Creating the Namibian Constitution

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A. Introduction

Unlike most "first" constitutions of newly independent countries, the Constitution of the Republic of Namibia was formulated not as merely an incidental part of the independence process, but as an integral and essential component thereof, since the collaboration of some of the essential participants in the process, in particular South Africa and the Namibian "Internal Parties", was predicated on the adoption of a constitution with certain agreed features and by certain agreed means.

For the first time, the constitution of a newly independent State was formulated and brought into force as part of an international process, rather than either as a unilateral domestic act or, as happened more frequently in the course of decolonization, by a legislative act of the former metropolitan power. The constitution-creating process, once formally launched, proceeded with unprecedented speed and smoothness.

The Constitution contains exceptionally far-reaching and generous human rights provisions, distinguished not only by their scope but also by the firmness with which they are embedded therein.

B. The Role of Constitution-Making in the Independence Process

South Africa's refusal, during many decades, to relinquish its hold on South West Africa (SWA), originally mandated to it by the League of Nations, was due to many reasons, the relative importance of which changed over time, but undoubtedly one of the leading and last objections was the fear of abandoning those South Africans who had established them-

1 Der Verfasser hat als UNO-Experte an den Verfassungsberatungen mitgewirkt.

selves in the Territory to an independent country that would almost surely be ruled by its native majority and in particular to the Owambo-dominated South West Africa People's Organization (SWAPO). To some extent this concern also extended to the other Whites in the Territory, and to Whites in the Territory, and to the other Coloured and Native groups that had politically allied themselves with them. Consequently, in order to induce the South African government to allow Namibia independence it was necessary for the world community, aside from exercising various diplomatic and economic pressures, to convince the Government that those for whom it felt politically responsible would be safe in an independent State.

South Africa's own preference, and that of many of the Whites in Namibia, would have been for a solution along the lines of the apartheid system prevailing in South Africa itself - but that was unlikely to be feasible in the late 20th Century, especially in light of the small percentage of Whites in the Territory. It did, however, introduce an alternative, milder version of that system in Namibia, by creating a very weak central government and leaving most important governmental functions, such as schooling, medical care, agricultural assistance, etc. to 10 ethnically constituted "Second Tier Authorities", of which the White one was the only really prosperous, effective and self-governing one, while most of the others could at best maintain minimal services from their own revenues and sparse subsidies from the central regime[2]; it soon became clear that this system was not acceptable to the majority of the population and could not be maintained in an independent country. Finally, even a solution along the lines of that negotiated by the United Kingdom for post-UDI Southern Rhodesia/Zimbabwe: a Native-majority-ruled country, but with some special constitutional privileges for the remaining Whites - did not prove to be particularly successful there and, in any event, required the maintenance of at least vestiges of ethnic distinctions that were entirely unacceptable to the majority of Namibians represented by SWAPO.

Consequently, South Africa would have to be induced to relinquish its hold on Namibia on the basis of a different type of guarantee: an assuredly democratic system established by a strong constitution, which would also provide for a high level of human rights, protecting both persons and property, regardless of color. The recognition that the solution for Namibian independence would have to be along these lines did not come quickly or easily, and once proposed did not immediately achieve general approval - but gradually it did commend itself to more and more of the responsible leaders. It probably first found formal expression in the wake of the failed all-party conference convened in Geneva in January 1981[3] in an effort to reinvigorate the Resolution 435 process, which had started with high

2 SWA Representative Authorities Proclamation (AG.8 of 1980).

3 See *M. Wiechers*, Namibia: The 1982 Constitutional Principles and Their Legal Significance, South African Yearbook of International Law, vol. 15 (1990), p. 1 at pp. 5-6, crediting a proposal

promise in 1978 but then almost immediately ground to a halt because of South African insistence on conducting - necessarily unsupervised - elections by the end of that year.

In any event, the Western Contact Group managed, by 1982, to convince all the affected parties, including both the internal political parties in Namibia, and even SWAPO, which was initially reluctant to constrain in any way the Constituent Assembly that was to be elected under UN supervision, of the merits and indeed the necessity of a set of pre-agreed Constitutional Principles (CPs). As reported to the Security Council, these Principles consisted of several distinct parts: a set of basic rules that would govern the election of the Constituent Assembly; a requirement that the Assembly would adopt the constitution as a whole by an absolute two-thirds majority; and a catalogue of substantive principles for the constitution itself, including rules that would ensure the pre-eminence and stability of that instrument, rules for establishing a sound and democratic tripartite government, and a list of civil and political rights (based on the 1948 Universal Declaration of Human Rights - UDHR) that would have to be included in the constitution.[4]

Though as an informal understanding among entities of very different legal character, the CPs initially lacked a firm legal standing, they belatedly achieved that on the eve of the UNTAG deployment by their inclusion by the Secretary-General in a report, later approved by the Security Council, listing the legal elements governing the Resolution 435 Process.[5] However, even earlier, they had evidently informed the constitution-drafting process in which the Namibian Internal Parties engaged during the mid-1980s.

In a somewhat grotesque manoeuvre, the SWA Administrator-General (AG) attempted to include the CPs, in paraphrased form, in the legislation he had drafted for the establishment and functioning of the Constituent Assembly.[6] However, as that legislation had to be approved by the Secretary-General's Special Representative, the head of UNTAG, the AG was induced to omit almost all those provisions, when it was pointed out that neither the Namibian people nor the world community would accept the substantive governance of any aspect of the work of the Constituent Assembly by South African legislation (i.e., an AG's Proclamation); only the two-thirds requirement for adopting the constitution as a whole survived in the final legislation.[7] However, as the AG insisted, purportedly on behalf of the Internal Parties, that some way had to be found to guarantee that the Assembly would

for a "Declaration of Intent" appearing in a post-conference report b J.S. Kirkpatrick, Chairman of the Federal Party of Namibia.

4 S/15287, Annex.

5 S/29412, para. 35, approved by S/RES/632 (1989).

6 Draft Constituent Assembly Proclamation, General Notice No. 91 of 1989, sect. 2(2), SWA Official Gazette No. 5755 (21 July 1989).

7 Constituent Assembly Proclamation (AG.62 of 1989), sect. 2(1)(b), SWA Official Gazette No. 5854 (6 Nov. 1989).

conform of the CPs, the Special Representative agreed that he would monitor the procedures and work of the Assembly to make certain that the CPs were not disregarded - and would keep the UN Secretary-General informed, who in turn would inform the Security Council.[8] Though the AG accepted this solution, he still sought to make assurance doubly sure by proposing that all the parties participating in the election to the Constituent Assembly sign a pledge to abide by the CPs; even though no party raised any objection in principle, no agreement could be reached on the wording of such a pledge, and that effort was abandoned shortly before the election.

True to his undertaking, the Special Representative sent a letter formally calling the attention of the Constituent Assembly's Chairman to the CPs, as soon as the latter was elected at the first meeting of the new body. However, even before the Assembly could be informed of this communication, SWAPO moved that "the 1982 constitutional principles be adopted as a framework to draw up a constitution for South West Africa/Namibia" - a motion adopted by acclamation. That this was not a mere formality appears from the further proceedings of the Assembly, in which the CPs were frequently referred to and set as the standard against which controversial provisions were judged. Though UNTAG did keep monitoring the process, there were only a few occasions when it privately advised the leadership of the Assembly that certain provisions under consideration raised problems of conformity with the CPs, and after the adoption of the Constitution the Secretary-General in a report to the Security Council demonstrated in detail how every requirement of the CPs was amply met by the new instrument.[9]

Thus the formulation of the Namibian Constitution, though clearly the work of elected representatives of the Namibian people, was informed by a set of principles that were internationally formulated in order to satisfy the concerns of the former metropolitan power and of the segment of the colonial population it was especially seeking to protect.

C. Formulating the Constitution

Though the process of writing the Namibian Constitution formally started with the convening of the Constituent Assembly on 22 November 1989 and was completed with the adoption of that instrument just 80 days later on 9 Frebruary 1990, there was a proloque and a short postlude, both of which had some influence on the ultimate product.

8 Exchange of letters of 3 November 1989, reproduced in General Notice AG.184, SWA Official Gazette No. 5855 (6 Nov. 1989).

9 S/20967/Add.2, Annex II.

As already mentioned, South Africa had insisted on conducting unsupervised elections in 1978 which resulted both in structuring the parties that participated therein (the Internal Parties, as distinguished from SWAPO) and in an intermittent series of SWA quasi-governments. In particular, in 1983 six of the Internal Parties established a Multi-Party Conference which the following year adopted a Charter of Fundamental Rights and Objectives that clearly took account of the CPs - in whose formulation these Parties had collaborated. The South African government then included this Charter in a constitutional proclamation, which created an interim transitional government, including a Namibian National Assembly.[10] That Assembly in 1985 established a Constitutional Council, with the representatives of 18 Internal Parties under a South African justice, V.G. Hiemstra. In 1987 that Council, or rather its Chairman, produced a draft constitution, which again took account of the CPs; however, four of the 18 parties rejected the draft and the South African government never acted on it, the exercise then being overtaken by the external events that made it possible finally to proceed with the Resolution 435 Process.

Although the 1989 UNTAG-supervised and controlled election was for the members of the Constituent Assembly, none of the parties presented to the voters complete drafts of the type of instrument that they advocated, though the broad outlines of and the essential differences between their respective proposals were generally understood. The outcome of the election, in which ten parties or alliances of parties participated, was largely as expected by most neutral observers: SWAPO won a convincing victory, with 57 % of the vote and 41 seats in the 72-member Assembly; DTA came next, with about half the votes and 21 seats; five other parties and alliances shared the remaining 10 seats. No logical combination of these parties could command 48 votes, the two-thirds that was required under both the CPs and the Constituent Assembly Proclamation to adopt the constitution as a whole. Consequently it was clear that considerable negotiation and compromising would be necessary, and it was by no means clear at that stage how long it would take to resolve the wide differences known to be prevailing among the parties elected to the Assembly. Though UNTAG was nominally budgeted until 31 March 1990, the Security Council and the General Assembly could and it was hoped would extend its mandate of the duration of the Constituent Assembly's work required this - and many thought that an extension until at least the summer sould be necessary.

To everyone's surprise, the Assembly convened in a guardedly polite, almost friendly atmosphere, and immediately produced its first sensation: the approval by acclamation of the CPs, on a SWAPO motion. Within a few days a committee unanimously reported a set of rules of procedure (evidently abstracted from those of the previous internal National Assembly, which SWAPO and the UN had loudly condemned a few years earlier), which

10 South West Africa Legislative and Executive Authority Proclamation, 1985 (South African Proclamation R. 101 (1985)).

were adopted by consensus.[11] After a brief, sharp exchange of views as to the method of proceeding with work on the constitution (SWAPO preferring a largely closed process while DTA and some of the other parties a more open one), each of the parties was allowed to make a public statement of its views as to the constitution and to present, by 6 December, its written proposals to a 21-member all-party Standing Committee. Three parties (SWAPO, DTA and ACN) presented complete draft instruments, while each of the others presented outlines or sets of principles; the DTA draft was almost identical to the 1987 "Hiemstra" draft, and the other two had clearly been influenced by that text, as appears both from their structure and some of their provisions. It seems clear that the later negotiations were facilitated by this common derivations.

The Standing Committee immediately started its work, and it is remarkable that in spite of its all-party nature and the regular reports that the Committee members made to their parliamentary colleagues, almost nothing of its proceedings leaked to the press (most of which was closely associated with one party or another). Nor were the drafts and other written submissions of the parties published or formally circulated to all members of the Assembly. Quite likely, this close-mouthedness faciliated the work of the Committee which within one week was able to report to the Assembly that it had decided by consensus to take the SWAPO draft as the basis of its work and that it had reached broad agreement on most provisions, with only two important areas requiring serious further deliberations: the role of the President and the composition of the legislature. The Committee received a mandate to continue its work and another week later, on 20 December, was able to report that it had "succeeded to resolve all remaining substantive issues in principle, subject only to technical and minor further amendments and discussions". It was authorized to charge three South African jurists with preparing a modification of the SWAPO draft to reflect the agreements reached, and asked to report soon after the holidays.

By 6 January 1990 the three jurists did present a complete draft to the Standing Committee. Although the latter had hoped to report out an agreed text to the Constituent Assembly by the end of that week, it actually took until 25 June to prepare, in joint work of the Committee and the jurists, a new draft, which was on that day tabled in the Assembly. Though that draft was available to the members of the Assembly, it was not published, and only one newspaper printed reasonably extensive excerpts and paraphrases on which some public debate could be based.

11 It is interesting to note that "consensus" was not a method of decision-taking foreseen in the rules of procedure or in the Constituent Assembly Proclamation. It evidently reflected instead the preference of the SWAPO leadership, including the elected Chairman of the National Assembly, acquired during their lengthy exiles and extensive experience with UN proceedings. Ultimately even the Constitution was formally adopted by consensus, instead of by the qualified majority so carefully inserted into the CPs and the Constituent Assembly Proclamation.

The Chairman had hoped that the Assembly would give only pro forma consideration to the new draft and send it back for final polishing to a smaller legal committee, but several parties insisted on a provision-by-provision debate, which was accomplished in just one week (29 January-2 February). Although evidently not every clause was discussed, many provisions, both structural and substantive ones, were scrutinized, and a fair number of significant changes were made in response to initiatives from the floor. It should be understood that these debates were generally conducted in terms of ideas and principles rather than words, and only rarely were actual texts approved; for the most part the Chairman simply terminated the debate when he considered an issue sufficiently ventilated, and left it to the jurists to draft the necessary language. At the end of the debate, it was announced that a new draft would be available over the weekend, and that the Constitution would be adopted on 9 February); thereafter a professional editor would complete the polishing of the text.

Unsurprisingly, the jurists were not able to make the extensive but somewhat indefinite changes that had been agreed to and to present a new draft just four days hence, and indeed, no new text was available even on the day of its adoption. Nevertheless, the members of the Assembly, evidently trusting their leaders, were content to adopt the Constitution of the Republic of Namibia, by consensus, in a solemn ceremony, during which the head of each parliamentary party presented his views as to the instrument just adopted - for the most part congratulatory, though occasionally cautionary or mildly regretful. Thereupon, the process of editing the already formally adopted text began - a process that ultimately took some five weeks, because of the need to extensively improve the originally hastily prepared drafts while constrained by the fact that the instrument had already been adopted and could therefore not be greatly changed. At the last stage, the changes suggested by jurists and editors behind the scenes were briefly vetted by a small all-party drafting committee appointed by the Chairman of the Assembly. Then, on 16 March, the Constituent Assembly met for the last time, and in a somewhat extra-legal but symbolically important act, every member of the Assembly signed ceremonial copies of the new instrument. It went into force five days later, on the midnight preceding Independence Day and implementation started immediately with the swearing in of the first President - symbolically, by the UN Secretary-General.

This was certainly an extraordinary achievement: to turn out a quality product in such a short time and under what appeared to be quite difficult political conditions. Aside from the personal rivalries and political enmities that had long divided many of the persons in the Constituent Assembly, most sitting together for the first time, there were the wide substantive differences between them on constitutional issues; these in turn reflected their respective political strengths and weaknesses. SWAPO desired a strong Presidency, with a relatively weak, unicameral Legislature elected on a single-member constituency basis; DTA and most of the other parties wished for a weak Presidency and a bi-cameral Parliament, one house elected by proportional representation and the other, with substantially

equal strength, elected on the basis of geographic regions and thus in effect representing ethnic groupings. These differences were bridged during the first two weeks in the Standing Committee. And though it is the devil that is supposed to dwell in the details, here it was at most an imp, which was dispatched in three more weeks in the Committee and one in the Plenary Assembly. Though, as will be seen, SWAPO probably gave up more - for which it was rewarded by attaining independence and thus power quickly - the other parties too had to be accomodating to make it possible to achieve a consensus solution. For better or for worse, the restraint of the media and the public in intervening in the work of their elected representatives probably facilitated the process. The contribution of the forceful and able Chairman, Hage Geingob, now Prime Minister, must not be underestimated, and particularly his skilful use of consensus - which by avoiding all votes resulted in a Constitution adopted, in spite of some misgivings, with apparent unanimity and thus immediately became a symbol of the country's new unity rather than of the prior divisiveness.

D. Salient Provisions of the Constitution

1. Supremacy of the Constitution

The Constitution is the Supreme Law (Art. 1(6)), and all governmental acts must conform to it. All public officials must take an oath on the Constitution (Art 30 and Schedules 1-3), and the courts are charged with reviewing all governmental acts, including legislative and administrative ones, for their constitutionality (see para. 2 below).

The Constitution can not easily be amended, and not at all so as to derogate from the civil and political rights or to simplify the amending process itself (Arts. 131, 132).

2. Institutional Features

As called for by the CPs, the new Constitution created a classical three-branch-type government (Art. 1(3)): The executive power is vested (Art. 27(2)) in a popular elected (Art. 28) President, who is head of both state and government, as well as commander-in-chief of the armed forces (Art. 27(1)), and the Cabinet. Though the President has wide powers, he must exercise most of these in consultation with the Cabinet (Art. 27(3)) and he can be reigned in by the National Assembly, which may "review, reverse or correct" almost all his actions (Art. 32(9)), must co-operate if emergency measures are to be continued for mor than a few days (Art. 26), can overcome vetoes (Art. 56(2,4)) and impeach the President (Art. 29(2)) - though most such decisions require substantial majorities. If the President dissolves the National Assembly, his own term of office also ends (Art. 29(1)(b) and (5)).

The President appoints the Prime Minister and the Cabinet, but for the most part these must be elected members of the National Assembly (Arts. 32(3)(i), 37(1,2), 39). Other high-level officials must be appointed and can only be removed on the recommendation of the Judicial Service Commission, the Public Service Commission or the Security Commission (Arts. 32(4), 32(6), 82, 84, 85, 88(1), 90, 94, 112-113, 114, 116-117, 119-120, 122-123, 127(1,4)).

The legislative power is vested in the National Assembly (Art. 44), elected by direct vote by proportional representation (Arts. 46(1)(a), 49 and Schedule 4), though it is subject to certain checks by the National Council, the President and the Supreme Court - but all but the latter can be overcome by sufficient majorities. The Assembly can be dissolved by the President, but only at the cost of ending his own term (Art. 57).

The National Council is a very much weaker second house, which must be consulted on all legislation but can at best delay it or require the National Assembly to act by higher majorities (Arts. 74, 75). Its members are elected by and from the Regional Councils according to procedures that are still to be established by legislation (Art. 69) - consequently, it has not yet been established, though it must be soon (Arts. 136, 137).

The legislative process is a convoluted one, in which bills can take various paths, bouncing back and forth between National Assembly, National Council, the President and the Supreme Court, depending in large part on the majorities with which the two legislative bodies act (Arts. 40(b), 56, 60(2), 63(1), 64, 65, 75).

The judicial power is vested in a Supreme Court, a High Court and in Lower Courts (Art. 78(1)). Aside from the usual powers, the Supreme and High Courts have the power to review the constitutionality of legislative and executive acts, of pending legislation at the request of the President and of pre-Independence laws (Arts. 25(1), 64, 66(1), 79(2), 80(2), 140(1)).

A very powerful control function is vested in the Ombudsman, whose independence is essentially the same as that of judges (Arts. 89-94). In addition to the strong central governmental organs, regional and local government is foreseen, consisting of a number of Regional Councils, Local Authorities, a Council of Traditional Leaders and other bodies, whose functions are largely to be established by national legislation and whose geographic scope will be determined with the assistance of a Delimitation Commission (Art. 102-111).

3. *Human Rights Provisions*

A special feature of the Namibian Constitution is its strong and in some respects unusual human rights provisions. In analyzing these, it is convenient to divide them roughly into

civil and political ones, and economic, social and cultural ones, the legal force and forms of which differ considerably.

The civil and political rights set out in the Constitution are derived largely from the CPs, and therefore ultimately from the UDHR. However, in some instances the drafters of the Constitution also relied on some later instruments, such as the 1966 International Covenant on Civil and Political Rights and on its 1989 Protocol 2, and on the 1989 Convention on the Right of the Child. They are "entrenched" in the Constitution, i.e. it is not possible to amend that instrument so as to remove or weaken any of them (Arts. 131, 132(5)(a)). For the most part, they may not be derogated from, i.e. they cannot be set aside even on the declaration of a public emergency (Art. 24(3)). They are binding not only on all governmental organs, but even on individuals and other private entities (Arts. 5, 91(d)). They are to be enforced through all governmental organs, but especially through the courts and the Ombudsman (Arts. 25, 91(a,d)).

As to their contents, the following are the most notable: Capital punishment is prohibited (Art. 6). Discrimination on the basis of sex, race, color, ethnic origin, religion, creed, and social origin is prohibited (Art. 10(2)) - and this also applies to private actions. There is, however, provision for affirmative action, in favor of persons who had been "socially, economically or educationally disadvantaged by past discriminatory laws and practices" (in particular, apartheid) including especially women who have "traditionally suffered special discrimination" (Art. 23).

Women's rights are recognized in many ways, as in respect of the family (Art. 14; also 95(a)); a particularly interesting feature of the Constitution is its gender-neutral language, using paired pronouns to refer to all public officials, from the President to the Speaker of the National Assembly to Judges to the Auditor-General to the Registrar of Deeds (e.g., Arts 27(3), 35(2), 51(2), 84(1), 89(4), 127(1), Schedule 4(5)).

Personal liberty is explicitly protected (Art. 7) and preventive detention (except for illegal aliens) is generally not permitted; even in emergencies persons detained have a right to have their detention reviewed by a quasi-judicial body, and all persons are always to have access to the courts (Arts. 11, 24(2,3), 26(5)(c)).

Property rights are recognized and protected, and any expropriation requires just compensation (Art. 16). Political rights are also extensively protected, in particular the right to form and participate in political parties (Arts. 17, 21(1)(e); also 95(k)). Thus it would be illegal to establish a one-party system. Workers' rights to form unions and to strike are also protected (Arts. 21(1)(e,f); also 95(b,c,d,i)). Administrative bodies are required to act fairly and lawfully, and their acts are subjected to review by the courts (Art. 18).

The economic, social and cultural rights set out in the Constitution largely appear as "principles of state policy" that are "not of and by themselves ... legally enforceable by any Court", but are to guide the organs of government in the making, applying and interpreting laws (Art. 101). In other words, unlike the civil and political rights, which constitute clearly enforceable law, they constitute a type of domestic "soft law". They are not derived from the CPs, but are largely based on other provisions of the UDHR, the 1966 International Covenant on Economic, Social and Cultural Rights, and other international human rights instruments.

Their most notable contents are: non-discrimination in the remuneration of men and women (Art. 95(a)); regular pensions for senior citizens (Art. 95(f)); protection of the unemployed, the incapacitated, the indigent, and the disadvantaged (Art. 95(g)); free legal aid (Art. 95(h)); ensurance of a living wage adequate for the maintenance of a decent standard of living and the enjoyment of social and cultural opportunities (Art. 95(i)); adequate level of nutrition and public health (Art. 95(j)), protection of the environment(Arts. 95(1); also 91(c)); and the right of asylum (Art. 97).

4. *The conservative nature of the Constitution*

In spite of the reputedly and perhaps originally revolutionary nature of the majority party, SWAPO, and in spite of the revulsions against the long South African governance of the country which was widely characterized as illegal, the Namibian Constitution is a profoundly conservative instrument in the literal meaning of that term. In particular, the Constitution preserves the entire body of statutory law in force just before independence (Art. 140(1)) (with the exception of some specified administrative measures based entirely on ethnic distinctions) (Art. 147 and Schedule 8)[12], as well as the common and customary law (Art. 66(1)), though subjects to eventual court review for conformity with the Constitution. All treaties were kept in force, subject to review of individual ones by the National Assembly (Arts. 143, 63(2)(d)). In addition, all public officials were maintained in office, as were all judges, and all pending litigations (civil and criminal) were continued (Arts. 138, 141).

This conservative cast was no coincidence, as the objective of the exercise was to reassure the prospective citizens of the new Republic that none of their existing rights (except to

12 It should, however, be noted that most discriminatory or restrictive laws had already been repealed as a UN requirement for holding the 1989 elections: First and Second Law Amendment (Abolition of Discriminatory and Restrictive Laws for purposes of Free and Fair Elections) Proclamations, 1989, SWA Government Gazette 5726 (8 June 1989) and 5758 (22 July 1989).

discriminate against others) would be diminished. And, of course, prospective investors and donors were pleased by the minimal legal upheaval.

E. Conclusion

The process of adopting the Namibian Constitution was initiated and largely carried through at a time when it was not yet evident that constitution-making was destined to become a major cottage industry of the last decade of the second millennium. Those now laboring on the fundamental laws of the new States of Eastern and Central Europe, as well as those formulating new and improved instruments for many African and Asian countries, might do well to pay heed both to the procedures followed in Namibia and to the resulting product. This applies most particularly to Namibia's former colonial ruler, the Republic of South Africa, which in respect of its own future faces the same basic dilemma as in releasing Namibia: the transfer of power from a White-dominated minority regime to one in which the Non-White majority will have effective political control without destroying the sense of security of those Whites whose concurrence in such a transfer of power is essential if it is to take place peacefully and relatively rapidly.

Will it work? Will the Namibian Constitution ensure democracy, social peace and progress? Evidently, no mere piece of paper can do that, and there is as yet no telling how the new legal regime will react under stress. But a smooth transition to independence and a good start for the new country were accomplished, which were the agreed and only possible immediate objectives.