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MINISTER OF JUSTICE

actually we have the capacity within the Ministry to do these kinds of things. It is not that we were trying to create a new department, it is just to have people who will be able to do this.

AGREED TO.

ACCESSION: CONVENTION AGAINST TORTURE.

MINISTER OF JUSTICE: Mr Speaker, I move the motion. (Page 55 of the Minutes/Page 8 of these Debates).

MR W BIWA: I second.

MINISTER OF JUSTICE: Cde. Speaker, the next motion is about the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Under this Convention state parties are enjoined to prevent torture and other cruel, inhuman and degrading treatment or punishment in their jurisdictions and to ensure that people found guilty of such practices are legally punished.

In a special feature the Convention provides that suspected torturers shall be extradited to stand trial for their crimes or that, if not extradited, they may be placed on trial in the courts of the state party to the Convention.

Namibia's accession to this instrument will also be a mere formality since torture and other cruel, inhuman or degrading treatment or punishment are outlawed by the Constitution of this land. It is, therefore, only aimed at giving support to the international commitment to abolish torture and other cruel punishment and treatment worldwide.

Namibia is required to submit an initial report within one year of its accession to the Convention, then every four years thereafter.

Mr Speaker, I again humbly move that the Hon. Members agree that the Government of Namibia ratifies and accedes to the Convention against Torture and the Cruel Inhuman and Degrading Treatment or Punishment. I do move, Cde. Speaker.

MR KAURA: Again, Hon. Mr Speaker, I am happy that so far we are not acceding to a convention abolishing corporal punishment, because I would like

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to slap my kids a little bit to get them right, and I do not want to be confronted with a convention here in Parliament, even though it is in our Constitution, but at home I am still the father, the boss. INTERJECTIONS.

Article 8(2)(b) of our Constitution again abolishes torture, so it is again a reaffirmation of our Constitution. Thank you, Hon. Speaker.

MINISTER OF EDUCATION AND CULTURE: Cde. Speaker, Sir, I fully support this motion, read together with motion number three. I hope that these two motions will not only be applicable to state, but also to individuals and organisations within states. I would like to see that Epango, certain customary courts and khutas, are subjected to these conventions as well as organisations like Red Eye and whatever we have. They should be subject to these conventions, especially Epango, so that people are protected.

Right now our Constitution protects people against its own state, fine, but individuals there are terrorising others. If you go to an Epango court, it is total torture you find there.

HONOURABLE MEMBER: Have you been there?

MINISTER OF EDUCATION AND CULTURE: Yes, my friend escaped from there the other day and the Hon. Kaura can confirm it. Unless this is applicable to those types of courts, unless it is applicable to those types of organisations, these conventions, as good as they are, will not protect the people of Namibia. I thank you.

AGREED TO.

ACCESSION: CONVENTION ON THE PREVENTION
AND PUNISHMENT OF THE CRIME OF GENOCIDE

MINISTER OF JUSTICE: Mr Speaker, I move the motion. (Page 56 of the Minutes/Page 9 of these Debates)

MR BOTHA: I second.

MINISTER OF JUSTICE: Thank you, Cde. Speaker. The motion is about the Convention on the Prevention and Punishment of the Crime of Genocide. This Convention declares genocide to be a crime under International Law

ASSEMBLY CHAMBER
WINDHOEK
14 OCTOBER 1994

The Assembly met pursuant to adjournment.

THE SPEAKER took the Chair and read Prayers and the Affirmation.

ANNOUNCEMENT

THE SPEAKER: I have an announcement to make. As agreed by the Whips of all parties, all Orders of the Day will be adjourned not later than the following day, except where this is not possible. This was the agreement of the Whips of all parties represented here and on my part I have the duty to schedule the Orders of the Day to provide for the smooth running of the business of this Chamber. The adjournments which were moved yesterday were so uncoordinated and will leave the Assembly with very little to do either today and/or Monday if we follow that. So, I have used rule 34, which empowers me to change the Order Paper as I wish, as long as I still hold the position. I have therefore instructed the Secretary to put all the Orders on the paper. As you see, they all appear and will call on the Hon. Members. All you can do is to adjourn them again, but they will be called so that we can proceed with the business of the House very smoothly and orderly.

TRADITIONAL AUTHORITIES BILL: INTRODUCTION AND FIRST READING

MINISTER OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING: Mr Speaker, I move the motion.

MR WOHLER: I second.

AGREED TO.

THE MINISTER OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING thereafter lays upon the Table the *Traditional Authorities Bill*, [B.33 - '94] and moves -

That the Bill be now read a First Time.

AGREED TO.

Bill read a First Time.

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TRADITIONAL AUTHORITIES BILL:
SECOND READING

MINISTER OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING: Mr Speaker, subject to rule 82 of the Standing Rules and Orders, I move -

That the Bill be now read a Second Time.

MR WOHLER: I second.

MINISTER OF REGIONAL AND LOCAL GOVERNMENT AND HOUSING: Thank you, Mr Speaker, Hon. Members of Parliament, this Bill is, as Mr Jagger says, long overdue, but finally it is coming before the next elections.

Before the colonial era traditional leaders exercised the power and performed the duties and functions of government in a rudimentary and simple fashion. With the advent of colonialism and up and until the Turnhalle era, the colonial administration resorted to political assimilation to give credibility to the system of divide and rule, as evidenced by the establishment of various ethnic administrations in this country. As a result the appointment, recognition and remuneration of traditional leaders by the colonial government was by and large influenced by political loyalties.

During the German colonialism they even went as far as ignoring the succession and appointing a weaker heir as chief, who was manipulated to sign what the Germans put before him. There were no "hers" that time.

The institution of traditional leadership was, therefore, politicised and some traditional leaders became active in politics while others were suppressed. Their role did, therefore, not change very much from the role they played before colonialism as both executives, legislative authorities, judicial officers and military commanders.

In the past we also witnessed the assassination of some traditional leaders by their own people as a result of their cruel and inhuman treatment of their subjects.

In recent years, and until now, we still witness in some regions the conservative nature of the institution of traditional leaders in relation to the treatment of women. Despite the existence of some vices inherited in the traditional system, the necessity for the retention of the traditional system

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cannot be over-emphasized. As evidence of this need our Constitution provides for the establishment of a Council of Traditional Leaders. Although this is not the subject of the Bill, it is important to link this Bill to that provision of our Constitution as it is the implicit basis for the retention of the traditional system.

But having said that, Mr Speaker, I must point out that Namibia is a republic and that a monarchy and a republic cannot co-exist within the same geographical area.

With the establishment of regional and local government structures in place, the role of the traditional leaders will mainly be confined to upholding culture and traditions. The traditional system, in our case, should therefore be subservient to the democratic institutions we have put in place.

Mr Speaker, I would now like to address some of the substantive provisions of the Bill. The objective of the Bill is to provide for the establishment of traditional authorities, the designation and recognition of traditional leaders, to define their functions, duties and power and to provide for matters incidental thereto.

The Bill in clause 2 establishes traditional authorities, consisting of one chief, one senior traditional councillor and such number of traditional councillors measured against the size of the population of every traditional community.

Clauses 3 to 6 deal with the designation of traditional leaders and their recognition by Government and spell out the procedures for designation, notification to the Minister and recognition by the President.

Having categorised traditional leaders in three categories under the designations referred to in clause 2, clause 7 entitles the respective communities to address their traditional leaders by their respective traditional titles traditionally accorded to them.

Clauses 8 and 9 spell out the procedures and grounds for the suspension or removal of traditional leaders from office and the settlement of disputes arising there from.

The functions, duties and powers of traditional leaders are elaborately covered by clause 10 and, inter alia, include the following:

Codification of applicable customary laws; and execution
of customary laws; promotion protection and preservation of culture,
language, traditions and traditional values of their communities;

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preservation and maintenance of cultural sites, works of art and literary works of their communities; performance of traditional ceremonies and functions held in respect of their communities; to advise the Council of Traditional Leaders; promote affirmative action, particularly the question of women, and assistance to the Central Government in that respect; the exercise of power conferred on traditional authorities by customary or statutory law.

These are mainly the broad functions and duties.

As functions are generally accompanied by duties, clause 10 obliges traditional authorities to operate trust funds for their communities, to hear and settle disputes in customary law and to assist the police, subject to the Constitution, in the apprehension of criminals.

Clause 11 of the Bill places limitations on the performance of functions and duties of traditional leaders in the exercise of their power by, inter alia -

1. prohibiting them to apply customs, traditions or practices of discriminatory nature and which detracts from, or violates the rights and freedoms of citizens as enshrined in the Constitution, and
2. by limiting the application of such customs, traditions and laws to members of specific communities.

What is important, Mr Speaker, this clause prohibits traditional leaders to hold political offices while also holding the office of traditional leader.
INTERJECTIONS.

Clause 12 deals with the relationship of traditional authorities with government organs and specifically provides for the precedence of the powers of central government, regional councils and local authorities over those of traditional authorities in case of conflicts of law.

Clause 13 deals with traditional leaders and provides for determination of remuneration by the Minister in consultation with the Minister of Finance, meaning that when we have more money we will increase their allowances or vice versa. The clause also provides for the appropriation by Parliament of funds to cater for such remuneration. Mr Speaker, I have already alluded to the establishment of a community trust fund and which is the subject of clause 14. The issues of remuneration of traditional leaders and administration of the trust fund are live issues which need constant monitoring and revision.

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To handle these matters, clause 15 thus empowers the Minister to make regulations relating to remuneration and the manner of administering the community trust funds. They will actually send Hon. Tjingaete to these trust funds now and again.

Finally, Hon. Speaker, this Bill by clause 16 repeals the Native Administration Proclamation, no. 15 of 1928 and saves some important sections of the Proclamation. For clarity we have decided to short title this Bill the Traditional Authorities Bill. I thank you.

MR LUIPERT: Mr Speaker, I move that this debate be adjourned until Tuesday, 18th October.

MR GASEB: I second.

AGREED TO.

ENFORCEMENT OF FOREIGN CIVIL JUDGMENTS
BILL: COMMITTEE STAGE

FIRST ORDER READ:

Committee Stage - *Enforcement of Foreign Civil Judgments Bill*, [B.37 - '94].

MINISTER OF JUSTICE: Mr Speaker, I move -

That the Assembly goes into Committee on the Bill and that the Speaker leaves the Chair.

MR BOTHA: I second.

AGREED TO.

ASSEMBLY IN COMMITTEE:

CHAIRMAN OF COMMITTEES: The Committee has to consider the *Enforcement of Foreign Civil Judgments Bill*, [B.37 - '94].

Clauses and Title put and agreed to.

MR BOTHA: I second.

AGREED TO.

TRADITIONAL AUTHORITIES BILL:
RESUMPTION OF SECOND READING

NINTH ORDER READ:

Resumption of debate on Second Reading - *Traditional Authorities Bill*, [B.33 - '94].

THE SPEAKER: When this debate was adjourned on Friday, 14th October, the Question before the Assembly was a motion by the Hon. Minister of Regional and Local Government and Housing -

That the Bill be now read a Second Time.

MR LUIPERT: Mr Speaker, I move that the debate be adjourned for further consultations until next January 1995, 17th January 1995.

MR GASEB: I second.

AGREED TO.

ADJOURNMENT OF ASSEMBLY

On the motion of the Prime Minister, seconded by the Minister of Home Affairs, the Assembly adjourned at 16:55.