THIS WEEK IN NAMIBIA
Week of January 7 - 14, 1990

(A weekly report filed by the Lawyers' Committee for Civil Rights Southern Africa Project staff in Namibia)

**Constitution Update.** An unofficial draft constitution was published in *The Namibian* today reflecting the input of three South African constitutional advisors, including Mr. Arthur Chaskalson, SC, acting on instructions from the Constituent Assembly's Standing Committee on Rules and Orders. The draft, scheduled for Committee and full Assembly consideration later this week, was leaked to the paper. While the document is provisional, many of the articles, including those relating to state of emergency powers, fundamental rights and freedoms, the powers of the president, the composition of the legislature and the administration of justice are believed to be in close to their final form.

After considerable internal and international objections to draft State of Emergency regulations providing for the derogation of fundamental rights in the interest of "national security," certain of these rights are now guaranteed by the constitution and cannot be abrogated under any circumstances. Furthermore, state of emergency laws "cease to have legal force" if not approved by the Assembly within fourteen days. In addition, the death penalty has been outlawed and the right to a fair trial enshrined. The provision for preventative detention, however, still stands, though the length of detention allowed before official review has been considerably shortened to 30 days. Upon review, such detention can be extended to a period of twelve months.

Earlier differences between SWAPO and most other parties regarding presidential power and the composition of the legislature have been resolved in favor of an Executive President (SWAPO's position) and a bi-cameral parliament (advocated by the DTA and most other smaller parties). The President is to be
elected to a five year term by a simple majority of the Assembly and can be impeached by a 2/3 vote by the same body. The parliament will consist of a National Assembly, elected by proportional representation, and a House of Review established by the President within five years of independence. The House of Review will have only review, investigative and reporting powers and no legislative authority.

Some observers commenting on earlier drafts criticized that judicial decision could be overridden, in certain circumstances, by acts of parliament. The current draft emphasizes an independent judiciary, subject only to the constitution and rule of law. Any dispute over the powers of parliament will be referred to a constitutional court which will have final say in deciding constitutional matters.

Despite these and other improvements, including new provisions for workers' rights, conscientious objection, affirmative action and equal pay for equal work, concern persists, mainly over the preventative detention provisions. Questions have also been raised regarding the possibility of detention without trial under the State of Emergency, the actual powers of the House of Review and the possible appointment of six non-voting additional National Assembly members. Consideration of the draft by the Standing Committee and full Assembly is still expected later this week.

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