THIS WEEK IN NAMIBIA
Week of February 2 - 9, 1990

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

1. Constitution Adopted: At 10:00 a.m., February 9, exactly eighty days after its first meeting on November 21, the Constituent Assembly adopted by consensus the Constitution for the Republic of Namibia. Under a banner stretching the length of the Tintepalast (the former seat of South Africa's Administrator General of Namibia), Constituent Assembly Chairman Hage Geingob recited the Constitution's preamble and presided over the document's adoption. Each party leader then made a formal statement, beginning with SWAPO President and Namibian President-elect Sam Nujoma.

Addressing the Chairman, the Administrator General, the Special Representative of the Secretary General, the Assembly members, the diplomatic corps, international observers and a large crowd of Namibians all gathered to witness the event, President Nujoma praised the Constitution as "one of the most important and memorable acts of self-determination." He said the Namibian people "have a constitution which is the product of their sovereign will and which embodies their wishes and aspirations." Above all, President Nujoma stressed that this "supreme law" of Namibia embodies a very comprehensive bill of human rights to protect the individual from possible abuse of power by organs of state... [which] should give our people full confidence in the future of our nation."

Despite these praises, President Nujoma stated that this constitution is "not a perfect document." Similar views were expressed by each of the party leaders. All, however, joined in general agreement on adopting the constitution, though without unanimous consent on all principles. The ACN, for example, objected to the association of apartheid with affirmative action (Article 23) because "it gives the impression that apartheid was the only cause of inequity in Namibia." The DTA expressed
continued dissatisfaction with the lengthy amount of time before regional and local elections are to be held and the National Council is to be formed (estimated at two and a half years), arguing that such elections should take place immediately. The UDF, while satisfied with the adoption of the 1982 Constitutional principles, and particularly the fundamental bill of rights (Chapter 3), maintained that the Assembly had failed to adequately address the issue of SWAPO detainees. NPP President Moses Katjiuングua praised the document because it "even protects those who don't agree with it, like Mr. de Wet of the ACN," but warned that this "contract must not be abused or betrayed."

The constitution was adopted following an announcement on Tuesday, February 6, that the Standing Committee had agreed that the final draft reflected the will of the assembly as expressed in the lengthy debate of the previous week. The full Assembly did not receive a copy of the final version of the document at that time, however, and it appears that some members did not ultimately receive one until the evening of February 8. Nonetheless, as noted above, no one expressed deep reservations concerning adoption.

2. **Important Changes:** As noted last week, constitutional debate in the Assembly centered mainly on preventative detention, fundamental human rights and freedoms, presidential power, the election of the second house and the procedures for constitutional amendment. The adopted constitution reportedly reflects all the mandated changes. The preventative detention clauses have been dropped, Chapter 3 has been entrenched against any amendment which "diminishes or detracts" from the fundamental human rights and freedoms defined there, the President must choose his Cabinet and Deputy Cabinet Ministers from within Parliament and many of his decisions are subject to a vote in one or both of the houses, transitional provisions guarantee a limited time span before the formation of the National Council and the constitution must be amended by two-thirds majority of both houses or, failing that, by a two-thirds majority vote in a national referendum.

Reportedly, however, some of these changes may have had unforeseen consequences. For example, in the section pertaining to arrests and detentions (Article 11), certain rights (e.g. to be brought before a magistrate in 48 hours) were not to apply to a) illegal immigrants, and b) those detained under preventative detention laws. The Assembly subsequently deleted the provisions pertaining to preventative detention (and with them the Advisory Board which would regularly review such detentions), but retained the reference to illegal immigrants. This change could leave illegal immigrants with little protection, save the right to consult a lawyer. Furthermore, after striking the preventative detention provisions from Article 11, the Standing Committee reportedly inserted a new, somewhat vague clause empowering
Parliament to make additional arrest and detention laws which are "in the interests of national sovereignty" and "acceptable in a democratic society." This insertion was never debated in the full Assembly. Whether the question of illegal immigrants has been addressed or whether the new arrest and detention clause appears in the adopted constitution is unclear, as the final version is not yet publicly available.

3. Constituent Assembly's Last Meeting: The last meeting of the Constituent Assembly is scheduled for 10:00 p.m. on March 20th, where they will elect the President of the Republic of Namibia. In preparation for that evening and the Independence Day celebrations, the Assembly announced formation of a national Steering Committee, chaired by Hage Geingob. With over 2,000 people expected to arrive in Namibia over the two-day period, the Committee has its work cut out for it and has already formed sub-committees on protocol, finance, transport and accomodation.

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