes norms and values which are accepted by the democratic nations of the world.

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MR KATJIUONGUA

We want a constitution whose values and objectives are shared and internalised by the broad sections of our people - a constitution by the people and for the people of Namibia. It is only a people who makes the constitution the fundamental basis of its political culture that can defend that constitution against those who may want to overthrow it.

The constitutional ideas and proposals I present here today come from four sources:

1. The 1982 Constitutional Principles;

And saying that, Mr Chairman, I did not want to spoil the good atmosphere of the House by going into the question how these principles came about, and that type of history. I will simply stop by a mere reference to the 1982 Principles.

2. The Constitutional Draft by the former Constitutional Council - the so-called Hiemstra Draft - and related documents;

3. The Election Manifesto of the NPF.

We are not going to forget our promises in the election campaign simply because things went the way they did.

4. Views and opinions from my voters, the 10 639 people, and other citizens. I am still in touch with them for the next election.

Mr Chairman, as a minority party, a single delegate for that matter, I do not intend to present a detailed Constitutional Draft - as my colleagues here has done - but I will put forward - for the consideration of my colleagues in this august Assembly - a number of basic ideas and proposals which we would like to see incorporated into the constitution of a free Namibia. Indeed, I'm right not to produce a ready-made Constitutional Draft, because yesterday we saw the two numerical heavyweights exhibiting heavy documents here. So, maybe I think we can start from there.

Technical details about my proposals can be discussed in the committee or left to the constitutional and other experts.

I now come to our constitutional ideas and proposals.

Sovereignty: The Republic of Namibia - a simple Republic

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and not a fancy "People's Republic" - should be an indivisible, unitary, decentralised, democratic and secular state.

Although theoretically we have no problems with the concept of federalism, we do not regard federalism as practical politics for Namibia today.

Why a unitary state?

1. The assimilation of federalism with apartheid is avoided.
2. The problems of tribalism are transcended and the country is united.
3. The excesses and the related costs of federalism are avoided: in a country with a small population, federal structures can be very expensive.

The Republic of Namibia must be based on the principles of equality for all its citizens - from the President to the street-sweeper - before the law and equality of opportunity for all Namibians, without distinction as to ethnic, geographical origin, race, sex, religion, or any other form of discrimination.

All power and national sovereignty must belong only to the people who shall exercise them through the process of regular free and fair elections, through a secret ballot.

State Succession - a very controversial matter: Considering the fact that the question of State Succession is a double-edged sword, the Republic of Namibia will be the successor to the old SWA, but reserves the right to review the obligations entered upon by the colonial regime within a period of three years after independence, to determine the extent to which these obligations are in the national interest of Namibia. What I have in mind is the following:

If we say we are not the successor to the old South West Africa, then it is a contradiction in terms to say after a certain period of time we are going to review what happened before, because then there should be nothing to review. That is the point I want to make.

Territory: A free Namibia must negotiate with South Africa the use by Namibia of Walvis Bay in the interim period and the eventual return to Namibia of Walvis Bay and all the off-shore islands. The southern border between Namibia and

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South Africa must be the middle of the Orange River and not the northern bench. A commission dealing with these matters should be appointed as soon as a government is elected, or appointed.

National Symbols - Anthem, Flag and Seal: My honourable colleague, Mr Gurirab, before we have our constitution by December, we must have these things in place, so that when our friend goes to the airport to welcome his people, somebody could sing a song and the flags are put up...

MR DE WET: But you still have your party's flag.

MR KATJIUONGUA: Maybe they can take that one and use it.

Mr Chairman, we must avoid a situation whereby the symbols of a particular party become the symbols of the nation. Since politicians are no experts in such matters, a Committee on National Symbols should be appointed right away - and not wait for the end of this debate - and be given the right to launch a public competition through the TV and radio media and other forms of publicity, to find the national symbols. Such a competition would enhance the spirit of participation and nation-building.

The Official and National Languages: English should become the official language of Namibia and the other languages, including Herero and Afrikaans, be declared national languages with Afrikaans serving as the lingua franca during the transitional period. We can't become English-speaking overnight: We may have to travel via Afrikaans to get there.

Citizenship: The provisions in the Draft of the former Constitutional Council (the so-called Hiemstra Draft), minus the sexual inequality of Article 2(c), which forbids a foreign man, who marries a Namibian citizen from becoming eligible for citizenship, are fine. A nationality and immigration code that would regulate immigration and naturalisation procedures should be covered in a separate law.

Bill of Fundamental Rights, Freedoms and, of course, Responsibilities. There are no rights and freedoms without responsibilities.

The Bill of Rights must be rigidly enshrined and entrenched in our Constitution, contained in a separate and distinct chapter of its own, like that of the Republic of Botswana, our good neighbour.

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It should contain all the universally accepted rights, freedoms and responsibilities, such as:

- The Right to Life;
- The Right to Liberty, Security and Personal Privacy;
- The Right to Equality before the Law;
- The Right of Access to Basic Needs;

That means shelter, food, health and jobs.

- The Right to Fair Trial;
- The Right of Protection from Slavery and Forced Labour;
- The Right of Protection from Inhuman Treatment;
- The Right to Freedom of Expression;
- The Right to Peaceful Assembly
- The Right to Freedom of Association;
- The Right to Participate in political Activity and Government;
- The Right to Enjoy, Practise, Profess, Maintain and Promote Culture, Language, Tradition and Religion;
- The Right to Freedom of Movement and Residence
- The Right to Protection from Deprivation of Property;
- Derogation from Fundamental Rights, Freedom and Responsibilities;
- Declarations relating to Emergencies.

We should be careful, Mr Chairman, not to use emergencies for party political purposes and we should determine which particular fundamental freedoms should be maintained even in times of crises or during a state of emergency, such as respect for the dignity of the human being, the freedom of expression and the right to existence of a political party. Crises and state of emergencies tend to perpetuate themselves.

The International Covenant on Civil and Political Rights (1966), the Nairobi 1981 African Convention on Human Rights

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and the 1948 Universal Charter of Human Rights should be ratified by the State of Namibia to make our government accountable for its human rights records.

The President of the Republic of Namibia: We should have a President who is not the head of the government but a father/mother figure who represents the dignity, and the unity of our people and the continuity and stability of our political institutions.

Changes and upheavals in the political arena should not necessarily affect the existence and operation of our political institutions.

He/she should be the Commander-in-Chief of the Armed Forces and Chairman of the National Defence Council.

He/she should also be the Chairman of the Advisory House of Traditional Leaders.

He/she should be elected for two(2) 5-year terms, after which he/she will not be eligible for election.

The other functions of the head of state stands defined in the so-called Hiemstra Draft and as we may decide in this Assembly.

Mr Chairman, to call these functions of our head of state mere ceremonial is to miss the point or to play ignorant.

While I may admire the American Presidential System of Government, I have no desire to transplant, lock, stock and barrel, the political system of any country to Namibia. Namibia must be choosy, like a beautiful girl, as to what may suit our conditions and what may not. We prefer a non-executive President as a form of separation of powers to ensure stability and continuity. That is all. Generally speaking, in Africa when an executive president is overthrown, the whole system crumbles. This we want to avoid. We cannot always start from scratch. Our civilisation and our institutions must carry on and not depend on which individuals are in power at a given point in time.

We are proponents of a parliamentary democracy based on a two-chamber parliament and an executive cabinet of ministers.

To balance important but divergent factors, such as population figures, economic and geographic realities, skills and expertise and the concerns of our people as a whole throughout the whole nation, and to prevent

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destabilising factors from disturbing our national life, we should have a bicameral Parliament consisting of a House of Deputies or House of Representatives, and a National Council or a Senate. The size of each House can always be trimmed to make them cost-effective.

The House of Deputies or House of Representatives should be elected with Proportional Representation and the highest remainder.

The National Council or the Senate, should be elected by an electoral college representing the geographical areas of the country, say provinces, and have an equal number of representatives for each province, and should also have representatives from interest organisations.

This House, i.e. the National Council or the Senate, should be the custodian of particular values, concerns or realities and be the body that moderates against monocracy.

Budgetary and non-legislative questions should be discussed and decided by both houses in joint session. However, legislative matters may be introduced in either of the chambers and shall be debated separately but must be passed by both houses before becoming law. This procedure also takes place in Iceland which is a rather homogeneous community. It is not a question of tribalism being involved here.

Both Houses will be elected for a period of four years, one year less than the office of the President. The Draft by the former Constitutional Council gives us clues about the composition and functions of the two Houses, and we are open for discussion about technical detail.

Mr Chairman, it is incorrect and against all empirical evidence to attempt to argue that countries with small populations like ours cannot afford to have a two-chamber parliament. It is simply not true that there are no countries in the world with small populations like ours with bicameral parliaments.

First, Mr Chairman, bicameral parliaments are not simply designed on the basis of population figures alone but also on the basis of other factors such as the composition of the population, and, for example, the necessity to prevent a demagogue, like Adolf Hitler, from taking the whole nation into a disastrous war by working on the nerves of the members of the German Reichstag. Some people argue that if you had a two-chamber parliament at the time, this could have been avoided.

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Secondly, there are economic and budgetary considerations and, thirdly, it is a fact of life that there are countries with small populations like ours which have bicameral parliaments for a variety of reasons. Examples:

Antigua and Barbuda: population 80 000; Bahamas: population 231 000; Fiji: population 588 000; Barbados: population 253 000; Belize: population 120 000 and Iceland: population 248 000 - much less than Namibia.

Malta in the Mediterranean has a population of 380 000 and has a House of Representatives of 65 members. Mauritius with a population of roughly 1 million has a Legislative Assembly of 62 members.

Our good neighbour, Botswana, although it has a unicameral parliament, has a 15-member House of Chiefs. And Mr Chairman, keep in mind that Botswana is a much more homogeneous community than ourselves.

We should keep in mind that if we try to handle the problems presented by our cultural geographic and economic diversity by artificial means, we are only inviting trouble in the long-term. I recommend that we should not be that myopic, or unrealistic.

If people think it is a waste of time and money to have two chambers, which I think is not a well-considered proposition, we should reorganise the 72 members - I mean the figure - into 29 for the National Council or Senate, and 43 for the House of Deputies, or House of Representatives. Then we save money as well.

The Cabinet - Executive Government: Also here the so-called Hiemstra Draft gives some ideas about the functions and composition of the Cabinet under a Prime Minister as the Head of Government. Although an executive government with a parliamentary majority somewhat confuses the application of the doctrine about the separation of powers, a strong opposition and an independent judiciary still put brakes on the abuse and concentration of power at any point in the system of government.

The Role of Political Parties: Political parties should be regarded as crucial to the functioning of a multi-party democracy based on the permanent acceptance of the principle of "Majority Rule and Minority Rights" - that is, a political minority of today could very well become the majority government of tomorrow through the use of the democratic political process based on the respect for the fundamental rights, freedoms and responsibilities contained

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in the Bill of Rights. A State of Emergency should not allow for the abolition of political parties. Only the Supreme Court could have the right to dissolve a political party and only as a result of criminal proceedings. The Draft of the former Constitutional Council tells a lot on this score.

It should also be considered, as they do in Germany and Sweden, whether it is not desirable for the State to subsidise political parties in proportion to the votes they got in an election. It is true this system has certain disadvantages. They say big parties continue to get big money, and small parties small money, they cannot grow. But I think at the same time it frees the parties from corrupting influences from private hands. It is also assumed that the political fortunes of the parties would not always depend on money alone but also on policies and performance. Therefore, minorities could become bigger parties the next day.

All this means, Mr Chairman, that a one-party state is permanently ruled out as a democratic alternative in our national political life, because a one-party does not represent a genuine political choice.

Mr Chairman, I want to put on record that the arguments that in Africa the leader or the headman must have all the powers - head of state and government, President of the Young Pioneers, etc., which are used to justify the idea of a one-party state, is total nonsense because they are not scientific propositions but a mere reflection of the failure of political elites in tribally divided societies to establish a community of values via an open and free dialogue and democratic participation in the political process. That is the crux of the problem. Instead of people looking for this method of resolving internal contradictions, leaders tend to be more impatient, autocratic and authoritarian, resorting to co-optation and coercion, if necessary.

The Constitutional Court: The Constitutional Court - see page 14 of the Hiemstra Draft for its functions: to inquire into and to pronounce upon the validity of acts of parliaments, etc. It should also serve as the National Electoral and Delimitation Commission.

Ombudsman: The Ombudsman should be elected by the National Assembly with a two-thirds majority on the recommendation of the Prime Minister. His/her role should not be too legalised, but rather rustic, popular and easily accessible. The Ombudsman should have access to the Constitutional

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Court.

The Judiciary: Powers of the courts shall be entrenched in the constitution to ensure the independence and political impartiality of the courts, and judges shall be appointed on merit and shall enjoy security of tenure. We should have our own Court of Appeal, and no longer have to go to Bloemfontein.

Advisory House of Traditional Leaders: This House will only have an advisory capacity in terms of Customary Law, Personal Law (births, deaths, marriages, etc. in traditional areas) and providing information and advice to the government of the day in the process of nation-building. The rationale for a traditional house is that before we, the politicians, started this exercise, it was our traditional leaders, the Witboois, the Mahereros, the Mandumes, the Ipumbos and the Hosea Kutakos who started the battle for independence. We are only carrying on the work these people started, and therefore we cannot say we are now in charge as modern politicians and you chaps have now become irrelevant. They must have a place in our society as a word of thanks for what they have done for our country.

The President of the Republic will be the Chairman of this House.

The Public Service: The existing Public Service of Namibia should form the backbone of the Public Service of an Independent Namibia. We should keep in mind that the people who are here today are also our people, Namibians, and when things are reshuffled and reorganised, all the factors must be taken into account.

Merit, efficiency and representativity must be the basis of recruitment of people into the Public Service. I must emphasise "representativity". It is important that we don't have a Civil Service that is seen by the public to represent only a section of our community, as some people have been complaining about some of the things we have inherited from the past. But merit and efficiency must be strictly combined with representativity.

Political impartiality and loyalty to the government-of-the-day must be the basis of conduct of the civil servants, whether they like the government or not, whether they like that party or not. That party is the choice of the voters and they must serve it wholeheartedly. There is no middle-way. We are prepared to negotiate all aspects related to this matter.

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Security Forces - Army and Police: A balanced structuring of the police service and the defence services would require the following:

Both the army and the police should be strictly apolitical - that is, political affiliation should be forbidden in these services.

Acceptance qualifications should be stringent - from standard eight onward, so that these services remain highly professional and not mere outlets for the unemployed.

The Army should be a small, efficient and professional force which is of a defensive nature - like the Army they have in Switzerland, for example - designed only to defend the country and to make it ungovernable by any potential invader. We may not invade South Africa, but certainly we must be able to defend our country.

All Namibians - of both sexes - will serve in the Security Forces. Compulsory military service will be two years.

The President of the Republic shall be Chairman of the National Defence Council which shall also consist of the Prime Minister, Minister of Defence, Chief-of-Staff of the Army, the Inspector General of Police, Chief of National Intelligence, and other officials as may be determined by the Cabinet. This council oversees the security needs of the nation.

Only a Joint Session of Parliament voting by a two-thirds majority can authorise the President to declare war.

Neutrality/Non-alignment and foreign policy: An independent Namibia should pursue a foreign policy of peaceful co-existence based on the principles of permanent and active neutrality and mutual benefit.

An independent Namibia should not belong to any military alliances nor allow the establishment of foreign military bases on her soil.

Local Government - Municipal and County/Village Government: I am sorry, it is here where I differ from my colleagues in the DTA about regional governments. I am for a two-tier government, the Central Government and institutions and municipalities and county or village governments. Inbetween, nothing. The Central Government can have its institutions in the country where necessary. The reason for that is that because of our past national negative experience with second tier authorities or AG 8, and to save

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money, by avoiding too many bureaucratic institutions and to bring the government and services to the people, an independent Namibia should only have two elected levels of government, namely, the Central Government and its institutions and the Local Government, that is Village Councils and things like that, as circumstances may dictate.

When we had the second tier authorities, I think that was the biggest post on the budget of the State apart from the military appropriation. We had over 300 politicians in the country paid by the State and politicians are not always productive. So we must try to minimise their number as much as we can. If we are going to have a governor, a secretary and five officials for the region or province, a chauffeur, a limosine, and all these things and you add all these things up, you will have a bill and you are going to find out whether it makes sense or not. But we are prepared to discuss this issue concerning the idea of third tier governments. That idea was discussed and made a proposition on the 8th April 1988. I think I will prefer to settle for that rather than having regional councils or regional governments. But if the majority would like to do so, you may have to waste your money.

Economic System: I think this must be enshrined in the constitution, so that there is no ambiguity as to what system we are pursuing in this country, that one day one shouldn't get up and say scientific socialism and one says capitalism and that sort of thing.

The economic system will be a mixed economy characterised by a co-existence of a broad spectrum of ownership forms ranging from private, public, joint, cooperative, collective and family ownership to foreign investments. The goal of our economic system is the combination of allocative efficiency with distributive justice.

There shall be a Central Bank of Namibia, a National Development Bank of Namibia, taking the place of the present Development Fund, a National Service for Community Development for our young people who, for some reasons of conscience and others may not want to go to the army, but want to help build up the country. They should have an outlet and this National Service for Community Development is the outlet for that. There shall be a National Planning Commission consisting of a cross-section of expertise to advise the Government on economic policy and drawing up a National Economic Strategy, and a Foreign Private Investment Code. The functions of all these bodies shall be defined in statutory laws.

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Education: Race and colour, religion and ethnic origin will not play a role in the admission of pupils to any school in our country. Only the language medium and the ability of the pupil to cope with instruction and the curriculum will be the criteria for admitting pupils to any school in Namibia.

There will be one Department of Education and a single system of education in Namibia.

Private schools shall be permitted but shall be subject to the educational requirements of the State and may not offer inferior education to that provided by State schools. They have the same idea in the Federal Republic of Germany.

The State of Namibia shall promote and maintain high standards in our education system and schools will be encouraged to provide economically relevant skills to meet the needs of an increasingly technological labour market. Science, mathematics and foreign languages will be given special consideration in our schools.

Mr Chairman, this is a religious country, we have many priests and many reverends, and with all due respect to that section of our community, we also need to have more mathematicians, scientists, engineers and things like that.

There shall be special education for the disabled who shall enjoy equal status with the rest of the students. It is a very good example when a political party loses an election to donate everything to the disabled. I think we should continue with that and do whatever we can to help these people feel meaningful members of the community. Even when you go to a building in this country, you will find a place especially made for disabled people to go up, and I think we should look into that in future.

Mr Chairman, I said in the beginning that this would be a secular country without a state religion and therefore religious instruction will not be compulsory and there will be no discrimination in religious teaching as between the various religions in our country and the rest of the world. A teacher must be able to teach Hindu as well as some other things.

The liberty of parents, and where applicable, legal guardians, to choose for their children the type of school and direction of education will be respected and protected.

Land Reform: The State shall assist each and every citizen who is willing to work hard to have access to and/or the

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opportunity to own or to cultivate land for his own needs and those of society as a whole.

The following measures and steps will be taken to achieve that objective:

- The State will purchase underutilised farmland and lease it to potential farmers on the condition that the land is used productively.

The diplomats from the countries that are promising this country help after apartheid and South Africa have gone, they have an opportunity to pump money into our government to solve this land question.

- The State will encourage the creation of credit institutions to help promising but needy farmers on reasonable terms.
- The State will impose a tax on farmland to discourage people from holding too many farms for the purpose of tax avoidance.
- The State will encourage the introduction of a system of co-operative land-ownership to serve as a transitional measure between the communal system and a fully-fledged separate right of ownership system coupled with the provision of meaningful training and guidance. Such a system would make provision for planned division of the present communal areas into large economic units where proprietary rights are given jointly, in undivided shares to residents of a certain area. Extension services and agricultural guidance will be provided to the co-operative jointly, and the co-operative could do marketing of the products on behalf of the members. Each farmer would, however, make progress or fall behind according to his own ability and achievements. In this way a commercial substructure would be introduced whilst the various farmers pass through the different stages of skill and expertise.
- Private developers can, through a scheme of leasing land, help develop the communal, underdeveloped areas.

I hope, distinguished colleague, Mr Rukoro, this will help the NNF to get the land back to the people. INTERJECTION. Then tell the people that you are going to expropriate, don't sit on the fence.

- The overall objective of our policy on farming, land-ownership and the development of underdeveloped areas is

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the joint development of our material and human resources.

- There can be no deprivation and/or nationalisation of private, co-operative and collective property without prior consultation and just compensation. Deprivation and/or nationalisation can only take place in the national interest.
- Non-permanent residents and/or foreign registered companies and corporations shall not be allowed to own land in Namibia.

Protection of Environment: The State of Namibia shall take every precautionary measure, including the application of the best available scientific and technological know-how, to protect its national environment in all its forms and diversity.

The State of Namibia shall never allow its national territory to become a dumping ground for foreign nuclear or toxic waste or any other form of pollution. The Motto is to Keep Namibia Clean!

Mr Chairman, there are people going around this country with big money and when they see this country is practically bankrupt, they say: "We will give you millions and we dump the stuff on your country." So, I think I must take a clear stand to avoid speculation on this particular question.

Electoral System:

- Proportional Representation for the House of Deputies, or the House of Representatives and the
- Majority List System for the National Council or the Senate.

Mr Chairman, when we discuss important and serious matters such as the nature of our national Parliament and the electoral systems, we should be careful of what we say and we should make a clear choice whether we do so as mere political propagandists or whether a bit of academic and intellectual acumen is not an additional requirement. I suppose the people who elected us here would like to see from this Assembly the approach and performance of serious statesmen and stateswomen and not anything else.

Mr Chairman, earlier I touched on the question of parliamentary chambers. Now I wish to say a few things about the

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electoral systems - proportional representation and single member constituency.

It is not intellectual honesty to allege that the Single Member Constituency - the "Winner-take-all" - is a better reflection of the value of individual votes than the method of Proportional Representation. The reverse is true. It is an incontestable fact that with Proportional Representation one gets one's fair share of the vote that one gets in an election. That is why I am here. With its nett result of the "winner-take-all", even if he wins with one more vote, the single member method cannot and is not more fair than the system of Proportional Representation in reflecting the equality of votes or the ratio of the number of votes won to the percentage actually distributed among the contesting parties.

Mr Chairman, let me give you an example of a hypothetical election in "Sweetheartland" of Headman Kaparingo who was baptized "Thomas" by the Roman Catholics without understanding the "No eat meat on Friday" implications of the conversion process:

Constituency	Number of Votes Cast	Votes for A	Votes for B	Seats Won
1.	50 000	24 000	26 000	B
2.	50 000	24 000	26 000	B
3.	50 000	45 000	5 000	A
	150 000	93 000	57 000	

As we can see, Party B, while having received a minority of the national vote, has more seats in the Assembly, while Party A, with almost the whole electorate behind it, has only one seat. It explains the complication of this type of voting. That is why I say, Mr Chairman, we must be very careful before coming to conclusions as to what system is best suited for our country.

Mr Chairman, it is true that the system of proportional representation has the disadvantage of making people concentrate more on parties - even if the party might be useless - than on personalities. But in our tribally and racially still contaminated society it looks as if proportional representation is the only method that helps bring about national integration and inter-dependence amongst our people. Single Member Constituency under all circumstances and a single chamber parliament are bound to produce political apathy on the part of those who may think that their numbers will never, ever give them adequate bargain-

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ing power, and I can assure you, political apathy could become a very dangerous destabilising factor.

Amendments to the Constitution: Only by a two-thirds majority in both Houses.

To conclude, I come to transitional provisions and I have the following views. We must have an agreement before we disperse, after having approved the constitution or before we approve the constitution, we must include in our constitution some kind of transitional provisions to take care of some business that is important.

The mandate of the members of the present Constituent Assembly shall expire within a period of three to four years, beginning from the date of the Declaration of Independence.

This Assembly shall declare Namibia an Independent Nation at any date but not later than the 31st March 1990.

This Assembly shall determine which provisions of the present constitution shall apply now, pending the first election in terms of the present constitution.

Until that day, that is, the first election referred to above, the present Assembly shall serve as a Provisional Parliament for Namibia.

The majority party in the present Assembly shall have the right and the choice to (a), appoint a government only from among its own members in the Assembly. That right I do not contest, I think it is a comfortable majority and if you want to go it alone, I think you have that right and that freedom. But you have another option: (b) to invite other parties in the Assembly to join it in a Government of National Unity dominated by it and (c) form its own government that includes co-opted individuals.

The difference between the two is that when you are invited as a party, you have the possibility of inputs, even if you are a minority. If you are co-opted as individual, you are there as a "gast-arbeiter."

The powers of the present Assembly shall expire only when the results of the First Election in an Independent Namibia are proclaimed.

Mr Chairman, I want to assure my colleagues here, I have no desire to delay the process. In fact, I am a man frustrated because sometimes things tend to go too slow, and as a

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one-man delegation I don't have the bargaining power to try to delay things. When I plead for caution, and when I say the kombi of independence should not be driven to overturn before we get there, it is simply to be careful that we don't make mistakes that tomorrow we might regret. We are here to talk to each other very friendly and normally I don't talk behind people's backs, I talk straight whether people like it or not and I hope they will remain my friends.

For the small parties like myself, the bargaining power we have over the majority parties or the government-in-the-making is this constitution. I have a vested interest to make sure that the constitution is good, protects and takes care of my concerns. Then whoever governs I don't worry too much. I only hope that those in the government will run this country in the best interest of our people.

So, Mr Chairman, I am ready to play my part, as Nyerere said at one time. Thank you.

ADJOURNMENT OF ASSEMBLY

In terms of Rule 7 of the Standing Orders, the Chairman adjourned the Assembly at 17h30.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
6 DECEMBER 1989

The Assembly met pursuant to the adjournment.

NOTICE OF MOTION

MR WENTWORTH: Mr Chairman, I give notice that tomorrow, 7th December 1989, I shall move -

That this Assembly -

in total commitment to its responsibility towards the people of this country and its singular determination to successfully discharge its primary obligation of drafting and adopting a constitution for an independent Namibia;

with grateful conviction states that notwithstanding certain identified areas of difference, sufficient evidence has been provided that a spirit of flexibility, reasonableness and preparedness to give and take in the interest of Namibia, has manifested itself in the various approaches to the drafting of a constitution and this spirit justifiably fills this House with optimistic expectations for early independence.

With acute distress realises that the favourable factors mentioned above, so conducive to the successful completion of the task of this Constituent Assembly, will be systematically eroded and finally destroyed if the lawlessness in our Northern regions is allowed to reign rampant and uncontrolled in its application, yet seemingly not so in its orchestration.

With profound dismay takes note of the apparent ease with which dangerous criminals - who have already displayed their opposition to the independence process - have escaped from police custody and, having evaded recapture, pose a further threat to the workings of this Assembly.

Nevertheless steadfastly believes that the threats, atrocities, bloodshed and killings can be speedily ended by prompt, necessary and courageous action by South

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Africa in the person of the Administrator General. In effectively also restoring peace and stability to the troubled Northern regions, the AG will be contributing tremendously towards maintaining the prevailing atmosphere and spirit in this House, so conducive to achieving independence without undue delay;

Resolves to:

- (1) Unanimously direct an all-party appeal to the Administrator General to use the necessary power at his disposal to not only diffuse the situation and restore peace in the North, but also to seek to identify and apprehend the orchestrators of the violence, regardless of their political persuasion or military/police rank if such may be the case; and
- (2) to commit the leadership of all parties represented here to the fullest co-operation with the Administrator General in his unflinching determination to restore peace and stability in the North, and thereby ensuring a climate wherein this body can successfully and expeditiously draft a constitution for a free and independent Namibia.

LEAVE OF ABSENCE

MR BARNES: Mr Chairman, I move that leave of absence be given to the honourable member Mr Junius who took ill this morning and who has been taken up in hospital for an indefinite period.

AGREED TO.

INTRODUCTION OF CONSTITUTIONAL PROPOSALS

FIRST ORDER READ:

Resumption of debate on Constitutional Proposals.

MR RUKORO: Mr Chairman, honourable members and comrades, since sixty to seventy percent of my statement has been plagiarised throughout the course of the last two days in

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advance by some of the honourable members, I shall only make use of one-third of the seventy minutes allocated to my party. The remainder will be donated to some fraternal organisation, the quid pro quo shall be discussed outside this Assembly.

Mr Chairman, we are gathered here today to commence in all seriousness with the momentous task of drafting the independence constitution of Namibia. We in the Namibia National Front, the NNF, are deeply honoured to be active participants in this historic process, for the opportunity to act as founding fathers and mothers of a nation emerging out of colonialism does not repeat itself. It is against this background that we are deeply conscious of our responsibilities towards the Namibian people and we do not intend to fail them in their revolutionary expectations.

Mr Chairman, honourable members, the basic purpose of a political constitution has been described as being primarily to secure social peace and progress, safeguard individual rights and promote national well-being. It is our submission that political charters of themselves are not enough to achieve the aforesaid national objectives. Excessive reliance on constitutional devices and formulae as a means of securing social peace or safeguarding individual rights, is a manifestation of a complete lack of appreciation of the political realities of contemporary Africa. If the will to make a constitution work is not present among the people for whose benefit it is designed, unconstitutional practices will inevitably be adopted to nullify it.

It is against this background that we in the NNF would caution against attempts to overload the constitution we are about to draft, to such an extent that it cannot be bent without being broken. In the same breath we would caution against the urge of independence now, as an excuse for rushing the process to such an extent that the final product is a defective political charter that has to be subjected to innumerable amendments during the first year of independence. Let us create the necessary human relationships, understandings and political climate that is conducive to mutual trust and national harmony. It is only when we act in this fashion that we can lay down the necessary strong foundations upon which the standing committee, and other committees, can construct a durable constitution that will last for generations to come.

I will only highlight what the NNF regards as the most salient aspects of our constitutional proposals. Firstly, the Legislature:

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The supreme legislative power in Namibia shall vest in Parliament, which shall consist of a Senate and a National Assembly. Against our peculiar background of apartheid, colonialism, with its attendant tribal divisions and the occasional inclination towards political hegemony, bicameral constitutionalism is a prerequisite for creating the Namibian nation which at present is non-existent. The existence of such a second chamber prevents the passage of precipitate and ill-considered legislation by a single House. The sense of unchecked power on the part of a single chamber, conscious of having only itself to consult, may lead to abuse of power and tyranny.

Because of the fact that the population of Namibia is very small, and because we have suffered under the most brutal colonial and racist oppression for over a century, we as the founding fathers and mothers of a Namibian constitution have the sacred duty to build in all the checks and balances which will guarantee that such suffering will never again form part of our national life. The size of the population alone must never be used as an excuse to create an opportunity for the abuse of power.

These arguments, Mr Chairman, called for a centre of resistance to the predominant power in a state at any given moment, whether it be the people as a whole or a political party supported by a majority of voters. It is against this background that we as political architects of the new Namibian nation must create a second chamber which shall act as a court of legislative revision, having a co-ordinate authority with the Lower House.

Secondly, the electoral system: We in the NNF believe strongly that proportional representation is the fairest and most democratic electoral system anywhere in the world. The reason is that it accords parties representation in Parliament in direct proportion to the votes it received - once the party has satisfied the requisite quota of course. In this way parties that are numerically relatively small, but politically extremely relevant to the democratic process, are accommodated in the national interest.

Having listened the day before yesterday to Namibia's political giants in this House, and the quality of some of their submissions, I am more convinced than ever before that the system of proportional representation is in the broader national interest of Namibia, and consequently must be retained for the foreseeable future. As the Americans say, "if it ain't broken, why fix it?"

Therefore, proportional representation to us is one of the

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prerequisites without which we cannot, in the national interest, agree to a draft constitution.

Thirdly, executive President: We are proposing an executive President elected by Parliament, acting as an electoral college, from amongst its members. The President must be responsible to Parliament and must at all times enjoy the confidence of the majority of its members. Ours is therefore a parliamentary executive, elected by the duly authorised representatives of the people of Namibia assembled in Parliament.

The NNF further proposes that the President be elected for a term of five years, and be eligible for only one further term of office, if re-elected. This provision is necessary to guard against political decay and stagnation, which is characteristic of presidents for life. New blood every ten years can only be to the nation's advantage.

Fourthly, Council of Chiefs: The NNF proposes that there be established a statutory body called the Council of Chiefs, which shall act as the chief advisory organ to the President in matters relating to tradition, culture and administration of traditional affairs.

Further, the NNF proposes that traditional leaders assembled in council, be entitled to appoint two amongst themselves to represent the council and traditional authority in general in the nation's legislature as part of the nominated members of Parliament. In this fashion Parliament will be fully sensitised of the legitimate concerns of traditional societies. On the other hand, chiefs and headmen will be enabled to keep pace with the changing times, and by so doing, effect a smooth harmonisation of the traditional and the modern processes of government.

Basic rights and freedoms: Mr Chairman, we in the NNF subscribe fully to the 1982 Principles which, inter alia, provide for a Declaration of Rights enforceable by the courts of the country. Given our recent past, Namibia not only needs a Charter of Fundamental Rights and Freedoms, but also the requisite institutions to effectively facilitate the exercise of such entitlements. That is why we are proposing a Constitutional Court and the Office of the Ombudsman. Namibians need to be protected even against their own government if and when the need arises.

The NNF also proposes a constitutional provision against the death penalty out of the following considerations: We have been victims of a system where the death penalty has been abused to rid the regime of its political opponents.

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Authoritarian regimes which violate human rights have made a crime, punishable by death, the exercise of freedom of speech and political association. In many countries of the world where the death penalty is used, it is argued that such penalty serves as a deterrent. It has been proven, however, that most capital crimes continue to be committed in precisely those countries in which the death penalty exists. Very often, therefore, the death penalty is more of a system of revenge on behalf of society, rather than a means of preventing would-be perpetrators of serious crimes. A study of people sentenced to death, for example, shows that the majority comes from the oppressed and under-privileged sectors of the population, those who are often wronged by inequalities of the system itself. By putting them to death, the powers-that-be avoid addressing the defects in a society which causes people to commit crimes in the first place.

Once the death penalty is included, the possibility of mistake is always there. The best way of preventing an innocent person from being put to death, is to avoid having the death penalty in the first place.

Mr Chairman, we in the NNF are, as a matter of principle and as a matter of honouring our campaign promises, irrevocably committed to the full and complete emancipation of the women of this country. We therefore propose that separate and distinct provision be made in the constitution for a special regime of women-rights. In our type of Namibia women shall be entitled to, and shall receive equality on the same basis as men - in the home, in the family, in commerce and industry, in government, the civil service and in all other spheres of public and private life. No nation can claim to be truly free unless and until its women are fully emancipated and Namibia cannot afford to exclude sixty percent of its population from the decision-making processes of its future.

National Defence: As far as National Defence is concerned, we in the NNF are proposing the creation of a well-trained, professional para-military police force, backed up by a peoples militia in lieu of a large conventional army. Whilst conventional armies in Africa and elsewhere have been the main agents for destabilisation and the violation of constitutional rights, and military coups after military coups, they have been dismally ineffective when it comes to defending their countries against foreign acts of aggression.

Apart from the above, we share the views of those who argue strongly for a force that is engaged in community service

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and community development. We want a force that at all times will be subordinate to the democratically elected civilian authority, a force that shall neither seek, nor exercise, any political mandate.

Namibian territory: In view of the high stakes involved, the NNF proposes that the constitution expressly provides that Namibia comprises the territory defined by history and by International Law as the mandated Territory of South West Africa on the African Continent and that it includes the harbour and port of Walvis Bay, the Caprivi Zipfel, as well as islands within the territorial waters of Namibia. That is crucial to preserve our future strategic positions.

Further, the constitution should also specify that the southern border of Namibia shall be the middle of the Orange River and not the highwater mark on the northern bank of the river, as claimed by our colonisers.

Amendments to the Constitution: Although we subscribe to the notion that a constitution is a living document that must be susceptible to further development and refinement over time, we nevertheless believe that the case for such changes to the constitution must be made out nationally and not on the basis of party-political considerations. Hence our proposal that any constitutional amendment must be carried by a three-quarters majority of both Houses of Parliament. Why the rigidity? Because in our peculiar situation the process of constitutional law-making cannot be identical with the process of ordinary law-making.

The NNF further proposes that no amendment of the constitution, that has the effect of removing the democratic and republican nature of the state, shall be permitted whatsoever.

In conclusion, Mr Chairman, let us, through our constitution, 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 people. Let us also, through this constitution, pay tribute to all Namibians who have participated in our struggle for national liberation. Let us draw up a constitution which will be worthy of the sacrifices our people have made. Let us create through this constitution a Namibia which will honour the memory of all Namibians who have paid with their lives in order that

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we today are entrusted with the responsibility of drawing up our independence constitution. Let us, by our actions in this House, demonstrate that their sacrifice was not in vain, and let us, through this constitution, pave the way for future generations, so that they can build on what we have done and not have to struggle once again against a new form of oppression.

Honourable members, let us not fail our people and our continent, let us together walk that final round of our revolutionary struggle. I thank you.

MR J G A DIERGAARDT: Mr Chairman, I could easily be called a single voice calling in the desert - if I may translate directly from Afrikaans - but I think that principles are principles and I must stick to them.

There are two ways of obtaining unity in a state to be independent. One way is simply by forcing down a majority vote on all the people of this country by way of the Westminster-system - "winner-takes-all". We know from our experience of Africa that that leads to party dictatorship, revolt and in the end all the people are being oppressed by that group which is the majority in that part of the country. We also saw that in Africa, we even see it today in most West European countries where the system of "winner-takes-all" is bringing some problems for those countries which are thousands of years old.

Therefore, the other way of bringing unity is by having a government consisting of all the people in that country, where you will have the loyalty of all the people in a government supported by all the people of that country. Therefore the Federal Convention of Namibia has prepared a comprehensive set of proposals which it will table for the consideration of this honourable House. In it is contained the full text of what we believe should be included in any constitution and eventually adopted. However, notwithstanding that each party has been allotted 70 minutes to present its proposals, we do not wish to burden this honourable House with a reading of the full text of our document. Instead we present herewith a brief outline of what is contained in the document we table.

We propose a sovereign independent state to be named the Federal Republic of Namibia, based on the principles of democracy, on the mental freedom and an economy based on private and communal landownership, social justice and free

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enterprise, a federal republic consisting of a federal government and ten sub-states.

The Code of Arms, Flag and National Anthem to be determined by this Assembly and embodied in the constitution.

We propose two official languages, namely English and Afrikaans, but instruction in schools to be in mother-tongue other than English and Afrikaans.

We would advocate that citizenship be determined by the constitution or preferably by a separate law determining who qualifies for citizenship and providing for loss or relinquishing of citizenship.

We propose a Bill of Rights embracing, inter alia, the 1982 Principles, which will be entrenched in the constitution.

We propose a President elected by an electoral college of the National Assembly and the House of Representatives for not more than two consecutive periods of office.

A legislature consisting of the President and the two Houses, namely the National Assembly and House of Representatives, with power to make laws, acts on external affairs and commerce, defence of the Federal Republic of Namibia, the security of the State, monetary policy, fiscal policy, national water supply and distribution, aviation, national police force, nature conservation, national health in respect of standard of services and training, national road network, national education in respect of standard of services and training, universities and schools of the disabled, immigration and passport control, powers in respect of capital urban area, forming of undertakings, prisons, matters assigned by the constitution or any other law upon a substate to be carried on by the Federal Government by virtue of a request of a substate, made by a resolution of the federal executive authority of that substate.

The National Assembly to comprise of 61 members and the House of Representatives 44 members, of whom 4 should be elected by the legislative authority of each substate.

Executive: A Cabinet to be established in which the executive government is vested and consisting of a chancellor, as many ministers nominated with concurrence of both Houses.

Substates: We propose ten substates to be established, each consisting of a Council of Ministers and a Legislative Assembly with power to make laws, and ordinances in all

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matters which are not assigned by the constitution on the federal legislature.

Communal land: Ownership of communal land to be transferred from the government to the tribe in question, subject to such conditions as are contained in our proposal.

Local Government: We propose a system of local government under the authority of substates and consisting of municipalities and peri-urban development board.

Judiciary: We propose the judicial power of the Federal Republic of Namibia vest in the independent Supreme Court, comprising of an appellate division, general division and lower courts. We also strongly urge that a small claims court be established.

Ombudsman: An Office of the Ombudsman should be established to which an independent, respected and capable person is appointed with power to decide on:

- any decision taken by, or under the authority of the state or substate, a governmental institution or local authority or any act performed or omission to act by any person in the employment of the state or substates, governmental institution which abolishes, diminishes or derogates from any fundamental right;
- that any law and other matter is administered by, or under the authority of the state or substates, a governmental institution or local authority in a manner which is not in the public interest;
- that the powers, duties or functions which vest in the state or substates, a governmental institution or local authority or any person in its employment are exercised in incompetent, dishonest or irregular manner or are not exercised or performed at all;
- that moneys forming part of the funds of a state or substate, a governmental institution or local authority received for help by, or on behalf of the state or substates, a governmental institution or local authority or its other property are being or have been dealt with in a dishonest, irregular or improper manner;
- that any person, either directly or indirectly, has been or is being enriched or has received or is receiving any advantages in an unlawful or improper manner through or as a result of any act or omission in connection with the administration of the affairs of a state or substate, a

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governmental institution or local authority.

Auditor General: This office to be established to examine and audit all accounts of the state and substates.

Financial Matters: We propose that the Central Revenue Fund be allowed to continue and that no money should be withdrawn from the fund except in accordance with an act of the parliament.

Entrenched Matters: We propose that no provision of the constitution relating to the Bill of Rights should be amended in such a way that any fundamental right contained therein is abolished, diminished or derogated from.

That no provision of the constitution, except the provision relating to citizenship, should be amended, other than by a decision taken by a two-thirds majority of all the members of the National Assembly and the House of Representatives during separate sittings of those Houses, and that no amendment should be of any force and effect unless the Legislative Assemblies of at least seven substates have approved such amendment within a period of two months as from the enactment of such an amendment.

Continuation of Laws: We propose that all existing laws relating to constitutional matters which are of a discriminatory nature should be repealed expressly by the constitution.

That all existing laws which are of a discriminatory nature and which do not relate to constitutional matters, should not be allowed to continue after independence.

That all other existing laws should be allowed to remain in force until they are amended or repealed.

Conclusion: We, the Federal Convention of Namibia, lay these principles upon the table of this honourable House in the belief that it will not only serve in the interest of all the inhabitants of this country, and will create a just society free from all discrimination, but that a system of government will thereby be established in which no population group will be dominated by any other population group and where the diversity, cultures, languages, religious beliefs, ways of life, traditions and customs of all the inhabitants of this country will be maintained.

We are, of course, prepared, if called upon to do so, to draft and table a draft constitution and other relevant constitutional draft legislation embracing the principles

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for which we stand.

In view thereof that all parties are not in agreement as to the principles we embodied in the constitution, we accept that this honourable House cannot achieve its objectives unless it performs its functions in a spirit of reconciliation. We therefore accept in principle that concessions must be made by all parties in order to achieve our common goal, namely to bring about, in a spirit of reconciliation, independence, peace, freedom, national unity, stability and progress in this country. I thank you.

CHAIRMAN: The debate on the introduction of constitutional proposals by leaders is hereby closed, as all the leaders have proposed their constitutions or their guidelines. The standing committee shall meet tomorrow to identify and formulate working categories or areas of material disputes in the various proposals submitted by the parties in this Assembly and shall report back on Tuesday, 12 December 1989.

MOTION ON HUMAN RIGHTS DAY

MR KATJIUONGUA: Mr Chairman, I move the motion. (Page 59 of these Debates/Page 14 of the Minutes)

MR RUKORO: I second.

MR KATJIUONGUA: Honourable Mr Chairman, since I tabled the motion I have been approached by some of the parties represented in this House, that I should withdraw my motion to allow the political parties on their own to organise this day together. The parties that approached me were Swapo, the NNF, UDF and NPF. These parties requested me that, in withdrawing my motion, I should direct a request or an appeal to our colleagues in the DTA, FCN and ACN to get in touch with their colleagues concerning the organisation of this occasion. The people to be contacted in this connection are my honourable colleague, Dr Ithana, Nora Chase, Ruth Black, Maria Kapire, Miss Muundjua and others. You can start your contact with my honourable colleagues here with the honourable member Penny Ithana to begin with.

Mr Chairman, I thank the parties for having helped this

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House with the burden of taking away the organisation of this day from this House so that we can continue with our main task, namely the deliberation and adoption of the constitution for a free Namibia. It is good that for the first time our people will see all of us commemorating this day together without competition and without confrontation. I wish that we all would keep in mind that this is not the only day to commemorate. I assume other days are coming, as this country becomes independent, to be commemorated as well. So, I hope the spirit that takes us together to commemorate this day together, December 10th, will also be kept when other days come up for discussion and for commemoration.

With these few words, Mr Chairman, I withdraw my motion and allow the parties to do their own thing. Thank you.

MOTION WITHDRAWN

ADJOURNMENT OF ASSEMBLY

The Chairman adjourned the Assembly at 15h00.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
12 DECEMBER 1989

The Assembly met pursuant to the adjournment.

THE CHAIRMAN took the Chair and read Prayers.

INTRODUCTION: FIRST REPORT : STANDING COMMITTEE
ON STANDING RULES AND ORDERS AND INTERNAL
ARRANGEMENTS ON CONSTITUTIONAL MATTERS

MR RUPPEL: Mr Chairman, it is with pleasure that I can report back today on behalf of the Chairman of the Standing Committee of this honourable House on the deliberations concerning the constitutional matters as follows:

FIRST REPORT BY STANDING COMMITTEE ON STANDING RULES
AND ORDERS AND INTERNAL ARRANGEMENTS ON CONSTITUTIONAL
MATTERS.

The Standing Committee on Standing Rules and Orders and Internal Arrangements (the Standing Committee):

1. Having been mandated by the Constituent Assembly to:
 - 1.1 Receive and consider with appropriate urgency the proposals and ideas from registered parties in the Assembly regarding the future constitution for Namibia;
 - 1.2 Identify and formulate working categories for a future constitution or areas of material disputes in the various proposals submitted by the registered parties; and
 - 1.3 Make proposals for establishing committees to deliberate and negotiate on the matters referred to above and to suggest terms of reference and the method of operation of such committees;

hereby submits, pursuant to the aforementioned mandate, its first report on its meetings held at the Tintenpalast on the 7th December, 8th December,

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11th December and 12th December 1989.

2. The Standing Committee unanimously agreed to employ the constitutional proposals submitted by the majority party elected to the Constituent Assembly as a working document for the purposes of discharging its aforementioned mandate and as a basis for deliberations in respect of matters incidental thereto.
3. In its endeavours to discharge its work, the Standing Committee, comprising of representatives of all the parties elected to the Constituent Assembly, identified the following issues as enjoying broad agreement in principle, and therefore subject only to minor amendments and discussions, being the Preamble, the General Provisions of the Constitution, Citizenship, Fundamental Rights, the Electoral System, Procedure to amend the Constitution, Environment, the Language Issue, Definition of the Territory, Education and Local Government and/or Regional Councils.
4. The following issues were identified for further discussion, but in respect of which no material dispute was found to exist:

State organs, including inter alia, the police, defence force, prisons and ombudsman (but excluding the role of the President as part of the executive) the economic system and its institutions, land reform, State succession and transitional provisions.
5. The Standing Committee identified two important areas for further deliberations, namely the executive, and specifically the role of the president within the executive, and the composition of the legislature.
6. The Standing Committee accordingly recommends:
 - (a) that the Assembly mandates it to continue with its deliberations and negotiations with the view to reaching agreement or to identify constitutional issues in respect of which a material dispute exists; and
 - (b) that the Standing Committee reports back to the Constituent Assembly on its work pursuant to the extended mandate during its sitting on

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Wednesday, 20 December 1989; and

- (c) the issue of national symbols, i.e. the Anthem, Flag and Coat of Arms be referred to a subcommittee of the Standing Committee.

MOTION OF CONDOLENCE

MR KATJIUONGUA: Mr Chairman, I move as an unopposed motion:

That this Assembly -

1. expresses its deep regret at the death on 10 December 1989 of Mr K Nauyala, a member of this Assembly since 21 November 1989 and desires to place on record its appreciation for his services; and
2. further resolves that its sincere sympathy and bereavement be conveyed to the relatives of the deceased.

AGREED TO.

CONSIDERATION: FIRST REPORT: STANDING COMMITTEE
ON STANDING RULES AND ORDERS AND INTERNAL
ARRANGEMENTS (CONSTITUTIONAL MATTERS)

MR RUPPEL: Mr Chairman, I move -

That the Report now be considered.

AGREED TO.

MR RUPPEL: Mr Chairman, I move -

That the Report now be adopted.

AGREED TO.

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MOTION ON ECONOMICAL ACTIVITIES:
RESUMPTION OF DEBATE

FIRST ORDER READ:

Resumption of debate on Economical Activities.

CHAIRMAN: When this debate was adjourned on Wednesday, 29th November, the Question before the Assembly was a motion by honourable member Mr de Wet. (Page 25 of these Debates/Page 6 of the Minutes)

MR M GAROËB: Mr Chairman, when I, pursuant to Rule 29(e) of the Standing Rules and Orders of this Assembly, moved a motion of postponement on the motion which was moved by Mr de Wet, to debate matters concerning the economic future of this country, I did so in accordance with the Proclamation on the Constituent Assembly which specifically states that this Assembly is charged with the specific task of drafting and adopting a constitution. I also did state specifically in my preamble and introduction, in spite of the interruptions by Mr Mudge and Mr Barnes, who were outside the rules as it were, that parties were requested to submit their constitutional proposals and that the urgent matter before this Assembly was then the consideration of the various constitutional proposals of the various parties.

At this point in time I still firmly believe that the issue concerning the economic future of this country to be debated by this Assembly is not in order and is not of urgency and is not in pursuance of the task which this Assembly is assigned, namely to draft a constitution and to adopt the constitution. It was because of this consideration that I proposed that that particular debate be postponed to a date to be determined in future when it is appropriate for that question to be discussed.

Therefore, Mr Chairman, without playing to the gallery and without wasting time, I still believe that that motion should stand as moved, to be debated at an appropriate time in future. In this context I might add that I was in full consultation with Mr de Wet, who is in agreement with this proposal. I thank you.

CHAIRMAN: In view of the spirit that prevails in this House and in our committee discussions, and also that the committee decided that we only engage in discussing things mentioned in our mandate, therefore, with this understand-

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ing reached outside the House, I therefore hope that this will be referred to the Constitutional Committee and that this will be discussed in the committee.

MOTION WITHDRAWN

MOTION ON THE NAME NAMIBIA
RESUMPTION OF DEBATE

SECOND ORDER READ:

Resumption of debate on the name Namibia.

CHAIRMAN: When this debate was adjourned on Wednesday, 29th November, the Question before the Assembly was a motion by the late Mr Nauyala. (Page 27 of these Debates/ Page 8 of the Minutes)

In view of the fact that we are still discussing the constitution in the committee, it is decided this motion is withdrawn.

MOTION WITHDRAWN.

MOTION ON SECURITY SITUATION IN THE NORTH

MR WENTWORTH: Mr Chairman, I have been informed that the matter which needed to be addressed by this motion will be dealt with by the Chairman in consultation with the Standing Committee. I consequently withdraw the motion.

MOTION WITHDRAWN.

ADJOURNMENT OF ASSEMBLY

The Chairman adjourned the Assembly at 14h35.

CONSTITUENT ASSEMBLY

ASSEMBLY CHAMBER
WINDHOEK
20 DECEMBER 1989

The Assembly met pursuant to the adjournment.

THE CHAIRMAN took the Chair and read Prayers.

VACANCIES IN THE ASSEMBLY

CHAIRMAN: Vacancies occurred in the Assembly after the death of Mr K Nauyala and after Mr J G A Diergaardt vacated his seat in terms of Section 3(1) of the Proclamation.

In terms of Section 4(b) of the Proclamation I hereby declare Mr Peter Shehama Tjirumbu of Swapo and Prof Mburumba Kerina of the FCN to be duly elected members of the Assembly with effect from today.

SECOND REPORT: STANDING COMMITTEE ON STANDING
RULES AND ORDERS AND INTERNAL ARRANGEMENTS
(CONSTITUTIONAL MATTERS)

MR RUPPEL: Mr Chairman, I lay upon the Table the report as follows:

STANDING COMMITTEE ON STANDING RULES AND ORDERS AND
INTERNAL ARRANGEMENTS (THE STANDING COMMITTEE):

having been mandated by the Constituent Assembly on 12th
December 1989 to -

- (1) continue with its deliberations and negotiations with a view to reaching agreement or to identify constitutional issues in respect of which a material dispute exist;
- (2) report back to the Constituent Assembly on its work pursuant to the extended mandate during its sitting on Wednesday, 20th December 1989; and
- (3) refer the issue of national symbols (the Anthem,

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Flag, Code of Arms to a subcommittee of the Standing Committee;

hereby submits, pursuant to the aforementioned mandate, its Second Report on its meetings held at the Tintenpalast on the 12th, 13th, 14th, 15th, 18th and 19th December 1989:

The Standing Committee, comprising of representatives of all the parties elected to the Constituent Assembly, discussed and succeeded to resolve all remaining substantive issues in principle, subject only to technical and minor further amendments and discussions including, inter alia, details in relation to the system of proportional representation, and a second house of the parliament.

The Standing Committee discussed and agreed that the draft constitution and the principles agreed on in relation thereto should be referred to a panel of three eminent lawyers who will be instructed to settle the draft, incorporating the said principles for submission to and further discussion thereon by the Standing Committee.

The Standing Committee resolved that the three lawyers should have had no previous involvement in the drafting of the proposals for any of the parties elected to the Constituent Assembly and furthermore, that they should receive their instructions from the Constituent Assembly.

The Standing Committee also discussed and resolved that two of its members should be delegated the function to brief the three independent lawyers in accordance with the undertakings reached in relation to Namibia's future constitution.

The Standing Committee can also report that pursuant to its aforementioned mandate, a subcommittee on national symbols has been established and that its first report will be presented shortly.

Consistent with its deliberations and decisions taken, the Standing Committee accordingly recommends that the Assembly:

- (a) mandates Mr H Ruppel, rapporteur of the Standing Committee, and Adv. V Rukoro to travel to Johannesburg in order to instruct Adv Arthur Chaskalson, SC, Prof Marinus Wiechers and Prof Gerhard Erasmus

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to consider the draft proposals, the agreed principles and incidental instructions in relation thereto, and to provide the Standing Committee with a draft constitution for Namibia;

- (b) authorises all expenses relative to the aforementioned mandate to be defrayed from State funds;
- (c) mandates the Standing Committee to receive and discuss the draft to be provided by the group of three lawyers by not later than 8th January 1990; and
- (d) instructs the Standing Committee to report back to the Constituent Assembly on its work, pursuant to the aforementioned mandate, during the Assembly sitting on Friday, 12th January 1990 at 10h00.

ADOPTION: SECOND REPORT: STANDING COMMITTEE
ON STANDING RULES AND ORDERS AND INTERNAL
ARRANGEMENTS (CONSTITUTIONAL MATTERS)

MR RUPPEL: Mr Chairman, I move -

That the Report now be adopted.

In view of the fact that all the parties elected to this honourable House are represented in the Standing Committee and have had an opportunity to consult their caucusses from time to time, I believe that everyone of the members present in this honourable Assembly are well-informed and I accordingly move that the report be adopted without further discussion.

MR MUDGE: Mr Chairman, I believe it would be a pity if we let this occasion go by without making a few comments on the progress that was made by the committee. I suppose it is too early to celebrate, there is still a lot of work to be done, but I want to convey to you the congratulations of the DTA-executive, Mr Chairman, and the members of the committee, for the remarkable progress made so far. I want to make a few observations and I am sure that some of the

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other members of the committee will also want to add to that. I will not take the floor for longer than two or three minutes, but I want to make a few observations that honourable members will not find in the report itself.

Even before the committee met for its first meeting, and after we had the opportunity to study the drafts submitted by the various delegations or the various political parties, it became evident that there were so many similarities and that we had so much in common, that the deliberations actually kicked off in a spirit of optimism and it was obvious that all the parties represented in the committee have in one way or another already been involved in constitution-writing for quite some time.

Mr Chairman, it was also evident in this process that all of them were guided by the 1982 Principles, and Sir, that all of us could also learn a lot from past experience in other parts of the world. We could learn from mistakes made and we could learn from experience gained elsewhere, and that without sacrificing in any way the importance of our own backgrounds and our own experience.

Although we identified a few areas of material dispute, the committee succeeded in resolving, as far as I can see, all of them, which leaves us only with a few minor issues to be resolved, of course without underestimating the immense task of drafting the final document. By that I mean the law which will have to be approved by this House.

Our party^{*} wants to put it on record that if deliberations in a future government would take place in the same spirit of goodwill, understanding, in the same spirit of give and take, the people of this country need not fear the future, but they can look forward to the future with confidence.

I want to conclude by saying that as far as I am concerned democracy has passed its second test, the first one being the election and the second one the report that has been tabled by the honourable member a few minutes ago. I think that for democracy it was a good start, and I have reason to believe - and maybe I am a little over-optimistic - we in the DTA have discussed the report this morning, and there was general consensus that if we proceed at this speed, we should have a final draft by the middle of January and we should have a constitution by the end of January. I hope that we will not be disappointed. I think it is too early to thank the Chairman, I think we will reserve that for a later date. On that occasion, and maybe in a more relaxed atmosphere, I would want to make a few remarks about some of the honourable members that I had the

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honour and privilege to meet during the deliberations of the committee, but that will have to stand over. I thank you.

MR M GAROEB: Mr Chairman, if I stand here at this point in time, it is simply to voice the sentiments of Swapo in so far as the deliberations of the standing committee, and hence, the work of the Assembly has been conducted so far. I would like to register here that one of the fundamental elements that we have achieved here during our deliberations to a large extent has been the fact that we have overcome - and I would like to believe we have overcome - the mutual suspicions, at worst, the mutual hatred that permeated our relationships while we were abroad and when we came back home, and subsequently when we met in this Assembly. That in itself is indicative of the political maturity that is prevailing in this Constituent Assembly, a Constituent Assembly that is characterised by seven political parties and hence by seven different political ideologies, differences of all kinds, reflected not inside the Assembly only, but outside the Assembly as well, but then through having overcome suspicion, mutual or otherwise, we have been able to surmount this difficulty. I do not see - and I agree with Mr Mudge - that probably even on this score we should not congratulate ourselves, because it just might be too early.

Having said that, I would like to say here that when we were elected by our people to draft and adopt a constitution for Namibia, we were given a very, very serious responsibility, and the onus was on us to prove whether we would live up to that responsibility. It is hardly a month since we have been deliberating here, and someone would have told me in the days gone by that we would have had what is reflected in the Second Report of the Standing Committee, that an unanimous atmosphere prevailed to the point that we agreed on the basics of the constitution that we are going to adopt for our country, that we are going to adopt this report today, the 20th day of December in the year of our Lord, 1989, I would have probably told that person to go and jump in the sea. But in any event, Sir, I am happy that I am not going to do that, but even then probably it is too early.

When this Assembly was convened there were many doubting Thomases. It was speculated and anticipated that because of the different political parties and because of the different historical backgrounds of these political parties,

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the conflict in our country, we would have a protracted debate on the constitution of our future country and would probably go, speculation had it, into two years after the election. But alas, the sense of national unity and reconciliation has prevailed to the extent that we are able to sit here today to accept the report of the standing committee. So let the doubting Thomases keep on doubting.

Much remains to be done, but if what has been done by the standing committee is any yardstick to go by, in terms of problem-solving, in terms of the spirit of give and take during the process of negotiation to facilitate a constitution acceptable to all of us, I do believe that we stand a more than fair chance to achieve the objectives in the shortest possible time. That is a record which all of us ought to be proud of, and if that again is a yardstick, I have great hope for the future of this country, that no matter how difficult the problems that we are going to face in future, for as long as we consult each other in the spirit of reconciliation, there can be no problem that would be so difficult as to be insurmountable. I strongly believe in this and I have no doubt that my colleagues on this side of the House believe the same.

Mr Chairman, we are witnessing a very, very important development here in our country. We have accepted, for better or worse, the multi-party democracy, an open democracy. It is in an experimental stage, but in any case, we hope for the best that it will be born, strengthened and entrenched in this country of ours. The responsibility is ours as leaders to ensure that this infant democracy that we are in the process of establishing, will not only be born, but will be institutionalised and stabilised. We hope that all of us in this House, irrespective of what has happened in the past, will forgive. I do not know how easy it is to forget. But let us start a new page, that is all I am trying to say. I think we can do it. We have the potential and it has been shown here during the deliberations that we have the capability of working together. "Working together", those are the operative words, for the benefit of our country. But more than that I would like us to submit to the will of the Almighty in these deliberations that we are having here, ask for His blessings, not only for now as we are working for the future of our country, not only for this present generation, but for the generations to come of our children and our grandchildren. Thank you.

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MR KATJIUONGUA: Mr Chairman, my fellow Namibians, I join the ranks of my colleagues to express my sincere recognition of what I, as a very careful man, consider to be very good progress by our standing committee. Given the divergent views on many important issues expressed in this House, the issue of the presidency, the electoral system, the nature of a future parliament for Namibia and similar issues, and taking into account the background of our past differences, and in some cases outright hostilities, I must say that I was pleasantly surprised that we could reach consensus on practically all the constitutional issues before us in such a very short period of time. Mr Chairman, perhaps miracles like this can only happen here in Namibia. Let's hope that this is the first important sign of many good things to come our way.

I must comment all my colleagues on the committee, the twenty gentlemen and the only sole sister, Mrs Ithana, for having at all times kept a wonderful atmosphere of mutual respect and joviality, and maintaining an attitude of flexibility and a spirit of give and take. In particular most credit must go to our chairman, brother Hage Geingob, who kept the show going through his phenomenal sense of humor and impartiality. I want the supporters of all the parties on the committee to know that they have good and tough and committed negotiators. Make no mistake about it.

Fortunately the nature of the challenge facing them, and a great sense of national responsibility was the fundamental common denominator that induced all of them to establish a community of interests and a sense of compromise. Also, the country should know that so far, so good; so good to be true. So far Namibia and the Namibians are the winners and the only losers here are the prophets of doom and disaster.

If things continue in this manner, if we all keep the present style and approach and retain the moral high-grounds, Namibia and its future could be said to be in good and responsible hands. It is now incumbent upon all of us not to disappoint our people after we have raised the expectations so high. It is my sincere hope that we shall all try our best to strengthen what unites us and to minimise the areas of difference and possible conflict in the best interest of our own country and our own people.

Mr Chairman, I wish you personally and all my colleagues on the committee and the rest of the House a grand time during the coming holidays, and I hope we shall all return in one piece to complete our historic task and I sincerely hope that the rain will come soon to give us the additional encouragement we badly need to plan for a bright future for

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aspects - and please note, I say only in some - we differ in principle with the proposed constitution. On that I shall elaborate at a later stage. But because we are in the minority, we do not have any other choice than to accept the challenge and try to live with it. We are not running away from our responsibilities, but are going to contribute in a positive way. I must admit that what is encouraging us was the very good spirit which prevailed right through the discussions in the standing committee. Even the understanding, although not agreement with our point of view, we appreciate.

For the sake of the record - and I think you are at this stage already used to it coming from me, putting something on record - I want to extend a special word of thanks and congratulations to the Chairman for his professional, impartial, disciplined and firm way in which he handles the meetings of the standing committee, always with a sense of humour which made it quite an experience to attend the meetings.

Mr Chairman, what will be of vital importance for national reconciliation and peace will be the way and spirit in which this proposed constitution will be applied in the future independent country.

To conclude, we want to make a positive contribution. We shall continue to put our point of view, we shall continue our struggle, our political struggle for the necessary balance between individual and group rights, for the necessary balance between rights and responsibilities. We will do so by way of conviction. We are accepting that challenge in good faith.

Meneer die Voorsitter, mag ek die voorbeeld van my agbare kollega volg en dan vir u in my eie taal met alle erns sê, 'n Geseënde Kersfees en 'n baie mooi Nuwejaar vir u almal. Baie dankie.

MR RUKORO: Mr Chairman, honourable members and comrades, we are, as we know, ordinary mortals and as ordinary mortals we have all been affected by the spirit of peace and goodwill to all on earth which is so prevalent at this time of the year. We have been through a most difficult year in the history of our country. We should be encouraged by the fact that in spite of a hard-fought election campaign and in spite of several sessions of intense negotiations in the standing committee, we can still feel this basic goodwill

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towards each other. 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, and 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 the effective work in the new year.

I have been singularly impressed by the willingness shown by honourable members from all sides of this House to make those necessary compromises which have been necessary in order to reach consensus on both parts of the constitution where we had serious differences in the past. I trust that we all recognise that we need to make such compromises in the national interest, that by so doing we are drawing up a constitution which will fight general acceptance and which will endure for generations to come.

We shall now have to return to our constituencies, we shall have to inform our people of what we have accomplished and we shall do our best to involve them in the entire constitution-making process.

We in the Namibia National Front believe that it is of vital importance that this constitution is regarded by our people as their constitution. 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 to be kept in state archives. For a constitution to be part of a nation, it must also be inscribed in the heart of every Namibian. The way to do this is to take the constitution to all the corners of our country and to get our people to read, to understand, to debate and to accept every line. We have to make this constitution part and parcel of our political culture. If we can do this, it would be our best guarantee of stability and democracy in the future.

I shall like to conclude by wishing the honourable Chairman and all the honourable members and comrades a truly Merry Christmas and a peaceful and prosperous New Year. Thank you.

AGREED TO.

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ADJOURNMENT OF ASSEMBLY

The Chairman adjourned the Assembly until 12th January 1989, at 15h15.
