

THE CHAIRMAN OF THE CONSTITUENT ASSEMBLY

DEAR SIR

PROPOSALS ON A CONSTITUTION FOR THE REPUBLIC OF NAMIBIA

Congratulations on having had the strength and conviction to do away with the Sections concerning Detention without Trial. We are aware of the deep wounds which such legislation under South African rule has caused in the past. The deletion from the constitution thereof, does, however, not mean that these laws cannot be introduced in the future, even though it would be necessary for the legislature to satisfy itself that the Government will be prepared to subject itself to the same limitations as are presently set out in article 11.

CHAPTER 7:

In terms of Article 45 the members of the National Assembly are the representatives of all the people of Namibia. In terms of article 48 such members shall cease to be members of the National Assembly if the political party which had nominated them decides to expel such members from that political party. In our submission, article 48 contradicts article 45 and we suggest that a duly elected member of the National Assembly remains a member of the National Assembly until such time as he is removed by the electorate, alternatively, by other procedures made provision for in the Constitution, for example, in the case of dishonesty.

The legislature is appointed with a view to passing laws which have been debated within the National Assembly and which therefore should portray the will of the people. It is therefore unacceptable to us that a President should be entitled to withhold signature of a proposed law as is presently made provision for. In our opinion this would constitute undue interference in the affairs of the legislature and everything possible should be done to remedy the situation by not granting to the President such all-encompassing powers.

This section as also the section referring to the appoint of judges by the President on the recommendation of the Judicial Service Commission blurs the division between the Executive, Legislative and the Judiciary. Were these provisions to be left as they are, we foresee serious conflicts arising from this. Furthermore, the National Assembly should not be dissolved and its life should not be subject to the whim of the President.

The Constituent Assembly, it is submitted, should decide whether it wishes to have a clear cut separation between the various powers, ie. the Executive, Legislative and Judicative, and if it does not want this separation, it should not pretend otherwise. In terms of Article 62, the National Assembly is the principle legislative authority and shall have the power to promulgate and repeal laws. This authority, it is submitted, should not be tampered with.

As has been stated above, it is to us unacceptable for the President to interfere with the affairs of the Legislature. In the event of any Namibian being of the opinion that a law proposed to be passed by the Legislature is in conflict with the Constitution, it should be the right of any Namibian to have a Court of Law pronounce upon its validity. This should not be the function of the President.

As it is presently stated, this whole Chapter and therefore the powers of the Legislature, are subject to the will of the President and serious consideration should be given to amending this Chapter.

CHAPTER 9:

We have already aired our views on the appointment of judges and wish to repeat our criticisms of the draft Constitution insofar as it relates to the appointment and removal of

judges from office. We are of the opinion that the same safeguard for the appointment and removal of an Auditor General, as set out in article 125, should apply to judges. One only has to look at what happened in the Republic of South Africa with the appointment of Judges, to see what effect it can have on the administration of justice and interpretation of laws. We should therefore learn from mistakes which have been made by others and not repeat them ourselves.

It is suggested that judges too be appointed and removed by the President on the recommendation of the Judicial Service Commission and with the approval of the National Assembly. Were this suggestion to be accepted there would be public debate concerning appointments and removals in which members of the public could be involved.

The powers and functions of the Attorney General are, we submit, too wide and should be reviewed.

CHAPTER 10:

The appointment of an ombudsman is welcome. The powers of the Ombudsman, we however submit, have not been clearly defined. Here again we have learned from experience than an Ombudsman without power is not worth appointing.

CHAPTER 14:

The Inspector-General of the Police shall have the power in terms of the Constitution to make suitable appointments to the police force, and also to discipline the police force and to ensure its efficient administration. A person with such powers should not be appointed and/or removed by the President alone, as is also the case with the appointment and removal of the Commanding-General of the Defence Force.

CHAPTER 15:

The fact that income from Namibians will be used for the benefit of all Namibians and not only for the ethnic group to which they belong is to be welcomed, and it is recommended that a Government as soon as it is elected, should make sure that monies presently being expended for the benefit of certain ethnic groups only, be stopped.

CHAPTER 17:

We understand that article 127 has been amended and we favour such an amendment.

We have in principle, no objection to the appointment of a strong President, and we maintain that the powers given to the President within the Constitution make him a powerful person. It is, however, unwise, we submit, to grant virtually unfettered powers to the President. No one person is so perfect as to be able to exercise such powers in the interests of all Namibians without being influenced by personal interest and convictions. In fact, the Constituent Assembly by conferring such powers on a future President, are expecting superhuman qualities from that person.

Yours faithfully

P.F. KOEP
CHAIRMAN on behalf of the Executive of NPP 435.