

# POLITICAL PERSPECTIVE

by Gwen Lister



I DEALT with the subject last week, but I am forced to go further and deal with it once again - namely the 'secrecy' that seems to prevail in all quarters of this country at present. I thought we had elected a Constituent Assembly to write a constitution for an independent Namibia; but in fact we have a Standing Committee to do so. It is obviously more convenient that it happens this way for the parties involved, since they are guaranteed 'secrecy' in this fashion, whereas public debating would perhaps take longer, but at least in the latter manner the public could keep itself informed. But the 'secrecy' phobia goes even further than this ....

REPORTERS trying to elicit United Nations comment on a news story last night, were told that after-hours numbers of UN personnel, including those in the press liaison division, are 'confidential' and cannot be released to either the public or the press. When told that it was a matter of some urgency, the spokesperson would not budge, but reiterated that they could be contacted in working hours.

Those of us who are targetted by right-wing elements, particularly with death threats and other obscene phone calls, can understand the UN concerns with personal security and right to privacy, but at the same time believe that some of them must be available after hours.

Also this week, a reporter from this newspaper approached the British Mission in order to photograph the 'middle-ranking' military men who arrived earlier in the week at the invitation of Swapo to offer assistance on the formation of a future independent army. Quite obviously this is a news story worth carrying, but our reporter was told by an official at the mission that for 'security' reasons, the officers could not be photographed until shortly before their departure from Namibia due to 'security' considerations.

Perhaps it is mere wishful thinking and idealism on my part, to want a more 'open' society where there are no secrets because there is no need for them.

There are many more examples. We realise that as members of the Fourth Estate we have no less or no more rights than any other citizen of this country, and that is the way it should be. But at the same time an atmosphere of openness would be so much more conducive to accurate reporting and in the interests of a free flow of information in Namibia.

There are many copies of the draft constitution floating around, particularly abroad, it seems, and yet locally, no one is being informed about matters crucial to their future.

Groups outside the country, the latest of which is Amnesty International, have access to the draft independence constitution, and in fact have already reacted to it in letters to the Chairman of the Constituent Assembly, and yet similar debate within Namibia, and among Namibians, appears to be subtly discouraged. In many instances, the press are accomodating to the whims of the rulers.

We had a largely sycophantic press in the days of South African rule - media which kept silent because the government wanted them to be (and largely because they wanted to be silent themselves!) and ignored largescale atrocities and human rights violations at the hands of the occupying forces. In an atmosphere such as this, where the majority of the press corps here, voluntarily silence themselves, is it any surprise therefore, that the government of the day wants an obedient media?

I personally have great hope for Namibia in the future. I believe that the party supported by the majority of the people of Namibia, namely Swapo, was elected in 435-supervised elections; I believe too, that their intentions towards Namibia and Namibians are good, and that they have learned enough from the oppressive years under South African rule, not to impose a similar system.

But they, as the leaders, would be doing the country and its people a great service if they would take the lead in opening up democratic ways for the people of this country. The majority are silent because they have been denied democratic rights for too many years, and they have become used to their own silence. They must be told that they have a voice, so that they learn how to use it for the good of the country as a whole. Only the majority party can encourage them in the ways of democracy.

# ON THE CONSTITUTION

AN OPINION PIECE BY JOSEPH DIESCHO

*"WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace; and whereas the said rights include the right of the individual to life, liberty and to the pursuit of happiness, regardless of race, colour, ethnic origin, sex or religion, creed or social or economic status; and whereas the said rights are most effectively maintained and protected in a democratic society, where the government is responsible to freely elected representatives of the people, operating under a sovereign constitution and a free and independent judiciary ... whereas the people of Namibia have resolved to constitute Namibia into a sovereign, secular, democratic Republic and to secure to all its citizens ... now therefore, we the people of Namibia declare this day, the following as the fundamental law of our sovereign and independent Republic"*

SO intones the preamble of Namibia's draft constitution, a solemn declaration that would make our forbears Witbooi, Marengo, Maharero and Mandume dance with joy. The first Constituent Assembly deserves to be applauded for the spirit with which it has commenced the arduous task of hammering out a working document.

The whole Namibian people have their eyes fixed on the leaders sitting in the chambers of the Tintenpalast assembly with the deep hope that something will come out which will, once and for all, determine the course of Namibia's history and the relationships we will all have with one another as a people and with the government and government officials, now and in the future. So far we have not been let down.

In the United States, I read a story not too long ago about one of the framers of the US constitution. After the so-called founding fathers completed the task of writing the constitution, one of the delegates, Benjamin Franklin, upon leaving the hall, was confronted by a woman who asked him: "What kind of government have you given us, Mr Franklin?" To which he replied, "A Republic, madam, if you can keep it".

The point here is that the time has not yet come to celebrate our independence in Namibia. We must remain vigilant and keep our eyes on the prize as our newly elected leaders work to fashion a document that will navigate us towards nationhood. We must walk together with our leaders on this now treacherous road and not be afraid to question ourselves and each other. We must continually ask what government they are giving us and how we plan to keep it. We would err to surrender our role in the struggle for liberation from South Africa and silently allow our current leaders to present us with a finished constitution without our input.

What is a constitution? What we have seen so far has been mechanical explanations and definitions of how a constitution is supposed to work; what we need to find is a document that reflects our historical specificities and sociological particularities in contradiction to that which has been discussed by academics and expert pundits of late. We need to create a constitution that reflects our cultural values, history and traditions, one that is organic to our own experiences. We can accept a template, a model from others' experiences, but we must not be afraid to mould it to suit our unique Namibian personality. The point is not to reinvent the wheel, but to adjust the wheel to suit our experiences and needs.

A constitution is a reference point, a dictionary, a biography. Our constitution should be an expression of what it is to be a post-colonial Namibian, to have fought for so many years against European invasion, domination, exploitation and political exclusion. A constitution that does not relate directly to a peoples' needs is senseless. A constitution cannot be borrowed. It is noteworthy that non-Namibians have been hired to work a large part of the draft constitution. One cannot help but question the degree of commitment the members



Joseph Diescho

of the Constituent Assembly are making to it, or how long it will take for the constitution to become inscribed in the hearts of the Namibian people. Common sense has it that something that has not been created by oneself for oneself, cannot generate a commitment necessary to maintain it. Why can't the people we elected to write a constitution do what they promised they would do; it would appear that the central preoccupation of the Assembly is to write and ratify a constitution and declare independence immediately. While we all share their impatient to achieve independence as quickly as possible, if we don't take the necessary time to work with the proposed documents so that it reflects our lives, we will pay for it in the long run.

It is sad that we have not yet heard an adequate explanation for why there should not be nationwide popular participation in the ratification of a constitution. To my mind, the pundits and others with voices in our communities have neglected to raise the idea of a plebiscite or some form of referendum which would serve both to educate the people of Namibia as a whole about the new government and their relationship to it, as well as to procure their direct support and commitment to it.

The process of popular participation enables people to formulate and act upon their own positions relative to and critical of the government they have chosen. Needless to say that those of us who believe to have the right to speak for others are in danger of creating a situation that we have been struggling against for so long. Just as others have spoken for us without our consent in the past, we might in the future find ourselves doing exactly what we have been averse to for so long, namely, speaking and deciding about and for others. I have yet to hear the good reasons - and there may very well be many - why there should not be a national "roll-call" on the constitution. After all, a constitution

is a new thing for all of us in Namibia and we cannot proceed into a new era assuming that, just because the leaders writing it have been elected, whatever they decide is necessarily the vox populi.

In all fairness, there seems to be no genuine attempt on the part of the Constituent Assembly to involve the public in the process of finalising the constitution. It seems that many people believe that because the Assembly was neglected, the era of disagreement is over and that we no longer have to remain vigilant. I have heard very plausible rationalisations and dismissals of a public debate. They say it would be too expensive and time consuming. I am not convinced that independence attained so quickly would necessarily ameliorate the problems of nation-building, self-reliance and national security. The call by the National Union of Namibian Workers for public comments on the constitution before it is ratified should not be ignored.

It is better to set out in the same way we plan to continue, for if we forfeit our chance to create and encourage a true participatory system of governance now, we may forfeit the opportunity for a long time to come.

Without the approval and the participation of the people, no constitution can stand for long. For example, the Nicaraguans could never have withstood the US aggression, political blackmailing and continuous threats for so long as they have done if the people had not participated in the development of their constitution. They were willing to withstand further hardship and destruction at the hands of the US because they felt they had something that was truly theirs to defend. A battle started well is half won, they say.

**NEXT WEEK: Analysing the draft constitution - the second part of the opinion piece.**

OPINION....OPINION...OPINION....OPINION...OPINION....OPINION...OPINION....OPINION...OPINION....OPINION...OPINION....OPINION...OPINION

IF the question of how many chambers of government were put to the people, what would we decide? Two chambers, a senate and a house of representatives, as the United States has? Or a unicameral structure where all legislative decisions are made in one body?

The members of the Assembly have debated this issue and it seems as though they have compromised by providing for a bicameral structure. However, the house of review, the second house, will not function for the first five years. Two houses are necessary for checks and balances in the normal intercourse of government. Two houses guard against concentrated power and help to guarantee its dispersal, so that individuals or corporations with special interests cannot influence lawmakers unnoticed: before a law can be ratified it must pass from one house to the next. It is therefore difficult to understand why the Constituent Assembly has put the second chamber on hold for five years, especially during this crucial time when we can expect continuous refinements and experimentation with the process of nation-building in the creation of the new state.

Presumably, after the first term, there will be some personnel changes in the government. Why should the new lawmakers inherit the problem of creating a system for checks and balances? During this crucial time we need a structure that is responsive to our needs, while at the same time not so pliable that it yields to power interests.

**CUMBERSOME JUDICIARY**

As far as the judicial branch of government is concerned, one cannot overestimate the importance of not only the existence of legal courts, but their autonomy from the legislative and executive branches. The draft constitution seeks to guarantee the independence of the judiciary by providing mechanisms to protect the sanctity of the constitution and the law. What is not clear, however, is the *raison d'etre* of the division between the Supreme Court structure as provided for in Article 87(3)(a). This article provides for a General Division, an Appellate Division and a Constitutional Division.

So many divisions is cumbersome, complicating judicial procedures in a way that will only serve to impede and not facilitate constitutional justice. In other words, the branches of the Supreme Court as provided for in the proposed constitution serves no useful purpose.

The Constitutional Division of the Supreme Court could be used by the executive to encroach on the independence of the judiciary. This division is presided over by the "President of the Constitutional Court" (sic) and the Division reigns supreme over the entire court structure. The reading of this section of the constitution gives the president of the Constitutional Division enormous power to direct the conduct of the entire Supreme Court. Those drafting the constitution assume that there is a distinction between constitutional and unconstitutional issues and that

# ON THE CONSTITUTION

Warnings about cumbersome judiciary and checks and balances

THIS is the second part of an opinion by Joseph Diescho on the draft independence constitution for Namibia. The first part was published in Friday's edition.

the Constitutional Division will deal with the former while the other two courts will be concerned with the latter. But every conflict that arises between parties involves constitutional rights. If the president of the Constitutional Division is given the power to override the sections of the Supreme Court by deciding whether an issue is constitutional or not, the subversion of justice could become possible. On the fact of it, the Constitutional Division, in standing beyond the reach of the other two branches of the Supreme Court, stands above the law, by virtue of its power to overrule the General Division and even the Appellate.

**BUILT-IN POLITICAL FUNCTION**

It would appear that this body has a built-in political function since it can adjudicate between the executive and the legislature. In other words, the single person presiding over this powerful body has the power to overrule the legislature, the peoples only direct line to government. The very fact that the Constitutional Division may also hear and adjudicate ... disputes or uncertainties brought to it by the Attorney General, the President of the Republic, a Minister of State, the Ombudsman or an aggrieved citizen ... undercuts other branches and places the Supreme Court in competition with the political arm of government. The Supreme Court must stand alone and its members must strive towards an objective interpretation of the Constitution. This is not to say that the judiciary can be value-free. All branches of government are an embodiment and reflection of relationships within society along race, ethnic, class, sex and religious lines. The traditional role of the court is to interpret the law and not to make it. It appears as if by institutionalising a body such as the Constitutional Division, the executive intends to make laws through the courts.

While the constitution asserts itself on freedom of expression, and free media, it falls short of providing for the necessity of a press that is independent from government and/or corporate control. While governments of many newly-independent countries claim to provide for freedom of the press, it is not enough to protect the press from SA domination. It must also be given the space to operate unfettered from Namibian

government control in order to provide space for the people to disagree with those in power and express their opinions, feelings and aspirations without fear of reprisal. Freedom of the press is included in the Universal Declaration of Human Rights (Article 19) which was the basis of the 1982 Constitutional Principles. The Constituent Assembly adopted these principles on its first day in session but failed to include the broadest interpretation of freedom of expression.

**THE SA EXPERIENCE**

One sees the extent to which the SA experience has a direct bearing on the making of the Namibian constitution. In South Africa, each time the court interprets the law in a way that is politically repugnant to the racist lawmakers in the parliament, the legislators simply promulgate a new law in response to the court's ruling. Very often with retroactive force. For example, the Terrorism Act of 1967 (which was passed as an amendment to the 1952 Suppression of Communism Act) was passed specifically to convict Namibian freedom fighters including ya Toivo, Tuhadeleni, and others. The danger for Namibia insofar as this Supreme Court is concerned, is that the executive could manipulate the constitutional division to interpret and adjudicate the law in a way that would be congruent with its political desires. Unlike in South

Africa, where the parliament is reactive to the court, the Namibian parliament wishes to anticipate the political exigencies of the other branches and institutionalise a mechanism by which the court will have an organic relationship with the lawmaking body. In this way, the court becomes politically charged and prejudicial to rights that traditional courts zealously protect. Simply put, the danger is that the executive can infiltrate the law through the Constitutional Division.

One cannot help but wonder how the Supreme Court structure with adjudicate traditional disputes that do not fall within the ambit of western law. If a dispute emerges within a particular tribe over witchcraft or an arranged customary union, for example, the magistrates court would not have the wherewithal to preside and resolve such disputes to the emotional and existential satisfaction of the litigants. If the writers of the constitution had been in dialogue with the Namibian people, they would have recognised the need for including traditional court structures in the national judiciary.

**ON LANGUAGE PROBLEMS**

On the language question, the constitution recognises English as the only official language, although it does not prohibit use of other languages in schools and/or governments. It is unfortunate that the constitution is not firm enough on the necessary

promotion of indigenous Namibian languages. The reading of the article makes it incumbent upon those who do not speak English to petition for the use of their language in their schools and to convince the authorities as to why a language other than English should be used. This exhibits insensitivity on the part of the elite legislators who have adopted the use of English as their own and as a means to power. All languages should be official, with the proviso that English be the national language, and the language spoken by the majority in a particular region should accompany English in schools, business and government.

It is disappointing that the government limits itself to political issues at the expense of economic justice with respect to land. One would have expected to have a whole section devoted to reform and redistribution. For example, given Namibia's geographical contrasts - in the south there are large tracts of arid desert whereas the north has been blessed with rivers and rich soil - it would be conceivable that many people in the south would want to relocate to the north. According to the constitution, an individual's right to land he or she has been living on for generations is ambiguous, the constitution states that anyone has the right to own, sell and bequeath movable or immovable property, provided the contractor is Namibia, but it makes no allowance for the many Namibians who own no title to their land.

For example, the family who has lived for generations on arable land in the north no longer faces the danger of losing its land to the white government. Instead the danger could come from fellow Namibians with money, education, access to government and a desire to relocate to better soil.

This could become a source of tribal or ethnic conflict. Namibia is an African country and faces African realities that are not respected in the constitution. This is but one example of the dangers of imposing a constitution on the people, rather than allowing the people to participate in the creation thereof. Namibians have not

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The following people should report to Mr Joseph S. Nangolo at CCN/RRR, 8 Mont Blanc Street, Windhoek, on 22 January 1990, at 14h30 (2.30p.m)

1. Enatha Andreas
2. Alfeus Namushinga
3. Aloisius Shechama
4. Gabriel Niinkoti
5. Hosea Kamuwa
6. John Kwedhi
7. Joseph Thomas
8. Michael Hamukoto
9. Nicky Kwedhi
10. Paul Limene
11. Anna Albino
12. Foibe Makanda
13. Hilda Ampenya
14. Hilja Shuudeni
15. Lucia Iyambo
16. Asser Shigwedha

17. Benard John
18. Fares Ambunda
19. Gabriel Hamunjala
20. Sam Shanghala
21. Leonard Kadhila
22. Nahas Kadjala
23. Peter Nampadhi
24. Emilia Shindove
25. Hilda Eino
26. Helen Indongo
27. Indileni Shindove
28. Kaarina Shinana
29. Lalja Ndjelekani
30. Lavinia Silas
31. Liina David
32. Maria Nandjebo

33. Regina Shilengitha
34. Thresia Theophelus
35. Paul Shipale
36. Maria Steven
37. Herman Hilunduta
38. Ester Shiwaya
39. Stanley Shikwamdi
40. Bertha Angula
41. Ismael Onesmus
42. Joseph Lemesius
43. Kavungo Veiko
44. George Kapa
45. Kareg Matheus
46. Emilia Mathias
47. Anna Herman

They should come with their Form VI school records. The date and time is fixed and they should not miss that appointment.

**ANTIQUES**

Works of Art (paintings, etchings, etc.)  
 Postcards of old South West Africa, unusual potteryware and gifts  
 Karakul carpets and wall hangings  
 Collectables of all sorts  
 Malachite jewellery from Zaire  
 Bric-a-Brac  
 Solid wooden furniture  
 And lots more!!!

Drawings welcome

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