

STANDING COMMITTEE ON STANDING RULES AND

ORDERS AND INTERNAL ARRANGEMENTS

WINDHOEK
12 DECEMBER 1989

Members:

Mr Geingob	- Chairman	Mr Ruppel
Mrs Ithana		Mr E Biwa
Mr Barnes		Mr Katjiuongua
Mr Bessinger		Mr Angula
Dr Tjiriange		Mr Mudge
Mr Katjivivi		Mr Pretorius
Mr Staby		Mr Rukoro
Dr Thiange		Dr Tjitendero
Mr Gurirab		Mr Matjila.

DR THIANGE: In order to know whether a person is going on holiday or not, one has to identify this. We have to start from there first, who are the consultants we have in mind, whether we go by a formula that each party will denote a consultant or what, and that we will then solve the problem because there are no consultants for these groups in waiting. Let us identify them.

MR ANGULA: I was going to second what Dr Thiange said, as to how many advisors are allowed for each party.

MR BARNES: What is very important is the fact that we have to decide, are these consultants going to work individually or will it be a team-effort? If I may suggest, with your kind permission, I would recommend a team-effort so that we have continuity continuously in the submissions that are made to the committee.

DR KATJIVIVI: Yes, I just wanted to support Comrade Barnes. I also wanted to find out whether there is a limit in terms of how many legal advisors are going to be needed, and if so, whether we could actually harmonise in terms of

working out a team of legal advisors who could then maybe meet and consult, and then be briefed by us collectively or by a group of members of the standing committee.

DR TJITENDERO: I am a little bit at a lost, because when Mr Mudge raised the question, I thought he was raising the question because we already are engaging these individuals whom we already know. I do not think the question of numbers really arises, because each party or each group has already, I assume, identified individuals. The question of numbers, I think, should be left to the needs of the individual parties that are engaging these experts. I also want to draw our attention back to this morning when Nahas made the comment with regard to drafting the areas that have been agreed to. I think we are doing this either in our caucusses or during the time we have available. So, I do not believe that there should be any time wasted with regard to engaging these individuals. I believe that they have started already. If they have not started, I think this is the time, because already section that we have agreed to should be given to these people to rationalise and bring back to us to react and agree, because they are experts.

MR MUDGE: On a point of order, I think the press are now getting information they shouldn't get.

CHAIRMAN: I think I shall postpone this very important discussion for proper discussion behind closed doors. There is a request from the public and diplomats whether we can make this text, this very concise text available to the

press. So decided. Legal advisors. Firstly the question is, are we going to have one team advising this committee or is each party going to have an advisor?

MR MUDGE: We would want to nominate someone from our side, and I think every party has the right to nominate. I think every party has the right to nominate and some parties really need two. I think that would be possible. If some parties would want to share one consultant, I think that will also be possible. It will be our consultant, but we are hoping that our consultant will be co-operating with the other consultants as a team, the way we co-operate as a team. They will know the views and the feelings of our party and they will try in a more objective manner to marry those different views. But I think the parties must indicate whether they need their own advisor, whether they need more than one. To get the ball rolling, our party has decided to nominate Prof Marinus Wiechers and Adv Gerhard Maritz, the two of them. That is what we had in mind, but we are even prepared to share if other people want to make use of them.

MR MATJILA: The experts or the consultants, are they going to be paid by the State?

CHAIRMAN: I was coming like that. If it is a small group, well-qualified, but of course, it doesn't preclude the parties from retaining their own.

MR MUDGE: That is what I had in mind, one paid by the State, maybe one we pay ourselves.

DR THIANGE: I think what we have to agree is just the

principle and we can give the names later.

CHAIRMAN: We are seven parties, do we think that each party must nominate one person?

MEMBER: That is only democratic.

CHAIRMAN: Democracy can be very expensive. The question is now, will each party, not proportionally, nominate one candidate? What will be the optimal number we need? Two or three or four?

MEMBER: Four.

CHAIRMAN: We have identified areas and we have to think of the expertise in those areas, otherwise it will be a waste of time to bring a person qualified in the electoral system.

DR TJITENDERO: Even if there are X-number of areas outstanding, I think Mr Mudge's original submission, because we are actually hiring expertise, so one lawyer or two lawyers who are draftsmen, who could be utilised by two or three parties, because we are actually dealing with one basic draft with ideas submitted by different parties. So, I do not necessarily think that the number has to go up very much. I think two or three would be adequate. But as you said, if we were to think very carefully in relation to the areas that are still outstanding, here we can be helped by our colleagues on the committee who have legal expertise. But I would think three would be the maximum.

CHAIRMAN: I have my doubts, because we are political parties and we must have engaged individual lawyers to draft these documents we have here, and I have learnt that law-

yers, on what they have drafted, are very stingy. Either you are going to have the kind of experts that are well-known internationally or maybe the parties can propose and jointly the others one that they will agree on. So, we can say major parties can propose one person each and the other parties can collectively propose one, so we can have three.

MR ANGULA: About the numbers, democracy, as you say, is expensive, but we cannot force somebody else. I think the question of proportion is a minimum. A minimum number of lawyers must be given to a party, and those parties who want can get lawyers. One way of dealing with that question of course is to say that the parties have to pay their own experts, not the state. Secondly, the mode of operation. Are we going to sit together and discuss the document or are they just here to advise me?

MR BESSINGER: Mr Chairman, my understanding of the exercise at hand for the lawyers is one of taking decisions that we make here, basic decisions that were taken, agreed upon in some instances, to take that and formulate it in legal language to fit within the framework of the constitution. I am afraid if we are going to have five, six, seven lawyers, especially representing specific and identified interests, then it will bog us down as lawyers go by their work. I think we should consider, if there is agreement and consensus on an issue that we want interpreted in legal terms and put on paper, that we need not need seven, eight lawyers to do that job.

MR RUKORO: Yes, I also have problems with your approach,

and that is that writing a constitution is primarily an exercise of political judgment. It is a political function and not a legal one. Therefore we must do the work right here in committee until we agree. I suspect that we will need some of these experts to put the final touches to the document. That will be way back in January, I suspect, the final thing once we have agreed. That does not mean that some specialist committees, like the committee on the national symbols, cannot be appointed to go and start doing their job now. It is a non-lawyer committee, it is a specific one to which we can delegate this responsibility. But in terms of legal advisors, I think everybody has already retained or is going to retain his or their own lawyers to advise them in their own offices. When we come here we are already briefed, we are prepared, and where I think we will need lawyers is when the final document is ready, and whether it is special people or even state attorney office, that is where I really see the need for lawyers, but not to be in at the round chamber.

MR RUPPEL: As a lawyer I know how we work and whether it is commercial agreements or whether it is marital dispute or whether it is constitution writing, if you give a lawyer a mandate, he will carry it out as individual, there is no problem, and if you tell your lawyer and another lawyer to negotiate some kind of settlement within certain parameters of a mandate, there is also no problem. But to ask two lawyers from two sides to be friends and work on the same thing, it is not going to work. They all have their

preconceived ideas and they are going to bog down the process rather than help it on. I think as far as the touch-up is concerned, I fully agree with the honourable member Mr Rukoro, there is absolutely no necessity of asking lawyers to make decisions for us, we have to make the decisions. What is important is that they provide us from time to time through our individual advisors or through our caucus meetings with new drafts on a formulation which may fit everyone. The final touch-up, that in my view can be very helpfully be done by one single eminent lawyer who can be agreed upon by all of us. There is no problem in finding somebody who is internationally reknowned, a neutral person who we, no doubt, can get at short notice. I think if that is the attitude, we will get a far way in dispensing of the problem, but if we leave it to the lawyers to negotiate, then I think we are redundant here.

DR THIANGE: I want to agree with the last speaker. I just wanted to suggest that we go by the honourable Rukoro's suggestion, but the chairman, who has been so much helpful to all of us in this committee and in general, impartial as he is, could maybe make available those legal services to the committee by either going by Ruppel's suggestion or having that team under him. We shall maintain our own legal advisors as individual organisations, but the final document will then go to the services that the chairman will provide for the committee through that body that he is going to have under him. Being it one person or two, that will be the chairman's body that will help the committee.

It is nobody's body, it is the chairman's body to which the final document will be referred.

MR STABY: Mr Chairman, I have much sympathy with the approach that is likely to lead to rationalisation of our work and the expeditious completion what we have been charged to do. On the other hand, I am very conscious of the fact that this is the first time that all of us together sit down to write a constitution for our independent country, and I think we are obliged to produce the best possible result. I then will suggest that we not be unnecessarily conscious of legal fees that we may have to fork out in order to get advice. We are trying to write a constitution which is going to last for generations and not just for a year. So, therefore I think we can with justification try and use the best possible advice that we can get. I would agree that the drafting of the final result can be quite easily handled by way of one or two constitutional experts, and I would also agree that the drafting of clauses for discussion purposes in the interim can be handled by advisors to the specific political parties, but I think there is more involved than the mere drafting of clauses. I would, for instance, like to see that a lawyer be present here, one or two or maybe even three, participate in the meetings of this committee, so that we can turn to them for advice on options available, or that we can turn to them for advice on the repercussions of certain decisions that have been made. After all, whereas many of us have concerned themselves with constitutions for a long

time and have certain experience, we simply cannot claim to be experts. So, I would say, to cut a long story short, let us not be stingy when it comes to the appointment of constitutional advisors, so that we don't have to merely rely on people to draft certain things, but that they are also available to us when we need their advice on specific issues.

CHAIRMAN: Basically that is a good approach, but I thought lawyers go by brief. If I brief him that I want to have a strong executive, he will give me a very strong executive because I told him I want that. So, if we are going to bring experts to sit here to advise us, and he is my lawyer I have already been using outside, and he knows my philosophy of the executive presidency, he knows what I want in the constitution because he was helping me, he will stick to that. That is the original brief that I gave him. That is why I was afraid about lawyers to come and sit in here and to advise us. Maybe should have people who are unknown. Once they are absorbed into the atmosphere of this House, they may change, but I have my suspicions about bringing people here who we have already been using outside and who are briefed, to come and advise us inside the house. But outside it will be all right.

MR MATJILA: The Administrator General sent a message just about two minutes ago, requesting whether the Chairman of this committee could supply him with a copy of the statement that you are about to issue.

CHAIRMAN: We have a statement ready now from the drafting

committee to be issued by the chairman. May I then call upon honourable Matjila to read it out to us, please, for our approval.

MR MATJILA: Press Release by the Chairman of the Constituent Assembly, the honourable Mr Gaingob, Tuesday, 19th December 1989: The Chairman of the Constituent Assembly, the honourable Mr Hage Gaingob, in co-operation with the parties elected to the Constituent Assembly, has in the light of conflicting and confusing press statements and radio- and TV-reports on the education issue, decided to issue the following statement on behalf of all parties:

- (a) All elected parties in the Constituent Assembly have accepted the principle of private schools in an Independent Namibia. Provision will therefore be made in a future independence constitution to embody the principle of private schools run by church-bodies, companies, foundations, individuals or organisations seeking to promote education.
- (b) That parties to the Constituent Assembly are strongly opposed to the privatisation and/or leasing of any existing government facilities at this stage, as such a move alienates the feelings of the majority of our citizens and will no doubt do great harm to our current efforts to foster national reconciliation and peace among all Namibians. The Administrator General is therefore requested not to go ahead with the planned privatisation and/or leasing of fifteen schools as envisaged in his initial plan.

(c) With Namibia now irrevocably on the road to independence, all citizens should contribute to the general good by promoting the spirit of co-operation, confidence and trust. I therefore appeal to the Administrator General, the various school administrators and parents, in spite of the fact that the present education system will continue for some time, to realise that this must not be construed as permitting the continuation of discriminatory policies and practices. This is the time of the year when men of goodwill must bind themselves to a new order, a new Namibia, a new emerging nation. Let us all join hands as Namibians to promote the future of all our citizens.

CHAIRMAN: There is one principle that all of us agreed upon, that they should build these schools with their money and not with state money.

MR MUDGE: Establish and maintain schools.

DR TJITENDERO: I think there is a little omission there. I think in the second to the last paragraph we had the intention to state that all schools should be open. I think that sentence is missing from the draft.

CHAIRMAN: There was a discussion about some principals being ready to accept all races by January. That concept should come in, that those who may be ready can do so from January on.

MR MATJILA: If you could allow the two of us just three minutes outside.

MR MUDGE: It must be made clear that there will be no

racial segregation in the schools from January.

CHAIRMAN: There are two things we have'to decide and move on. One is the question of the principle of having advisors, lawyers.

MR MUDGE: I want to make a proposal, I think we are unnecessarily complicating the issue. May I make a suggestion? I think every party must have a lawyer or a legal advisor. I don't think we drafted these documents ourselves, we made use of lawyers, legal advisors, experts. Although I hundred percent agree that politicians must write the constitution, but when it comes to legal language I cannot do it. I am very honest about it, when it comes to legal language I need a lawyer, and this is normally where the problem comes in. You use terminology and you formulate and afterwards you find what you really intended, did not in the end appear in the constitution. So, we have our lawyers. But now, unfortunately, as you so rightly said, those lawyers will normally try to please the party employing them. They will want to find arguments to strengthen the party's views, and people tend to listen too much. Some people really believe them, I don't, because they can be very shrewd.

MR RUPPEL: There are also dishonest farmers.

MR MUDGE: This creates problems. I find when sometimes the lawyers meet, they can sort out problems which is not so easily sorted out by politicians, because..

CHAIRMAN: Let them do it outside. We discuss here and we refer our problem to them outside, and they can meet and

come back, but not to sit in here.

MR MUDGE: Exactly, that is what I had in mind. But it is sometimes important for lawyers to listen to the arguments of politicians. They cannot take part in the committee, but just to sit in and listen to get a better idea what do the people really want to solve. Then they can go out and they can meet. I don't have a problem where each party must appoint their own lawyers. The question which has to be resolved here, how many do we think must be paid by the state, and secondly, when it comes to the final drafting of the constitution, then I think we must agree upon one person, maximum two, who will do it for all of us. Our lawyers can check on them, but they must do the job. That is what I thought. Let each party have its own lawyers, let those lawyers sometimes sit in and listen, let them meet and talk. The question is, for how many are the State going to pay?

MR KATJIUONGUA: If we say that each party will be at least entitled to one lawyer and should they so prefer, even to share lawyers or a lawyer, that they be entitled, then I think what my colleague here proposed that we should try to look for somebody who we feel is eminent, is qualified, who can possibly sit in here, who will follow the discussions here, so that when we arrive at some understanding about a certain technical point, he understands the context in which the ideas were exchanged. So that, when we ask this person later to go and draft something, he understands the environment in which a certain understanding was reached. I

think we should still be free to consult with whatever the lawyers might have outside this building, but inside here at some stage. This business of saying "let's jump over this one, we will come back to it later", sometimes that is too time-consuming. If we have somebody who is here and say we agree on this, he sees the essence of what we want and he simply puts that into technical legal language. Then that can be dealt with right away. So, somebody from the moon can drop here, who is accepted by all of us, and can sit here, especially when we are discussing certain technical matters. Then I think that will simplify our work. But outside I think the parties could be entitled to have somebody who can strengthen their arguments on certain positions.

MR HAMUTENYA: Mr Chairman, I agree with much of what was said by honourable Ruppel, honourable Mudge and honourable Katjiuongua. I would just like to slightly modify the very last proposal or the proposals by honourable Katjiuongua, that yes we should agree on that creature, that impartial judge or whatever, but then after we have gone through all the issues, we decide which ones we need redirect to the lawyers and for what reasons. So, at the end of this exercise, we will call that animal in and systematically brief him from the preamble to the last word, and say now we have gone through the whole document, these are the issues, tell us where we are going wrong. These are the issues we have difficulties with, the reasons were a, b and c, we want you now to go and look at all the issues. We give him a whole

section or two and we say you now go and report to us before the 15th January. Meanwhile we continue with our own caucusses, our own advisors and continue to improve on those issues, so that by the time we come here to brief that particular judge, I am only giving him areas where we want him to help us.

MR RUPPEL: If that amendment is a proposal, then I second it.

MR ANGULA: I listened to the views. Perhaps the problem is not that complicated. What is simply needed is a bit of hard work.

MR M GAROËB: On a point of order. I think at some point the Chair has to decide as to whether we have exhausted the issue, because I was about to be attracted to my colleague next to me suggested, but if we are going to reopen the discussion, I would probably be inspired to look at a different idea and it might take us back to... The chairman has to at some point summarise the consensus. You are a very democratic chairman, I appreciate it very much, but at some point the Chair has to sense the consensus of the House.

CHAIRMAN: Maybe I didn't sense it so far. Could you finish your statement? There is a proposal which has been seconded on the table. Do you have a counter-proposal?

MR ANGULA: We are debating whether each party should have lawyers. I think you said yes. How many? We have not decided how many. The mode of work of these lawyers, how are they going to work?

CHAIRMAN: The proposal on the table is this, that each party can have their own lawyers as they had it. How many, that is their business, but we are going to have one creature who will be called the lawyer - he may drop from heaven - who is going to sit in here and be briefed on the areas we have agreed on and disagreed on, and will be given instructions to go and draft in proper legal language those things and bring them before the 15th. That was the proposal on the table, seconded by Ruppel. So there is agreement that we will have our own not paid by the State.

MR ANGULA: But I want to know how are they to work.

CHAIRMAN: The point is this, some people are saying this is a political issue. We all had advisors, they were advising us and we come here and we debated the issues already for the last four days, having been advised by the lawyers from outside. But we still found some areas of disagreement, we referred it back to them again. Then we will come back with redrafts, but it is said that while we are going through this, we must decide, not the lawyers. We will decide on issues and when we have problems, first one lawyer that we are going to agree on, must sit in here. That is the first decision. And you will one day have a briefing session with that lawyer: We agreed on constitutional principles, on the Bill of Rights, please go and put them now in an acceptable form. He will go and do that and come back and report on the 15th January. But we as politicians will meet here and go over the whole document as we did in the past, with the advice of our lawyers we are re-

taining outside. They are not going to work together with us.

MR KATJIUONGUA: If the individual lawyers the parties will have will not be paid by the State - that is the understanding - why don't we get two people?

CHAIRMAN: There is now a concrete proposal, we are going to have two lawyers, not one. Agreed. Any other business? We have a main one now, our work programme. We have agreed to come tomorrow and each one of us is going to work out the areas of material dispute, so that we can discuss them and agree on what we are going to ask our lawyers outside and then also the time-frame. The first thing is to go over the whole document and do what we have been doing throughout. But we come back and organise ourselves where we are now. I think we basically mentioned things in a rush yesterday to finish all of them, but we didn't discuss the legislature at all. We didn't discuss the executive presidency at all. These are the main issues still outstanding to be discussed and finished politically here, like we did with the issue of fundamental rights. We can say we have now agreed and there is only a very, very minor disagreement on the executive presidency. We discuss that and agree and then we will ask the individual experts to draft what we understand should be in the paper, and then send it to our God-given lawyers to put it in its final context. Emergency powers, fundamental rights was also discussed. We said we must borrow from Rukoro's text. Regional or local government, we agreed in passing, but it

must be discussed. So, I propose that we come back and systematically mention the things, a kind of agenda that I have to draw up for consultations for tomorrow's meeting, so that we agree on discussing those things systematically.

MR MUDGE: May we make proposals now? Time is running out. I have an idea, for instance we have now reached consensus on most of the articles in the fundamental rights and the preamble. Those are things which falls into separate categories. Can't we already now appoint a subcommittee and say "you go and sit down and you work hard to sort out the differences in the preamble, marry them, the preamble and the fundamental rights," people who have some background. Mr Staby, for instance, has a lot of experience and background when it comes to fundamental rights, and we nominate people and say "work on that one." I have a problem with the one-man parties, that is a problem, but I am hundred percent sure we can reach an agreement on many of these issues. Then we carry on and establish another one which can work on the question of the executive and the legislature, just to get the thing going.

CHAIRMAN: How many can we identify and appoint committees on?

MR KATJIUONGUA: Mr Chairman, I am scared, are we giving the appearance of making progress without the substance of that progress being really visible? Therefore I tend to follow your proposal that we now we go home and tomorrow morning each party representative comes out with those issues he thinks are terribly important, which must be dis-

cussed and differences ironed out. Then we don't postpone issues which are controversial. We come to grips with them and once we have resolved them, the the other issues which if not of so much controversial nature, then those we can go step by step, to make it easy to identify and then we discuss them. Then later we can go step by step as you say.

DR AMATHILA: I think at the initial stage we sort of took a decision that we will not break up this committee into various committees. You find it very useful to operate on the basis that we have been operating and it would appear to me that the way we went about seems to have proved to be rather very useful. I don't have any reason to feel that failed in doing what we have done so far. It would appear to me that we were in a process, having decided that the one constitution submitted by Swapo was going to be the working document. We started systematically going either paragraph by paragraph or chapter by chapter, and we did not complete that exercise. The results so far up to the moment have proven very useful, because we identified not only the areas of material dispute, but also those areas in which we believe some attention was needed from the expert, and we have kept these ideas or portions in abeyance in order to refer this to the experts to help us sort out these problems. Now, I don't know, the proposal made by the Chairman at the moment, whether it will really help us in expediting the progress which seems to have proven very effective up to now.

MR KATJIUONGUA: When we meet tomorrow you should say "on the president, each party, what are your major problems with that section", then we go to the next one.

MR MUDGE: But we have done it already.

MR RUKORO: If you have done it, let's produce a first draft based on the discussions.

MR MUDGE: I want to accommodate Mr Katjiuongua, because in the spirit of co-operation I don't think we should try and just anything. But if I remember correctly, and I would hate the idea of going back and discussing the preamble and discussing the Bill of Fundamental Rights all over again, if I remember correctly, I think there is only one article, subarticle in the whole Bill of Fundamental Rights where we thought there should be more discussion. For the rest we have agreed on more or less everything, we deleted parts of sentences, and I think there is one that I want to discuss again, and I think Mr Pretorius has one. Let us take out those two and discuss it again, but to discuss the whole and identify new difference, I really think we have devoted a long time to this.

CHAIRMAN: We seem to be recording these things. Can the Secretary maybe tomorrow also give us what happened on Friday, so that we know how far we have gone, what has been agreed upon.

MR MUDGE: Mr Staby made a summary of that in detail.

MR STABY: I will have that available tomorrow.

MR RUPPEL: Mr Staby was not here Friday-afternoon.

MR BARNES: But we briefed him.

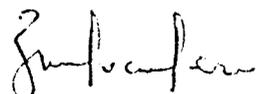
CHAIRMAN: Can we make progress now, please? We have agreed, all of us, that we go ahead and go on from where we have stopped. I also want a written record, because we have these things recorded. So, they can also give us what we have decided on.

MR STABY: I will produce those notes tomorrow-morning. We can go through them and augment them. We have made them from our point of view. There may be others who might wish to add to those notes, but I think we have a fairly full record.

CHAIRMAN: The topic is exhausted. We are going to bring those records tomorrow and we will go from where we have left off.

COMMITTEE ADJOURNS

CERTIFIED A TRUE TRANSCRIPTION OF THE PROCEEDINGS IN
THE CONSTITUENT COMMITTEE ON 12 DECEMBER 1989.



Z. M. VAN DER MERWE
TRANSCRIPTION SERVICES