

**State Formation in Namibia:
Promoting Democracy and Good Governance**

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encourage good governance, to promote a culture of human rights, and to build state institutions to support these policies have also been examined with a view to determining the nature of the state that evolved in Namibia. Finally, the study carries out a democratic audit of Namibia using Swedish normative tools.

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Abstract

This dissertation examines significant events in the process of state formation in Namibia and provides an insight into the role played by various actors involved in shaping the evolution of Namibia as a state, such as the Namibians, their liberation movement SWAPO, successive colonizing powers (Germany and South Africa), OAU, the Frontline States, the international community, and particularly the United Nations. It is argued that the international actors' role in the process of state formation in Namibia was driven by their desire to ensure their continued influence in Namibia for their own benefit. Self-interest of the West in Namibia was driven by the geopolitical imperatives of the cold war, and preserving western economic interests.

In Namibia, which was a settler colony, self-interest also gained a racial dimension as the West sought to protect the interests of white settlers. The case is made that impetus to resolve the Namibian question had to await a number of streams coming together – the disintegration of the Soviet Union changed the complexion of geopolitics; deeper involvement of the Cubans in Angola threatened South Africa; Constitutional Principles put forward by the Western Five (U.S.A., the United Kingdom, Germany, Canada, and France) ensured continued protection of the economic interests of the West and the protection of the interests of the settlers; and success of Namibians' struggle at the international fora and on the battlefield catalyzed the coming together of various streams. This constellation of events ensured Namibia's independence in 1990.

The study also examines how Namibians sought to build a reconciled society out of ethnically and racially stratified, diverse and often antagonistic groups. This process was begun with the drafting of the constitution by the Constituent Assembly. The first government's initiatives to promote democracy and a policy of reconciliation, to improve the life condition of the previously disadvantaged groups through affirmative action, to

encourage good governance, to promote a culture of human rights, and to build state institutions to support these policies have also been examined with a view to determining the nature of the state that evolved in Namibia. Finally, the study carries out a democratic audit of Namibia using Swedish normative tools.

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Chapter One Introduction

Curiosity and necessity are the primary motives underlying human inquiry. Either we seek to understand the world around us for the sake of knowledge, or we seek to understand it so that we may protect or better our lot in it. Whichever is the case, our knowledge often brings with it, at least potentially, a recognition of certain ways to improve upon things as they are.

Jarol B. Manheim and Richard C. Rich¹

Background

I undertook this research more out of necessity than out of curiosity. As Manheim and Rich point out, knowledge gained from research helps us unearth problems and at the same time helps us "improve upon things as they are" -- in other words knowledge gained through research helps us identify problems and find solutions to the problems. My objective in undertaking this research was to seek out problems, challenges and opportunities for Namibia in the areas of state formation, including strengthening democracy and good governance.

State formation is impacted by history. In Africa, slave trade and colonialism all but destroyed traditional social and political institutions. States that began to emerge during the colonial era were transplants from Europe, and their structures were designed to exploit the continent's resources, both material and human, for the benefit of the metropolitan country. In other words, the history of colonialism in Africa has been the history of exploitation of the continent by European empires in their own struggle for supremacy through expanding their territorial conquests, controlling maritime traffic, acquiring new sources of raw materials, and finding new markets for their goods.

¹ Jarol B. Manheim and Richard C. Rich (1995), *Empirical Political Analysis – Research Methods in Political Science*, 4th ed., White Plains, N.Y., Longman, p.1.

A significant thrust for the carving up of Africa came at the 1884-85 Berlin Conference “to obviate the misunderstanding and disputes which might in future arise from new acts of occupation (*prises de possession*) on the coast of Africa.”² In the continent’s geopolitical history, another major thrust, an anti-colonial thrust, came in the post World War II era, particularly in the 1950s and 1960s when indigenous populations of many countries began to demand independence.

In the four decades following World War II, pressures exerted by the people of the colonies made it non-viable for the colonizing states to continue to hold on to their colonial empires. These pressures were largely peaceful but invariably included threat of violence by individuals, political organizations and liberation movements in the colonies. Even when independence movements, such as those led by Nkrumah, the founding father of Ghana, or Kaunda, the founding father of Zambia, talked about non-violence, their support amongst the majority carried an implicit threat of violence. On the other hand, independence movements in some colonies, such as Algeria, Kenya, Zimbabwe, Angola, Mozambique, other Portuguese colonies, South Africa and Namibia, had to go one step further and resort to violence and armed struggle for securing the independence of their countries.

One distinguishing feature between the colonies that achieved independence largely peacefully and those whose inhabitants had to resort to armed struggle was that the latter were settler-colonies with large populations from the colonizing states. One could argue that the colonizing states’ interests in the non-settler colonies were largely geopolitical and economic, and racism was used peripherally to further these interests. However, their interests in the settler-colonies were influenced also by their desire to protect the interests of settler populations. Racism was used as a policy instrument to further not only the

² General Act of the Conference of Berlin of the Plenipotentiaries of Great Britain, Austria-Hungary, Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden and Norway, Turkey and the United States Dealing with Africa. In Fred L. Israel (ed.) (1967), *Major Peace Treaties of Modern History, 1648-1967*, II, New York, Chelsea House Publishers. The treaty was not ratified by the United States.

interests of the colonizing states but also those of settler communities. Consequently, in settler-colonies racial issues became very significant during their struggle for liberation.³

Policies of job reservation, and discouraging of social interaction across races and cultures pursued during the colonial era stratified various societies. In settler colonies, colonial rulers had segregated dwelling areas, such as the Katuturas and Sowetos of this world. Social intermixing was not only frowned upon but was unacceptable and illegal. Access to jobs, education, health services, and other opportunities was stratified according to colour and ethnicity. Such imposed structures could not provide a basis for integration after independence.

Even when it became clear to the colonizing states that it was no longer viable to hold on to their colonies, these states and their western allies sought to manage events and outcomes that would ensure the protection of their geopolitical, economic and ethnic interests after their colonies became independent. Therefore, they not only attempted to manage the outcome of transition to independence but also created conditions that ensured their continued economic and geopolitical influence in the newly emerged independent nations.⁴

This interest in creating geopolitical and economic spheres of influence was particularly enhanced during the cold war era. As the colonial powers were all European or ethnically European, their desire for creating and securing geopolitical and economic spheres of influence found expression in the old themes of racial 'supremacy'. In fact, these themes were never far from the surface in the colonial powers' calculations in their interaction with the newly independent states. Protection of the interests of settler white communities was seen by the colonizing states to fit seamlessly into this approach.

³ See Basil Davidson (1992), *The Black Man's Burden: Africa and the Curse of the Nation-State*, New York, Random House.

⁴ See for instance, Ibbo Mandaza (ed.) (1986), *Zimbabwe: The Political Economy of Transition, 1980-1986*, Dakar, CODESRIA.

Efforts to ensure geopolitical and economic dominance and continued protection of the interests of the whites took many shapes. First, in their dealings with their erstwhile colonies, these states took an anti-socialist, anti-communist stance; then they linked aid to anti-nationalization policies. Of late, emphasis of the European states' relations with the African states has shifted to issues such as democracy, human rights, particularly property rights, and compensation to the settler community if 'their' properties were taken over by the state. In their approach towards African states, interests, views and cultures of the indigenous populations were of little consequence. Policies of these states, for instance, did not take into account the plight of the indigenous landless but focused on ensuring that settler whites did not lose land regardless of the way they acquired that land. This one-sided relationship created some unique social, political and economic problems for the governments of newly independent countries.

People seeking independence, on the other hand, focused their initiatives on seeking support of the international community and sometimes launched armed struggle to achieve their objective. Organisation of African Unity, the Non-Aligned Movement, United Nations General Assembly, and many individual countries supported their effort. People who had gained their independence sought also to ensure that their rights as citizens of independent states were continually strengthened. Country after country therefore sought ways to empower indigenous populations through land reform, affirmative action, and socio-economic policies that were often very different from those desired by the European states.

Thus, those who had colonized Africa, and those who were colonized sought to promote their own interests. However, it needs to be emphasized that self-interest cannot and should not be trashed in itself. As Rabbi Hillel⁵ had said some two thousand years ago, "If I am not for myself, who is for me?" He goes on, however, to put a limit on self-interest, "But if I am only for myself, what am I?" Interpreting Hillel's questions, Rae⁶ suggests, "We need to go beyond the pursuit of self-interest to an understanding of the

⁵ Quoted in Bob Rae (1998), *The Three Questions: Prosperity and Public Good*, Toronto, Viking, p. 9.

⁶ *Ibid.*, p. 11.

responsibilities we have for other people.” Hillel’s questions haunt us at every stage as we deal with the role of individuals, the government, the private sector, the civil society, globalisation, capitalism or socialism.

This process of promoting their interests was and continued to be defined by various parties always taking a cold, hard look at where they were coming from, i.e., their strengths and weaknesses; seeking to define where they wanted to go, i.e., what objectives would perpetuate their geopolitical and economic self-interests; and focusing relentlessly on issues that helped them move toward their goal. Zimbabwe’s example provides an illustration of how various parties sought to promote their interests. The constitution imposed on Zimbabwe by the Lancaster House Agreement (1979) guaranteed white representation in the parliament for a fixed period, but after the expiry of seven years, Zimbabwe scrapped these provisions. In Namibia, on the other hand, SWAPO was able to resist the West’s efforts to impose a constitution but had to accept certain Constitutional Principles that guaranteed property rights and job security for the whites.

Taking specific Namibian examples and concentrating on a few significant events, this study examines the pathogenesis of Namibia’s social, political and economic problems and their linkage with the western nations’ desire to protect their interests without regard for the wishes of Africans. Equally, this study seeks to gain an insight into how representatives of the people seeking independence and statehood pushed for their own self-interest of achieving stability and promoting development in their countries. This obvious conflict and interaction of opposing interests had consequences for state formation.

For instance, countries, such as Namibia, Zimbabwe, and South Africa with sizeable settler populations share a common characteristic of racially skewed land distribution. The majority of whites owning land rely on property rights to protect their interests, but blacks feel that whites acquired land illegally through coercion and dubious treaties. Whites are being supported in their effort to hold on to their properties by European

countries with little regard for how the land was acquired and little consideration for the desperation of the blacks. The land question therefore continues to be a source of conflict between the settlers and the indigenous populations.⁷

Of course, peaceful solutions are possible, but European states and the United States have maintained a blinkered view. They did little to help Zimbabwe solve the problem of land hunger amongst the blacks, but have now shown deep concern over the Zimbabwe government's decision to seize white-owned land to settle landless blacks to reconnect Africans with their ancestry. Similar concerns are being raised about Namibia. However, so far Namibia remains a peaceful country that seeks to solve problems constitutionally and democratically. Causes for the situation developing in Zimbabwe, and the fear of such a situation developing in Namibia, need to be addressed by those who created such a situation in the first place.

As for the governments of these two independent countries, realizing that they had reasonably big white settler populations, they had been anxious to promote reconciliation and address contentious issues through reconciliation. However, western countries' belligerence on the land issue has seriously compromised reconciliation in Zimbabwe. There is not even recognition of the fact that Zimbabwe was the first country in southern Africa where the policy of reconciliation was implemented. Who can forget that it was President Mugabe who had appointed General Walls as the Army Chief of independent Zimbabwe! Who can forget the fact that Ian Smith, who had rebelled against the British Crown, instead of being executed as all rebels were dealt with in Europe, is still a free man! Europeans and Americans who have been concerned about the turn of events there, have been found wanting. They should have displayed the same concern about the plight of landless Africans as they have shown about the 'seizure' of white land by the Zimbabwe government.

⁷ See, Fiona Adams and W. Werner (1990), *The Land Issue in Namibia: An Inquiry*, Windhoek, Namibia Inst for Social and Economic Research; Sam Moyo (1995), *The Land Question in Zimbabwe*, Harare, SAPES Books; Tessa Marcus, Kathy Eales and Adele Wildschut (1996), *Down to Earth: Land Demand in the New South Africa*, Durban, Univ. of Natal.

Namibia is following constitutional means to try to address the burning issue of land. During 1999, I was designated by the cabinet to tour European cities and the European Union to sensitise European leaders on this burning issue. I informed them about our policy of willing-seller-willing-buyer that had emerged from a successful land conference held in Windhoek during 1991. Using a metaphor from the computer industry, I appealed to the representatives of European countries to help us buy the hardware, i.e., the land. They opted for the easier option. They wanted to help with software only, i.e., training of new persons settled on that land. I had reasoned with them that their decision implied that government would need to seize the land on which landless could be settled and trained. I also pointed out to them that in adopting this approach Europeans were saving a million dollars today, but when the situation got out of hand, they would have to spend one billion dollars on efforts to rescue the white people. They were being penny wise and pound foolish.

By focusing on some of the events that proved to be critical in changing the direction of political evolution of the state, this study seeks to gain some insight into the method, motivation, and intent of various actors that shaped the Namibian state. These actors included the South Africans, Europeans, North Americans, the League of Nations, the United Nations, Organization of African Unity, the Frontline States, the Non-Aligned Movement, and the Namibians.

An understanding of the historical, political, social and economic context should help shape responses to the social and political issues newly independent Namibia needs to address.

Research Questions

Thus, research questions for this study can be articulated as follows: How did different actors' actions through history manipulate events that impacted on the type of state that emerged in Namibia? What impact did these actions have on the progression of the Namibian question until its final resolution? How did Namibians respond to these actions

to achieve their objectives? Since Namibia's independence, what have Namibians done to build a modern state?

In answering these questions, this study aims to enhance our understanding of the evolution of the political history of Namibia. However, in order to ensure that the study remains focused on the research questions, it concentrates on various issue sub-questions in the context of the research questions.

Issue sub-questions, as Stake⁸ points out, "are not simple and clean, but intricately wired political, social, historical, and especially personal contexts.... Issues draw us toward observing, even teasing out the problems of the case, the conflictual outpourings, the complex backgrounds of human concern." They "address the major concerns and perplexities to be resolved."⁹ Principal issue sub-questions related to this study may be articulated as follows:

1. What was Namibia's colonial inheritance (German, South African, and International), and how did this inheritance shape the context within which Namibia's transition to independence had to be negotiated? What were the key interests of different players, and how did these interests impact on the events leading to the independence of Namibia?
2. What were the strategic and tactical agendas of the people of Namibia under the leadership of the South West Africa People's Organization of Namibia (SWAPO)?
3. In the process of transition, how were different players' agendas constituted and reconstituted and to what effect?
4. What has been the experience of the first government of independent Namibia in state building with special emphasis on some of its core political projects and policies?

⁸ R. Stake (1995), *The Art of Case Study Research*, Thousand Oaks, Sage, p. 17.

⁹ John W. Creswell (1998), *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*, Thousand Oaks, Sage, p.101.

Based on research questions, and issue sub-questions, the study seeks to examine various issues in chronological order.

Research Methodology

This study is particularly amenable to a case study approach for investigation as it allows the researcher to concentrate on uncovering the interaction of significant factors characteristic of the phenomenon. Further, the case study approach within the context of qualitative research is considered suitable for this study because the issues whose understanding is sought are grounded in the assumption that features of the social environment are constructed as interpretations by individuals and that these interpretations tend to be transitory and situational.¹⁰ In addition, the issues to be examined fall within the scope of a qualitative research approach with generally accepted characteristics as follows:¹¹

1. Qualitative research manifests an interest in understanding how people make sense of their world and the experiences they have in the world. It strives for a depth of understanding as an end in itself, not as an attempt to predict what may happen in the future, or to generalize to a universe.
2. Qualitative research provides an inductive approach to knowledge generation. Qualitative researchers build towards theory from observations and intuitive understandings gained in the field.
3. Central to qualitative research is gaining the emic, or insider's, perspective, that is, the perspective of the participants in the research study.
4. Emphasis on understanding the emic perspective is not incompatible with inclusion of the etic, or outsider, perspective. The perspective of the researcher helps him or her to make conceptual and theoretical sense of the phenomenon in terms of the researcher's professional experience.
5. Data are mediated primarily through the human instrument as distinct from an inventory, questionnaire or computer analysis.

Because case study, as a methodology, is particularly responsive to research questions of why and how, it is particularly suited for this inquiry, which requires a holistic examination of social and behavioural phenomena that are by their very nature characterized by ambiguity and a necessity to be responsive to changing conditions of

¹⁰ See Karen E. Winegardner, *The Case Study Method of Scholarly Research*, <http://www.tgsa.edu/online/cybrary/case1.html>, accessed 15 June 2001.

¹¹ S.B. Merriam (1988), *Case Study Research in Education: A Qualitative Approach*, San Francisco, Jossey-Bass Publishers, quoted in Winegardner, *The Case Study Method of Scholarly Research*.

information and design. It also allows for an adaptive research structure that can accommodate qualitative and quantitative perspectives, techniques and standards.¹²

Significance of the Study

Bibliographic research finds no study that integrates the role of various actors involved in the Namibian question and its resolution with the independence of the country. Such a study, analysing efforts by various players to influence events, could provide an insight into the constraints and opportunities within which the process of Namibia's independence has unfolded. These events shaped the Namibian society, its political structures, race relations, the final outcome of the constitution, and the type of democracy that evolved. Examination of these events could also shed some light on the historical circumstances that impacted on the ability of the government of independent Namibia to address some of the pressing problems, such as promotion of democracy, public service reform, economic development, promotion of social equity, and carrying out land reform. To this end, this work will contribute towards a greater understanding of the future direction of economic development, social equity, and democracy in Namibia.

Definitions

In this study some terms have been used with specific meanings, and it would be appropriate to define the parameters within which these terms have been used as follows: West means European, North American, and pre-1994 white South African governments, and ethnic whites in Namibia. The words 'European' and 'White' have been used interchangeably to represent a racial grouping. Therefore, there is an overlap in the use of the words 'West', 'European', and 'White'.

Researcher's Personal Interest

Because of my role in the independence struggle, in the drafting of the constitution of Namibia as the chairman of the Constituent Assembly, and subsequently as the first prime minister of Namibia, there is an autobiographical element to the thesis. My personal involvement in the process of Namibia's state formation ensured that I had a

¹² Winegardner, *The Case Study Method of Scholarly Research*.

unique perspective of the events. Thus, working on the thesis as a participant in the events as well as analyst gave me extraordinary opportunities and imposed significant constraints. I, by virtue of being the prime minister was privy to unique information that would normally be inaccessible to other researchers. Equally, however, by virtue of my commitment to the collective responsibility of confidentiality with regard to the discussions within the cabinet and within SWAPO Political Bureau meetings, I was constrained in the use of additional information. In fact, collective responsibility demanded that the members supported the final decisions even if they did have reservations about them.

It is against this background that I undertook the study. I have not divulged any of the information from the proceedings within the cabinet, the Political Bureau of the Central Committee of SWAPO, and the Drafting Committee of the Constituent Assembly that were classified or restricted because of collective responsibility. For instance, for information pertaining to the decisions of the drafting committee of the Windhoek Constituent Assembly, I relied on the minutes of the Assembly meetings – when decisions of the drafting committee were reported to the Constituent Assembly’s meeting and were recorded in the assembly’s meeting, they could be used because those minutes are public documents.

This limitation, however, does not in any way limit the value of the study. After all, scholars often bring their own personal experiences and perspectives just as I have done. As Kaplan¹³ cautions, “Often, what passes for analysis is merely an expression of one’s life experiences applied to a specific issue. From that sin stems another – that of selecting facts and insights to defend a particular vision. To this dilemma there may be no solution.”

Despite this caveat, I was motivated to undertake this research for many different reasons. A clear understanding of what these motivations are can contribute greatly to focusing on core aspects of the study, and help bring about objectivity to research

¹³ *Ibid.*

methodology and context, particularly if the approach taken is qualitative. According to Maxwell:¹⁴

It is useful to distinguish between three different kinds of purposes for doing a study: personal purposes, practical purposes, and research purposes. Personal purposes are those that motivate you to do a study; they can include such things as a political passion to change some existing situation, a curiosity about a specific phenomenon or event, a desire to engage in a particular type of research, or simply the need to advance your career. These personal purposes often overlap with your practical or research purposes, but they may also include deeply rooted individual desires and needs that bear little relationship to the 'official' reasons for doing the study.

Manheim and Rich¹⁵ point out that "curiosity and necessity are the primary motives underlying human inquiry. Either we seek to understand the world around us for the sake of knowledge, or we seek to understand it so that we may protect or better our lot in it."

I was motivated to undertake this study for all the reasons listed by Maxwell except for the need to advance my career. Another important reason for my undertaking this study was the realization that political literature generated contemporaneously with the period of occupation or of liberation does not, because of different priorities, concentrate on building an interpretive paradigm. Through this research, I seek to make such an attempt. The resulting realignment of evidence with objective and method in the evolution of Namibia's political history should help bring together theories, methods and evidence within which Namibia's political history needs to be perceived.

Equally, however, assumptions of this new paradigm need to be vindicated and personal bias that can never be far from the surface needs to be exorcised.¹⁶ As a politician, I am aware of these implications, and that awareness has motivated me to undertake this study as an academic exercise.

¹⁴ Joseph A. Maxwell (1996), *Qualitative Research Design: An Interactive Approach*, London, Sage, p. 15.

¹⁵ Manheim and Rich, *Empirical Political Analysis*, p.1.

¹⁶ Robert D. Kaplan (2002), *Warrior Politics: Why Leadership Demands A Pagan Ethos*, New York, Random House, p. xix.

The limitations within which I worked on this thesis did not stop me from bringing to this study my personal perspective, and the perspective of many other Namibians who were, and continue to be, participants in the political evolution of the country. These perspectives have, of course, been subjected to informed analysis.

This study also has particular relevance for me as a politician, because it allows me to examine how management of events by the West impacted on the country's transition from colonialism to democracy. This aspect of the study should be of value to the evolving political milieu in the country, as the government moves forward to strengthen democracy with social justice. The study should also be of some value to many other countries in Africa and elsewhere in identifying challenges thrown up by conflicts between the West's agenda and Africans' own agendas.

Finally, this study has been undertaken at an opportune time as Namibia prepares to elect a new president after the first thirteen years under the leadership of the founding president. The challenge for Namibians would be to secure an orderly succession. The process of management of this succession will truly test the country's democratic credentials. The jury is still out on which way Namibia will turn.

Literature Survey

Sources of material for this case study are diverse. While emphasis has been on my personal recollections, an attempt has been made, wherever possible, to substantiate facts by referring to existing literature. Towards this end, collections of Namibia's National Archives, the National Library, the University of Namibia Library and regional library catalogues that cover most of the major South African libraries have proved valuable.

A significant body of information on Namibia exists, but the majority of documents are not readily available for various reasons. As Hillebrecht points out, "The literature concerned with Namibia has reached immense quantities (though much of it is less

impressive qualitatively), and the only problem lies in getting to it.”¹⁷ To get to this literature, scholars on Namibia need to have access to the archives in Windhoek, Cape Town and Pretoria; the records of the German colonial administration in Potsdam, Germany; the Rhenish Missionary Society records held by the Vereinigte Evangelische Mission in Wuppertal, and the Finnish mission records in Helsinki.¹⁸ Thus, “not only are the sources for Namibian history very scattered; very few have been published.”¹⁹

Namibia’s history remains under-researched and under-published not only because of difficulties in getting to the available literature but also because primary literature exists in diverse languages. As Saunders²⁰ points out, historians of Namibia need to know English, Afrikaans, German, Otjiwambo, Otjiherero, Khoi-Khoi, Gwamb or Damara/Nama, and Finnish. This situation has, however, improved somewhat in recent years with some new monographs and articles appearing in the English language.

The rest of this chapter offers a survey of the literature available and outlines the themes that form the focus of each chapter of the thesis.

Thesis Outline and Themes

Erikson’s bibliography²¹, focusing on the political economy of Namibia, Strohmeier’s *Namibia National Bibliography*²² and some other general and specialized bibliographies²³ help to get an overall perspective of the literature, but for more recent information one

¹⁷ Werner Hillebrecht, “How to Find Out What has Been Written About Namibia,” in Brian Wood (ed.) (1988), *Namibia 1884-1984: Readings on Namibia’s History and Society*, London and Lusaka, Namibia Support Committee in cooperation with United Nations Institute for Namibia, p.74.

¹⁸ Christopher Saunders, “Towards the Decolonisation of Namibian History: Notes on Some Recent Work in English,” in Wood (ed.), *Namibia 1884-1984*, p. 81.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Tore Linne Erikson with Richard Moorsom (1985), *The Political Economy of Namibia: An Annotated, Critical Bibliography*, Oslo and Lusaka, Scandinavian Inst. of African Studies in cooperation with United Nations Institute for Namibia and Norwegian Institute of International Affairs.

²² Eckhard Strohmeier, *Namibische National Bibliographie/Namibia National Bibliography* (Basel, Basler Afrika Bibliographien, 1978, 1979, and 1981).

²³ Two bibliographies that are somewhat dated but are still useful are Barbara Rogers (1975), *American-South African Relations: Bibliographical Essays*, Mohamed A. El-Khawarizmi and Francis A. Kornegay (eds), London, Greenwood Press; Elna Schoeman (1978), *South West Africa/Namibia: An International Issue, 1920-1977*, Braamfontein, SA Inst. of International Affairs – This bibliography was updated in 1982 as *The Namibian Issue, 1920-1980: A Select and Annotated Bibliography* Boston, G.K. Hall.

has to go to other bibliographic sources, such as library catalogues, specialized indexes, and the internet.

The literature survey shows that little has been published specifically focusing on the impact of the West's initiatives on Namibia's evolution as a state. Of course, facts are there, but they need to be reinterpreted to examine the interplay of various forces involved in the Namibian question.

In Chapter Two, Namibia's colonial history during German and South African occupation has been examined. This part of the history greatly influenced the nature of the state. In addition, impact of the involvement of the international community through the League of Nations, the United Nations and the International Court of Justice has been analysed. At each level, various actors sought to influence short-term outcomes that had long-term implications for the Namibian state. The particular focus of the chapter is therefore to get a glimpse of how various actors' involvement influenced the formation of the Namibian state.

Historical developments during the period of German occupation, the period of the mandate and the period of illegal occupation of the territory by South Africa are relatively well documented. The period of German occupation has been chronicled by a number of researchers with works of Drechsler and Bley²⁴ remaining fairly significant. Drechsler's work, though narrowly focused, provides a scholarly account of the Herero resistance to German conquest, and the German policy of extermination. He also seeks to explain the economic reasons for this conflict, explaining the German policy of land theft and massacre of indigenous populations. Bley's work is broader in scope and is perhaps the most detailed account of German colonialism in Namibia. He illustrates in detail the

²⁴ Horst Drechsler (1980), *Let us Die Fighting. The Struggle of the Herero and Nama Against German Imperialism (1884-1915)*, London, Zed Press; Helmuth Bley (1996), *Namibia Under German Rule*, Hamburg, LIT. Bley's other important and relevant works include "Social Discord in South-West Africa," in P. Gifford and William R. Louis (eds.) (1967), *Britain and Germany in Africa*, New Haven, Yale Univ. Press, pp. 607-30; and "German South-West Africa after the Conquest 1904-1914," in Ronald Segal and Ruth First (eds.) (1967), *South-West Africa: A Travesty of Trust*, London, Deutsch, pp. 35-53.

formation of the settler colony, highlighting the brutality of German racism, totalitarianism, and military adventures.

Works of Esterhuyse, and Kienetz²⁵ also provide useful background information on the resistance of the Witboois and the Herero against German infiltration and occupation. Esterhuyse's Ph.D. thesis is a narrative of the first decade of German colonialism, and Kienetz's thesis provides details about German land grab policies, and emigration policies during the first decade of German colonial rule. A number of early works focusing on Namibians' resistance are also of interest. These include the works of Bochert, and Bridgman.²⁶ Bochert deals with the penetration of traders and missionaries, and the role of the Witboois in their dealings with Germans and the eventual resistance of the Witboois against German intrusion. Bridgman, on the other hand, provides an account of German military campaigns against the Herero and Herero resistance. Two reports, one by the British government and the other by the German government, provide detailed accounts of the situation prevailing in Namibia during German colonial rule.²⁷ The British report criticizes German policies in the territory, and the German report is a response to this British report. These two reports also show how the beginning of a new phase in the struggle for domination of the territory of Namibia began. These works were valuable background readings that helped crystallize my thinking.

The interwar period, starting with the establishment of the League of Nations, its decision to make South West Africa a class 'C' Mandate, the exercise of this mandate by South Africa, and the consequences of these developments for the Namibians, spawned

²⁵ J. H. Esterhuyse (1968), *South West Africa 1880-1894. The Establishment of German Authority in South West Africa*, Cape Town, Struik. This document was originally submitted as a Ph.D. thesis at the University of Cape Town. Alvin Kienetz (1975), *Nineteenth-century South West Africa as a German Settlement Colony*, Minnesota, Univ. of Minnesota.

²⁶ Christian Bochert (1980), *The Witboois and the Germans in South West Africa. A Study of Their Interaction Between 1863 and 1905*, Durban, Univ. of Natal; Jon M. Bridgman (1981), *The Revolt of the Hereros*, Berkeley, Univ. of California Press. In addition, Drechsler's *Let us Die Fighting* is a very useful source of Namibians' struggle against German occupation.

²⁷ United Kingdom (1918), *Report on the Natives of South-West Africa and Their Treatment by Germans. Prepared in the Administrator's Office, Windhuk [Windhoek]*, London, HMSO; Deutschland, Reichskolonialamt (1919), *The Treatment of Native and Other Populations in the Colonial Possessions of Germany and England: An Answer to the English Blue Book of August 1918: 'Report on the Natives of South-West Africa and Their Treatment by Germany,'* Berlin, German Colonial Office.

considerable primary literature. Significant works include those of Bradford, Braum, Hayes, Lewis, Ngavirue, Simons, Barron, and Theodoropoulos.²⁸ Bradford's thesis covers South African native administration's actions in the territory. It outlines various racist laws implemented by the administration and provides statistics that show the impact of these racist policies. Braum's work supplements Bradford's study as it provides the hitherto unpublished documents on the nature of South African administration in Namibia in 1920s. Louis also deals with South Africa's native policies and provides a well-researched analysis of the Bondelswarts 'rebellion'. Ngavirue's thesis details economic and political basis of competition and conflict between various Namibian groups as well as between them and the Germans. *The Nazis in Africa*, edited by Barron is a collection of documents showing continued links between German settlers and Germany and how Germany sought to maintain influence over the colony even after South Africa had occupied it. Theodoropoulos examines the legal aspects of settler racism and exploitation of black workers. A recent study by MacMillan²⁹ provides an exhaustive narrative of background negotiations between the Europeans and the Americans in establishing the League of Nations and devising the mandates system. In addition, a number of reports by the Union of South Africa and South African propaganda material provide useful insight into the events of the period.³⁰

²⁸ Robert Leroy Bradford (1965), *The Origin and Concession of the League of Nations' Class 'C' Mandate for South West Africa and Fulfilment of the Sacred Trust, 1919-1939* (PhD Thesis), New Haven, Yale Univ.; Robert L. Braum (ed.) (1976), *Southwest Africa Under Mandate: Documents on the Administration of the Former German Protectorate of Southwest Africa by the Union of South Africa under the Mandate of the League of Nations, 1919-1929*, Salisbury, North Carolina, Documentary Publications; Patricia Hayes and others (eds.) (1998), *Namibia under South African Rule: Mobility and Containment, 1915-1946*, Oxford, James Currey; William Roger Louis (1967), "The South West African Origins of the 'Sacred Trust', 1914-1919," *African Affairs*, 66, 262, pp. 20-39; Zedekia Ngavirue (1972), *Political Parties and Interest Groups in South West Africa: A Study of Plural Societies* (PhD Thesis), Oxford, St Antony's College; H.J. Simons, "Techniques of Domination: South Africa's Colonialism," in Segal and First, ed, *South West Africa: A Travesty of Trust*, pp. 103-17; L. Smythe Barron (ed.) (1978), *The Nazis in Africa*, Salisbury, North Carolina, Documentary Publications; and Christos Theodoropoulos (1978), "Racialism and International Law: Native Law or the Regulations of Capital-Labour Relations in Namibia," *The Indian Journal of International Law*, 3-4, pp 299-321.

²⁹ Margaret MacMillan (2002), *Paris 1919: Six Months that Changed the World*, New York, Random House.

³⁰ South Africa (Union), *Official Yearbook of the Union of South Africa and of Basutoland, Bechuanaland Protectorate and Swaziland* (Pretoria, Govt Printer, 1917 (Vol. 1) –1960 (Vol. 30)) (Each report contains a section on Namibia); South Africa (Union), *Report Presented by the Government of the Union of South Africa to the Council of the League of Nations Concerning the Administration of South West Africa for the Year* (Pretoria, Govt Printer, 1918-1939, 1946). Other reports by the Union of South Africa include *Interim and Final Reports of the Commission Appointed to Enquire into the Question of the Future Form of*

Post-World War II period of the mandate has also received considerable scholarly interest. Dugard's³¹ work, a collection of documents on legal and political history of the period is perhaps the most comprehensive work on the Namibian question at the United Nations and in the International Court of Justice. Goldblatt,³² who had spent all his life in Namibia, details the exploitation of Namibians on the farms and in the mining sector, emphasising various repressive actions of the colonialists. Wellington's work³³ is perhaps most significant for the interwar years as he critically analysed the annual reports of the SWA Administrator. South African government's *Report of the Commission of Inquiry into South West Africa Affairs*³⁴ aimed at promoting apartheid structures in Namibia became a valuable and comprehensive source of information on the condition of blacks in the territory in early sixties. A more recent study covering the Namibian question during the period of the League of Nations, the United Nations, and the International Court of Justice, subsuming earlier works on the topic, was published by the United Nations Institute for Namibia as *Namibia: A Direct United Nations Responsibility*.³⁵

Namibians' struggle for independence has been covered by Nujoma, Dobell, du Pisani, Moleah, Bauer, and others.³⁶ Nujoma's work is particularly significant as it provides a

Government in South-West African Protectorate, Cape Town, Govt Printer, 1921; *Report of the Administrator on the Bondelzwarts Rising*, Cape Town, Govt Printer, 1922; *Report of the Rehoboth Commission*, Cape Town, Govt Printer, 1927; *Report of the South West Africa Commission*, Pretoria, Govt Printer, 1936.

³¹ John Dugard (ed.) (1973), *The South West Africa/Namibia Dispute: Documents and Scholarly Writings on the Controversy Between South Africa and the United Nations*, Berkley, Univ. of California Press.

³² I. Goldblatt (1961), *History of South West Africa from the Beginning of the Nineteenth Century*, Cape Town, Juta.

³³ John H. Wellington (1967), *South West Africa and its Human Issues*, London, Oxford Univ. Press.

³⁴ South Africa (Republic) (1964), *Report of the Commission of Enquiry into South West Africa Affairs, 1962-63*, Pretoria, Govt Printer (Also known as the Odendaal Report).

³⁵ United Nations Institute for Namibia (1987), *Namibia: A Direct United Nations Responsibility*, Lusaka, U.N. Inst for Namibia.

³⁶ Sam Nujoma (2001), *Where Others Wavered: The Autobiography of Sam Nujoma*, London, Panaf; Lauren Dobell (2000), *SWAPO's Struggle for Namibia, 1960-1991: War by Other Means*, Klosterberg, Schlettwein; Andre du Pisani (1982), "Namibia: From Incorporation to Controlled Change," in *Journal of Contemporary African Studies*, 1 2, pp. 281-305; Andre du Pisani, "State and Society Under South African Rule," in C. Keulder (ed.) (2000), *State, Society and Democracy: A Reader in Namibian Politics*, Windhoek, Gamsberg Macmillan; Andre du Pisani (1985), *SWA/Namibia, the Politics of Continuity and Change*, Johannesburg, J. Ball Publishers; Alfred T. Moleah (1983), *Namibia: The Struggle for Liberation*, Wilmington, Disa Press; Gretchen Bauer (1998), *Labour and Democracy in Namibia 1971-1996*, Oxford,

first hand account of the evolution of Namibians' struggle for independence. Dobell's analytical and refreshingly comprehensive work, based on interviews with many SWAPO and non-SWAPO leaders in the country, provides valuable information at one place on the emergence of SWAPO and the role it played in the liberation of the country. However, some of Dobell's assumptions, e.g., SWAPO lacked broad-based grassroots activism and therefore worked through the international community, cannot go unchallenged. To paraphrase what Mao had said, the guerrilla is like a fish. Fish lives in the water and cannot survive without it. Similarly, the guerrilla lives with the masses, and cannot succeed in his mission without mass support. He is sustained by the masses. SWAPO could not have succeeded in gaining Namibia's independence without mass support.

Du Pisani's writings are informative as they deal with attempts at controlled change and state formation. Moleah provides an introduction to the history of Namibia with special emphasis on the migrant labour system, South African strategy for internal settlement, and the liberation struggle.

Chapter Three examines the evolution of Security Council Resolution 435 of 1978 and analyses how the West sought a settlement of the Namibian question by engineering this resolution to shore up its own interests in a changing environment.

Some very useful publications are available to help gain an insight in to the West's actions. Works of Barber, Brown, Crocker, Renwick, Rich, and Stultz³⁷ provide details about the geopolitical, political and economic changes being sought by the West,

James Currey; Wood (ed.), *Namibia 1884-1984*; United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*.

³⁷ S. Barber (1989), "Creating Realities: Some Final Thoughts from Chester Crocker," *Optima*, 30, 2; Chris Brown (1990), "Regional Conflict in Southern Africa and the Role of Third Party Mediators," *International Journal*, 45, 2; Chester A. Crocker (1992), *High Noon in Southern Africa: Making Peace in a Rough Neighborhood*, Johannesburg, J. Ball Publishers; Robin Renwick (1997), *Unconventional Diplomacy in Southern Africa*, New York, St Martin's Press; Paul Rich, "The United States, Its History of Mediation and the Chester Crocker Round of Negotiations Over Namibia in 1988," in Stephen Chan and Vivienne Jabri (ed.) (1993), *Mediation in Southern Africa*, London, Macmillan; Newell M. Stultz, "South Africa in Angola and Namibia," in G. Weiss and James G. Blight (eds.) (1992), *The Suffering Grass: Superpowers and Regional Conflict in Southern Africa and the Caribbean*, Boulder, Lynne Rienner.

particularly the United States, in achieving its objectives and how the West proceeded to achieve these objectives. Jabri³⁸ explores the same theme emphasizing the part played by the Europeans. Namibian and African perspective on the developing situation and their responses are elaborated on by Dobell, Khadiagala, Moleah, and Wolfers.³⁹ South Africa's strategy as it related to the region is examined by Clough and Herbst.⁴⁰ On a broader front, covering various issues related to Namibia and linking them together, works of Brown, Keulder, Kaela, NDI, Namibia Support Committee, Nujoma, and the United Nations Institute for Namibia⁴¹ are useful.

However, there are very few publications by Namibians on most of these topics, with the exception of the works published by the United Nations Institute for Namibia and the Namibia Support Committee.⁴² This situation makes the examination of Namibia's state formation effort somewhat one-sided – largely European. As Davidson points out, European writers' view of colonial history ignores the extent of the resistance of the African people.⁴³ However, since the late 1960s, there have been some African initiatives to correct this imbalance by emphasizing studies on African resistance.⁴⁴ In Namibia,

³⁸ Vivienne Jabri, "European Involvement in the Western Contact Group: The Stress and Convenience of Coalition Mediation," in Chan and Jabri (eds.), *Mediation in Southern Africa*.

³⁹ Dobell, *SWAPO's Struggle for Namibia, 1960-1991*; Gilbert M. Khadiagala (1994), *Allies in Adversity: The Frontline States in Southern African Security 1975-1993*, Athens, Ohio, Ohio Univ. Press; Moleah, *Namibia: The Struggle for Liberation*; Michael Wolfers (1976), *Politics in the Organisation of African Unity*, London, Methuen.

⁴⁰ Michael Clough and Jeffrey Herbst (1989), *South Africa's Changing Regional Strategy: Beyond Destabilization* (Critical Issues Series, 1989 No 4), New York, Council on Foreign Relations Press.

⁴¹ Brown, "Regional Conflict in Southern Africa; Laurent C.W. Kaela (1996), *Question of Namibia*, New York, Palgrave Macmillan; Keulder (ed.), *State, Society and Democracy*; NDI for International Affairs (1990), *Nation Building: The U.N. and Namibia*, Windhoek, NDI; Wood (ed.), *Namibia: 1884-1984*; Nujoma, *Where Others Wavered*; United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*.

⁴² See, for instance, United Nations Institute for Namibia (1986), *Namibia: Perspectives for National Reconstruction and Development*, Lusaka, U.N. Institute for Namibia; Wood (ed.), *Namibia 1884-1984*.

⁴³ Basil Davidson (1964), *Which Way Africa? The Search for a New Society*, 3d ed., London, Penguin, p. 50. See also Davidson, *The Black Man's Burden*.

⁴⁴ Peter H. Katjavivi's various works as follows: *Some Aspects of Namibia's Political Sociology*, Warwick, Univ. of Warwick, 1980; *The Rise of Nationalism in Namibia and its International Dimensions*, Oxford, St Antony's College (D. Phil Thesis); "Namibia: Strike and Political Protests," paper presented at the Conference on Namibia's Fight for Freedom, Brussels, May 1972, convened by SWAPO of Namibia; Hidipo Hamutenya and Hage Gottfried Geingob, "African Nationalism in Namibia," in Christian P. Potholm and Richard Dale (eds.) (1972), *Southern Africa in Perspective: Essays on Regional Politics*, New York, Free Press, pp 85-94; Hage Gottfried Geingob, "Impediments to the Settlement of the Namibia Question," in Wood (ed.), *Namibia 1884-1984*. See also other articles in Wood (ed.), *Namibia 1884-1984*; *Proceedings of the Conference on Namibia's Fight for Freedom*, Brussels, May 1972, convened by

there is perhaps another good reason for this gap in literature. During the struggle for independence and soon after the country became independent, many Namibian revolutionaries were involved or consumed in the liberation activities or in managing the affairs of the state. Further, many, as good revolutionaries, awaited the revolutionary leader to first release his account of the history of the struggle before they could venture into this field. Now that the president, the founding father of the Namibian nation, has written his autobiography, Namibian scholars will hopefully follow suit -- thus making some input into the body of existing literature.

In Chapter Four, emergent issues and their implications in the drafting of the constitution of independent Namibia are examined. As I was involved in this exercise, my own recollections form a significant part of the contents of this chapter. My perceptions of the unfolding events in the formulation of the constitution hopefully contribute to the primary literature on the subject. I have also relied on the minutes of Constituent Assembly meetings, and meetings of the Standing Committee on Standing Rules and Orders and Internal Arrangements.⁴⁵ From a historical perspective, Nujoma's⁴⁶ autobiography helps examine the underpinnings of the issues that shaped the events of that period. At the conceptual level, works of a number of authors have been helpful. Elster's⁴⁷ work has been particularly useful in helping compare the work of the Windhoek Constituent Assembly with that of the assemblies that drafted the constitutions of the United States of America and France. On specific themes of the constitution, a considerable body of literature exists on various aspects of the constitution, but only a few documents were used for their normative value.⁴⁸

SWAPO of Namibia; Ngavirue, *Political Parties and Interest Groups in South West Africa*; Tunguru Huaraka (1982), *Namibia by Resolutions: A Legal Analysis of International Organisation's Attempts at Decolonisation* (PhD Thesis), Geneva, Univ. of Geneva; John Ya-Otto (1981), *Battlefront Namibia: An Autobiography*, New York, Lawrence Hill; Kenneth Abrahams (ed.) (1981), *Seminar on Namibian History*, Windhoek, Namibian Review Publications.

⁴⁵ Windhoek Constituent Assembly (1990), *Minutes of Meetings 1989/1990*, Windhoek, National Archives; Windhoek Constituent Assembly (1990), *Minutes of the Standing Committee on Standing Rules and Orders and Internal Arrangements 1989/1990* (Unpublished -- Personal collection).

⁴⁶ Nujoma, *Where Others Wavered*.

⁴⁷ Jan Elster, *Arguing and Bargaining in Two Constituent Assemblies*, <http://www.law.upenn.edu/conlaw/issues/vol2/num2/elster.htm>, accessed 19 July 2001.

⁴⁸ See for instance Charles Grove Haines (1930, *The Revival of Natural Law Concepts: A Study of the Establishment and of the Interpretation of Limits on Legislatures with Special Reference to the*

Since 1990, when the Constitution was drafted, only one work known to me by a Namibian scholar, Joseph Diescho, has been produced on the subject so far.⁴⁹ From the perspective of historiography, this study certainly fills a void. By putting various events of Namibia's history of the recent past in a chronological order, and by reproducing some relevant documents and agreements, Diescho's work opens the way for an understanding of events that led to the adoption of the Constitution.⁵⁰ Cliffe⁵¹ provides a chronicle of political events in Namibia during the period 1989–1990 that influenced the final outcome of the constitution and the state. This work also compares the Namibian situation with that of Zimbabwe during 1980.

In Chapter Five, the West's influence on the process of state formation in Africa and Namibia has been analysed. The chapter also highlights the challenges the new government of independent Namibia faced in setting up new government structures to undo some of the wrongs of the past.

Various aspects of state formation have an extensive body of literature available.⁵² However, there is a serious shortage of literature on the related subjects specific to

Development of Certain Phases of American Constitutional Law, Cambridge, Massachusetts, Harvard Univ. Press, <http://www.islandnet.com/~arton/constitution.html>, accessed 10 August 2000; Thomas Paine, *Rights of Man*, <http://www.ushistory.org/paine>, accessed 1 December 2002; Ernest Renan (1982), *Qu'est-ce qu'une Nation?/ What is a Nation?*, Paris, Calmann-Levy; Norbert Elias (1972), "Process of State Formation and Nation Building," *Transactions of the Seventh World Congress of Sociology*, 1970, Sofia, ISA, pp 274-84; United Nations Institute for Namibia, *Namibia: Perspectives of National Reconstruction and Development*; Windhoek Constituent Assembly, *Minutes of Meetings 1989/1990*; M.M. Ncube and Collins Parker (1989), *Comparative Electoral Systems and Political Consequences: Options for Namibia*, Windhoek, U.N. Inst for Namibia; Nohlen Dieter (1996), *Elections and Electoral Systems*, 2d ed., Delhi, Macmillan India; David Beetham and Kevin Boyle (1995), *Introducing Democracy: 80 Questions and Answers*, Paris, UNESCO Press.

⁴⁹ Joseph Diescho (1994), *The Namibian Constitution in Perspective*, Windhoek, Gamsberg Macmillan. See also, Lionel Cliffe and others (1994), *The Transition to Independence in Namibia*, Boulder, Lynne Reiner.

⁵⁰ Hage Geingob in his Foreword to Diescho, *The Namibian Constitution in Perspective*.

⁵¹ Cliffe and others, *The Transition to Independence in Namibia*.

⁵² For example, see Pierre Englebert (1997), 'The Contemporary African State: Neither African nor State,' *Third World Quarterly*, 18, 4; Renan, *Qu'est-ce qu'une Nation?*; Elias, "Process of State Formation and Nation Building," pp 274-84; Thomas Carothers (2002), "The End of the Transition Paradigm," *Journal of Democracy*, 13, 1; Larry Diamond (1999), *Developing Democracy: Toward Consolidation*, Baltimore, John Hopkins Univ. Press; Jarle Simensen (1999), "Democracy and Globalization: Nineteen Eighty-nine and the 'Third Wave'," *Journal of World History*, 10, 2; William Tordoff (1997), *Government and Politics in Africa*, 3d ed., Bloomington, Indiana Univ. Press; Samuel Huntington (1991), *The Third Wave:*

Namibia.⁵³ Therefore, in examining the issues related to state consolidation I have relied on my and my colleagues' experience in the government, and references to literature have been made only to define concepts. In that sense, therefore, this study should become a useful source of information on Namibia's experience with state consolidation.

In Chapter Six, I elaborate on how the first government of independent Namibia sought to meet some of the critical challenges it faced in strengthening the democratic state. Of course, on the subject of state consolidation, the range of topics that could be covered is quite extensive. However, during the first decade of independent Namibia, the significant issues were the need to promote reconciliation,⁵⁴ strengthen democracy,⁵⁵ strengthen civil society,⁵⁶ and launch anti-corruption⁵⁷ initiatives. Based on various issues of state

Democratization in the Late Twentieth Century, Oklahoma, Norman; Amritya Sen (1999), "Democracy as a Universal Value," *Journal of Democracy*, 10, 3.

⁵³ However, see Hage G. Geingob (1995), "From Colonialism to Freedom and Democracy: Role of an Effective Public Service in the Political Transition – the Namibian Experience," *Public Administration and Development*, 15; Cliffe and others, *The Transition to Independence in Namibia*; United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*; United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*; M.D. Bomani and C. Ushewokunze (1979), *Constitutional Options for Namibia: A Historical Perspective*, Lusaka, U.N. Institute for Namibia.

⁵⁴ Geingob, "From Colonialism to Freedom and Democracy"; Nujoma, *Where Others Wavered*; Namibia (1990), *Constitution of the Republic of Namibia*, Windhoek, Govt of Namibia; also Catholic Commission for Justice and Peace in Zimbabwe (1997), *Report on the 1980s Disturbances in Matabeleland and the Midlands* (March 1997); Val Ingham-Thorpe (1997), "Reconciliation in Zimbabwe: Reality or Illusion," paper presented at the Symposium co-hosted by Centre for the Study of Violence and Reconciliation and the South Africa Office of Oxfam, 1997.

⁵⁵ Simensen, "Democracy and Globalization"; Huntington, *The Third Wave: Democratization in the Late Twentieth Century*; Freedom House survey, <http://www.freedomhouse.org>, accessed 15 August 2001; Sen, "Democracy as a Universal Value"; Carothers, "The End of the Transition Paradigm"; Larry Diamond (1996), "Is the Third Wave Over?" *Journal of Democracy*, 7, 3; Mathew Horsman and Andrew Marshall (1994), *After the Nation-State: Citizens, Tribalism and the New World Disorder*, London, Harper Collins; Georg Sorensen, *Democracy and Democratization: Processes and Prospects in a Changing World* (Boulder, Westview Press, 1993); Zehra F. Arat (1991), *Democracy and Human Rights in Developing Countries*, Boulder, Lynne Rienner Publishers; William D. Gairdner (ed.) (1998), *After Liberalism: Essays in Search of Freedom, Virtue, and Order*, Toronto, Stoddart Publishing.

⁵⁶ Charles F. Bahmueller (1997), "Civil Society and Democracy Reconsidered," *Civnet's Journal for Civil Society*, 1, 1, <http://www.civnet.org/journal/demo.citizen5.htm>, accessed 9 February 2002; Edward Shils (1991), "The Virtue of Civil Society," *Government and Oppositions*, 26, Winter; Thomas Janoski (1998) *Citizenship and Civil Society: A Framework of Rights and Obligations in Liberal, Traditional, and Social Democratic Regimes*, Cambridge, Cambridge Univ. Press; Diamond, *Developing Democracy: Toward Consolidation*; Larry Diamond (1994), "Rethinking Civil Society: Toward Democratic Consolidation," *Journal of Democracy*, 5; E. Gyimah-Boadi (1997), "Civil Society in Africa: The Good, the Bad, and the Ugly," *Civnet's Journal for Civil Society*, 1, 1, <http://www.civnet.org/journal/issue1/egboadi.htm>, accessed 9 February 2002; Wood (ed.), *Namibia: 1884-1984*.

⁵⁷ Carolyn Baylies, Robin Cohen, and Gavin Williams (1986), "The Struggle for Spoils," *Review of African Political Economy*, 13, 35; Jacqueline Coolidge and Susan Rose-Ackerman (1997), *High Level Rent*

formation and state consolidation, an attempt also has been made to carry out a democratic audit of Namibia. In carrying out the democratic audit, I found the Swedish normative tools, and the works of Beetham and Micheletti⁵⁸ particularly useful.

Finally, in Chapter Seven, I return to the research question to relate it to the findings of this study.

Seeking and Corruption in African Regimes: Theory and Cases, Washington D.C., World Bank; Cheryl W. Gray and Daneil Kaufmann (1998), "Corruption and Development," *Finance and Development (World Bank)*, 35, 1; Chris Heymans and Barbara Lipietz (1999), *Corruption and Development: Some Specific Perspectives* Pretoria, Inst for Security Studies; Robert Klitgaard 1998), "International Cooperation Against Corruption," *Finance and Development (IMF)*, March; Morris Szeftel (1998), "Misunderstanding African Politics: Corruption and the Governance Agenda," *Review of African Political Economy*, 25, 76; Morris Szeftel (2000), "Clientelism, Corruption and Catastrophe," *Review of African Political Economy*, 27, 85; Transparency International (2000), *TI Source Book 2000: Confronting Corruption The Elements of a National Integrity System*, Berlin, Transparency International; World Bank (1997), *World Development Report 1997*, Washington DC, World Bank.

⁵⁸ Particularly useful documents on this subject include: David Beetham (1993), *Auditing Democracy in Britain* (Democratic Audit Paper No. 1), London, Charter 88 Trust; David Beetham (1994), "Conditions for Democratic Consolidation," *Review of African Political Economy*, 21, 60; Michele Micheletti (1998), *Democratic Audit of Sweden* (A Periodical Bulletin of the Swedish Information Service) (Viewpoint Sweden No 18, February 1998).

Chapter Two

Impact of External Political Forces on Namibia's Colonial History

No European nation had the right to assume sovereignty over the inhabitants of any part of Africa, and the claims put forward by the various governments at the Berlin Conference in 1885 took little account of the right of the people who lived in the territories claimed.

Sir Alan Burns, former Governor, Nigeria, 1948⁵⁹

Introduction

As a moral argument, Sir Alan's thinking cannot be faulted. However, throughout history, international politics has never been a product of noble thoughts, idealism or good intentions. Colonization of Africa had little to do with the 'civilizing mission' as many twentieth century politicians would have us believe, but had everything to do with their economic and geopolitical interests. Colonizing states' policies were greatly influenced by the thinking of Malthus and Machiavelli. Malthus gave the politicians an argument or justification for seeking additional *lebensraum* for fast growing populations.⁶⁰ Albeit simplistic, occupation of foreign territories was a convenient answer. Other 'benefits' of colonization were soon discovered subsequent to the occupation of territories in Africa. Machiavelli helped the politicians' conscience by arguing that policy is defined not by its excellence but by its outcome; if it is not effective, it cannot be virtuous.⁶¹ Like Machiavelli, Churchill, Sun-Tzu, and Thucydides all believed in a morality of results rather than of good intentions.⁶² This 'self-evident truth' continues to find reaffirmation throughout history.⁶³ Even today, similar arguments

⁵⁹ See Wood (ed.), *Namibia: 1884-1984*, p. 152.

⁶⁰ H.L. Wesseling (1996), *Divide and Rule: The Partition of Africa 1880-1914*, Arnold J. Pomerans (tr.), London, Praeger, p. 105.

⁶¹ Harvey C. Mansfield (1996), *Machiavelli's Virtue*, Chicago, Univ. of Chicago Press, pp. 20, 33. See also Nocolo Machiavelli (1997), *Discourses on Livy*, Julia Conaway Bondanella and Peter Bondanella (trs), New York, Oxford Univ. Press.

⁶² Kaplan, *Warrior Politics*, p. 53.

⁶³ For examples see Kaplan, *Warrior Politics*, pp. 54- 55.

continue to be 'validated' on different issues. For example, globalisation is being cloaked in terms of its importance for national development. However, Kaplan points out that globalisation is Darwinian. It means economic survival of the fittest.⁶⁴

There are lessons to be drawn from history as we examine Namibians' struggle for self-determination and independence. Strains felt by Africa during the colonial period have not disappeared. In fact, conflicts between haves and have-nots, and emphasis on outcomes based on self-interest with little regard for justice and fairness have only become accentuated. In this context, a number of scholars have examined the role of the West and international bodies, such as the League of Nations, the International Court of Justice, and the United Nations, in addressing the Namibian question.⁶⁵ However, the interplay of various forces and mechanisms used by these forces to sideline the very people who were most affected by their decisions has not received the sufficient attention of scholars. From the Berlin Conference to the implementation of United Nations Security Council Resolution 435, decisions about Namibia were taken without regard to how Namibians felt about these decisions.

This chapter briefly revisits Namibia's history to gain an insight into the mechanisms utilized by the Europeans directly and through the League of Nations, the International Court of Justice, and the United Nations to further their own interests. This chapter also examines the possible motives behind the Europeans' various initiatives and their repercussions, including Namibians' responses to the Europeans trying to manage outcomes.

⁶⁴ Kaplan, *Warrior Politics*, p. 119.

⁶⁵ See, for instance, Goldblatt, *History of South West Africa*; Dugard (ed.), *The South West Africa/Namibia Dispute*; United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*.

Namibia Under German Colonial Rule

Europeans' interest in Namibia began in early 1880s with Imperial Germany's desire to acquire its own colonies in Africa. In order to further its aims, the Imperial Government convened the 1884-85 Berlin Conference:⁶⁶

to regulate the conditions most favourable to the development of trade and civilization in certain regions of Africa, and to assure to all nations the advantages of free navigation on the two chief rivers of Africa flowing into the Atlantic Ocean; [and] to obviate the misunderstanding and disputes which might in future arise from new acts of occupation (*prises de possession*) on the coast of Africa.

In convening this conference, the Germans had very specific plans: being late on the colonization scene, they wanted to acquire colonies without ruffling the feathers of other colonizing states. These intentions found manifestation in Article XXXIV of the General Act of the Conference of Berlin:⁶⁷

Any Power which henceforth takes possession of a tract of land on the coasts of the African Continent outside of its present possessions, or which being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own.

These attempts by Germany started the final push towards the scramble for Africa by the signatories to the Act: "This conference did not establish new rules but validated a shareout which had the aspects both of competition and partnership."⁶⁸ This treaty also sealed Namibia's fate. In 1884, Imperial Germany declared the territory a protectorate, and in 1890 it was declared Germany's Crown Colony. In 1893, Germany established colonial administration in the territory.⁶⁹ "The period after 1890 saw German ruthlessness and brutality upon Namibians in its ugliest form when the entire machinery of exploitation – an administrative system, land alienation, white settlement, a labour

⁶⁶ General Act of the Conference of Berlin of the Plenipotentiaries of Great Britain, Austria-Hungary, Belgium, Denmark, France, Germany, Italy, the Netherlands, Portugal, Russia, Spain, Sweden and Norway, Turkey and the United States dealing with Africa, p. 1081.

⁶⁷ *Ibid.*, p. 1097.

⁶⁸ Kader Asmal (1984), "Judicial Aspects of the Berlin Conference, 1884-5: Contribution to a New Colonial Order," paper presented to the Conference of the German Association of Africanists, Hanover, 13-16 June 1984.

⁶⁹ Henning Melber (1982), "Shadows of the Past: The Consequences of Colonisation and German Colonial Rule in Namibia," paper submitted to International Seminar on the Role of Transnational Corporations in Namibia, Washington, 29 Nov. – 2 Dec. 1982, p. 2.

extraction system, mineral exploration, and laws based on obnoxious system of racial discrimination – came into being.”⁷⁰

The territory was divided into two sections. Colonial administration was established to cover only the southern 80% of the country that came to be known as the ‘Police Zone.’ This area was meant largely for the whites. In order to help the new immigrants from Germany to settle, large tracts of land were confiscated from the blacks through devious means and repressive measures. Where the indigenous population resisted, they were deprived of land by force. In 1894 there were clashes between Germans and Khausas, followed by the ‘revolt’ of Goortontein in 1901, the Swartbooi uprisings of 1904-7, and the Herero uprisings of 1904-7.⁷¹ Confiscated land was given to the whites, indigenous inhabitants’ cattle were confiscated for the benefit of the whites, and they were given generous financial assistance to help them settle in the colony.

Blacks were forced to live in the so-called tribal areas in the north and in scattered reserves in the Police Zone. This movement of people exaggerated the already existing skewed population distribution. As a result of this movement of the blacks to unproductive areas, loss of their lands and livestock, and the resulting economic plight forced them to work on ‘white-owned’ farms and in mines for meagre wages. By 1913 there were over 1300 farms comprising 13.4 million ha of land – all ‘owned’ by Germans.⁷² Thus, German policy in Namibia ensured that the settlers not only did not have any competition from indigenous entrepreneurs but also had access to a large pool of cheap labour. In fact, labourers for white farms, mines and railway construction became a significant ‘prize’ for Germany.⁷³ Germany fully exploited this prize: “The ‘native’ was almost universally looked upon as a means to an end, never as an end in

⁷⁰ United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, p. 30.

⁷¹ SWAPO (1981), *To be Born a Nation: The Liberation Struggle for Namibia*, London, Zed Press, p. 17. See also Moleah, *Namibia: The Struggle for Liberation*, p. 42.

⁷² United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, p. 31.

⁷³ See Keulder (ed.), *State, Society and Democracy*, p. 34.

himself, and his welfare and that of the colony were completely subordinated to the interests of the German on the spot and of Germany at a distance.”⁷⁴

Namibia’s occupation bore ample witness to the sad truth that settler colonialism was the worst form of colonialism.⁷⁵ This form of colonialism entailed not only economic exploitation and political oppression but also super-exploitation and brutal political repression. All colonialism has a racist predicate, but settler colonialism has a virulent racist predicate. As could be expected in such exploitative situations, a constant companion of settler colonialists was a fear of the deprived and oppressed natives. Germans met this challenge by consistently increasing the oppression.

The German colonial episode came to an end with the defeat of Germany at the end of World War I. The fate of the colonies of the defeated state was worked out at the Paris Peace Conference. However, the administrative and legal infrastructure established in the Police Zone, the settlement pattern characterized by racial and ethnic segregation, and the labour extraction system established by the Germans in Namibia provided a solid foundation on which South Africa later erected its own apartheid state.⁷⁶

Thus, the end of the German occupation era changed nothing for Namibians. What the people of Namibia wanted continued to be of little consequence. In fact, the practice of cooperation by colonial powers and other global players, as characterized at the Berlin Conference, continued to thwart Namibians’ efforts at self-determination and independence. The result was that the Namibian question continued to be a football of colonial powers in the League of Nations, in the International Court of Justice, and in the United Nations until 1990 when Namibia eventually secured independence.

⁷⁴ MacMillan, *Paris 1919: Six Months that Changed the World*, p. 99.

⁷⁵ See for instance, Mandaza (ed.), *Zimbabwe: The Political Economy of Transition, 1980-1986*.

⁷⁶ United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, p. 33.

Mandate for South West Africa

The Berlin Conference had tried to 'validate' the sharing out of Africa, but, largely because of the United States' revolutionary zeal during discussions leading to the formation of the League of Nations, the post-World War I era brought a new thinking:⁷⁷

Colonies should not continue to be treated like trophies, transferred by last year's champions to this year's winners.... Forced to accept that concept, the Allies took a fall-back position, attempting to blur, as far as possible, the differences between the mandate and the annexed territory, by assimilating the former to the latter.

In principle, the concept of no more annexation defined the League of Nations' Mandate System under which the Mandate for German South West Africa was assigned⁷⁸ but in reality this nascent thinking was not backed by appropriate actions. In fact, at the practical level, the application of the concept continued to be governed only by the self-interest of the colonizing nations. Even the concept of 'self-determination' was confusing. President Wilson, who had articulated this phrase, seemed vague as to what it actually meant. Secretary of State Robert Lansing had asked: "What unit has he in mind? Does he mean a race, a territorial area, or a community? ... It will raise hopes that can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the danger until it was too late."⁷⁹

As Lansing had feared, what happened in the Balkans, in the Middle East, and in the Far East (Japan taking the Shantung peninsula in China, for example) and in many parts of Africa has its roots in what happened in Paris in 1919. In South Africa, this thinking was later on to be translated into a homelands policy based on ethnicity. The intentions of South Africa were for these homelands to exercise their right to self-determination and seek independence. However, South Africa's policy on Namibia was different as it sought to incorporate Namibia into South Africa against the wishes of the Namibian people.⁸⁰

⁷⁷ See United Nations Institute for Namibia, *Namibia: United Nations Responsibility*, pp. 80-81. Further details are given in Dugard (ed.), *The South West Africa/Namibia Dispute*, pp.28-29.

⁷⁸The Mandates System, Series of League of Nations Publications VI.A. Mandates 1945.

⁷⁹ Richard Holbrooke, "Foreword" in MacMillan, *Paris 1919: Six Months that Changed the World*, p. viii.

⁸⁰ South-West Africa Amendment Act No. 23 of 1949, sec. 27.33.

Thus, the vagueness of the new phrase (self-determination) created new problems. The principles governing relations between European and non-European people did not change much from those prevailing up to the end of the fifteenth century. Up to the end of the fifteenth century, "territorial conquests were not only considered meritorious, but after occupation, the colonizers could and often did insist that foreign states accorded them the benefits of international law. The subjugated populations had no protection against colonizer except his humanity and sense of expediency. The sense of humanity was narrowly limited by race and religion."⁸¹

In the case of Namibia, marginalization of Namibians was conveniently 'justified' by General Jan C. Smuts, one of the two South African representatives at the Paris Peace Conference. He argued that the ex-German colonies in Africa and the Pacific should be excluded from the League of Nations' Mandate System: "The German colonies in the Pacific and Africa are inhabited by barbarians who not only cannot possibly govern themselves but to whom it would be impracticable to apply an idea of political self-determination in the European sense."⁸²

As South African forces had occupied Namibia after the defeat of Germany, General Smuts' arguments were designed to acquire the territory for South Africa by annexation. He argued that Namibia's annexation by South Africa, rather than placing it under mandate, was considered "natural and right." Smuts had suggested to his British colleagues that if Americans objected to annexation, Great Britain could graciously concede and ask in return for control under general, and minimal, League supervision.⁸³

⁸¹ Quincy Wright (1930), *Mandates Under the League of Nations*, Chicago, Univ. of Chicago Press, quoted in Isaak I. Dore (1985), *The International Mandate System and Namibia*, Boulder, Westview Press, p. 1.

⁸² Jan C. Smuts (1919), *The League of Nations: A Practical Suggestion*, quoted in Dugard (ed.), *The South West Africa/Namibia Dispute*, pp.28-29.

⁸³ MacMillan, *Paris 1919: Six Months that Changed the World*, p. 99.

General Smuts' influence was clearly discernible in the Covenant of the League of Nations as well as in the Mandate for German South West Africa. As per Paragraph 6 of Article 22 of the Covenant of the League of Nations:

There are territories, such as South West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

Safeguards were outlined in Paragraph 5 and included freedom of conscience and religion, prohibition of abuses, such as slave trade, arms traffic and liquor traffic, prevention of military training of the natives, and securing equal opportunities for the trade and commerce of other members of the league. Continued influence of the Berlin Conference could also be discerned in this clause.

At the time of the formulation and adoption of the mandate, no one had any interest in knowing what the Namibians thought about the future of their country. They were not consulted about their future because of continuing and pervading belief, first articulated in the Treaty of Westphalia, that global politics was exclusively the function of sovereign nation-state actors.⁸⁴ Beyond that, the concern was only for white Christians. Another reason why Namibians were not consulted was perhaps because the interested parties knew that the Namibians sought nothing less than independence and control over their resources, such as land, cattle, and minerals, and that position was not convenient for Paris Peace Conference participants, their ally, South Africa, and global capitalist interests.⁸⁵

⁸⁴ Richard W. Mansbach, Yale H. Ferguson, Donald E. Lampert (1976), *The Web of World Politics: Non-state Actors in the Global System*, Englewood Cliffs, Prentice-Hall, p. 274.

⁸⁵ Large part of investment capital and assets in the mining sector belonged to multinational corporations domiciled in South Africa, North America, Britain, France and Germany. Consolidated Diamond Mines, the South West Africa Company, the Tsumeb Corporation, and the Rossing Uranium Ltd together accounted for 90% of output excluding uranium. Further, countries that had negotiated long-term contracts for uranium included Britain, France, West Germany and Japan. See United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, pp. 27-28.

Nevertheless, with the establishment of the League of Nations, the colonized people had very different expectations. They had hoped that the establishment of the League of Nations would be a turning point for the many territories that the vanquished of World War I were forced to surrender. They had not recognized Machiavelli's warning that history does not reward morality per se, and virtue is defined by outcomes and not by any moral imperative. Consequently, the new era ushered in with the creation of the League of Nations was no different from that prior to its creation. In practice, justice for the mandated territories or for colonies was not given importance. What was important was how control over the resources in the colonies and the mandated territories was to be exercised.

It was therefore no surprise that the Mandate for German South West Africa was given to South Africa. South Africa violated every restrictive provision of the mandate and made every effort to extend its sovereignty permanently over Namibia⁸⁶ by questioning the continuation of the mandate beyond the League of Nations.⁸⁷ South Africa also attempted to incorporate Namibia as its fifth province by providing representation of the territory in the South African parliament⁸⁸ and by making all persons born in Namibia automatically and involuntarily citizens of South Africa.⁸⁹ Decisions affecting the lives of the people of the territory were once again made much in line with the fifteenth century concept of international law, according to which the wishes and interests of the inhabitants of the possessions did not matter: they were narrowly limited by race, religion and language. Thus, giving the mandate over German South West Africa to South Africa was an example of the western powers' collusion to protect their interests and deny the Namibians a voice in shaping their own destiny.

⁸⁶ See, *Rex v. Christian* (1924) A.D. 101. Christian's conviction for treason could only be upheld if South Africa had sovereignty over Namibia. The Appellate Division concluded that sovereignty was vested in South Africa because neither the League nor the Principal Allied Powers was an entity in which sovereignty could be vested.

⁸⁷ See, *Hansard* (19 March 1947) col. 1327, (11 April 1947) col. 2588, (25 February 1948) col. 2407-8; and *I.C.J. Reports* (1950).

⁸⁸ South-West Africa Amendment Act No. 23 of 1949, sec. 27.33.

⁸⁹ South Africa (Union), Citizenship Act No. 44 of 1949, sec. 2-5.

Mamdani in his work, *Citizen and Subject*, amplifies this concept by locating colonialism in its historical context. He argues that colonial states were organized and reorganized by the colonizers to address the overriding dilemma: the native question – the question of how a tiny foreign minority could rule over the indigenous majority.⁹⁰ South Africa sought to address this question by giving each of the homelands or ‘native’ reserves in Namibia an alternative choice: either to opt for independence or to join up with any other neighbouring independent state of their own choice. Ovambos could either claim independence or join with Angola; Kavangos could opt to link up with Botswana; Caprivians could join Zambia; and, of course, the white homeland could opt to join South Africa.⁹¹ South Africa tried to persuade various chiefs to make their choices. Chief Eliphas of the Ovambos would have agreed to the independence option had SWAPO not intervened by mobilizing the masses against such a break up of Namibia.⁹²

Mamdani, elaborating on the strategies for colonial rule argument referred to Lugard’s apologia on racism.⁹³

On the one hand the policy does not impose any restriction on one race which is not applicable to the other. A European is as strictly prohibited from living in the native reservation as a native is from living in the European quarter. On the other hand, since this feeling exists, it should in my opinion be made abundantly clear that what is aimed at as segregation of social standards, and not a segregation of races. The Indian or the African gentleman who adopts the higher standard of civilization and desires to partake in such immunity from infection as segregation may convey, should be as free and welcome to live in the civilized reservation as the European, provided, of course, that he does not bring with him a concourse of followers.

Reality was, however, very different. Whites did not lose land, they were not persecuted and deprived of their livelihood. They were not denied decent education, health services, and a say in the governance of their affairs. In fact, the arguments put forward by Lugard

⁹⁰ Mahmood Mamdani (1996), *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Princeton, Princeton Univ. Press, p. 16.

⁹¹ *X-Ray* (August 1972), quoted in United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*.

⁹² My conversations with the role players in the north central region (October 1992).

⁹³ Mamdani, *Citizen and Subject: Contemporary Africa*.

could easily have come from the South African policy document promoting apartheid,⁹⁴ which, translated into English means 'separate development'. Equality or equal opportunity was not a part of the policy.

In the case of Namibia, the League of Nations showed little concern about the fact that under South African rule martial law was imposed in Namibia, mass imprisonments were commonplace, and forced labour was used to build the railroads and to work in the mines. When white settlers were given limited self-government in 1925, there were clear signs that the indigenous population was dissatisfied with South African rule, and therefore the terms of the mandate were not being met.⁹⁵ But that changed nothing.

Even after the demise of the League of Nations and the emergence of the United Nations to replace it, South Africa continued to harbour the desire to incorporate Namibia as its fifth province. Not only did South Africa refuse to place its mandate under the United Nations Trusteeship System that had replaced the League's Mandates System,⁹⁶ it reinforced its efforts to incorporate Namibia, or a good part of Namibia into South Africa. However, its efforts were consistently thwarted as a result of India's steadfast opposition to incorporation.

The 1950 Advisory Opinion of the International Court of Justice

After South Africa refused to place its mandate under the United Nations trusteeship system, the United Nations General Assembly, by Resolution 338(IV) of December 1949, adopted by 40 votes in favour to 7 against and 4 abstentions, decided to seek an advisory opinion of the International Court of Justice on the legal status of South West Africa. It asked:⁹⁷

What is the international status of the Territory of South West Africa and what are the international obligations of the Union of South Africa arising therefrom, in particular:

⁹⁴ See, for instance, South Africa (Republic), *Report of the Commission of Enquiry into South West Africa Affairs 1962-1963*.

⁹⁵ M.J. Fox (1998), "Missing the Boat to Self-Determination: Palestine and Namibia in Retrospect," *Arab Studies Quarterly* (22 June 1998).

⁹⁶ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, Chapter 5.

⁹⁷ United Nations General Assembly Resolution 338(IV) (1949).

Does the Union of South Africa continue to have international obligations under the Mandate for South West Africa and, if so, what are these obligations?

Are the provisions of Chapter XII [Trusteeship] of the Charter applicable and, if so, in what manner, to the Territory of South West Africa?

Has the Union of South Africa the competence to modify the international status of the Territory of South West Africa, or, in the event of a negative reply, where does the competence rest to determine and modify the international status of the Territory?

The court was unanimously of the opinion that South West Africa continued to be under the international mandate. However, the provisions of Chapter XII of the Charter, though applicable to the territory, do not impose on the Union of South Africa a legal obligation to place the territory under the Trusteeship System. The Court was also unanimous in its opinion that the Union of South Africa does not have the competence to modify the status of the territory unless acting with the consent of the United Nations.⁹⁸

Five of the judges also gave dissenting opinions. Judges De Visscher and Krylov were of the opinion that Namibia remained a mandated territory and the trusteeship provisions of the Charter placed an obligation on South Africa to negotiate with the United Nations in good faith in order to conclude a trusteeship agreement for Namibia.⁹⁹

The General Assembly accepted the Court's opinion.¹⁰⁰ South Africa, on the other hand, refused to accept the opinion on the grounds that certain vital information had not been placed before the Court.¹⁰¹ Subsequently, one legal scholar observed that the Union Government's refusal to abide by the Court's view did not deprive the Court's opinion of its full legal value, but merely meant that the South African government relied upon the fact that there was no machinery for giving effect to that decision.¹⁰²

⁹⁸ *I.C.J. Reports* (1950), pp. 143-4.

⁹⁹ *Ibid.*

¹⁰⁰ United Nations General Assembly Resolution 449(V) (1950).

¹⁰¹ United Nations General Assembly, Official Records; 5th Session, Fourth Committee, 196th meeting, paras 46-52. See also United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, pp. 133-4.

¹⁰² I. Goldblatt (1960) *The Conflict Between the United Nations and the Union of South Africa in Regard to South West Africa*, Windhoek, the Author.

South-West Africa Cases

Emboldened by the 1950 Advisory Opinion of the International Court of Justice, South Africa refused to accept the United Nations' supervision of its administration of Namibia. However, tolerance for this South African prevarication was running thin by the 1960s because of the enlargement of the United Nations General Assembly with the admission of sixteen newly independent African states. In the General Assembly, attitudes to South Africa's intransigence were hardened further following the massacre of innocent Namibians by South African forces at Windhoek's Old Location (currently Hochland Park) in 1959, and the Sharpeville massacre in the following year. These changed circumstances created a new climate at the United Nations, manifesting itself in a new militancy in the General Assembly.

The massacre of innocent Namibians by South African forces at Windhoek's Old Location was a result of blacks refusing to abandon their homes to make room for the expansion of 'white areas'.¹⁰³ This incidence was the very first massacre of Namibians by the South Africans. It was followed by the Sharpeville massacre of 1960 where 60 blacks died. Namibians, thus, led a confrontation against the occupation regime, just as they were to be the first in the region to take up arms against racist South Africa.

Further, in June 1960, at the Second Conference of Independent African States held in Addis Ababa, Ethiopia and Liberia announced that, as former member states of the League of Nations, they intended instituting legal proceedings against South Africa over South West Africa.¹⁰⁴ Subsequently, the General Assembly passed Resolution 1565(XV) commending "the Governments of Ethiopia and Liberia upon their initiative in submitting such dispute to the International Court of Justice for adjudication and declaration in a contentious proceeding in accordance with Article 7 of the Mandate."¹⁰⁵ Of course, none of the European states had even considered instituting legal proceedings against South Africa over South West Africa.

¹⁰³ Nujoma, *Where Others Wavered*, p. 74.

¹⁰⁴ Dugard (ed.), *The South West Africa/Namibia Dispute*, p. 214. The states participating in the conference included Ethiopia, Ghana, Guinea, Libya, Liberia, Morocco, The Sudan, Tunisia, and the United Arab Republic. There were also observers from Algeria, Cameroon, Nigeria, and Somalia.

¹⁰⁵ United Nations General Assembly Resolution 1565(XV) (1960), paragraph 4.

Liberia and Ethiopia's application to the court asked that South Africa be held accountable to the United Nations for its administration of Namibia, and that apartheid in Namibia violated Article 2 of the Mandate.¹⁰⁶ In response, South Africa raised four preliminary objections. First, it argued that since the demise of the League of Nations, the mandate was not a treaty in force. Second, Ethiopia and Liberia were not qualified to bring proceedings before the court, as they did not have any *locus standi*. Third, these two countries' material interests were not involved. Fourth, the conflict did not meet the requirement of Article 7 of the Mandate that "it cannot be settled by negotiations."¹⁰⁷

The Court was, thus, forced to consider the objections before it could consider the Liberian and Ethiopian application. Two years later, in December 1962, the court overruled all the objections by eight votes to seven.¹⁰⁸ The line up of the various judges, as to who was with the majority and who with the minority, was significant as it had a serious bearing on the outcome of the final decision of the Court in 1966.

After South Africa's objections were overruled, South Africa was asked to respond to the original complaint of Ethiopia and Liberia. Reacting to the outcome, the Prime Minister of South Africa, Dr Verwoerd, stated in the House of Assembly that:¹⁰⁹

In the circumstances, ... particularly the very narrow majority in the matter of the Court's jurisdiction, the Government of the Republic would be fully justified in not filing counter-memorials in reply to the allegations contained in the memorials of the two complainants. The position is, however, that the decision of the majority of the Court entitles the complainants to proceed with the merits of the case, and unless South Africa files counter-memorials, its case will go by default.... The Government's decision [to file counter-memorials] should, however, not be construed as implying a change in the attitude which it has consistently held in regard to the South West Africa issue, namely that the International Court has no jurisdiction -- a matter on which the present members of the Court are themselves so sharply divided.

¹⁰⁶ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 140.

¹⁰⁷ *ICJ Reports* (1962), pp. 326-7.

¹⁰⁸ *Ibid.*, p. 347.

¹⁰⁹ South Africa (Republic), *House of Assembly Debates* (21 January 1963), 5, Cols. 14-15.

South Africa submitted ten volumes of counter-memorials that provided an incredible amount of information hitherto not available on South West Africa. As a sampling, the counter-memorials stated that apartheid was a political necessity to stop the repetition in South West Africa of the bloodshed unleashed in Congo and by the Mau Mau in Kenya. It stated that African reality demanded that the 'white bearers of civilization' treated the natives as their wards, protected them against exploitation by not allowing them to own their own land, and gave them the benefits of modern government without the burden, which might be abused, of direct political representation.¹¹⁰

On 18 July 1966, after long and costly litigation the Court, by the President casting the deciding vote (the votes being equally divided), rejected the claims of Ethiopia and Liberia on the ground that they had not established "any legal right or interest appertaining to them in the subject matter of the present claims." In other words, the Court refused to decide on the merits of the issues presented to it and went back on its earlier decision regarding South Africa's objections. "The judgement surprised all the participants and commentators, since the issue was considered by the Court on its own motion. The general reaction was that the Court had reopened and reversed its 1962 judgement on the third preliminary objection, thus undermining the basic principle of *res judicata*, which ensures the parties to a dispute that a judicial decision is final."¹¹¹

The line up of judges who held majority and minority views shows that the former minority had become the new majority because of some changes in the composition of the Court. Scholars believe that the new composition of the International Court had played a significant role in the outcome. "Change in personnel [judges] was sufficient to change the outcome of the case on the merits assuming that a judge's vote on the first phase was a reliable indicator of his vote on the second – and the voting of the judges who sat on both phases suggests that is was a reasonable assumption."¹¹² Dugard¹¹³ provides an outline of the changes that took place, emphasizing how various judges were

¹¹⁰ For details, see Dugard (ed.), *The South West Africa/Namibia Dispute*, p. 282.

¹¹¹ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 143.

¹¹² *Ibid.*

¹¹³ Dugard (ed.), *The South West Africa/Namibia Dispute*, pp. 291-2.

manipulated to ensure an outcome that was more acceptable to some of the members of the Security Council.

Dugard noted that:¹¹⁴

The main purpose of the litigation over South West Africa, as far as the applicants were concerned, was to obtain an enforceable judgement against South Africa. In terms of Article 94 of the Charter of the United Nations each member State agrees to comply with the decision of the International Court 'in any case to which it is a party,' and 'if any party to the case fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement.'

This objective was, however, thwarted by the changed composition of the Court.

Having exhausted a possible legal remedy, the newly independent countries in Africa and Asia decided to resort to a political solution of the Namibian question at the United Nations.

Inclusion of "self-determination of peoples" in the United Nations Charter was a turning point in international relations. This concept was eventually accepted as a right in international law. It was a right that was unprecedented because of its new applicability to entities other than states or governments.¹¹⁵ However, Chapter XI, Article 73 of the United Nations Charter studiously avoided the use of the term 'self-determination' for non-self-governing territories. Instead, terms, such as 'political advancement', 'self-government', 'political aspirations' and 'progressive development of their free political institutions' were used.¹¹⁶

As a consequence of World War II, and the evolving new thinking about the importance of self-determination, post-war decades saw the sprouting of the seeds of nationalism in many of the colonized territories. Demands for decolonisation and self-determination

¹¹⁴ *Ibid.*, p. 277.

¹¹⁵ Fox, "Missing the Boat to Self-Determination."

¹¹⁶ *Ibid.*

gained increased momentum with the independence of Ghana in 1957 and Nigeria in 1960. Subsequently, the United Nations General Assembly also adopted its 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. The declaration,¹¹⁷ among others, stipulates, “The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, and is contrary to the Charter of the United Nations and impedes the promotion of world peace and cooperation.”

The Creation of SWAPO

In the same year, the South West Africa People’s Organization (SWAPO) was established as the first national movement with the aim of securing independence for Namibia. SWAPO finds its roots in the Ovamboland People’s Congress (OPC) that was formed in 1957 by the Namibian workers in South Africa under the leadership of Andimba H. Toivo ya Toivo with the active support of Namibian students studying there. At home, OPC was renamed the Ovamboland People’s Organization (OPO) and developed into a powerful workers’ organization. Though OPO worked to better the condition of workers under the hated contract labour system,¹¹⁸ the leaders realized that no real change was possible without political emancipation. This realization led the workers’ struggle to merge into the wider struggle for political independence after the formation of SWAPO on 19 April 1960 with Mr Nujoma elected President in absentia.¹¹⁹

Soon after its establishment, SWAPO began the work of consolidating its support amongst Southwest African workers, peasants, students, intellectuals, clergy, and community leaders throughout Namibia, regardless of individuals’ ethnicity. SWAPO had thus become a national movement.

¹¹⁷ United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the United Nations General Assembly on 14 December 1960 (Resolution 1514 (XV))

¹¹⁸ Under the contract labour system, workers were recruited from the ‘homelands’ for a fixed term and were forced to return to their ‘homelands’ after the completion of the contract. They were not allowed to bring their families with them, change jobs, or resign.

¹¹⁹ Nujoma, *Where Others Wavered*, p. 108. See also United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, pp. 264-5.

The leadership also realized that SWAPO's profile needed to be raised outside the territory in order to ensure that Namibians had a say in the resolution of the Namibian question subsequent to the United Nations General Assembly passing Resolution 1514.¹²⁰ Consequently, SWAPO leadership decided to establish its offices in other countries. It was also decided to open Provisional Headquarters in Dar es Salaam. Nujoma notes, "Tanganyika did not become independent until 9 December 1961 (thereafter the United Republic of Tanzania), but it achieved internal self-government in May of that year, and that made SWAPO's development, and the conduct of our campaign from there, somewhat easier."¹²¹ As the profile of a resistance movement is shaped by the nature of the oppression it faces, SWAPO's profile was that of black resistance against the culture of white oppression. Therefore, initially there were no Whites in the leadership, but over time SWAPO membership at all levels became increasingly representative of Namibian diversity.

The 1959 Windhoek massacre and the 1960 Sharpeville massacre in South Africa had convinced SWAPO that South Africans would go to any extent to retain White dominance over Blacks in Namibia as well as South Africa. Therefore, SWAPO contemplated launching a war of liberation. By 1962, SWAPO cadres, who were later to constitute People's Liberation Army of Namibia (PLAN), were being trained in Egypt, Algeria, and in several socialist countries. Some debate took place between SWAPO members in particular and Namibians in general about the wisdom of launching an armed struggle versus peaceful petitioning to the United Nations. On the one hand, there was a feeling that our cause was just, and we could expect that that the so-called civilised world would be with us. Advocates of peaceful petitioning also believed that the International Court of Justice would not betray the trust Namibians had in it. On the other hand, there were those who thought that we should be ready for any eventuality.

On the very same day that the International Court of Justice had ruled that Ethiopia and Liberia had no *locus standi* under Article 7 of the Mandate, and were therefore not

¹²⁰ United Nations General Assembly, Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the United Nations General Assembly Resolution 1514(XV), 14 December 1960.

¹²¹ Nujoma, *Where Others Wavered*, p. 113.

entitled to a judgement, SWAPO responded from its headquarters in Dar-es-Salaam that the Court's negative decision "would relieve Namibians, once and for all, from any illusions which they may have harboured about the United Nations as some kind of a saviour in their plight.... We have no alternative but to rise in arms and bring about our own liberation."¹²² The Secretary of Defence of SWAPO, Mr Peter Nanyemba had stated on that occasion, "We have to cross many rivers of blood before we can achieve our freedom."¹²³ The sense of betrayal was widespread after the International Court of Justice's ruling. Consequently, on 26 August 1966, SWAPO launched its armed struggle for the liberation of Namibia.

The first battle between PLAN and South Africans took place at Ongulu-gOmbashe in the north.¹²⁴ Soon thereafter, South Africa started its brutal repression of SWAPO cadres. South African forces rounded up most of the top internal SWAPO leaders and tried them under the Terrorism Act applied retroactively. All but three leaders were imprisoned on Robben Island for terms ranging from five years to life.

Revocation of the Mandate

As a result of these developments and SWAPO's efforts at keeping the Namibian question alive in the international arena, the General Assembly, expanded with many African members, proceeded to revoke the Mandate for South West Africa. On 27 October 1966, it adopted Resolution 2145(XXI) by 114 votes to 2 (South Africa and Portugal), with 3 abstentions (France, Malawi, and the United Kingdom), revoking the mandate and taking over the administration of Namibia.¹²⁵ This forward movement on the Namibian question as a result of SWAPO having taken up arms against South Africa silenced most of those who had earlier questioned the wisdom of launching an armed struggle.

¹²² SWAPO, *To be Born a Nation*, p. 17.

¹²³ As recollected by the author.

¹²⁴ For details about the battle and repression that followed, see Nujoma, *Where Others Wavered*, pp. 163-170.

¹²⁵ United Nations General Assembly Resolution 2145 (1966).

A great deal of manoeuvring went on behind the scenes when Resolution 2145(XXI) was being drafted. I recall that heated arguments had taken place between the Tanzanian representative, Ambassador John Malecela, who later became the Prime Minister of Tanzania, and Judge Goldberg, U.S. Permanent Representative to the United Nations, when the latter tried to make a last minute amendment. In his last ditch effort, Judge Goldberg argued that the mandate with lower case "m" should be terminated and Mandate with capital "M" should revert to the United Kingdom. I did not see the difference at that time, but Ambassador Malecela objected to the amendment. I recall him having said:¹²⁶

Here we are talking about the suffering of the people of Namibia, people who are desirous of securing independence, and my distinguished judge is talking about big 'M' and small 'm'. What he is saying in fact is that the mandate with small 'm' was given to South Africa and must be terminated and the mandate with capital 'M' will therefore revert to Great Britain; still Namibia would be under the control of someone else, some other colonial power, some other imperial power. We therefore reject it.

Eventually, the original resolution was adopted and members of the *Ad Hoc* Committee for South West Africa were elected. The western countries, however, continued to argue that the resolution was unrealistic, because South Africa continued to occupy the territory and showed no sign of withdrawing.¹²⁷

The *Ad Hoc* Committee, comprising representatives from fourteen states, viz., Canada, Chile, Czechoslovakia, Ethiopia, Finland, Italy, Japan, Mexico, Nigeria, Pakistan, Senegal, the Soviet Union, the United Arab Republic, and the United States, met in 1967 to consider the "practical means by which South West Africa should be administered."¹²⁸ Various members put forward three proposals. African representatives on the committee proposed that United Nations Council for South West Africa be established to administer the territory and lead it to independence by June 1968. The Mexican representative

¹²⁶ Based on my recollection.

¹²⁷ United Nations Press Release GA/3368 (19 May 1967).

¹²⁸ United Nations General Assembly Resolution 2145 (1966).

proposed that the General Assembly should immediately adopt a declaration of independence.¹²⁹ The United States, Canada, and Italy representatives argued in favour of the appointment of a special representative for South West Africa to make a comprehensive survey of the territory; ascertain the true representatives of the 'peoples living in the Territory' [as opposed to exiled SWAPO members]; consult with 'all representative elements' in order to establish 'a nucleus of self-government' as soon as possible; determine the needs of the territory; and report back to the General Assembly, which would decide what to do next. This proposal also called for a small, preferably three-member, Council for South West Africa, whose function was to receive the report from the special representative and to cooperate with him.¹³⁰

This proposal for a small three member Council for South West Africa was seen by SWAPO as a ploy for heading off more radical alternatives, while at the same time placating some Africans and by so doing causing division. Discussions also showed that there was an attempt at marginalizing SWAPO. The idea of a fact-finding mission was in itself a rejection of those who were already designated as the legitimate representatives of the Namibian people, and to solicit other possible opinions contrary to those of SWAPO leaders in exile.

We, as SWAPO representatives, therefore strongly argued against the position of the United States, Canada and Italy proposing the sending of a fact-finding mission to Namibia. We argued that we knew what the situation was, and that the United Nations' archives were full of documentation about how apartheid was being implemented by South Africa.

Support of the OAU, NAM and Socialist Countries

The International Court of Justice's decision had already accentuated the North/South divide on the Namibian issue, and this divide had manifested itself at the General Assembly – the Fifth Committee of the Assembly refused to approve an additional

¹²⁹ United Nations Document A/6640, para 48.

¹³⁰ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 152. See also United Nations Documents A/AC.129/L.6 and A/6640, pp. 32-3.

budgetary appropriation for the Court,¹³¹ and the Assembly made sure that no white Commonwealth judges were elected.¹³²

SWAPO, too, was being consulted regularly by the Afro-Asian block in the General Assembly. As Nujoma mentions in his autobiography, "Whenever there was an international conference we were there, and at all OAU liberation committee meetings."¹³³

As the OAU considered mechanisms for furthering the cause of Namibia, it needed a vehicle through which support could be channelled. This vehicle had to be national in character with potential to carry out the national struggle. SWAPO fit the bill as it was national in its representation and, by launching an armed struggle against South African occupation in 1966, showed that it had the capacity to carry the national struggle forward.

Although SWAPO did not have any legal standing at the United Nations Headquarters until it was given observer status in 1976,¹³⁴ African ambassadors made SWAPO members' task easier at the United Nations. I recall that I was given authority by some African ambassadors to use their names whenever I came to the United Nations building. Previously, as petitioners, we were given only a 'day pass'. These African ambassadors, such as Mr Malecela of Tanzania, Mr Abdul Wahab of Egypt and later on Mr V.J. Mwaanga of Zambia would treat the SWAPO representative as a comrade and would show deference to him even if they were surrounded by western countries' representatives in the Delegates' Lounge. These western countries did not formally recognise us, but ambassadors like Mr Malecela who were listened to by the ambassadors of the western countries would get up to meet me halfway and introduce me to the others, "Do you know the SWAPO Representative? This is SWAPO Representative Mr

¹³¹ *United Nations Monthly Chronicle* (November 1966), p. 62.

¹³² Dugard (ed.), *The South West Africa/Namibia Dispute*, p. 378. Dugard points out that Sir Kenneth Bailey of Australia was a strong contender for Sir Percy Spender's place on the Court, but African delegates made it clear that, following the 1966 decision of the Court, he was no longer acceptable.

¹³³ Nujoma, *Where Others Wavered*, pp. 123. Formal recognition of SWAPO as the sole and authentic representative of the Namibian people came after SWAPO had started the armed struggle in 1966.

¹³⁴ United Nations General Assembly, Resolution 31/152 (1976).

Geingob.” Others would shake hands with me. This is the way solidarity with SWAPO was manifested at the United Nations.

One example of this solidarity was provided by the support of African diplomats when Mr Nujoma was to address the Security Council in 1971. Mr Nujoma arrived in New York with Professor Katjavivi and Mr Garoeb one day before he was to deliver his address. Mr Katjavivi and Mr Garoeb were to have prepared his address. At that time, I was still a student in New York. When I returned from my classes, I found to my dismay that no work had been done on his address. I therefore sat the whole night to draft his address. As it was the first time that a freedom fighter was invited to address the Security Council, the address had to be well crafted and well produced. The next morning I took the draft to Ambassador Vernon Mwanga, Zambia’s representative at the United Nations, for his comments. He was happy with the draft and had it retyped on an IBM typewriter. Subsequently, I called Ambassador Malecela of Tanzania and asked him to go over the draft address. He didn’t have any time to spare as he was going to the United Nations but agreed to go over the address on his way to the United Nations. I rode with him in his car as he went over the draft. He was happy with it. This narrative illustrates the kind of challenges SWAPO faced. We had no office, but we had the goodwill of African representatives at the United Nations.

OAU, NAM and socialist countries were focused on addressing the Namibian question but often had ideas of their own. At the *Ad Hoc* Committee meetings, the Soviet-led group argued in favour of not entering into another colonial situation. They argued in favour of declaring independence forthwith. This caused the SWAPO representatives considerable worry. In October 1965, President Nujoma and I met with the Deputy Foreign Minister of the Soviet Union and the Soviet Union’s Deputy Representative at the United Nations in the Indonesian Lounge at the United Nations Headquarters. It turned out to be a heated debate. Mr Nujoma argued that declaration of independence would mean giving South Africa *carte blanche* to act as it wished. He asked if the Soviets would send the Red Army to enforce independence. At the moment, we had the international community supporting Namibia’s legal status, but if independence were

declared unilaterally, we would have to stand alone. At this meeting, Mr Nujoma became quite upset and said, "You are wasting my time." He then got up and left. This episode illustrates that the nationalist leaders were independent in their action. I was now put on the spot, trying to rationalise the behaviour of Mr Nujoma by explaining that he had a prior commitment, etc.

Creation of the United Nations Council for Namibia

The African position was that we needed the United Nations to have direct responsibility to administer the territory by creating a Council for South West Africa as the legal administering authority. On 19 May 1967, the General Assembly considered the Report of the *Ad Hoc* Committee and adopted Resolution 2248(S-V) by 85 votes to 2 (Portugal and South Africa), with 30 abstentions. This resolution provided for the establishment of the United Nations Council for South West Africa

comprising eleven Member States to be elected during the present session and to entrust to it the following powers and functions, to be discharged in the Territory:

To administer South West Africa until independence, with the maximum possible participation of the people of the Territory;

- (a) To promulgate such laws, decrees and administrative regulations as are necessary for the administration of the Territory until a legislative assembly is established following elections conducted on the basis of universal adult suffrage;
- (b) To take as an immediate task all the necessary measures, in consultation with the people of the Territory, for the establishment of a constituent assembly to draw up a constitution on the basis of which elections will be held for the establishment of a legislative assembly and a responsible government;
- (c) To take all the necessary measures for the maintenance of law and order in the Territory; and
- (d) To transfer all powers to the people of the Territory upon the declaration of independence.¹³⁵

¹³⁵ United Nations General Assembly Resolution 2248 [S-V] (1967).

Eleven members elected to the Council at the General Assembly's fifth special session held in May 1967 were Chile, Colombia, Guyana, India, Indonesia, Nigeria, Pakistan, Turkey, the United Arab Republic, Yugoslavia and Zambia. Over the years, membership of the Council was increased to thirty-one, and the first substantive full-time commissioner for Namibia was appointed in late 1973.

Initially, the Council was rather toothless. This was due to three reasons. First, it was not supported, and was even opposed, by the western countries – only Third World countries were represented on the Council. However, there was also a positive side to this because the Third World countries were in full harmony with SWAPO's position and this ensured SWAPO's position being better understood and appreciated. Second, initially, the council had only part-time commissioners for Namibia. It meant that the decisions of the council were not followed through at the executive level. Third, the council members were not appointed in their personal capacities but as representatives of their countries. They could not therefore support any initiative that went against their countries' policies. I recall that initially the General Assembly's intention was to appoint the council members in their personal capacities, but this idea was given up when the question came up of who would pay them.

SWAPO fought for the appointment of a full-time commissioner in order for the council to become more effective. However, initially, even the full-time commissioners were rather ineffective because of the lack of support of the West for the work of the council. From the perspective of SWAPO, and of Namibia, the first substantive commissioner was Mr Sean McBride, former Irish Foreign Minister and former Chairman of Amnesty International. Soon after his appointment in December 1973, he shook up the United Nations establishment with his unorthodox methods. With his worldwide connections as a result of an illustrious career, he mobilized global public opinion in favour of the right of Namibians to independence and self-determination, and against apartheid. Every time I brought information to his attention about arrests and detentions in Namibia, he would personally contact and mobilize various anti-apartheid groups and Namibia support groups. An example of Mr McBride's unorthodox ways is my own recollection of an

episode. In 1974, he had seen an article about Namibia in a newspaper and asked me to arrange 8000 copies of it. As a United Nations official, I told him that we did not have an allocation for making so many copies. He told me "All I want is 8000 copies. How you do it is your own business." He got his copies.

Decree No. 1

During his period as commissioner, the council "acting in terms of the powers conferred on it by General Assembly resolution 2248 (S-V) of 19 May 1967 and all other relevant resolutions and decisions regarding Namibia" also adopted Decree No. 1 for the Protection of the Natural Resources of Namibia.¹³⁶ The objective of the decree was to preclude support for the illegal occupation regime by persons whose rights and profits depended on the continued existence of the *status quo*. The decree was subsequently approved by General Assembly Resolution 3295 (1974). Copies of this decree were sent out to all known investors in the territory and to shipping and insurance companies. Private individuals, acting in coordination with the commissioner's office, also raised the subject at these companies' annual general meetings. Subsequently, on 3 May 1985, the council decided to take legal action against companies and individuals violating Decree No. 1. However, this decision could not be followed through as one needed a European or American jurisdiction for the application of the provisions of the decree, i.e., the decree had to have the power of law at the national level.

However, the decree served its purpose. It was one more weapon in the hands of Namibia support groups as well as anti-apartheid groups. It also discouraged further corporate investment in Namibia as the corporations saw defying the decree as poor public relations. Further, the corporations were unwilling to invest in Namibia in defiance of the decree in case SWAPO came to power in an independent Namibia. One corporation that increased its investment in Namibia after the United Nations Council for Namibia promulgated the decree was Rio Tinto Zinc. This was in clear violation of the decree.

¹³⁶ Decree adopted by the United Nations Council for Namibia at its 209th meeting on 27 September 1974 and approved by the United Nations General Assembly at its 29th Session on 13 December 1974.

The western countries soon realized that the Namibian question was beginning to gain momentum and that the council was persevering in trying to keep the Namibian question on the front burner. They therefore decided to join the council, to dilute it and destroy its potency.¹³⁷ With an expanded council, one could see that the western representatives' interests were not in harmony with the interests of Namibia, and all of a sudden phrases, such as "my government's position is..." became commonplace. Council's position, if ever it took one, was overridden by national positions. However, African, Latin American and Asian representatives continued to fight for Namibia at council meetings. Mr McBride's contribution in making the council effective was outstanding.

Additional initiatives to support the Namibian cause were also launched, including the creation of special United Nations bodies, such as the United Nations Fund for Namibia,¹³⁸ the United Nations Institute for Namibia, and the Nationhood Programme.¹³⁹ As national programmes, the United Nations Fund for Namibia and the United Nations Institute for Namibia were of critical importance for human resource development – they helped prepare Namibians to take responsibility of government in independent Namibia. They also helped the Namibians penetrate the United Nations system with their placement in various United Nations organs. This exposure gave them an opportunity to learn about how the United Nations worked, and to make acquaintances with various representatives to the United Nations to further Namibia's cause.

The United Nations Institute for Namibia was established in Lusaka by the United Nations Council for Namibia at its 209th meeting held on 27 September 1974 in recognition of the fact that any steps that were taken to secure the independence of Namibia needed to be taken concurrently with efforts to prepare the Namibians to take over the administration of the country.¹⁴⁰ I was appointed director of the institute in 1975

¹³⁷ There are parallels to be drawn between this development and what Malcolm X had said about the march on Washington, D.C. He had said that the march on Washington, D.C. was very potent without the involvement of the whites. The march was hot, and angry when it was composed only of blacks. He compared it with black coffee that becomes diluted and loses its potency when milk is 'integrated' into it. (Said at a public meeting addressed by Malcolm X in Philadelphia in 1964. I was present at this meeting).

¹³⁸ United Nations General Assembly Resolution 2679(XXV) (1970).

¹³⁹ United Nations General Assembly Resolution 31/153 (1976).

¹⁴⁰ United Nations Institute for Namibia, *Prospectus* (1990).

and remained in this position until I returned to Namibia on 18 June 1989 to lead SWAPO's election campaign.

The purpose of the institute was:¹⁴¹

1. To enable Namibians to develop and acquire the necessary skills required for manning the public service of an independent Namibia;
2. To undertake research into various political and socio-economic aspects of Namibia which would contribute to the struggle for the emancipation of Namibia, as well as to assist in the formulation of policies and programmes of an independent Namibia;
3. To serve as an information and documentation centre on Namibia; and
4. To offer such substantive support in its areas of competence as may be essential to the struggle for freedom of Namibians and the establishment of an independent state of Namibia.

Over a period of fifteen years, the Institute trained some 1300 students in the fields of law, agriculture, economics, teacher training, political science and history. The institute also had arrangements with many universities in Africa, Europe, North America and Asia for the institute graduates to pursue higher education. Many institute graduates became lawyers, doctors, educators, managers, and academics. In addition, the institute published twenty-six sectoral policy research monographs.¹⁴² When Namibia gained independence, the institute's graduates formed the nucleus of independent Namibia's civil service. I am proud that some of the institute's graduates have risen to high political, legal and administrative positions. Attorney General Pendukeni Ithana, Deputy Minister Kawana, Adv. Petrus Damaseb, and Namibia's Permanent Representative to the United Nations, Ambassador Andjamba, personify the achievements of the institute graduates. The institute's work was guided by its senate under the wise leadership of Professor Adebayo Adedeji, a well-known Nigerian academic and executive secretary of the United Nations Economic Commission for Africa. Despite his other responsibilities, he gave his undivided attention to the institute and to the Namibian struggle.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

Thus, on many fronts the council was doing a great deal to further the cause of Namibia, and the General Assembly continued to push for freeing the territory from the clutches of apartheid South Africa. However, the General Assembly's efforts did not elicit any response from the Security Council as will become clear in the following paragraphs.

Terrorism Trial

Despite the fact that the General Assembly had revoked South Africa's mandate, South Africa continued to be adamant. As already mentioned, in 1966 South Africa arrested a number of SWAPO leaders. They were detained without trial for over a year, until the passing of the Terrorism Act, No. 83 of 1967 that was made retroactive to 27 June 1962.¹⁴³ Dugard¹⁴⁴ points out that in this act:

not only is the offence broadly defined but, unlike common law treason and other offences, the burden of proof is upon the accused to establish his own innocence, once the prosecution has proved the commission of some overt act likely to have certain results... a difficult task, as he [the accused] will have to show, *inter alia*, that his act was not intended to cause or encourage feelings of hostility between whites and other inhabitants of South and South West Africa, to hamper any person in maintaining law and order, or 'to embarrass the administration of the affairs of the State.'

During the trial, the defence counsel's plea was that the Terrorism Act, as it purported to apply to Namibia was invalid and of no effect, in that the Legislature of the Republic of South Africa was not competent to enact the said Act by reason of the fact that the Mandate for South West Africa was terminated on 27 October 1966, i.e., before the Terrorism Act was enacted. This was a test case for South Africa's illegal occupation of Namibia. Namibians were arrested in Namibia and transported to a foreign country where they had no relatives and were tried in a foreign country for the so-called crime they committed in Namibia. In this context, Mr Toivo ya Toivo stated, "We are not South Africans. We are Namibians and will never accept your right to try us here in a foreign country. We do not accept your jurisdiction over us."¹⁴⁵

¹⁴³ Dugard (ed.), *South West Africa/Namibia Dispute*, p. 414.

¹⁴⁴ *Ibid.*

¹⁴⁵ Stated during trial in a South African Court.

In response, South Africa's Attorney General raised the argument *in limine* that the court had no jurisdiction to inquire into the validity of the Terrorism Act by virtue of Section 59(2) of the Republic of South Africa Constitution Act No. 32 of 1961, which provides that, with certain limited exceptions, "no court of law shall be competent to inquire into or to pronounce upon the validity of any Act passed by the Parliament." The Court upheld the Attorney General's point *in limine*.¹⁴⁶

Subsequently, the trial proceeded and, on 26 January 1968, the court found thirty of the accused guilty of offences under the Terrorism Act and three for contravening the Suppression of Communism Act. Nineteen of the convicted were sentenced to life imprisonment and nine to twenty years of imprisonment. Among those who were sentenced to life imprisonment was Mr Herman Toivo Ya Toivo who went on to become the Minister of Prisons in independent Namibia at the time of writing. An appeal to the full court of the Appellate Division only helped reduce the sentences of five of the accused from life imprisonment to twenty years' imprisonment.¹⁴⁷

Loss of SWAPO leadership inside Namibia was a serious blow to the liberation movement. Some analysts¹⁴⁸ suggest that this loss decapitated SWAPO internally. However, this loss was temporary. South Africa did not ban SWAPO for many reasons: SWAPO had the support of the international community, and banning SWAPO would have resulted in increased support for it; South Africa would have achieved little by banning an organization that had a strong presence outside the country, and banning the party internally would only have made its internal wing go underground and therefore out of reach. SWAPO continued to enjoy popular support within the country.

However, after the intensification of intimidation and physical as well as psychological torture, some comrades at home succumbed. In the early seventies, chairman of the internal wing of SWAPO, Mr D. Tjongarero, because of coercion by South African

¹⁴⁶ Paraphrased by Dugard in Dugard (ed.), *South West Africa/Namibia Dispute*, pp. 415-6.

¹⁴⁷ *State v. Tuhadeleni*, 1969 *South African Law Reports* 153 (A.D.) Quoted in Dugard (ed.), *South West Africa/Namibia Dispute*, pp. 415-6.

¹⁴⁸ Dobell, *SWAPO's Struggle for Namibia, 1960-1991*, p. 36.

police, dissolved SWAPO's internal executive committee. This action also resulted in the closure of the internal office of SWAPO. However, the emergence on the scene of the SWAPO Youth League brought dynamism to the situation. These developments also led to differences between the views of some internal members of SWAPO and the external ones on the armed struggle and subsequent negotiations.

Challenges to the struggle came in many forms. Following the arrest and trial of Namibians, many other repressive measures were applied in the country. The regime sought to split SWAPO into two groups, i.e., SWAPO members in exile and those within Namibia. It did not succeed in its machinations.

However, with all the top leaders of SWAPO outside Namibia, some problems were created. Internal members of SWAPO had to defer to the leadership abroad. After the country became independent, this situation eventually led to a distinction being drawn between SWAPO cadres who were in exile and those who were within Namibia. They came to be known as 'returnees' and 'remainees' respectively. Indeed, such distinctions had the potential of creating friction.¹⁴⁹

Involvement of the United Nations Security Council

Although the General Assembly had repeatedly called the attention of the Security Council to the situation in Namibia during the early 1960s, such calls evoked no official response until after the revocation of the mandate.¹⁵⁰ The Security Council became involved in the Namibian question for the first time with the condemnation of the illegal trials of Namibians in Pretoria.¹⁵¹

¹⁴⁹ For example, only 'returnees' now have important ministerial portfolios in the government. However, it should be stated in all fairness that the leadership in exile was in the executive and the National Committee of the party and the internal group duly recognised that fact. Nevertheless, the internal group felt that if the returnees had suffered in exile, those who had remained and struggled inside the country had suffered equally if not more. They have demanded that their contribution be recognised by allocating important portfolios to them. This issue has to be addressed.

¹⁵⁰ United Nations Institute for Namibia, *United Nations: A Direct United Nations Responsibility*, p. 199.

¹⁵¹ United Nations Security Council Resolution 245 of 1968.

Western members of the Security Council also saw this as an opportunity to play a more significant role that was in keeping with their self-interest. One of the objectives of the western members was to sideline the Council for Namibia. The council was accused of wasting money on unnecessary travel. This accusation was partly true. However, SWAPO was strongly supportive of the council's activities, including travels. It argued that had Namibia not been illegally occupied, there would have been no need for the Council for Namibia, and there would have been no need for the expenditure on it or by it. If the United Nations wanted to save money, it had to resolve the Namibian question. No money would then be wasted. The Council for Namibia was carrying out its duty to be the legal administering authority of Namibia, and in so doing was keeping the Namibian question alive.

Finally, in its Resolution 264(1969), the Security Council took note of General Assembly Resolution 2145(XXI) of 27 October 1966 terminating the Mandate for South West Africa and assuming direct responsibility for the territory until its independence, and recognized the termination of the mandate and the assumption of United Nations General Assembly's direct responsibility for the territory until its independence. France and Great Britain had abstained from voting on this resolution, and South Africa had rejected it.¹⁵²

The primary reason for France and the United Kingdom abstaining was their economic ties with South Africa. These two European states not only had significant investment in South Africa but were also supporting it with weapons, such as Mirage fighters and Puma helicopters. These were the weapons that South Africa had used time and again against SWAPO bases and neighbouring countries. Significantly, France was also involved with South Africa in its collaboration in nuclear technology transfer, as was the United States.¹⁵³

On 12 August 1969, the Security Council adopted Resolution 269 condemning South Africa for its refusal to comply with Resolution 264 and called upon the Government of

¹⁵² *United Nations Monthly Chronicle* (June 1969), p. 31.

¹⁵³ Jean Sindab, "United States Nuclear and Military Collaboration with South Africa," in Wood (ed.), *Namibia 1884-1984*, pp. 694-701.

South Africa to withdraw its administration from the territory immediately and in any case before 4 October 1969. South Africa did not withdraw by 4 October 1969, and that set the stage for the adoption of Resolution 276 on 30 January 1970. France and the United Kingdom again abstained. By this resolution, the Security Council declared that all acts taken by South Africa on behalf of or concerning Namibia after the termination of the mandate were illegal and invalid, and decided to establish an *ad hoc* sub-committee of the Security Council to study, in consultation with the Secretary General, ways and means by which relevant resolutions of the Security Council, including Resolution 276, could effectively be implemented.

The sub-committee made various recommendations including the suggestion that an advisory opinion be sought from the International Court of Justice. In July 1970, the Security Council adopted two resolutions, Resolutions 283 and 284. In Resolution 283, it requested all states to refrain from any relations with South Africa implying recognition of the authority of South Africa over Namibia. Again, France and the United Kingdom abstained from voting on this resolution. In Resolution 284, the Security Council requested, for the first time, an advisory opinion on the legal consequences for states of the continued presence of South Africa in Namibia. Poland, the Soviet Union, and the United Kingdom abstained. While the United Kingdom had abstained for obvious reasons, abstention by Poland and the Soviet Union was also based on self-interest, as the Soviet Union did not want this resolution to become a pretext for questioning its own presence in Czechoslovakia.

This resolution sought the court's opinion on the following question: "What are the legal consequences for States on the continued presence of South Africa in Namibia, notwithstanding Security Council Resolution 276 (1970)?"¹⁵⁴

¹⁵⁴ Resolution 276 condemned South Africa's refusal to comply with the United Nations resolutions on Namibia; declared that all acts taken by South Africa on behalf of or concerning Namibia since the termination of the mandate were illegal and invalid; and called on states to refrain from any dealings with the South African government which would conflict with the provision relating to illegal and invalid acts.

In response, South Africa raised a series of objections on the participation of certain judges of the court in the proceedings for the advisory opinion, and to Security Council Resolution 284 on the grounds that two permanent members of the Security Council had abstained. It also submitted a proposal to the court that a plebiscite be held, to be conducted jointly by the court and South Africa to ascertain whether the people of Namibia wished to be administered by South Africa or the United Nations. The court rejected all objections and the plebiscite proposal.

During the hearings, the South African counsel had argued that in adopting Resolution 2145, revoking the mandate, the General Assembly had acted beyond its powers. In considering the issue, the court determined that material breaches of the mandate had occurred.¹⁵⁵ The resolution in question was therefore “to be viewed as the exercise of the right to terminate a relationship in case of a very deliberate and persistent violation of obligations which destroys the very object and purpose of that relationship.”¹⁵⁶ But merely recognizing a situation as illegal did not, according to the court, put an end to it: when a situation has been declared illegal by the Security Council, member states should be expected to recognize the declaration and respond to it.¹⁵⁷ The court’s decisions were “binding on all States Members of the United Nations, which were thus under obligation to accept and carry them out.”¹⁵⁸

Subsequently, Dugard noted:¹⁵⁹

The 1971 Opinion was sought mainly to put pressure on the United Kingdom and France (which have consistently opposed the legality of the revocation of the Mandate) to support Security Council action against South Africa. Despite the fact that the International Court has given its full legal blessing to the action of the Security Council, the Council has not succeeded in persuading the United Kingdom and France to adopt a more activist policy. On 20 October 1971, these two powers abstained from voting on a resolution of the Security Council accepting the Court’s Opinion and calling upon South Africa to withdraw from South West Africa.

¹⁵⁵ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 145.

¹⁵⁶ *I.C.J. Reports* (1971), para. 95.

¹⁵⁷ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p.146.

¹⁵⁸ *I.C.J. Reports* (1971), para. 115.

¹⁵⁹ John Dugard, “The 1971 Opinion and the Future,” in John Dugard and E.M. Grosskopf (1973), *South West Africa and the International Court*, Johannesburg, S.A. Inst. of International Affairs, p. 24.

He further noted:¹⁶⁰

This will not, however, be the end of the matter. The United Kingdom, France and the United States (which had accepted the Court's Opinion) will be under new pressure – which can only intensify with Peking seated in the Security Council – to support coercive measures against South Africa to compel her to leave South West Africa. Although these powers have consistently resisted attempts to force them to support enforcement action against South Africa in the past, they will find it difficult to adopt a purely negative attitude on this matter in the future. In these circumstances there is an urgent need for statesmanship on the part of the political leaders of South Africa and her trade partners.

Coup in Portugal

Where the Court and the Security Council did not succeed, a *coup d'état* in Portugal did. The *coup d'état* in Portugal in 1975 precipitated significant change in the attitude of France, the United Kingdom and the United States. Had there been no coup in Portugal, these countries would have continued to stage manage the proceedings in the international fora to give a semblance of seeking justice for Namibia through the International Court of Justice while in fact undermining the efforts of the Namibian people.

In the sixties, South Africa, Rhodesia, Namibia, Angola and Mozambique continued to be under the control of white regimes. Since 1968, military cooperation between South Africa and Portugal had been intensifying.¹⁶¹ In 1968, South Africa was allowed to maintain an air unit in eastern Angola, and a joint Portuguese-South African commando centre was established at Cuito Cuanavale. Twenty years later, Cuito Cuanavale was to play a crucial role in modifying the regional military balance of power in south-western Africa in favour of Angola and against South Africa.¹⁶² By 1971/72, South Africa was supplying arms, helicopters and pilots to the Portuguese in Angola and was actively

¹⁶⁰ *Ibid.*

¹⁶¹ *The Namibian* (1 July 1988).

¹⁶² Donald Dreyer (1994), *Namibia and Southern Africa: Regional Dynamics of Decolonization 1945-90*, London, Kegan Paul, p.66.

involved in actions against the liberation movements. At the same time, South Africa had started intervening in Angola using Namibia as a springboard.¹⁶³

About the same time, Namibians had started concerted action against the occupation regime, with Namibian students and trade unions making 1971/72 the years of intensification of resistance. According to du Pisani:¹⁶⁴

October 1971 marked the opening of a new frontier in the war against South Africa's presence in Namibia, when PLAN fighters operated for the first time in the strategically important Caprivi Strip. Protracted labour action throughout the country's mining and commercial sectors in late 1971–early 1972, added a new dimension to the politics of resistance. At the time, some 43 000 black contract workers (the vast majority from the former Owambo) were employed in the more developed formal economy of southern and central Namibia, some 11 000 in the almost exclusively white commercial farming sector, 14 000 in the local government service, commerce and industry, 3000 in fishing and approximately 3000 in domestic service. In Windhoek alone the strike involved some 5000 contract workers and by 1972 the strike involved some 13 500 workers in 21 towns and 11 mines.

Escalation of resistance in Namibia and the developments in Angola, with a white colonial regime being helped by a white racist regime, resulted in the militarization of Namibia. Later on, South Africa also used Caprivi, where it had built an air force base, known as Mbacha Air Force Base, as a springboard for attacking the Frontline States, training dissidents, and giving expression to its policy of "hot pursuit."

The primary reason for South Africa's support of Portugal in Angola was to ensure that buffer states, that is, Angola, Mozambique, and Rhodesia continued to survive under white minority control. African states that challenged South Africa by supporting the liberation of these buffer states, and seeking change in South Africa, suffered enormous economic, political and social upheavals as a result of their steadfast principles. For instance, Zambia's economic woes started around 1975, after Zambia's full compliance with sanctions against Rhodesia's UDI. Sanctions worked on Zambia more than on Rhodesia.

¹⁶³ *Ibid.*, pp. 66-67.

¹⁶⁴ Du Pisani, "State and Society under South African Rule."

However, the situation changed drastically in 1974 when the liberation movements in Portuguese colonies in Africa and Asia brought home to the Portuguese that colonial adventures were no longer sustainable. Portuguese forces were losing in Guinea Bissau and were under pressure in Angola and Mozambique. Timor was in the throes of civil war.

These developments in the colonies precipitated a military-led coup against Portuguese dictatorship and installed a new Portuguese regime dominated by the armed forces movement, Movimento das Forças Armadas (MFA). All political parties and particularly Partido Comunista Portugues (PCP) and Movimento Democrático Portugues (MDP) “strongly emphasized immediate decolonization, which they claimed would strengthen Portuguese democracy at home.”¹⁶⁵

Subsequent to the Lusaka Agreement of 7 August 1974, the process of decolonisation started in earnest, with Guinea (Bissau) becoming independent in 1974, and Mozambique, Cape Verde Islands, and Sao Tome--Principe Islands becoming independent in 1975. Indeed, the beliefs of MFA, PCP, and MDP proved to be justified, because Portugal embraced democracy soon thereafter. One could thus argue that pressures from people of African colonies had precipitated the democratisation of Portugal. In other words, Africa freed Europe!

However, in the case of Angola, considerable problems arose as no one party could be considered to represent the people of Angola. Eventually, by January 1975, three parties were recognized as the ‘legitimate’ representatives of the Angolan people: Movimento Popular de Libertacao de Angola (MPLA), Frente Nacional de Libertacao de Angola (FNLA), and Uniao Nacional para a Independencia Total de Angola (UNITA). A transition government with equal partnership between the three liberation movements and Portuguese presence was sworn in on 31 January 1975. However, soon fighting between

¹⁶⁵ Douglas L. Wheeler, “Portuguese Withdrawal from Africa, 1974-1975: The Angolan Case,” in John Seiler (ed.) (1980), *Southern Africa Since the Portuguese Coup*, Boulder, Westview, p. 5.

the three parties broke out with MPLA occupying Luanda. As a result of this fighting, just a few hours before Angola was to become independent, the Portuguese left Angola without recognizing any legal government, granting sovereignty to “the people of Angola.”¹⁶⁶ With the routing of FNLA, MPLA came to power in Luanda but the civil war continued.

With the victory of liberation movements of the Portuguese colonies in Africa, the belief espoused by the United States and many other western powers that southern African liberation movements could not hope to “gain the political rights they seek through violence,” was put to rest.¹⁶⁷

From the South African perspective, the independence of Portuguese colonies was a body blow. With the emergence of Angola and Mozambique as independent countries, South Africa’s buffer states had vanished. In the southwest, Namibia was soon to become the buffer state.

Loss of South Africa’s Buffer States and the Changing Geopolitical Situation

Zimbabwe’s liberation movement, the Zimbabwe African National Union (ZANU), got a boost with the victory of FRELIMO in Mozambique. It opened up the northern and northeastern borders of Rhodesia to the freedom fighters. Further, FRELIMO provided valuable support to ZANU in its struggle against the white regime.

Similarly, the departure of the Portuguese from Angola had left the northern border of Namibia unprotected by an ally of South Africa. According to Totemeyer and Seiler:¹⁶⁸

For the first time, with an independent black nationalist government at its northern border, effective military pressure could be brought to bear on the South African government. Before 1974, SWAPO guerrillas depended on Zambian sanctuaries (because of Portuguese cooperation with South Africa in denying camps or transit routes within Angola to the guerrillas), which meant that they could enter and leave SWA only through the narrow and relatively easily protected Caprivi Strip area or through Botswana. Now they could move back and forth across the Angolan-SWA [Namibia] border (some 800 miles long).... The

¹⁶⁶ *Ibid.*, p. 13.

¹⁶⁷ C. Munhamu Botsio Utete, “Zimbabwe and Southern African ‘Detente’,” in Seiler (ed.), *Southern Africa Since the Portuguese Coup*, p. 61. This idea was articulated by Kissinger in National Security Study Memorandum 39.

¹⁶⁸ Gerhard Totemeyer and John Seiler, “South West Africa/Namibia: A Study in Polarization and Confrontation,” in Seiler (ed.), *Southern Africa Since the Portuguese Coup*, p. 81.

Portuguese coup [also] brought about an immediate and massive act of political defiance by Namibian blacks.

As a result of this change in the geopolitical situation, Ovamboland, Kavango, and Caprivi became operational areas, and the populations of those areas became even more bitterly resentful of the South African administration for its high-handed approach towards local populations. Consequently, even the black churchmen who abhorred violence became supporters of the SWAPO-led liberation struggle:

By September 1976 participants in a consultation on 'the responsibility of the churches in the changing SWA/Namibian situation' could agree that 'the Churches should denounce the legalized violence of the South African regime, commend disobedience to unjust laws as a Christian Action, and support genuine resistance movements which are working for a freer and more just Namibia.'¹⁶⁹

Although South Africa remained intransigent, chinks in its armour were beginning to appear – its buffer states had vanished, and the liberation struggle was coming closer to home. In May 1975, the United Nations Security Council considered a draft resolution¹⁷⁰ that would have imposed mandatory sanctions against South Africa, but South Africa was saved once again by its allies, France, the United Kingdom, and the United States, who vetoed the resolution. This was the first time they had exercised a veto on the Namibian issue; until then the threat had led to much less drastic proposals.¹⁷¹

As the collapse of the Portuguese colonial empire had changed the geopolitical equation considerably with the independence of Angola and Mozambique, the West recognized that the liberation movements could not be wished away. One consequence of these events was the West's alarm that the Soviets had gained an upper hand in southern Africa, and its concern about being left out of the geopolitical developments in the region. This was one of the reasons why the western countries decided to join the Council for Namibia. Their concern was no doubt aggravated by the involvement of the Soviets in Mozambique, Angola, and Zimbabwe. Referring to the economic costs of the Soviet

¹⁶⁹ *Ibid.*, p. 83. Totemeyer quotes the Resolution Unanimously Adopted at the End of a Consultation on the Responsibility of the Churches in the Changing SWA/Namibian Situation, Swakopmund, 4-6 September 1976, mimeo.

¹⁷⁰ United Nations Doc. S/11701.

¹⁷¹ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 208.

presence in southern Africa, Julian Amery,¹⁷² former Minister of State for Foreign and Commonwealth Affairs, was quoted to have said the following:

The second most important source of raw materials in the world is Central and Southern Africa, providing gold, diamonds, platinum, uranium, chrome, cobalt, nickel, copper as well as many other minerals used in the making of steel and other technological processes. The Soviets have established virtually a colonial regime in Angola and a protectorate over Mozambique. From these two countries, they are poised to extend their influence over Zambia and Zaire's copper-rich province of Shaba. Meanwhile they have already begun guerrilla operations to the south against South West Africa and Rhodesia. The guerrilla forces involved are trained, equipped, indoctrinated and financed by the Soviets with East German and Cuban help.

It was about economics and self-interest. The West therefore began to focus on attempts at reasserting itself in the region and saw South Africa as its ally in this effort. South Africa, too, exploited the situation in its favour by playing the communist threat card. Of course, the United Kingdom and the United States considered these threats real enough to justify backing South Africa's adventures in the region.

This communist 'threat' became the focal point of the western leaders' strategy in the region. Various options for managing change were listed in the U.S. State Department's *National Security Study Memorandum (NSSM) 39*. One of the options in this memorandum was for the United States to partially relax American measures against the white regimes in South Africa and Rhodesia, increase aid to black Africa, and initiate diplomatic efforts to resolve tensions between the white governments and their neighbours. The State Department argued that, once adopted, this policy would prove sticky. Hence the label given to this option by its opponents: "tar baby".

Crocker, reviewing U.S. policy in southern Africa and his involvement in shaping this policy, observes in his book, *High Noon in Southern Africa*: "It was time for the West to compete in shaping the destiny of this region. The Soviets and their proxies were moving forcefully to assert claims to regional leadership."¹⁷³ He further commented that "Ronald

¹⁷² See Walter Walker (1978), *The Bear at the Back Door: The Soviet Threat to the West's Lifeline in Africa*, Sandton, Valiant, pp. xiii-xv.

¹⁷³ Crocker, *High Noon in Southern Africa*, p.28.

Reagan had not been elected to make Africa safer for Marxism, still less to work for yet another Marxist takeover in the wake of the 1975-78 Soviet or Cuban gains in Angola, Mozambique and Ethiopia and the 1980 Mugabe victory in Zimbabwe.”¹⁷⁴

Of course, in the case of Zimbabwe, in September 1978, the United States and British governments together had announced a constitutional and administrative plan for transition to majority rule. This plan eventually resulted in the Lancaster House Agreement that entrenched twenty-eight seats for white members in the legislative assembly for the next seven years. Arrangements were also made for inclusion in the constitution of a bill of rights including existing property rights, with resort to the judiciary that guaranteed human rights, property rights, public service job security, and pensions.¹⁷⁵

Zimbabwe's independence was thus negotiated and engineered to protect white interests. An attempt was also made to exclude the Patriotic Front, i.e. ZANU and ZAPU, from winning the elections. However the outcome of elections gave the Patriotic Front the power -- an outcome that was obviously not to the satisfaction of Mr Crocker. Nevertheless, the United Kingdom, with the support of the United States, had succeeded in tying the hands of the new government constitutionally at Lancaster House. This strategy of managing change to ensure geopolitical advantage for the West, and to protect the interests of white settlers, became even more acute in its impact when the United States became involved with objectives similar to those of the Europeans and South Africans in Namibia and South Africa.

In the context of Namibia, this attempt at managing change was particularly discernible with the West's evolving thinking and the creation of the Western Contact Group,¹⁷⁶ which largely drafted what came to be known as the United Nations Security Council

¹⁷⁴ *Ibid.*, p. 63.

¹⁷⁵ For details see Utete, "Zimbabwe and Southern African 'Detente'," in Seiler (ed.), *Southern Africa Since the Portuguese Coup*.

¹⁷⁶ The Western Contact Group comprising Great Britain, France, the United States, Canada and the Federal Republic of Germany came into existence in 1977. Their proposal was placed before the Security Council on 10 April 1978.

Resolution 435 (1978).¹⁷⁷ The role of Security Council Resolution 435 in bringing about change in Namibia will be explored in the next chapter.

Conclusion

German occupation of the territory was characterized by massacres, confiscation of land and cattle, and undermining of means of livelihood of indigenous populations. Indigenous populations were forced to live in reserves. These actions were designed to create a settler colony with plenty of free land and cattle, financial support, and cheap labour available to the settlers. Germany also created an administrative structure in the territory, particularly in the Police Zone, thus creating a colonial state. This trend continued during the period of the mandate exercised by South Africa with Afrikaner and English settlers moving in.

During German and South African eras of occupation, the end result was internal colonialism by white settlers and external colonial occupation first by Germany and then by South Africa. Furthermore, South Africa institutionalised racism through its policy of apartheid. After World War II, South Africa sought to integrate Namibia into South Africa and resisted United Nations attempts at supervising the mandate. In this effort, South Africa found Britain, France and the United States to be willing supporters.

At the United Nations, the General Assembly terminated the South African mandate over Namibia in October 1966 and declared that the territory came under the direct responsibility of the United Nations (Resolution 2145). Two years later the Security Council recognized the termination of the mandate and called upon South Africa to withdraw its administration from the territory. However, South Africa remained adamant.

Angola's independence resulted in Namibia's becoming a frontline state, and consequently South Africa started the militarization of Namibia. South Africa also played

¹⁷⁷ Soon after Security Council Resolution 435 was adopted, South Africa launched a brutal attack on Namibian refugee camps at Kassinga on 4 May 1978 to prevent SWAPO from accepting Resolution 435.

the 'communist threat' card that suited the West because of its own geopolitical ambitions in the cold war.

However, because of the involvement of the eastern block countries, changes taking place at home as a result of apartheid, South Africa's pariah status, and new militancy at the United Nations, the West realized that change in southern Africa was inevitable. It therefore sought to manage change. This attempt at managing change started in earnest with the Security Council's adoption of Resolution 385 in January 1976 and Resolution 435 on 29 September 1978.

Chapter Three

The Process of Implementation of Security Council Resolution 435

In international affairs, some problems are easier to tackle when they have reached the point of crisis than when they are merely heading there.

Robin Renwick¹⁷⁸

Introduction

From the western perspective, the point of crisis that Renwick refers to came in southern Africa after Angola and Mozambique became independent in the mid-seventies. The crisis became even more acute when Zimbabwe gained independence in 1980. South Africa, a western ally, no longer had any buffer state it could count on to shield the apartheid regime from South African and Namibian liberation movements. Cold War developments in Angola further challenged the hegemony of South Africa and its western allies in the region. For the first time, Namibia shared a border with a militant independent country (Angola) that helped SWAPO intensify armed struggle. The presence of Russians and Cubans in Angola further crystallized the international dimension of the crisis that South Africa and its allies faced. The stage was thus set for the interested parties to become proactive in ‘tackling’ the Namibian question by managing Namibia’s transition to independence.

Various players attempting to manage this transition sought to further their own geocentric, political and/or economic interests. These players included (1) the Namibians, with SWAPO as their “sole and authentic representative”¹⁷⁹; (2) the United Nations; (3) the Organisation of African Unity (OAU) and the Frontline States (FLS); (4) the United Kingdom; (5) France, (6) Germany, (7) the United States of America, and (8) South

¹⁷⁸ Renwick, *Unconventional Diplomacy in Southern Africa*, p. 129.

¹⁷⁹ In December 1976, the United Nations General Assembly, by its Resolution 31/146, had declared SWAPO as the sole and authentic representative of the Namibian people.

Africa. Different players had their own agendas. Namibians were trying to secure their independence; the United Nations was trying to fulfil its mandate of freeing Namibia from the clutches of South Africa; the Organisation of African Unity and the Frontline States were trying to counter colonialism and neo-colonialism; European powers were trying to protect their economic and/or settler interests; the United States was trying to counter the Soviet influence; and South Africa was trying to keep Namibia as a client state, and as a buffer against the forces of nationalism and Soviet influence.

The General Assembly had been involved with the Namibian question ever since the creation of the United Nations, first, to transfer the mandate for South West Africa to the trusteeship system and then, because of the pressure exerted by African and Asian states on the United Nations, to assume the mandate over Namibia. The Security Council, on the other hand, did not get involved until January 1968 when it condemned the trial of Namibians by South Africans under the Terrorism Act. More significant involvement of the Security Council came in March 1969 with the recognition of the termination of the mandate by the General Assembly,¹⁸⁰ and August 1969 with the declaration that the occupation of Namibia constituted an aggressive encroachment on the authority of the United Nations.¹⁸¹ Resolution 269 also recognized the legitimacy of the struggle of the people of Namibia against the illegal occupation of Namibia by South Africa.

Further, in July 1970, the Security Council asked all states to refrain from any dealings with South Africa that might imply recognition of South Africa's authority over Namibia. However, various western members continued to support South Africa in order to protect their own interests in southern Africa. For example, they made no attempt to isolate South Africa by even token actions, such as recall of their ambassadors for consultation or closing down their embassies to register their indignation at South Africa's continued occupation of Namibia. In their approach, any attempt at helping Namibians to fulfil their aspirations for freedom and independence was secondary to the protection of their own

¹⁸⁰ United Nations Security Council Resolution 264 (1969). This resolution called upon South Africa to withdraw its administration from Namibia and condemned South African policies designed to destroy the national unity and territorial integrity of Namibia.

¹⁸¹ United Nations Security Council Resolution 269 (1969).

interests in the region. This chapter explores various players' evolving positions as they sought to influence and control the emergence of an independent state of Namibia within the provisions of United Nations Security Council Resolution 435.

Recognition of SWAPO – A New Militancy at the OAU

Ever since its inception in 1963, the OAU had been seized with the need to liberate Africa from colonialism. In fact, its charter reflected three main aims: anti-colonialism, anti-racialism and liberation. The charter stipulated “absolute dedication to the total emancipation of the African territories which are still dependent.” In 1963, the OAU also formed an African Liberation Committee (ALC) and gave all liberation movements recognized by the OAU observer status at the meetings of the ALC.¹⁸²

In the same year, SWAPO and the South West Africa National Union (SWANU) were recognized by the OAU, and the South West Africa Liberation Army (SWALA) (renamed first as Namibian People's Liberation Army, NAPLA, in 1966, and then as People's Liberation Army of Namibia, PLAN, in early 1970s) was created outside the territory. SWALA was formed after SWAPO had opened an office in Algiers with Mr Solomon Mifina as its representative and after Mr Sam Nujoma had urged Algeria's President, Mr Ahmed Ben Bella, to deliver the first batch of arms to SWAPO. These weapons were later sent to the Caprivi Strip via Cairo and Dar es Salaam.¹⁸³

In October 1963, the South West African Liberation Front (SWANLIF), later renamed South West Africa National United Front (SWANUF), was constituted in the first organized attempt to unify different Namibian nationalist movements in the territory in response to OAU Liberation Committee's declaration that it would support one unified political movement in South West Africa. SWANUF, however, never really got off the ground.

¹⁸² See Andenkule Ajala (1974), *Pan-Africanism: Evolution, Progress and Prospects*, London, Andre Deutsch; and Wolfers, *Politics in the Organisation of African Unity*.

¹⁸³ Klaus Dierks (2002), *Chronology of Namibian History: From Pre-historical Times to Independent Namibia*, Windhoek, Namibia Scientific Society, <http://www.klausdierks.com/Chronology>, accessed 15 December 2003.

In 1964, SWAPO received OAU recognition as the legitimate Namibian liberation movement. This recognition came because SWAPO was a broad-based movement that had a plan of action including political mobilization (strikes), and intensification of the armed struggle. By 1964, SWALA had soldiers in training in Egypt, Algeria, Tanzania, and the People's Republic of China.¹⁸⁴ Because of these competencies, SWAPO was considered a suitable vehicle through which OAU assistance could be channelled to the Namibian cause.

OAU had, however, not withdrawn its recognition of SWANU until a serious *faux pas* by the SWANU President. In January 1966, during the Afro-Asian-Latin American People's Solidarity Conference, also known as the Tri-Continental Conference, in Havana, as well as in China, SWANU President, Mr Kozonguizi criticized all the African states as puppets and reactionaries who were receiving aid from imperialist countries. Such criticism led ultimately to the OAU's decision to withdraw its recognition of SWANU in 1968. This decision of the OAU also paved the way for SWAPO to be recognized by the United Nations General Assembly as the sole and authentic representative of the Namibian people¹⁸⁵ in 1976. Further, the United Nations General Assembly gave SWAPO full observer status in the General Assembly.¹⁸⁶

Thus, SWAPO had not only played an important role of keeping the Namibian issue alive in the international arena but had also put its faith in the international system to deliver Namibia from colonialism. As discussed in Chapter Two, guerrilla struggle was started only after the International Court of Justice refused to decide on the merits of the case.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ United Nations General Assembly Resolution 31/146) (December 1976). Interestingly, as narrated to me by the SWAPO representative at the United Nations, at the OAU meeting in Morocco in 1976, a debate had ensued between the Anglophone and Francophone members of OAU. The Anglophone members had proposed that SWAPO was the sole representative of the Namibian people, but the Francophone members of OAU argued that, in French, the word 'sole' was not adequate and the word 'authentic' should be used. Finally, the Tanzanian Foreign Minister, Mr Malecela, provided the solution by suggesting that both the words be used to describe SWAPO. Those who were looking for 'sole' would find it in the resolution and those who were looking for 'authentic' would find it in the resolution.

However, Central and East African states continued to express their preference for a peaceful resolution of the struggle for liberation. The Lusaka Manifesto approved by fifteen central and East African states on 16 April 1969 expressed preference for peaceful negotiation over confrontation. Over the next two years, this decision came under considerable criticism for having failed to recognize that moral persuasions were unlikely to succeed in persuading the colonizers to compromise their deeply entrenched economic interests in the southern African region. SWAPO leadership, along with the ANC of South Africa and the two liberation movements of Rhodesia, played a significant role in changing the thinking of OAU away from peaceful negotiations towards armed struggle as a catalyst for negotiations.¹⁸⁷

The Africa Group and the Non-Aligned Movement (NAM) at the United Nations had also pushed for an arms embargo against South Africa, which was blocked by Great Britain, France and the United States.¹⁸⁸ This new militancy in the international fora made the western powers concerned that they were becoming isolated on the Namibian issue. As this isolation was seen in western nations' capitals as having the potential of serious repercussions on the western powers' future relations with South Africa, Namibia and the FLS, the western powers decided to back the United Nations Security Council Resolution 385.¹⁸⁹

Response of the West

The Carter administration in the United States undertook a new initiative to address the Namibian question. In 1977, Mr Andrew Young, U.S. ambassador to the UN, invited the United Kingdom, West Germany, France, and Canada to join the United States in a new initiative to address the Namibian question.

Initial motivations of the countries comprising this group that came to be known as the Western Contact Group were quite different. The Carter administration was more

¹⁸⁷ There was a gradual move away from the Lusaka Manifesto. OAU's Mogadishu Declaration of 1971 and the Accra Strategy of 1973 moved towards an armed struggle option. The Dar es Salaam Declaration of 1975 fully supported armed struggle.

¹⁸⁸ United Nations Document S/11713 (6 June 1975).

¹⁸⁹ Rich, "The United States, Its History of Mediation," p. 79.

inclined to take the moral high ground. It also believed that the United States did not have to control regimes or independent states directly. Even as independent countries, they could sell their resources only to the West, and therefore they had no option but to accept neo-colonialism.

European powers were quick to respond to Mr Young's invitation. They saw it as an opportunity to bring about change in the region in a collective way. This reduced their accountability individually and still ensured their continued influence with their erstwhile colonies and/or post-colonial economic partners.¹⁹⁰ This change in strategy aimed to protect the economic interests of the West that could be compromised if newly independent countries were 'radicalised' by the Soviet block.

The Western Contact Group, led by Mr Don McHenry (who was later pivotal in the adoption of Security Council Resolution 435), deputy to Mr Andrew Young, began tough bargaining with South Africa's Prime Minister, Mr Vorster and Foreign Minister, Mr Pik Botha. SWAPO also made it clear that it would only participate in the constitutional process if the Turnhalle principles for internal settlement were abolished, if elections on a non-ethnic basis were held under United Nations supervision, and if the South African Defence Force left the country prior to elections.¹⁹¹ In May 1977, Mr Vorster met with U.S. Vice-President, Mr Walter Mondale, in Vienna, where Mr Mondale spoke on three issues: majority rule for Namibia, majority rule for Rhodesia, and a progressive transformation for South Africa towards the same end.¹⁹²

As a result of this effort, South Africa agreed to suspend plans to establish an interim government in Namibia, and persuaded Turnhalle delegates to drop their plans. It also agreed to allow free elections for a Constituent Assembly. Towards that end, South Africa passed the South West Africa Constitution Amendment Act No. 95 of 1977, and appointed an administrator general to administer the territory and to work with a United Nations Representative in the run-up to United Nations supervised elections.

¹⁹⁰ *Ibid.*

¹⁹¹ Dierks, *Chronology of Namibian History*.

¹⁹² *Ibid.*

However, Pretoria followed a two-track approach -- it worked actively towards reaching an internal settlement in Namibia, largely on South Africa's own terms, and cooperated on the diplomatic front to reach a peaceful and internationally recognised settlement on Namibia. SWAPO rejected this idea of a Pretoria-appointed administrator-general and preferred direct United Nations control over the transitional process.¹⁹³

These efforts were a result of a confluence of developments. Members of the Western Contact Group were driven to action because of the pressure being exerted militarily by SWAPO and ANC, demands of FLS and NAM for sanctions against South Africa, and increasing militancy of the United Nations Council for Namibia.¹⁹⁴ As Jabri¹⁹⁵ observes:

Involvement in mediation seemed to be the only means by which western European states, along with their North American partners, could find a way out of the conundrum.... From the revocation of South Africa's mandate over Namibia in General Assembly Resolution 2145 (XXI) of October 1966 to the creation of the UN Council for Namibia and subsequent UN decisions on Namibia, western interests came directly in conflict with the positions adopted by the UN and the emergent Namibian nationalist movement, SWAPO.

In retrospect, Andrew Young's decision to include the European powers was a shrewd move, because "the European participants [in the Western Contact Group] had a vital role in gaining acceptance of the mediation effort and in having an active role in the process of mediation."¹⁹⁶ The Europeans were, in any case, happy to get involved for their own reasons.

¹⁹³ *Ibid.*

¹⁹⁴ This militancy and its challenge to Western interests was illustrated by the enactment of Decree No. 1 for the Protection of the Natural Resources of Namibia enacted by the United Nations Council for Namibia in 1974 and approved by the United Nations General Assembly at its 29th session on 13 December 1974. See United Nations "Violations of Decree No. 1 for the Protection of the Natural Resources of Namibia," paper presented to Regional Symposium on International Efforts to Implement Decree No. 1 held by the United Nations Council for Namibia, Geneva, 27-31 August 1984; Roger Moody (1992), *The Gulliver File - Mines, People and Land: A Global Battleground*, London, Minewatch; and Nicolaas Jan Schrijver (1995), *Sovereignty over Natural Resources: Balancing Rights and Duties in an Interdependent World* (Doctoral Thesis), Groningen, Univ. of Groningen.

¹⁹⁵ Jabri, "European Involvement in the Western Contact Group," p. 61.

¹⁹⁶ *Ibid.*, p. 60.

The United Kingdom and Germany were interested in participating in this initiative because of their vital economic interests in southern Africa,¹⁹⁷ their need to protect the interests of the considerable white populations in South Africa and Namibia, the need to diffuse increasing pressure from FLS and Nigeria, and, in the case of the United Kingdom, as a response to increasing pressure from the developing Zimbabwe situation and pressure from the Commonwealth.

The United Kingdom's willingness to participate in the Western Contact Group is attributed to Dr David Owen, then Labour government's Foreign Secretary, who wanted to enhance economic ties of Great Britain with black Africa and reduce involvement with South Africa. He also believed that the solution to the Namibian question and the Zimbabwean question could best be obtained with the involvement of the FLS and Nigeria. However, "Owen's intention to achieve a lessening of economic relations with South Africa while intensifying such links with majority-led states on the continent was severely constrained by the potential costs of such readjustment."¹⁹⁸

The United States, however, was more interested in maintaining and enhancing its geopolitical position in the context of the Cold War. Further, the Democrats in the United States, and the Labour government in the United Kingdom, were interested in resolving the outstanding issues in southern Africa through a strategy of mediation in order to prevent further radicalisation of the liberation movements.

Initially, however, the United States was behind the Western Contact Group's initiative because of its concern about widespread criticism at home and abroad about its stance in deferring its initiatives to those of South Africa, particularly on issues related to Namibia and Angola. In the case of Angola, the United States was supporting UNITA against the Cuban backed MPLA government, with apartheid South Africa and Zaire (now the Democratic Republic of Congo) as its allies in that effort. The United States also had to

¹⁹⁷ See, for instance, W.S. Barthold (1977), *Namibia's Economic Potential and Existing Economic ties with the Republic of South Africa*, Berlin, German Development Inst.; A. Roberts (1980), *The Rossing File*, London, CANUC; Richard Moorsom, "In the Grip of Imperialism," in Wood (ed.), *Namibia 1884-1984*, pp. 302-313.

¹⁹⁸ Jabri, "European Involvement in the Western Contact Group," p. 62.

worry about black opinion at home and, perhaps, a 'Vietnam syndrome' response to its involvement in Angola. SWAPO, too, had successfully lobbied black power movements and other groups in the United States to influence policy change.

West Germany was motivated to participate in the Western Contact Group because of its own interests. It wanted to protect the interests of some 18 000 ethnic Germans in Namibia and wished to protect its growing trade with South Africa. West Germany also had growing military and nuclear links with South Africa, for which it had come under increasing criticism by the majority-led African states.¹⁹⁹

The French had signed military and nuclear contracts with South Africa and had therefore come under criticism by the FLS.²⁰⁰ Though the French government was less concerned about criticism as "Francophone African states were generally less vociferous in their criticism of western links with the apartheid regime than the Anglophone states of southern Africa,"²⁰¹ it was interested in being a party to negotiations to protect its economic interests.

Canada, the fifth member of the Western Contact Group, was also favourably inclined towards the United States' position, though it had few specific interests of its own, and, at best, might have brought some 'disinterested' moral authority to the negotiations.

Thus, each of the participants in the Western Contact Group had its own view and strategy, and these defined their approaches to the negotiation process. According to Jabri,²⁰² "In the absence of self-defined interest, the Western Contact Group process would not have taken place and, therefore, would not have established the diplomatic groundwork which ultimately led to Namibian independence."

¹⁹⁹ Sindab, "United States Nuclear and Military Collaboration with South Africa," pp. 302-313.

²⁰⁰ *Ibid.*

²⁰¹ Jabri, "European Involvement in the Western Contact Group," p. 63.

²⁰² *Ibid.*, p. 64.

Jabri²⁰³ further identifies the commonality of objectives of the western five that ensured the Western Contact Group building a consensus. There was consensus on the following issues:

1. Need for internationally acceptable outcome of the Namibian question and support for Security Council Resolution 385;
2. Opposition to South African sponsored Turnhalle constitutional conference;
3. Concern to avoid the threat of veto in case South Africa refused to participate in the process of negotiation; and
4. Opposition to limited sanctions (This was essentially the British government's position).

Actions of the Frontline States

The Frontline States, in line with OAU's Dar es Salaam Declaration of 1975 that gave priority to ending colonial rule in Rhodesia and Namibia, committed themselves to support SWAPO in its liberation war against South Africa. At that time, the Frontline States had considered it easier to tackle the Namibian question than the situation in South Africa, because the Namibian problem was that of illegal occupation of the territory. The situation in South Africa was, on the other hand, more complex, because South Africa's problems could be considered internal (encountering the doctrine of non-interference in the domestic affairs of other countries). Of course, once the United Nations declared apartheid as a crime against humanity, the international community became seized with this 'internal affair'. This was the position taken by the FLS.

Confronted with stark power imbalances and their involvement in the Zimbabwean conflict from 1974 to 1981, the FLS' dominant strategy was to mobilize international support to realize their regional objectives. Their greatest contribution to the Namibian decolonisation process was therefore to be a catalyst for multilateral diplomatic intervention in conflict resolution.²⁰⁴ However, the Frontline States and Nigeria had individually also "made substantial direct contributions to the liberation movements, and some, like Tanzania, established a special liberation fund to which the workers and

²⁰³ *Ibid.*, pp. 64-65.

²⁰⁴ Khadiagala, *Allies in Adversity*, pp.97-98.

peasants contributed routinely.”²⁰⁵ A number of Frontline States also helped SWAPO train its cadres for armed struggle. This initiative got additional impetus in December 1968 when ALC convened a conference at Morogoro in Tanzania to encourage African nationalist movements to train their fighting cadres within Africa.

South Africa’s Response

South Africa’s focus was largely on finding strategies that would help it keep Namibia as its client state. When calls for a mandatory arms embargo against South Africa were defeated in the Security Council by a triple veto, South Africa proceeded to seek an alternative solution to maintain *status quo* in Namibia. In September 1975, it convened a conference of ‘representatives’ of eleven ethnic groups at the Turnhalle in Windhoek. Various delegations “comprised mostly the same puppets that were earlier set up in ‘bantustans’, besides a handful of other black self-seeking politicians.”²⁰⁶ Their mandate was to produce an interim constitution that would form the basis of an ‘independent’ client state in Namibia. The entire scheme was opposed from its inception by the nationalist groups, such as SWAPO, SWANU, the Damara Advisory Council, and the Namibia National Front (NNF), as well as major church organizations.²⁰⁷ These independent thinking organizations were neither recognized by South Africa nor were they part of the Turnhalle conference.

Meanwhile, in January 1976, the Security Council adopted Resolution 385 that laid down the procedure for the transfer of power from South Africa to the Namibians. It provided that:

1. The United Nations shall take over the administration of Namibia.
2. South Africa shall release all political prisoners, abolish all repressive and discriminatory laws, and allow Namibian exiles to return to Namibia.

²⁰⁵ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 281. See also Ronald Dreyer (1994), *Namibia and Southern Africa: Regional Dynamics of Decolonization 1945-1990*, London, Kegan Paul International, Chapter 5.

²⁰⁶ United Nations Institute for Namibia, *Namibia: Perspective for National Reconstruction and Development*, p. 50.

²⁰⁷ Elizabeth S. Landis (1977), “The Turnhalle Constitution: An Analysis,” *Africa Today* (July-Sept, 1977), pp.15-16; and Peter Duignan and L.H. Gann (1978), *South West Africa-Namibia*, African American Affairs Association, p.20.

3. The United Nations shall supervise and control the holding of free elections throughout Namibia based on universal adult suffrage.²⁰⁸

Shortly before the scheduled review by the Security Council of South Africa's compliance with Security Council Resolution 385, the South African sponsored Turnhalle Constitutional Conference declared that it would draft a constitution for Namibia, and it hoped that Namibia would become independent by the end of 1978. South Africa had hoped that this effort would not only forestall calls for sanctions²⁰⁹ resulting from its non-compliance with the scheduled review, but would also help it implement 'Odendaal-style independence'²¹⁰ in Namibia. The plan contained "many features of the earlier Odendaal proposals which conferred authority onto tribal chiefs and councils unrepresentative of their people and usually handpicked by the South African administration. The interim constitution drafted by the Turnhalle Conference in March 1977 also provided that "individually and separately, any 'bantustan' could become 'independent' in future."²¹¹

The international community rejected the draft produced by the Turnhalle Constitutional Conference. Three permanent members of the Security Council chose not to take a hard line but to defer to South Africa's initiative. Nevertheless, the Western Contact Group, with its threat of veto in future resolutions, succeeded in persuading South Africa not to go ahead with the implementation of the Turnhalle constitution.²¹² However, in 1977, South Africa exacted its pound of flesh by excising Walvis Bay from Namibian jurisdiction and placing it under the Cape Province's jurisdiction. South Africa also had problems with almost every substantive issue in proposals put forward for an internationally acceptable solution to the Namibian question. Further, it continued to

²⁰⁸ United Nations Security Council Resolution 385.

²⁰⁹ South Africa did succeed in forestalling sanctions on that occasion. In October, another draft resolution for sanctions against South Africa was tabled in the Security Council but was once again vetoed by the three Western Permanent Members.

²¹⁰ South Africa (Republic), *Report of the Commission of Enquiry into South West Africa Affairs, 1962-63*.

²¹¹ United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, p. 51.

²¹² *Financial Times* (7 April 1977).

threaten the international community that it would hold elections in Namibia in 1978 with or without a United Nations presence or participation of SWAPO.²¹³

Western Contact Group Initiatives and Plan for the Independence of Namibia

The Western Contact Group started the work on its own proposals. There was an agreement that their proposals conform to Security Council Resolution 385 and other relevant resolutions. The issues involved the withdrawal of South African forces, release of political prisoners, presence of United Nations peace-keeping forces, and holding of elections. "By coordinating their diplomacy with the Frontline States, the Western Contact Group also attempted to exert leverage on SWAPO to make concessions to South Africa. The Western Contact Group members even suggested to SWAPO to participate in the Turnhalle Conference (1977) as 'one of the interested major parties'."²¹⁴ In response, SWAPO put forward its own proposals. These proposals included ceasefire by SWAPO and South Africa, immediate withdrawal of South African armed forces and their replacement with the United Nations peacekeeping forces, and repeal of all discriminatory, restrictive and repressive laws.²¹⁵

In January 1978, the Western Contact Group presented its own draft settlement proposals to SWAPO, South Africa, the Frontline States, and key United Nations officials.²¹⁶ These proposals were discussed by the United Nations officials and representatives of the Western Contact Group with SWAPO and South Africa at 'Proximity Talks' held in New York. An understanding was for the Frontline States to bring SWAPO on board, the five western powers to bring South Africa on board, and for South Africa to bring the internal parties on board. SWAPO under pressure from the Frontline States at Luanda (Luanda Accord) dropped its preconditions and accepted the proposals despite misgivings.²¹⁷ South Africa accepted the proposals on 25 April 1978²¹⁸ but soon thereafter attacked

²¹³ *Rand Daily Mail* (3 December 1977).

²¹⁴ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 287.

²¹⁵ *The Times* (London) (5 October 1977).

²¹⁶ *Proposal for a Settlement of the Namibian Situation* (31 January 1978).

²¹⁷ *Africa* (1981), No 81, p. 26.

²¹⁸ Dobell, *SWAPO's Struggle for Namibia, 1960-1991*, p. 69.

Namibian refugee camps at Kassinga in Angola. It had perhaps hoped that such a barbaric act would force SWAPO to reverse its acceptance of the proposals.

Soon thereafter, the Western Contact Group placed its proposals before the Security Council²¹⁹ and, on 29 September 1978, the Security Council adopted Resolution 435. This resolution provided for the establishment of a United Nations Transition Assistance Group (UNTAG) to assist the Special Representative of the Secretary-General to ensure an early independence of Namibia. The United Nations Plan for the Independence of Namibia called for:

The holding of elections for a Constituent Assembly that would, in turn, draft a constitution for an independent and sovereign Namibia, with the independence process to be overseen by the UN special representative (UNSR) assisted by UNTAG. General procedures for the observation of a comprehensive ceasefire under UNTAG supervision were to include (1) cease-fire by all parties, with both South Africa and SWAPO troops confined to base; (2) subsequent phased withdrawal of all but 1500 South African troops within twelve weeks and prior to the start of the election campaign, with remaining troops to be withdrawn after elections were certified; (3) citizen forces, commandos, and ethnic forces to be demobilized and command structures dismantled; (4) provision for SWAPO forces to return via designated entry points to participate in elections; and (5) an UNTAG military section to ensure provisions were observed by all parties. The implementation plan recommended establishing an UNTAG military component of 7500 personnel (5000 personnel in seven battalions, plus 200 observers and a 2300 person logistics component). The military component's duties would include monitoring the cease-fire; confining South Africa and SWAPO forces to their bases; assisting in the withdrawal of South African forces; confining the remaining South African forces until elections were completed; monitoring the borders; preventing infiltration of the borders; and monitoring the disbandment of citizen forces, commandos, and relevant command structures.²²⁰

South Africa accepted the United Nations Plan for the Independence of Namibia but again proceeded to register voters for an election for a Constituent Assembly to 'settle' the Namibian question internally, outside the framework of the United Nations. In response, the Western Contact Group sent a team to South Africa to persuade it to give up its insistence on holding the proposed elections. The team failed and the Western

²¹⁹ United Nations Doc. S/12636 (10 April 1978).

²²⁰ Fen Osler Hampson (1996), *Nurturing Peace: Why Settlements Succeed or Fail*, Washington, D.C, U.S. Institute of Peace Press, pp. 67- 69.

Contact Group announced that the elections organized by South Africa were “regarded as the first round of elections”²²¹ with perhaps the United Nations supervised elections as follow up to these elections. Once again the western powers’ actions were deferred to those of South Africa. SWAPO, on the other hand, rejected this position. In early December, South Africa went ahead with the planned elections. After the elections, South Africa reiterated its acceptance of the United Nations Plan for the Independence of Namibia.

Even after accepting the United Nations Plan, South Africa’s emphasis shifted to creating fault lines in its various provisions. It tried once again to scuttle the plan by giving its own interpretation to the ‘restriction to base’ of the South African forces and SWAPO freedom fighters. SWAPO’s understanding was that restriction to base meant restriction of both South African and SWAPO fighters within the country to a base inside the country. However, South Africa, by refusing to acknowledge that there were SWAPO fighters within the country, argued that there could be no restriction to base of SWAPO fighters within the country, but SWAPO fighters should be monitored in Zambia and Angola. This South African position later became a contentious issue when the Plan began to be implemented. South Africa also questioned the United Nations’ capacity to perform its duties in an impartial manner. Consequently, there was increasing pressure from African states for sanctions against South Africa.

In an effort to deflect the sanctions pressure, the Western Contact Group decided to organize a pre-implementation meeting between the WCG members, SWAPO, and South Africa.²²² The pre-implementation meeting was held in Geneva from 7-14 January 1981. There was increasing recognition in South Africa of the pressure that the western parties were bringing to bear upon it to enter into negotiations for a Lancaster House type settlement on Namibia. The DTA leader Mr Dirk Mudge tried to avoid such a course²²³ with South Africa and ‘internal parties’ again introducing the issue of ‘United Nations impartiality’. The breakdown of talks was imminent as DTA presented the United

²²¹ Moleah, *Namibia: The Struggle for Liberation*, p. 211.

²²² Rich, “The United States, Its History of Mediation,” p. 80.

²²³ *Ibid.*, p. 81,

Nations with a list of seven demands relating to the United Nations' alleged bias towards SWAPO.²²⁴ As Kaela²²⁵ observes, "Under the Turnhalle dispensation promoted by it, South Africa started to demand international recognition of the Turnhalle leadership by presenting them as the leaders of the Namibian people who should represent their country in the negotiations mediated by the Contact Group."

This intransigence of South Africa was in part based on its awareness that the new Thatcher government in the United Kingdom was supportive of its position. South Africa also had reason to believe that the new Reagan policy would be more favourable to it. It therefore took a hard line at the pre-implementation talks. That is why, "despite early assurances to the contrary, members of the South African delegation reopened the question of impartiality, claiming that the United Nations had disqualified itself from supervising free and fair elections in Namibia because of its recognition of SWAPO."²²⁶

Mr Pik Botha, South Africa's Foreign Minister, had also argued that negotiations needed to take place between SWAPO and the internal parties. On the impartiality issue, Mr Dirk Mudge, who had attended the talks as a member of the South African delegation, although he was referred to as leader of the internal parties, threatened to walk out and declare UDI in Namibia.²²⁷ On 19 January 1981, Administrator-General Mr Hough announced that, "the inhabitants of SWA/Namibia will have to find solutions to the problems themselves."²²⁸ The Reagan administration 'accepted' South Africa's argument against SWAPO.

Once the Reagan administration began to lead the Western Contact Group, it chose to deal with state actors only. Consequently, SWAPO was often not even consulted, and the western powers worked with South Africa primarily "to ensure that the future

²²⁴ Dierks, *Chronology of Namibian History*.

²²⁵ Laurent C.W. Kaela, "The Reagan Administration and the Decolonization of Namibia," in Rukhsana A. Siddiqui, *Sub-Saharan Africa: A Sub-Continent in Transition* (Brookfield, Vermont: Ashgate Publishing), p. 213.

²²⁶ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 219.

²²⁷ *Rand Daily Mail* (8 January 1981).

²²⁸ Dierks, *Chronology of Namibian History*.

government of Namibia would be moderate, pro-West, pro-capital and sympathetic to their economic – and to a lesser extent, strategic – interests in the territory.”²²⁹ On the other hand, SWAPO’s position was that in the end it must be the two parties to the conflict, i.e., SWAPO and South Africa, which must resolve the conflict. The other actors were only facilitators.

Reagan Administration’s Support of South Africa

Overall, however, the Reagan administration’s policy was less concerned with the Namibian question and more with the Cuban presence in Angola. Namibia was only a carrot for achieving its geopolitical objectives. According to Rich,²³⁰ “United States policy at this stage was based upon support for a protracted low-intensity war requiring United States military assistance [to South Africa and UNITA] which, it was hoped, would increasingly raise the military stake for the Cuban forces in Angola as well as the economic costs for the MPLA government.”

In January 1982, Mr George Shultz succeeded Mr Alexander M. Haig as the U.S. Secretary of State, and the United States and South Africa began asserting that the question of Namibian independence had to be linked to the withdrawal of Cuban troops from Angola. At the same time, South Africa carried out further raids into Angola. SWAPO rejected this ‘linkage’ outright.²³¹

During the same period, South Africans were pursuing the policy of destabilization against the FLS, and were seeking ways to deny both SWAPO and the United Nations any role in the final shape of Namibia’s future. This belligerency of South Africa was never condemned by the Reagan administration. In addition to linking the Namibian independence issue with the withdrawal of Cubans from Angola, the Reagan administration pushed for the introduction of proposals for drafting a constitution for Namibia prior to elections for the Constituent Assembly. Other members of the WCG were, however, committed to Resolution 435 as the basis for the settlement of the

²²⁹ Dobell, *SWAPO's Struggle for Namibia, 1960-1991*, p. 69.

²³⁰ Rich, “The United States, Its History of Mediation,” p. 85.

²³¹ Dierks, *Chronology of Namibian History*.

Namibian question. Thus, the United States' interests were becoming quite divergent from those of the European and Canadian members of the WCG to the extent that the Europeans began to view the WCG as a liability.²³² An earlier consensus at the WCG had given way to the demands of the United States that were primarily focused on its geopolitical interests:

The Reagan Administration, for its part, impressed upon the other parties, the need to amend UN Security Council Resolution 435 (1978) and to adopt the withdrawal of Cuban troops from Angola as a condition for granting independence to Namibia. An agreement was secured on these two issues as part of a common approach to negotiations for a settlement of the Namibian problem. Other points agreed upon were (1) the need, and measures, to counter what was perceived to be Soviet influence in southern Africa; (2) creating conditions for western-style democracy and the capitalist economic system in an independent Namibia; and (3) promoting peaceful change, while undermining the role of armed struggle as a means of national liberation. These were interrelated.²³³

In keeping with its policy of what it termed 'constructive engagement', Washington had also felt that South Africa's concerns with the mechanism for the implementation of the United Nations Plan should be addressed to make the plan acceptable to South Africa.

In the era of the Cold War, both the United States and South Africa saw SWAPO as a pro-Moscow organization that, along with the African National Congress (ANC) of South Africa and MPLA in Angola, could threaten their geopolitical interests:

Thus the Reagan administration viewed the problem of Namibia in the context of the Cold War at the global and regional levels. Its primary concern, as far as the problem of Namibia stood, was to influence the course of change so that what it perceived to be the Soviet threat could be dealt with. This necessitated collaboration with Pretoria ... to formulate a common approach to negotiations. The Reagan administration justified its collaboration with South Africa as 'constructive engagement.' It is against this background that Washington's attempt to have UN Security Council Resolution 435 (1978) modified should be viewed.²³⁴

Another major concern of the Reagan administration was to ensure that the future government of Namibia, even if headed by SWAPO, would not be a 'communist

²³² Jabri, "European Involvement in the Western Contact Group, pp.66-67.

²³³ Kaela, "The Reagan Administration and the Decolonization of Namibia," pp.216-217.

²³⁴ *Ibid.*, pp. 218-219.

dictatorship'. Hence the Constitutional Principles that the Western Contact Group, with the overbearing influence of Washington, wanted to adopt had all the characteristic features of western liberal democracy, such as the doctrine of checks and balances, guarantees of individual freedoms, the idea of competing for political office, and right to property. The Reagan administration had thus sought to ensure that Namibia retained the capitalist economic system open to investment by western multinational corporations. The inclusion of guarantees of private property in the Constitutional Principles addressed this concern. In promoting liberal democracy and a capitalist economic system, the Reagan administration had succeeded in imposing the parameters of a liberal constitution on Namibia.

Kaela²³⁵ further noted:

Behind the Reagan administration's advocacy of formulating an electoral system for Namibia before the beginning of the implementation of the UN independence plan lay another objective. The democratic constitution for which the principles had been formulated would still have to be drafted and adopted by the Constituent Assembly on the basis of the two-thirds rule. Therefore, the Reagan administration was interested in the choice of an electoral system that would prevent SWAPO from coming to power, or, one that would prevent it from winning a large majority of seats in the Constituent Assembly. This, it was hoped, would guarantee the adoption of a democratic constitution.

However, the electoral system was not the brainchild of the Reagan administration but that of the West Germans, whose intention was to ensure German settler representation in the Constituent Assembly by advocating proportional representation system of election. The issue of property rights was also of concern to the Germans, the British, the South Africans and the United States to protect the interests of the land-owning white settler communities and to safeguard investments in South Africa and Namibia.

The Linkage Issue

Fear of communism, and the desire of the United States to protect its geopolitical interests, resulted in the United States' attempt to link Namibian independence with the

²³⁵ *Ibid.*, pp.216-217.

withdrawal of Cuban troops from Angola. This shift in focus gave South Africa new hope for delaying the independence of Namibia:

This linkage ... played well in Pretoria, for it shifted the responsibility for achieving Namibian independence from South Africa to Angola and the United States. There were also military advantages to this changed posture. Linkage gave South Africa reason to continue its military forays into Angola, for, in doing so, it would ensure that the Cubans would remain there. As long as the Cubans stayed, South Africa could justify retaining its grip on Namibia.²³⁶

Thus, the linkage issue became a major obstacle to Namibia's progress toward independence. Namibians saw this interrelationship between Namibian independence and the withdrawal of Cubans from Angola as irrelevant. Namibian independence was about ending South Africa's illegal occupation in the territory. The presence of Cuban troops in Angola was, on the other hand, to help the MPLA government deal with invading South African troops and UNITA rebel guerrillas who continued to fight on.

SWAPO, the Frontline States, the Organisation of African Unity, France, the United Nations General Assembly and the Security Council rejected the linkage issue.²³⁷ However, South Africa remained defiant on the Namibian issue. In response to Security Council Resolution 539 that rejected the linkage issue, South Africa's Minister of Foreign Affairs issued a statement that South Africa would not succumb to Security Council's threats.²³⁸

Chester Crocker himself justified the notion of 'linkage' as follows:²³⁹

A narrowly defined Namibia settlement (without reference to Angola) was unattractive to Pretoria for a host of reasons. It would entail the loss of a mineral-rich, strategic buffer zone larger than Texas without any compensating 'quid'; the negative political imagery of a U.N.-led transition that would favour SWAPO; the risk of SWAPO exploiting its U.N., Soviet, Cuban and MPLA support effectively to coerce its way into power, drawing encouragement from the nearby presence of a highly trained, mobile Cuban force; the desire to avoid abandoning Pretoria's black UNITA allies in Angola; the prospect of a chaotic exodus from Namibia of

²³⁶ Richard N. Haass and Meghan L. O'Sullivan (eds.) (2000), *Honey and Vinegar: Incentives, Sanctions, and Foreign Policy*, Washington, D.C., Brookings Inst. Press, p. 100.

²³⁷ United Nations Security Council Resolution 539 (1983).

²³⁸ United Nations Doc. S/16106 (31 Oct. 1983).

²³⁹ Crocker, *High Noon in Southern Africa*, p. 41.

its white minority, leading to charges at home of a sellout; and the loss of Namibian bases for projecting military power into neighbouring states.

According to Crocker, the South African preferred an 'Angola first' brand of linkage, while the Angolans preferred a 'Namibia-first' variety. The United States' interest in the 'linkage' of the two issues was largely based on geopolitical considerations.

The fact that neither the European participants nor Canada was involved in the negotiations over the linkage issue suggested that they were not interested in linking the two issues. However, they continued to influence the thinking on the constitution and were successful in achieving a compromise proposal based on the introduction of constitutional guarantees for the white minority in Namibia, as opposed to the imposition of a full-fledged constitution.²⁴⁰

West Germans were particularly influential in gaining changes in WCG's proposals with the introduction of the idea of a Bill of Rights. They also introduced a proposal for the adoption of the German model of proportional representation that would ensure that smaller parties would have a significant role in an elected Constituent Assembly.

Apart from being motivated by a desire to achieve compromise proposals which would meet the needs of both the Reagan administration and those of SWAPO and its FLS allies, the German proposals were also motivated by an interest in the welfare of the German community in Namibia. Unlike the Reagan administration and the approach of its chief negotiator, Chester Crocker, which had essentially ignored SWAPO as a negotiator, the West German government maintained high-level contacts with the Namibian nationalist movement and attempted mediation between SWAPO and Chester Crocker in 1982.²⁴¹

Similarly, the French tried to promote discussions between Angola's Foreign Minister, Mr Paulo Jorge, and Mr Chester Crocker to resolve the linkage issue. However, the linkage issue was essentially negotiated by the United States, with the British government providing some support in the form of facilitating contacts as the British had an embassy in Luanda and the Americans did not.

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.* See also C. Legum (1981), "The Southern African Crisis," in *Africa Contemporary Record, 1981-82*. p. A31.

With the coming to power of Mr Francois Mitterrand, the French government also began to re-evaluate its priorities in southern Africa as it wished to promote relations with the FLS and southern African liberation movements. Soon thereafter, in July 1982, the French and Angolan governments signed a cooperation agreement. France also supplied armed helicopters to the Angolan armed forces for anti-guerrilla operations, despite the fact that the Reagan administration had supported UNITA. This new shift made the French reconsider their position in the WCG, and they temporarily withdrew from the group.²⁴²

These policy shifts had serious consequences for resolving the Namibian question. As already mentioned, initially, developments in southern Africa were focused on decolonisation. Emphasis in the OAU, amongst the Frontline States, within the NAM, and at the United Nations General Assembly was focused on the independence of the Portuguese colonies, Zimbabwe and Namibia and bringing about majority rule in South Africa. However, once the issue of Namibia moved to the Security Council, this initiative was lost and self-interest of the West became the dominant consideration as 'solutions' were sought for negotiated independence of Zimbabwe and Namibia. The developing role of the WCG further undermined the United Nations where the Security Council had begun to defer to the WCG on issues related to Namibia. Even the western influence began to be lost during the Reagan era because of President Reagan's belief that South Africa was a valuable ally against any Marxist tendencies.²⁴³

United States' Diplomatic Initiatives in the 1980s

The western initiative had lost its momentum and influence over the South Africans largely as a result of repeated vetoes by some of the members of the Western Contact Group, i.e., the United Kingdom, France, and the United States, in the Security Council. The United States, too, had undermined its own influence over South Africa during the Reagan era as President Reagan saw South Africa to be a friend and was vocal about it.

²⁴² United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 220.

²⁴³ Dreyer, *Namibia and Southern Africa: Regional Dynamics of Decolonization 1945-1990*, Chapter 6.

South Africa saw this as an opportunity to become even more hawkish against the majority-ruled black states in the region. One consequence of the United States' 'friendship' with South Africa was that the United States policy became deferred to that of South Africa. As a result, the United States' credibility in Africa suffered.²⁴⁴ Reflecting on the United States policy in southern Africa, Rich noted:²⁴⁵

United States policy continued to be burdened by a rather crude Cold War strategy rooted in the assumption that there was a monolithic communist interest expanding into southern Africa. The original decision by Fidel Castro to send troops to assist the MPLA was not a simple consequence of a Soviet grand geopolitical design, but related more to Castro's close personal relationship with the MPLA leadership, a sense of historical 'mission' to aid third world liberation and the desire to play a significant political role on the world stage.

It is in such a climate that Mr Crocker sought to redefine the State Department's southern Africa policy. In the 1981 talks with the Western Contact Group, the FLS, South Africa, and SWAPO, Mr Crocker concluded that since the beleaguered position of the Group lay at the mercy of South African intransigence and FLS impatience, a new initiative was needed to inject life into the stalled process.²⁴⁶

He considered that while Security Council Resolution 435 addressed the Namibian issue, it provided nothing to the South Africans in return. South Africa's primary concern was its own security against what it saw as communist expansionism emanating from Angola and Mozambique. He therefore sought to link the problem to issues that opened the possibility of trade-offs between an expanded list of parties.²⁴⁷ The linkage of Cuban withdrawal from Angola with the independence of Namibia provided just such an approach. Crocker's approach was in fact a direct result of the Reagan administration's support of its ally South Africa. If pressure were maintained on South Africa to accept change, there was little South Africa could do. Therefore, Crocker's explanations could be seen only as explanations for justifying the U.S. policy – and not a reason for linkage.

²⁴⁴ Nujoma, *Where Others Wavered*, p. 283.

²⁴⁵ Rich, "The United States, Its History of Mediation," pp. 83-84.

²⁴⁶ Khadiagala, *Allies in Adversity*, p. 138.

²⁴⁷ Brown, "Regional Conflict in Southern Africa," pp. 130-131

In pursuing the policy of linkage, Mr Crocker moved to achieve what he called, 'positive sum' – something for everyone. As his deputy, Charles Freeman Jr., elaborated, "There are at least two basic approaches to an apparently intractable problem if a frontal assault seems unlikely to work: one can either disaggregate the problem and attack it piece by piece, or one can link the problem to issues that open the possibility of trade-offs between an expanded list of parties."²⁴⁸ Linkage of Cuban troop withdrawal with the independence of Namibia was being sold as a part of this approach, though in the geopolitical context, the United States was not a disinterested party.

Constitutional Principles

In May 1981 the Western Contact Group endorsed the U.S. initiative comprising three phases: (1) addressing the constitutional concerns of South Africa and Namibian internal parties; (2) finalizing the agreement on the U.N. role during the transition period; and (3) establishing steps for the implementation of the agreement.²⁴⁹

On the election of Constituent Assembly members, the WCG suggested an electoral system with half the seats filled through the proportional representation system and half through the constituency-based, first-past-the-post system. SWAPO saw this as a ploy to prevent it from getting a majority, and especially control of the Constituent Assembly, as most of its candidates were in exile and not within the constituencies. It therefore rejected this proposal with full backing of the FLS. The WCG therefore put an alternative proposal of one vote counted twice – once to determine the outcome of proportional representation with the whole of Namibia as the constituency and once to determine the outcome in specific constituencies based on the first-past-the-post system. This, too, was unacceptable to SWAPO for the same reasons.²⁵⁰ The WCG therefore decided to put this issue aside, to be resolved as a part of the overall settlement.

In addition to the attempt to influence the outcome of elections, there were efforts to force a constitution on the future Constituent Assembly. This imposition, too, was

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.* p. 139.

²⁵⁰ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 222.

rejected by SWAPO, but it accepted certain Constitutional Principles. These Constitutional Principles provided that Namibia would be a unitary state with a written constitution, it would have three branches of government, the executive would be elected by universal suffrage, human rights would be protected and enforced by the judiciary, and the Constituent Assembly would adopt the constitution by two-thirds majority. However, the end result of these provisions was almost the same as imposing a constitution on Namibia.

Agreement on a set of Constitutional Principles was Phase I of three phases put forward by the Western Contact Group. The other two phases included negotiations on specific arrangements on a ceasefire and the composition of UNTAG; and public commitment by all parties to the implementation of Resolution 435. Before any discussion could take place on phase two of the WCG plan to implement Resolution 435, Mr P.W. Botha declared that the three phases could not be completed unless Cubans left Angola. This linkage was accepted by the WCG and Angola was willing to discuss it.

Cuba Raises Stakes

On February 4, 1982, Angola and Cuba responded to linkage by jointly declaring that Cuban troops would pull out of Angola only if four conditions were met:

1. Unilateral withdrawal of South African troops from the Angolan territory;
2. Strict implementation of Resolution 435 (1978);
3. An end to acts of aggression against Angola by South Africa, the United States and their allies; and
4. Cessation of South African aid to UNITA and all other counter-revolutionary bands.

Meeting these conditions would basically entail the removal of the *raison d'être* of Cuban presence in Angola. Angola and Cuba also made it clear that they were not prepared to exchange Namibia's independence for the withdrawal of the troops at the expense of Angola's security.²⁵¹

²⁵¹ Kaela, "The Reagan Administration and the Decolonization of Namibia," pp.216-219.

South Africa, on the other hand, used the linkage issue only as a delaying tactic and continued with its attempt at destabilizing eight neighbouring states with a combination of military and economic acts and Machiavellian diplomacy.²⁵² In addition, its incursions in southern Angola became bolder. It saw its concern as the communist threat coming down to the Orange River. South Africa's Defence Minister stated that if South Africa withdrew from the war for South West Africa, it would shift the operational area from the Kunene River to the Orange River.²⁵³ He also reported to the South African parliament that South Africa might make pre-emptive strikes in Angola. One could argue that South Africa would have been quite happy to see Cubans stay in Angola as such a situation would have ensured continued United States support for South Africa. However, the fact is that it was not up to South Africans only. Cuban forces had been reinforced and had the potential for going past Namibia. This was not the scenario that South Africa would have found attractive.

Such deep-rooted concerns of South Africa were difficult to address even for seasoned negotiators like Mr Crocker. His attempts to create a favourable climate between Angola and South Africa, through negotiations in Cape Verde, were later undermined by South Africa's alleging infiltration of SWAPO cadres in Namibia. Undermining the Cape Verde agreement on mutual withdrawal of forces from Angola only hardened the attitudes on all sides and set the stage for further South African cross-border campaigns in Angola.

Mr Crocker, however, continued to work towards achieving success with his linkage initiative.²⁵⁴

A mediator has his own agenda and the other parties are the other party. They are all on the other side of the table from the mediator and what you want to do is to raise the price for the other parties of obstructing the basic direction in which you're trying to move. At the same time you are trying to shape intentions in such a way that there is that common ground you keep talking about. You also have to have the right logical symmetry of tradeoffs so that it is a positive sum game.

²⁵² Joseph Hanlon (1987), *Beggar Your Neighbours: Apartheid Power in Southern Africa*, Bloomington, Indiana Univ. Press.

²⁵³ *Africa Report*, 29 2, p. 58.

²⁵⁴ Barber, "Creating Realities," p. 54.

Of course, Mr Crocker was a mediator, but he was there to protect the interests of the United States. His mediation role was subservient to his primary interest of ensuring continued U.S. influence in the region. He saw the promise of Namibia's independence in return for Cuban withdrawal from Angola as an ideal situation for furthering the United States' geopolitical ends in a cold war environment, and providing the necessary perception of security for South Africa. The new policy, therefore, had a number of components as follows:

1. First, in the interest of continued United States and South Africa cooperation that was considered important for the United States' interests in the region, work towards making South Africa more acceptable in the international community. This was to be achieved by seeking South Africa's cooperation on Namibia.
2. Second, to further United States geopolitical interests, seek to link the resolution of the Namibian question with the withdrawal of Cuban troops from Angola. South Africa was to be persuaded to agree to a timetable for Namibia's independence in return for the potential of security against 'communist influence'.
3. Third, seek to have the Clark Amendment²⁵⁵ repealed so that UNITA could be supplied with arms without congressional approval, and seek to make UNITA more acceptable to the Frontline States by putting some distance between UNITA and South Africa.
4. Fourth, MPLA needed to be assured of government security in Angola with the withdrawal of South Africans from southern Angola.

Contradictions between some of the components were ironed out as the negotiations proceeded between the United States, the Cubans and the South Africans.

This position was a significant shift from Mr Crocker's strategy of raising the stakes high enough to make it so expensive for the other party that it was forced to negotiate.

²⁵⁵ On 20 December 1975, the U.S. Senate passed an amendment to the Department of Defense Appropriations Bill introduced by a California Democrat, Senator John Tunney terminating covert assistance to anti-Communist forces in Angola. Later on, in the same year, Senator Dick Clark, another Democrat sponsored an amendment to the foreign aid bill that extended the ban.

However, the reality on the ground was very different. All sides to the conflict were raising stakes. In the pursuit of this strategy, South Africa and UNITA were United States' allies. As Nujoma observed:²⁵⁶

While the U.S. was supplying UNITA bandits and even training its soldiers in the usage of Stinger missiles in Zaire, Chester Crocker was continuing his talks with the Angolans and Cubans about the latter's withdrawal. The MPLA Government was willing to be flexible, but the South Africans continued to make an end to the war and implementation of Resolution 435 impossible by making completely unacceptable demands for rapid withdrawal of the Cuban internationalist forces from Angola. The reverse was happening, with the arrival at Port Namibe late in 1987 of massive Cuban reinforcements, the first contingent being the labour force needed to construct the essential air bases at Kahama and Matala so that Cuban MiG 23s could engage the South Africans, even over northern Namibia itself, without refuelling.

Cuba and MPLA were ready to match and raise the stakes further. In fact, by 1987, the balance shifted in favour of the Cuban and MPLA forces, when the MPLA forces attacked the South Africans at Cuito Cuanavale and downed ten South African Mirage jets. Subsequently, Mr Crocker proceeded to extricate South Africa from this situation despite the fact that South Africa continued its presence in southern Angola. In fact, in September 1987, it gained some ground in a new military offensive. However, its policy was not very sophisticated – it was still fighting a colonial style war that has been compared by some with that of the United States in Vietnam.²⁵⁷

The September 1987 attack by South African forces raised the stakes again and the Cubans and Angolans matched them by increasing the number of Cuban forces to 40 000. By December 1987 Cuba increased its troop strength in Angola to about 45 000, and later to 50 000. Concurrently, 15 000 of those soldiers were moved south toward the Namibian border where, in Pretoria's view, they threatened South Africa's military position in northern Namibia. In early 1988, Defence Minister Magnus Malan admitted his government's worry that SWAPO guerrillas might push straight into Namibia behind a Cuban shield. "By mid-January 1988 Cuban-piloted MiGs hit the South African forces south of Cuito Cuanavale. The Cuban military command concluded that they could

²⁵⁶ Nujoma, *Where Others Wavered*, pp. 371-373.

²⁵⁷ Rich, "The United States, Its History of Mediation," p. 88.

exploit the weaknesses in the South African position in southern Angola by escalating the war to a level beyond which Pretoria dared not to go.”²⁵⁸

By the beginning of 1988, South African dominance in southern Angola was over. SWAPO's 2nd Mechanized Infantry Brigade also fought alongside FAPLA at Cuito Cuanavale, though South Africans could not bring themselves to admit this.²⁵⁹

South Africa's Defeat at Cuito Cuanavale

South Africa made a final assault on Cuito Cuanavale in late March 1988 although it had lost its air superiority. At that time, some 3000 SADF forces were trapped south of Cuito Cuanavale with little hope of retreating because of Angolan air superiority. SWAPO's PLAN forces were also moving south, challenging the South Africans in the 'no go' zone. As *Africa Confidential*²⁶⁰ reported, it was South Africa's worst nightmare. In May 1988, President Kaunda of Zambia had commented:²⁶¹

For the first time the apartheid regime had met defeat at the hands of an African army – the Angolan forces – and the movement of Cuban troops towards the southern borders posed more danger to it. It was clear that the Boers were anxious to see that the Cubans did not delve deeper into the conflict in the southern part of Angola. With this background South Africa would succumb to pressure and loosen its hold over Namibia and eventually shed the system of apartheid.

With its soldiers trapped in southern Angola, and with increasing pressure within South Africa for its government to accept Resolution 435, South Africa was now ready to talk. Military significance of the battle at Cuito Cuanavale lay in the number of white South African casualties. For the first time, this number was large enough to jeopardize the capacity of the apartheid regime to deal with the domestic political consequences of such losses. After years of having fought a low-level 'bush war' in Angola, in which casualties were largely confined to black troops, South Africa found itself involved in a major military engagement, one that would produce in time the largest tank battle in Africa since World War II. Such an escalation represented for Pretoria a psychological-political

²⁵⁸ A confidential source quoted by Rich, "The United States, Its History of Mediation," p. 88.

²⁵⁹ Nujoma, *Where Others Wavered*, p. 373.

²⁶⁰ *Africa Confidential*, (27 May 1988), p.1

²⁶¹ *Times of Zambia*, (19 May 1988), p. 1.

threshold, one that the Cubans readily appreciated and sought increasingly to turn to their own advantage.

In April, following their heaviest war losses ever, South Africans began withdrawing from their positions around Cuito Cuanavale, and concurrently through diplomatic channels the Pretoria government signalled its willingness to enter into serious negotiations with Angola and Cuba.²⁶² This shift in military balance of power also translated into a "willingness by the United States to admit Cuba to the negotiations on Angola over the objections of the anti-Cuban factions in the State Department."²⁶³

This march towards resolving the conflict was further helped by the Reagan-Gorbachev summit in May 1988 in Iceland. At that time, Mr Crocker and his Soviet counterpart, Deputy Foreign Minister Anatoly Adamishin met and agreed on the necessity of peace in southwest Africa. No doubt, this congruence of views reduced the manoeuvrability of Cuba, MPLA and South Africa.²⁶⁴

Subsequently, in mid-July 1988, a major breakthrough was achieved between Cuba, Angola, and South Africa. They met at Governor's Island in New York to discuss fourteen principles for a comprehensive settlement. These principles included "the right to self-determination and peace, non-aggression, non-interference, and respect for territorial integrity and inviolability of frontiers, as well as recognition of the roles of the United States as mediator and the permanent members of the Security Council as guarantors of a final agreement."²⁶⁵

In short, the battles in 1987 and 1988 at Cuito Cuanavale and Calueque highlighted Pretoria's inability to tolerate substantial white casualties as well as the ability of the

²⁶² Stultz, "South Africa in Angola and Namibia," p. 84. Jabri, "European Involvement in the Western Contact Group."

²⁶³ Haass and O'Sullivan (eds.), *Honey and Vinegar: Incentives, Sanctions, and Foreign Policy*, p. 119.

²⁶⁴ Khadiagala, *Allies in Adversity*, p. 157.

²⁶⁵ *Ibid.*, p. 158.

Cuban troops to inflict casualties on the SADF. This realization moved South Africa generally in the direction of a negotiated settlement in the region.²⁶⁶

In the words of Clough and Herbst,²⁶⁷ South Africa's "confidence in the power of guns and ideology" appeared suddenly to dissolve before the promise of serious bargaining with the country's external opponents. Ten rounds of formal negotiations ensued, beginning in early May in London, and these discussions, together with two sets of secret or informal talks, finally resulted in the signing by Cuba, Angola, and South Africa of the so-called Angola-Namibia accords in New York on December 22, 1988. These accords, which ended more than thirteen years of military conflict in the area, stipulated that the three parties agreed to:

1. A timetable for Namibian independence (pursuant to Security Council Resolution 435), the process itself to begin on April 1, 1989, and to be supervised by UNTAG;
2. Elections for a Namibian Constituent Assembly, to be held on November 1, 1989;
3. Withdrawal of all South African troops from Namibia within one week of the announcement of the results of the aforementioned elections; and finally,
4. Phased departure of all Cuban troops from Angola, to be completed by July 1991.²⁶⁸

President Castro's statement at the 1986 NAM meeting in Harare, challenging South Africa that he was ready to take the war to South Africa itself, was in no small measure responsible for South Africa and its allies beginning to take the issue of the Namibian question seriously.

It could be argued that conditions were ripe for negotiations, because the Soviet Union was unable to sustain the regimes in Angola and Mozambique. However, such an argument is difficult to sustain in the light of the developments of 1988 and 1989. It was Cuba that had achieved successes in the field during the period. Support for UNITA through the Republic of Congo had all but dried up. I was also told by Cuban politicians during my visit to Cuba that Cuban support was not contingent upon the survival of the

²⁶⁶ *Ibid.*, p. 93.

²⁶⁷ Clough and Herbst, *South Africa's Changing Regional Strategy*.

²⁶⁸ Stultz, "South Africa in Angola and Namibia," p. 80.

Soviet Union.²⁶⁹ Conditions were ripe for negotiations for different reasons – the military equation in Angola and Namibia had changed in favour of SWAPO and FAPLA. There was also a great deal of pressure on the white government in South Africa from its own white constituents; there was already an exodus of whites from that country, and internal resistance against the white regime was growing in the country. There was therefore concern in South Africa that whites' survival in South Africa was threatened if the government did not negotiate the implementation of Resolution 435. The United States saw this as an opportunity to achieve its geopolitical ends and at the same time resolve the Namibian question without raising its own involvement in the conflict.

Implementation of Security Council Resolution 435

The agreement on Cuban troops' withdrawal was signed after further meetings in Brazzaville, Geneva and New York. It was a bilateral accord between Angola and Cuba. South Africa also voluntarily committed itself to *de facto* cessation of hostilities.²⁷⁰ The New York Tripartite Agreement signed by Angola, Cuba and South Africa on 22 December 1988 embraced both the Namibian agreement (withdrawal of South Africans) and Angolan agreement (Cuban withdrawal).²⁷¹ SWAPO was not directly consulted during the negotiations, but Cubans and Angolans were kept briefed of its position. This state of affairs "was both a testimony to Namibia's subsidiary position in Reagan administration's hierarchy of foreign policy concerns, and a tacit concession to Pretoria's desire to minimise the role played by SWAPO in bringing about Namibia's independence."²⁷² Negotiations were in fact restricted to states.

Nevertheless, as a result of these initiatives, the way was now clear for the process of implementation of Resolution 435 to begin. On 16 January 1989, the Security Council endorsed the Tripartite Agreement signed on 22 December 1988.²⁷³ This agreement had set down 1 April 1989 as the date on which the Resolution 435 implementation process would begin.

²⁶⁹ Personal conversations in Havana on 7 September 2001.

²⁷⁰ Dierks, *Chronology of Namibian History*.

²⁷¹ Khadiagala, *Allies in Adversity*, p. 159.

²⁷² Dobell, *SWAPO's Struggle for Namibia, 1960-1991*, p. 72.

²⁷³ United Nations Security Council Resolution 628 (1989)

In October 1988, in anticipation of developments towards the resolution of the Namibian question, SWAPO also held a Consultative Conference between SWAPO and progressive Namibians (including Messrs Immanuel Ngatjizeko, Anton Lubowski, Frieder Rohn, Gert Hanekom, Klaus Dierks, Bernd Riehmer, Peter Borsutzky, Hans Röhr, and Christo Lombard) in Kabwe, Zambia. Prominent exiled SWAPO leaders present at this conference included, among others, Messrs Sam Nujoma, Hage Geingob, Theo-Ben Gurirab and Hidipo Hamutenya.²⁷⁴ This meeting was meant to be a confidence-building measure or 'get-to-know-each-other' meeting to overcome the fear of the unknown.

The process of implementation of Resolution 435 began with the United Nations Special Representative moving to Namibia along with the United Nations Transition Assistance Group (UNTAG) to prepare the territory for holding elections for the Constituent Assembly.

From SWAPO's perspective, the process of elections was not as smooth as one would expect. SWAPO faced many challenges. As a liberation movement, it was not legally banned, but was not allowed to operate freely -- all kinds of restrictions were imposed that were tantamount to a ban. It had not legally maintained an office in the territory for nearly 30 years, and given the size of the country it was not easy to establish offices all over the country prior to elections. In addition, SWAPO was concerned whether the elections were going to be free and fair since elections were going to be organized by South Africa. But given the support of SWAPO throughout the country, it was sure that it would win even if there were a semblance of free elections.

As regards the security of SWAPO leaders, we recognized that there would be no absolute security. SWAPO headquarters was shot at several times. During the night some people would drive by and shoot at the headquarters as if for target practice. SWAPO members were insulted and intimidated by DTA. SWAPO rallies were monitored. Often at these rallies there would be people wearing DTA T-shirts, but SWAPO cadres did not

²⁷⁴ Dierks, *Chronology of Namibian History*.

expel them from the rallies and therefore did not give them the reason to disrupt our rallies.

Additional problems were created by the fact that a colonial civil service was still in charge of the elections. For example, SWAPO was scheduled to launch its *Election Manifesto* on 2 July 1989, but all the copies of the manifesto were held up at the border, and we had to launch the manifesto without distributing copies at the rally. We had to promise the people that they could get their copies at the office the following Monday. Fortunately, because of the pressure put on the civil service, the copies arrived by Monday. The colonial administration's purpose in creating these obstacles was to deny SWAPO an opportunity to display its manifesto to the crowd that would certainly have made an impact, as DTA did not even know the concept of election manifestos.

Similarly, when SWAPO sought to hire busses from Du Toit Transport in Windhoek to transport its supporters to the voting booths to cast votes, SWAPO was informed that all the busses had already been hired. We were informed that DTA had booked all the busses allegedly to block SWAPO from having access to them, though it was difficult to verify. Eventually, SWAPO arranged for hiring the busses through the South African Congress of Trade Unions (SACTU) from South Africa and paid over R2.5 million for this service. These busses turned out to be a great boost for us. Their drivers were great SWAPO supporters – they played music, and, using loudspeakers, urged people to come out and vote. SWAPO was therefore able to overcome a serious handicap.

The administrator general, Mr Pienaar, was a gentleman in the apartheid context or mould, but was definitely not a friend of SWAPO. He was there to see that SWAPO did not win the elections, and, if it did win, it would not win by a two-thirds majority. Mechanisms devised to prevent SWAPO from winning were (1) registration of white South Africans, including former residents, to swell DTA ranks, and (2) a system of central counting of votes. These were some of the mechanisms for maximizing support for DTA and rigging the elections.

The South African administration succeeded in registering white South Africans to vote in Namibian elections because SWAPO was too late in protesting such actions. The administration had issued a considerable number of South African whites with Namibian identity papers so that they could vote in the Constituent Assembly elections.²⁷⁵ Further, on 16 April 1989, the Namibia Communications Centre reported that a Colonel Botes of Brigade '91 SWA that was to be 'demilitarised', wrote to all the soldiers:

to cooperate, to work hard and cannily, to retain a Christian democratic dispensation in this country. I therefore request all of you to participate in the election campaign beginning on June 26. Make sure that you register as a voter and also that you vote. Even if you now live in the RSA [South Africa], I specifically ask you to make arrangements to travel twice to SWA (Namibia) – first, to register, then on November 1, to vote.

When SWAPO's Directorate of Elections realized that whites were coming from South Africa to vote, and were, after voting, going back to waiting planes that had been chartered apparently for that purpose, it decided to take some action to thwart this effort or, at least, to minimize its effect. Knowing that the planes taking the 'voters' back were bringing back some more voters, SWAPO sent its own busloads of voters to queue up at the polling stations at the airport before the plane arrived. Consequently, incoming whites were forced to join the queue at the back, thus disrupting the turn-around schedules of their planes.

SWAPO was even more concerned with central counting of votes. As SWAPO was popular in the north, its concern was that all the ballot boxes would be loaded in a plane from Ovamboland, and then flown to the coast where they could be dumped in the ocean and replaced with DTA filled boxes for counting in Windhoek.

The international community, too, criticized the provision of central counting of votes, and agreed with SWAPO's position: "The international community found the proposed system unacceptable in several respects. First, encoding ballots corresponding to the

²⁷⁵ *The Namibian* (10 February 1989)

voters' ID cards compromised ballot secrecy. Second, proposed centralized counting departed from internationally acceptable counting locally."²⁷⁶

SWAPO therefore decided to fight against these mechanisms, and particularly central counting as it was a make-or-break issue with serious implications for the outcome of elections. SWAPO sent a message outlining its concerns to the United Nations Secretary General. This message was supported by President Mugabe in a letter on behalf of the Frontline States. His letter cast aspersions on the competence of the Special Representative and asked for an African to be appointed to deputize him. Botswana's seasoned diplomat at the United Nations, Mr Joseph Legwaila was appointed as deputy to Mr Ahtisaari and that helped precipitate change. Elections proceeded with the understanding that counting of votes would take place at source. Thus, SWAPO's views on the subject prevailed.

UNTAG and the Special Representative Mr Ahtisaari also came under a great deal of criticism from South Africans who accused them of being biased towards SWAPO. Consequently, to prove the point that they were not friends of SWAPO, they distanced themselves from us. But, instead of being neutral, UNTAG and Mr Ahtisaari seemed to have become friends with the other side. However, after election results were out, Mr Ahtisaari explained that he had to behave that way to prove to the South Africans that he was impartial. We know that both Mr Ahtisaari and Mr Hashim Omayat, Director of United Nations Elections, were more concerned about the process and their role in that process of making sure that it succeeded. They were not necessarily concerned with the outcome of the elections. Of course, that was the role of the Special Representative.

This was proven during the 1st April debacle. The war had ended on 31 March 1989, and PLAN combatants inside Namibia were ready to report to UNTAG reception points. Instead, they were attacked by the South African forces. Nujoma points out that²⁷⁷

Ahtisaari allowed himself to be convinced that there were no SWAPO forces in Namibia before 31 March 1989. When fabricated evidence of PLAN 'incursions'

²⁷⁶ NDI for International Affairs, *Nation Building: The U.N. and Namibia*, p. 33.

²⁷⁷ Nujoma, *Where Others Wavered*, p. 297.

was produced, Ahtisaari swallowed the lie and agreed to permit the South African re-deployment of its 101st Battalion, who were in combat readiness. This diabolical secret plan had the full support of both the Reagan administration and British Prime Minister Thatcher.

SWAPO Wins the Election

The United Nations supervised elections were held from 7-11 November 1989, which gave SWAPO 41 seats (57.3% of the vote), the DTA 21 seats (28.6%), the UDF four seats (5.6%) and four other parties split the remaining six seats. There was a misunderstanding in the camp of the non-SWAPO parties, who were 'programmed' by South Africa, that SWAPO would need a two-thirds majority to form government.²⁷⁸ Therefore they thought that because SWAPO failed to get a two-thirds majority, it was obliged to form a government of national unity. This concern with two-thirds majority was visible everywhere – even academics talked about it. However, SWAPO was not concerned about getting a two-thirds majority, nor was there any strategy towards that end. Its focus was to win as many votes as possible.

I told other parties that SWAPO got an absolute majority of 41 seats out of 72 seats, i.e., 57.3 % and therefore could form the government by itself. In their continued belief that SWAPO would be obliged to form a coalition government, the DTA even rejected SWAPO's offer made to Mr Staby of the DTA to accept an appointment as Minister of Trade and Industry. Mr Dirk Mudge thought that SWAPO should have offered the post to DTA, and they would have negotiated the conditions under which they would accept such an offer, not realizing that it was SWAPO's own desire to instil a sense of inclusiveness. It was the president who had called on a citizen to do his national duty by serving in his cabinet. By rejecting this offer to Mr Staby, DTA lost out. Of course, two-thirds majority was needed only to adopt the constitution. My repeated statements that SWAPO was conscious of its historic role to unite all Namibians to forge national unity made no difference, and the DTA continued to have difficulty with the new reality.

²⁷⁸ See Chapter Four for the implication of two-thirds majority in the drafting of the constitution.

Fallacious views were also held in certain circles that SWAPO wanted to create a one-party state. There was a general belief that, in the absence of a clear two-thirds majority, SWAPO would be unable to impose a one-party state. Subsequent elections in which SWAPO won two-thirds majority have shown that SWAPO never had any such intentions. Proportional representation also ensured that there would always be an opposition.

With the election for the Constituent Assembly over, the stage was now set for the elected representatives of the people of Namibia to craft the basic law of the country. Work on the drafting of the constitution of Namibia started in mid November 1989.

Conclusion

The United Nations played a vital role in furthering the cause of Namibians to win independence. Its actions became more focused after the creation of the United Nations Council for Namibia and the appointment of Mr Sean McBride as commissioner for Namibia.

The United Nations is nonetheless a cumbersome body, and its Security Council far too dependent on the western powers to make its decisions stick. They are also the main funding countries for many of the United Nations initiatives. Further, veto powers of five members of the Security Council ensured that no resolutions went through the Security Council that were contrary to their own interests. On southern African issues, western members had frequently resorted to vetoing draft resolutions about sanctions against South Africa. In that sense, the emergence of the Western Contact Group, with a clear focus on its members' own self-interests, was, in retrospect, a useful development, for, the western powers' interests could at last be balanced with solutions to the Namibian question and the apartheid situation in South Africa. .

The 'positive sum' strategy followed by the United States was an offshoot of such a development. One corollary of this strategy could be that the gains of different parties depended on their strengths. SWAPO kept the pressure on South Africa and the

international community through armed struggle against occupation and through keeping a focus on attacking in the international fora the illegal occupation of Namibia by South Africa. SWAPO worked with the United Nations, WCG, FLS, NAM, OAU and other international organizations to ensure that the interests of Namibians were best served. SWAPO also realized that part of its strategy must be to placate the concerns of the members of the WCG regarding their own interests.

Oddly, the success of Mr Crocker's positive sum strategy did not benefit from the escalation of stakes by the United States and South Africa, but from escalation of stakes by Cuba, as this escalation made the United States and South Africa more receptive to finding ways for resolving this regional conflict. However, it cannot be denied that the increased involvement of Cuba was a result of the escalation of stakes by the United States and South Africa.

In the end, with the independence of Namibia, the positive-sum game was played out – Namibians represented by SWAPO were pleased that a negotiated settlement was reached. South Africa gained as it began to be seen in a totally different light, willing to make changes in its policy towards southern African countries and within South Africa itself. Members of the WCG were pleased because their economic, ethnic, and geopolitical interests were preserved. Cuba was happy that its men could come home after having completed their internationalist duty. FLS, OAU, and NAM were happy seeing the last colony in Africa become independent. The United Nations was pleased that it had fulfilled its mandate. Indeed, the success of its mission in Namibia gave it the much-needed boost. This success came at a time when the western criticism of the United Nations programmes and the costs involved was particularly acute.

The type of solution that emerged as a result of events outlined in this chapter had significant impact on the evolution of the Namibian state. Transition of Namibia to independence was peaceful. Its relations with Europe, the United States, the Russian Federation, China, OAU, FLS, NAM and the neighbouring countries, including South Africa became conducive to peace in the region. In this new milieu, a sense of inclusivity

developed that had a bearing on the drafting of the constitution. A spirit of give and take prevailed.

Further, the nature of transition in Zimbabwe, followed by the settlement of the Namibian question, strengthened the hands of the moderates in South Africa as they embarked upon their own transition towards a democratic majority ruled outcome. As Saunders opined, "Whatever the exact relationship between the transitions from the perspective of present-day South Africa, the Namibian transition, though it began disastrously, appears to have been remarkably successful."²⁷⁹ The National Democratic Institute for International Affairs²⁸⁰ amplified this point further:

The timing of this accomplishment will have a real effect on the evolving situation in South Africa. It is difficult to know the extent to which events in Namibia influenced the substance or the timing of President De Klerk's promising actions. What is clear, however, is that a smooth implementation of UN Resolution 435 was an essential precondition of any opening in South Africa.

²⁷⁹ Christopher Saunders (1992), "Transition in Namibia 1989-1990 and the South African Case," *Transactions*, 17 (1992), p. 215.

²⁸⁰ NDI for International Affairs, *National Building: The U.N. and Namibia*, p. 84.

Chapter Four

Drafting of Namibia's Constitution

Constitutionalism has one essential quality: it is a legal limitation on government; it is the antithesis of arbitrary rule; its opposite is despotic government, the government of will instead of law. In modern times the growth of political responsibility has been added to this through the winning of initiative in the discretionary matters of national policy by people's representatives; but the most ancient, the most persistent, and the most lasting of the essentials of true constitutionalism still remains what it has been almost from the beginning, the limitation of government by law.

*Charles Grove Haines*²⁸¹

Introduction

The evolution of constitutionalism has been the process of limiting the power of the state. In that sense, Paine's dictum that "a constitution is not the act of a government but of a people constituting a government"²⁸² is fully valid. Commenting on this dictum, McIlwain²⁸³ observes that the consequence of the validity of Paine's dictum is that the forms and limits followed in this 'constituting' become the embodiment of a 'constitution', superior in character to the acts of any 'government' it creates. He further argues that if this constituent act of the people entrusts certain definite powers to their government, 'enumerated powers,' as we term them, it is a necessary inference that this government cannot exercise any powers not so 'enumerated.' Thus, all constitutional government is by definition limited government or limiting of government. As noted above, Haines, too, emphasizes that "constitutionalism has one essential quality: it is a legal limitation on government."²⁸⁴

²⁸¹ Haines, *The Revival of Natural Law Concepts*.

²⁸² Paine, *Rights of Man*.

²⁸³ Charles Howard McIlwain (1947), *Constitutionalism: Ancient and Modern*, Ithaca, N.Y., Cornell Univ. Press, <http://www.constituition.org/cmt/mcilw/mcilw.txt>, accessed 25 January 2001.

²⁸⁴ Haines, *The Revival of Natural Law Concepts*.

Legal limitations on the government are, however, not arbitrary. They are or should be based on certain fundamental values, unalterable by ordinary legal process. These fundamental values are an inheritance of the long history of human thought and specific national history and context. Preambles to most of the constitutions acknowledge and recognize these values. Fundamental values based on the inheritance of the long history of human thought include democracy, freely elected representatives of the people, rights of man, sovereignty, and liberty.²⁸⁵ Similarly, certain values are driven by a national context. Namibia's Constitution talks about "the rights that have for so long been denied to the people;"²⁸⁶ the Preamble to the United States Constitution refers to the need for domestic tranquillity and common defence;²⁸⁷ the Preamble to the Japanese Constitution stipulates "that never again shall we be visited with the horrors of war through the action of government;"²⁸⁸ and the French Preamble states: "The French people hereby solemnly proclaim their dedication to the Rights of Man and the principle of national sovereignty.... By virtue of these principles and that of the free determination of peoples, the Republic offers to the Overseas Territories expressly desiring this to adhere to them new institutions based on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic evolution."²⁸⁹

Specifically, the Namibian Constitution's Preamble states as follows:

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 these rights have for so long been denied to the people of Namibia by colonialism, racism and apartheid;

Whereas we the people of Namibia:
 have finally emerged victorious in our struggle against colonialism, racism
 and apartheid;

²⁸⁵ See for instance, preambles to the constitutions of France, Namibia, South Africa, the United States, and Zambia.

²⁸⁶ Namibia, *Constitution of the Republic of Namibia*, Preamble.

²⁸⁷ United States, *Constitution*, Preamble.

²⁸⁸ Japan, *Constitution*, Preamble.

²⁸⁹ France, *Constitution*, Preamble.

are determined to adopt a Constitution which expresses for ourselves and our children our resolve to cherish and to protect the gains of our long struggle;

desire to promote amongst all of us the dignity of the individual and the unity and integrity of the Namibian nation among and in association with the nations of the world;

will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state;

committed to these principles, have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State securing to all our citizens justice, liberty, equality and fraternity.

Compromising of Vision by Different Interest Groups

The process of constitution making is influenced by the vision and self-interest of various interest groups, parties, classes, sectoral interests, and individuals participating in the process. Self-interest is invariably cloaked in phrases, such as 'public good,' 'essential for stability,' and so forth. Consequently, the final draft of a constitution is always a compromise. As an illustration, during the discussion on the text of the Preamble to the Namibian Constitution, one of the members of the Constituent Assembly, Mr de Wet of ACN, was particularly concerned about the Preamble. Reflecting on what he thought were biases, he had said:

Although we accept as resolved by the Standing Committee, that the Preamble should reflect the historical context of the birth of the new state of Namibia and the aspirations of its nation, we do not accept, as it is partly done in the draft, that the Preamble is the place where political views or bitterness of only one of some of the political parties or disputable historical facts are reflected, such as the rights which the inhabitants, or some of them, have allegedly been denied, those who have struggled against whom and who were victorious in such struggle.²⁹⁰

The victims of apartheid saw this statement as an attempt at clouding the realities of apartheid, and denying its impact on the lives of the majority in Namibia. His comment focused entirely on the self-interest of the whites. However, such statements were rare

²⁹⁰ Windhoek Constituent Assembly, Standing Committee on Standing Rules and Orders and Internal Arrangements, *Minutes of the Meeting of 30 January 1990*.

and should not be taken as a general view of the whites or their representatives at the Constituent Assembly.

As the United Nations had played a significant role in the process of Namibia's nationhood, considerable influence was also wielded by some of the members of the international community on the outcome of the final document. Various parties involved in addressing the Namibian question, i.e., South Africa, the Western Contact Group, ethnic parties and the liberation movement, tried to influence the ultimate outcome of the nature of the Namibian state to suit their own vision or interests. The important provisions of the constitution, the Constitutional Principles, were 'imposed' on the Constituent Assembly because the West wanted to ensure that the liberation movement did not opt for socialism that might compromise the interests of the settlers.

This interplay of conflicting interests has a sociological aspect - of how we view human nature. The processes of constitution making at the Federal Convention in Philadelphia in 1776, and at the Assemblée Constituante in Paris in 1789, also provide examples of the interplay of conflicting interests in the shaping of the final document. For instance, at the Federal Convention, the participants held a "generally dismal view of human nature." Alexander Hamilton had argued, "Men are ambitious, vindictive, and rapacious." Echoes of Machiavelli were clearly discernible in his statement. That is why James Madison preferred a 'republic' in which whims of masses are filtered through their representatives and agents, to direct 'democracy.'²⁹¹ However, it would be a fallacy to believe that the representatives and agents can be expected to be any less ambitious, vindictive and rapacious. That is why the rule of law instead of the rule of will is so important.

In Windhoek, the situation was similar to the one that prevailed in Philadelphia. 'Dismal view of human nature,' or of the nature of politicians or power-holders also could be sensed in the interplay of the self-interest of communities represented by the participants in the Constituent Assembly and their desire for 'safeguards'. The Windhoek Assembly in fact reflected the racial and ethnic nature of the Namibian society divided by long

²⁹¹ Kaplan, *Warrior Politics*, p. 63.

years of apartheid. The impact of this racial and ethnic nature will be highlighted in this, and the next two chapters.

Politics being largely about images, especially in the public sphere, various representatives at the Windhoek Assembly were concerned about how their constituencies would perceive their interests being addressed by their elected representatives. White representatives were concerned about protecting property rights of the whites and special privileges enjoyed by them. These included exclusive schools; the position enjoyed by their languages, namely, German and Afrikaans; representation in the parliament; and civil service job and pension guarantees. In this effort, their demands had already received a boost from the Western Contact Group and the Constitutional Principles espoused by them. Other parties that relied on their ethnic constituencies also sought to ensure representation in the parliament by arguing in favour of a bicameral parliament. Still others argued for the inclusion of tribal authority structures within the framework of the constitution, as has been the case in Botswana and Zimbabwe.²⁹²

Thus, events leading to the framing of Namibia's constitution had many variables, often conflicting, with different interests and parties trying to influence the clauses in the constitution that rule the machinery of government, the assignment of rights, and the procedures for amending the constitution.

In this chapter, some aspects of the emergence of the Namibian constitution have been compared with those of the French and U.S. constitutions, because they were two important countries known to have held conventions or conferences to draft their constitutions. Namibia, followed later by South Africa, was the only country in Africa at that time that drafted its own independence constitution through a Constituent Assembly. Many other African constitutions were drafted in Europe.

²⁹² For instance, in Botswana, the Tribal chiefs are represented at the highest level in the House of Chiefs, and District Councils Chiefs are non-elected members of the Councils, http://www.locgovinfo.co.zw/Mozambique_Study_Tour_to_Botswana.htm, accessed 3 November 2003.

Drafting of Namibia's Constitution

The primary purpose of United Nations Resolution 435 was to hold free and fair elections for electing the Constituent Assembly that would draft the constitution of independent Namibia. It was not intended to hold elections for an independent Namibia. This was in compliance with the agreed Constitutional Principles.

Ten political parties had qualified to participate in the United Nations supervised Constituent Assembly elections of 1989.²⁹³ These included Aksie Christelik Nasionaal (ACN), Christian Democratic Action for Social Justice (CDA), Democratic Turnhalle Alliance of Namibia (DTA), Federal Convention of Namibia (FCN), Namibia National Democratic Party (NNDP), Namibia National Front (NNF), Namibia Patriotic Front (NPF), SWAPO-Democrats (SWAPO-D), SWAPO of Namibia (SWAPO), and United Democratic Front of Namibia (UDF). However, only seven parties won seats: SWAPO 41, DTA 21, UDF 4, ACN 3, and NPF, and FCN and NNF 1 each.

The first meeting of the Constituent Assembly took place on 21 November 1989, at Tintinpalast, which is now the seat of parliament in Windhoek. The leader of the majority party, Mr Sam Nujoma, chaired this meeting. "A number of procedural issues had already been agreed to through consultation and published as the Constituent Assembly Proclamation of 6 November 1989."²⁹⁴ First order of business was the election of the chairman of the Constituent Assembly. There were two nominations, Mr Hage Geingob of SWAPO and Mr Andrew Matjila of DTA. After voting, I (Hage Geingob) was elected chairman.

I knew well, as did the rest of the SWAPO leadership, that the Namibian society was divided because of years of apartheid and racial stratification in the provision of services and opportunities. During campaigns for elections it was clear that the Namibian society

²⁹³ *Democracy Factfile*, http://www.sardc.net/sd/sd_factfile_namibia.htm, accessed 3 November 2003.

²⁹⁴ Nujoma, *Where Others Wavered*, p. 424.

had remained divided. Therefore, the first job for me was to promote a spirit of consultation, mutual respect and reconciliation. In my opening remarks, I emphasized:²⁹⁵

The people of Namibia ... have given us a mandate to hammer out and adopt in a spirit of compromise, a spirit of give and take, a constitution that will launch our country and people into nationhood. This is a trust we dare not betray... Obviously there will be differences of opinion on very vital matters, but through debate and consultation we should be able to find solutions and move forward. As chairman I will try my level best to be as impartial as is humanly possible. Towards all the political parties I will endeavour to be courteous and expect that the same spirit will prevail in this house.

Immediately thereafter, Mr Sam Nujoma said, "Namibia is a huge country with a small population. Therefore all Namibians, regardless of colour, creed or place of origin, have a place in our beautiful country. It is for us only to reach out to one another and mould a new nation out of diversity."²⁹⁶

These two speeches set the tone for the things to come. Leaders of some other parties also made statements of reconciliation.

Acceptance of Constitutional Principles

Prior to the convening of the Constituent Assembly, suspicions had run high. Non-SWAPO parties knew little about SWAPO and were suspicious that it would want socialism in Namibia. Furthermore, some of the non-SWAPO parties having close links with the South African apartheid regime were suspicious of any government dominated by blacks. I sensed their suspicions and sought to build confidence by alleviating the fears of various ethnic groups. Towards that end, I decided to have one-on-one informal meetings with many of the Constituent Assembly members even prior to the first meeting of the assembly. Such interactions that emphasized a shared vision for a new Namibia helped create a favourable climate for the work of the Constituent Assembly.

During the confidence-building period before the drafting of the constitution started, I discovered that some whites would seek to reserve some of the privileges they had

²⁹⁵ Windhoek Constituent Assembly, *Minutes of the Meeting of 21 November 1989*.

²⁹⁶ *Ibid.*

enjoyed during the apartheid era. This came out during a courtesy call I paid on Mr Jannie de Wet of ACN with a view to getting to know what his fears were. Mr de Wet was very happy to meet with me. He told me that the whites would be happy if the education system and standards were maintained. He identified fifteen schools that he would like to be reserved for the whites. If that could be given to whites there would be no problem, he said. I listened and said that I would report to the committee for the drafting of the constitution to see how they could deal with this issue.

White parents, with whom Mr de Wet had talked, took this issue further to Administrator General Mr Pienaar's attention. Mr Pienaar then brought it to the attention of the Drafting Committee of 21. What the parents, led by Ms Dominee de Klerk, demanded were three conditions: Christian character of education (that had characterised education in this country for years), maintenance of the standard of education, and instruction in mother tongue, especially in Afrikaans and German medium schools.²⁹⁷ Perhaps it should be mentioned that the administrator general did not seek to influence the proceedings of the Constituent Assembly, nor would he have been allowed to do so by me as the chairman because the work of the Constituent Assembly had nothing to do with him.

In any case, demands of whites brought to the attention of the Drafting Committee by Mr Pienaar were rejected as they were aimed at perpetuating white privileges. At this time, Mr Dirk Mudge made a very profound statement, "The impression must not be created that it is now only black people who are opposed to privatisation [of schools]. There are hundreds of white people who are opposed to that; for, privatisation would be a sort of 'rykmans-apartheid' (meaning rich man's apartheid)."²⁹⁸

There was also a perception in some speeches at the first Constituent Assembly meeting that SWAPO lacked commitment to democracy, as almost all the leaders of the opposition referred to the importance of the 1982 Constitutional Principles. Mr Sam Nujoma observed: "Before and during the elections, certain perceptions had been created

²⁹⁷ Windhoek Constituent Assembly, Standing Committee on Standing Rules and Orders and Internal Arrangements, *Minutes of the Meeting of 11 Dec. 1989*.

²⁹⁸ *Ibid.*

that SWAPO was a socialist organization and was not committed to such ideals as democracy, right to property, etc.”²⁹⁹

This perception was propagated by ‘instant’ democrats, i.e., white oppressors who denied Namibians their human rights including democracy, who were second-guessing SWAPO’s democratic credentials. They believed that SWAPO would reject the Constitutional Principles proposed by the Western Contact Group and by so doing incur the wrath of the West. Instead, SWAPO pulled the rug from under their feet by adopting the Constitutional Principles. There were no disagreements within SWAPO about the acceptance of these principles. SWAPO agreed in its caucus that we propose to accept the Constitutional Principles at the very first sitting of the Constituent Assembly. These Constitutional Principles³⁰⁰ included the provision that:

Namibia would be a sovereign, unitary, and democratic state with a constitution that provided for a system of government with three branches, an elected executive branch elected by universal and equal suffrage which will be responsible to the legislative branch; a legislative branch to be responsible for the passage of all laws; and an independent judicial branch which will be responsible for the interpretation of the constitution and for ensuring its supremacy and the authority of law. In addition, the constitution was to include a declaration of fundamental rights including right to life, personal liberty and freedom of movement; to freedom of conscience; to freedom of expression, including freedom of speech and free press; to freedom of assembly and association, including political parties and trade unions; to due process and equality before the law; to protection from arbitrary deprivation of private property or deprivation of private property without just compensation; and to freedom from racial, ethnic, religious or sexual discrimination. The declaration of rights was to be consistent with the provisions of the Universal Declaration of Human Rights. Aggrieved individuals would have the right to have the courts adjudicate and enforce these rights.

Adherence to the Constitutional Principles was in keeping with the essential requirement that the final constitution had to be approved by the United Nations Security Council. Unanimous adoption of this suggestion by all participants in the Constituent Assembly removed doubts harboured by many and warmed the different parties towards each other, thus making the work of the Constituent Assembly go much more smoothly.

²⁹⁹ Nujoma, *Where Others Wavered*, p. 425.

³⁰⁰ United Nations (1991), *Yearbook of the United Nations*, New York, U.N. Dep. Of Public Inf., p. 1292.

Acceptance of SWAPO's Draft Constitution as the Working Draft

The same afternoon, a Committee on Rules and Standing Orders was established.³⁰¹ The committee did most of the work and quickly. A week later, on 28 November, it presented its report containing draft standing rules and orders to the Constituent Assembly. After a few minor corrections, the report was accepted and the assembly proceeded to appoint a Standing Committee on Standing Rules and Orders and Internal Arrangements to address any new issues arising in the process of deliberations of the assembly. Membership of the new committee was the same as that of the Committee on Rules and Standing Orders that it replaced.

Various political parties had their own draft constitutions for independent Namibia with diverse positions on many of the constitutional elements. The Constituent Assembly reflected on various procedures for considering and reconciling the different drafts. I was not averse to resolving differences clause by clause, but there was unanimous concern that such a process could be time-consuming, time that the Namibians did not have, for, it was imperative that they wrested reigns of power from South Africa as soon as possible.

The process was, however, speeded up when, at its 30 November meeting, the assembly adopted a motion by Mr Nahas Angula of SWAPO, as amended by the proposal of Mr Rukoro of NNF. The motion adopted stipulated that various parties represented at the assembly would submit their constitutional proposals or ideas to the acting secretary of the assembly no later than 4 December 1989. It was also agreed that each party would have the right of introducing their proposals by way of statements to the assembly on 4 December. The motion further mandated and instructed the Standing Committee to receive and consider other proposals regarding the future of Namibia, identify and formulate working categories for a future constitution or areas of material dispute in

³⁰¹ Members of this committee were Mr Hage Geingob (Chairman), Mr E. Tjiriange, Mr H. Ruppel, Mr Hidipo Hamutenya, Mr Theo-Ben Gurirab, Mrs P. Ithana, Mr N. Iyambo, Dr M. Tjitendero, Mr N. Angula, Dr P. Katjivivi, Mr N. Bessinger and Mr B. Amathila (all from SWAPO), Mr D. Mudge, Mr P.M. Junius, Mr H.E. Staby, and Mr A. Matjila (all from DTA), Mr V. Rukoro (from NNF), Mr J.G.A. Diergaardt (from FCN), Mr M.K. Katjiuongua (from NPF), Mr J.W.F. Pretorius (from ACN), and Mr R.R. Diergaardt (from UDF).

various proposals, and to make proposals for establishing committees to deliberate and negotiate on the above. The Standing Committee was asked to report back to the assembly on or before 12 December.

On 4 December, each party introduced its own version of a constitution for independent Namibia, and its constitutional ideas. Debates on various ideas continued in the Constituent Assembly for the next two days. DTA President, Mr Muyongo, stated, "Namibia is a state that abides by the principles of territorial integrity and rejection of secession."³⁰²

A spirit of give and take, of confidence building, also spilled over in the work of the Standing Committee. Occasionally, there were lighter moments to break the monotony. During the 8 December 1989 meeting, during our discussion on fair trial, I suggested that the two proposals be married. Mr Ruppel broke into laughter, "Marry the DTA! Who would have thought we would marry the DTA!" Mr Barnes, too, joined in, "Who would have thought we would take up such a marriage!"³⁰³

SWAPO's suggestion that the Assembly adopt the 1982 Constitutional Principles as the starting point had already created a favourable climate for working together. The committee's work was made easier still as a result of a suggestion from Mr Dirk Mudge of DTA. He recognized that SWAPO was in the majority, and suggested that SWAPO's draft constitution be adopted as a working draft, and discussions could take place around it on issues where different drafts were at variance with it. Mr Mudge stated, "We did spend many hours together and we have, and I am not apologizing for that, taken your proposal as the basis for our discussion, not because it is the best proposal but because it represents the views of the majority and we have to take that into account."³⁰⁴ All members of the committee unanimously accepted this suggestion, and it set the stage for addressing specific issues.

³⁰² Windhoek Constituent Assembly, *Minutes of the Meeting of 4 December 1989*. Ironically, nine years later he led an armed rebellion against the state for the secession of the Caprivi Region.

³⁰³ Windhoek Constituent Assembly, Committee on the Rules and Standing Orders, *Minutes of the Meeting of 8 December 1989*.

³⁰⁴ *Ibid.*

The Constituent Assembly provided an opportunity of free and unfettered expression of opinions by members on each and every paragraph of the draft constitution until consensus was reached. In fact, the Drafting Committee of 21 persons never had to vote on any issue during its meetings. My approach was not to curtail filibustering but to allow debate to go on until late hours. The end result was that various members would eventually agree on the issue at hand, often without making any change to the original proposal. On the other hand, if I sensed that the views of the members were so strong and the debate was becoming acrimonious, I would call for a tea break to cool off the atmosphere. During the tea-break, I would consult with key players, such as Mr Dirk Mudge, Mr Rukoro, and others from non-SWAPO parties, and Mr Theo-Ben Gurirab, Mr Hidipo Hamutenya, Dr Mose Tjitendero, Mrs Pendukeni Ithana, Mr Nahas Angula, Mr Hartmut Ruppel and others from SWAPO's side to bring the discussions on track.

The Standing Committee submitted its first report to the assembly at its 12 December meeting. As I was the chairman of the committee as well as the chairman of the assembly, Mr Ruppel of SWAPO introduced the report. He reported that.³⁰⁵

1. There was a unanimous agreement to employ the constitutional proposals submitted by the majority party elected to the Constituent Assembly as a working document.
2. There was a broad agreement between parties on a number of issues and therefore only minor amendments and discussions were required. These issues included the preamble, general provisions of the constitution, citizenship, fundamental rights, the electoral system, procedure to amend the constitution, the environment, the language issue, definition of the territory, education, and local government and/or regional councils.
3. There were a number of issues that needed further discussions but in respect of them there was no material dispute. These included: State organs including, *inter alia*, the police, the defence force, prisons and the ombudsman, the economic system and its institutions, land reform, state succession, and transitional provisions.
4. There were two important areas requiring further deliberations, namely the executive and specifically the role of the president within the executive, and the composition of the legislature.

³⁰⁵ Windhoek Constituent Assembly, *Minutes of the Meeting of 12 December 1989*.

The report also recommended that the Standing Committee be allowed to continue with its deliberations and negotiations with a view to reaching agreement or to identifying constitutional issues in respect of which material disputes existed.

This report was adopted unanimously.³⁰⁶

Executive vs. Ceremonial Presidency

There was general agreement between the framers of the Constitution at Windhoek that executive power should not be unchecked. There were, however, differing views on how these powers could be subjected to oversight. DTA members concentrated on arguing that Namibia should have a constitutional or ceremonial presidency as against executive presidency. At the 8 December 1989 meeting of the Standing Committee, Mr Mudge had stated:

We know that you also agree with a democratic society. So it is just a matter of finding a solution to a problem which has been worrying us for a long time, the fear of dictatorship, the fear of concentrating power in one person, our fear that we might end up with an undemocratic society, the fact that things can get out of hand and it is now for us to discuss this problem. You must explain to us now how you see that there could be some restrictions, some restraints placed on the state president so that he cannot do things on his own.

Mr Ruppel elaborated on SWAPO's position and in response, Mr Mudge stated:³⁰⁷

We feel very strongly about the concentration of power, because as we see it, power corrupts and absolute power corrupts absolutely. The proposals in the working document, as I see it, have the inherent danger of establishing the system whereby the head of state exercises absolute power. We have listened to Honourable Ruppel only now, we will consider the proposals. In the meantime, we are of the opinion that the head of state in this proposal will exercise absolute power.

DTA had argued that providing for a constitutional head of state would be in line with the Westminster type of democracy. It was interesting that they opposed executive presidency despite the fact that in South Africa, with whom DTA had longstanding

³⁰⁶ *Ibid.*

³⁰⁷ Windhoek Constituent Assembly, Committee on the Rules and Standing Orders, *Minutes of the Meeting of 18 December 1989*.

relations, there was an executive state president. Concern was also expressed that executive presidencies in Africa were not on the whole successful.

SWAPO, on the other hand, viewed the African experience in a different light. Problems of many African countries were not a result of executive presidencies, but of inadequate constitutional checks and balances. In the absence of checks and balances, trouble could come from wherever the executive power rested. SWAPO did not share the concern of non-SWAPO parties about executive presidency. It therefore argued strongly in favour of executive presidency, subject to appropriate constitutional checks and balances.

SWAPO members were also unanimous in their belief that executive presidency was essential for building a unified state -- Namibia needed a leadership structure that would promote cohesiveness by bringing together various ethnic and racial groups that had been divided under apartheid rule. Anything short of that structure had the potential of undermining the fragile unity of the society. Therefore, SWAPO argued for a strong central government and against Namibia's becoming a federal state.

One finds evidence of similar concerns during the constitutional debates at the Federal Convention in Philadelphia. "The decision to establish the office of the president caused 'considerable pause', according to James Madison. Virginia's George Mason feared that the office would create a "foetus of a monarchy." But with Congress and the Court holding sufficient countervailing power, the framers were able to establish an office that was powerful yet under control."³⁰⁸

At the Windhoek Constituent Assembly, the framers of the Constitution agreed to make the president the head of state and of government, provided that he or she shall share executive power with the cabinet comprising the prime minister and ministers. In fact, the

³⁰⁸ Victor Camber (1995), *Giving up on Democracy: Why Term Limits are Bad for America*, Washington, DC, Regnery Publishers, p. 119.

final document emphasized: "The President shall in the exercise of his or her functions be obliged to act in consultation with the Cabinet."³⁰⁹

Some of the non-SWAPO members of the assembly also argued that the terms of office of the president should be limited to two, five-year terms. The United States example was quoted very often, despite the fact that when the framers of the constitution in Philadelphia had established the presidency

they did not limit the terms of office. They felt that a democracy did not need artificial limits, that there might indeed be situations where the country needed continuity and leadership of an established president. One of the reasons the Framers were able to write a strong executive into the constitution was that they knew who was going to be the first president and trusted him with such authority. And George Washington did not let them down.³¹⁰

Despite the fact that no term limits were set at the Philadelphia Convention, George Washington had set a precedent by stepping down after his second term, a standard that became firmly established when Thomas Jefferson stepped down after his second term in 1808.

Similarly, in Namibia, by the time the Constituent Assembly met for the first time, it was already known that Mr Sam Nujoma had led SWAPO to victory and would be the first head of state. Therefore, the debate regarding the presidency was not just at an ideological level, it was very much about the personality they knew.

However, in the spirit of give and take, SWAPO agreed to the provision of a two-term presidency but remained unconvinced by the reasoning given to justify it. SWAPO members felt that limiting the terms was unnecessary and undesirable. First, dictating that a person cannot contest elections for the third term, and dictating that the citizens cannot vote for that person was tantamount to abridging the person's and voters' natural rights. Many of them also felt that elections themselves provided term limits. If citizens did not

³⁰⁹ Namibia, *Constitution of the Republic of Namibia*, Article 27.

³¹⁰ Camber, *Giving up on Democracy*, p.120.

wish a person to continue in office, they could vote him/her out. Further, limiting terms denied the country access to an experienced office holder.

Diffusion of the executive power of the president as a result of his/her sharing executive power with the cabinet, and limit on the number of terms the president can serve, helped alleviate the concerns of the opposition parties. Time will tell if such an arrangement is successful in protecting Namibia from the possibility of any dictatorial tendencies.

The issue dealing with the nature of presidency was resolved within a week and, on 20 December, the Standing Committee was able to present its second report informing the Constituent Assembly that the committee had succeeded in resolving all the substantive issues in principle, subject only to technical and minor further amendments and discussions on details regarding the system of proportional representation and a second house of parliament.

At this stage, the committee also agreed that the draft constitution and the principles agreed on should be referred to a panel of three eminent lawyers³¹¹ who were to be instructed to finalize the draft incorporating the said principles for submissions to the Standing Committee for further deliberations. The committee also resolved that the three lawyers should have had no previous involvement in the drafting of the proposals for any of the parties elected to the Constituent Assembly and that they should receive instructions from the Constituent Assembly.

This report was also adopted with considerable satisfaction. In their comments, various members of the Constituent Assembly applauded the spirit of cooperation that existed between various parties. Mr Dirk Mudge said, "Our party wants to put it on record that if deliberations in a future government would take place in the same spirit of goodwill, understanding, in the same spirit of give and take, the people of this country need not fear

³¹¹ Lawyers recommended by the committee were Adv. Arthur Chaskalson, Prof. Marinus Wiechers and Prof. Gerhard Erasmus. The appointed lawyers were invited to sit in the Constituent Assembly and Standing Committee meetings to get a feel of the political context of the discussions. They did not participate in any discussions unless specific questions were directed to them.

the future, but they can look forward to the future with confidence.”³¹² Mr Moses Garoeb of SWAPO commented: “The responsibility is ours as leaders to ensure that this infant democracy that we are in the process of establishing, will not only be born, but will be institutionalised and stabilized.”³¹³ Mr Katjiuongua of NPF said, “Let’s hope that this is the first important sign of many good things to come our way.”³¹⁴ Similarly, Mr Justus Garoeb of UDF said, “The elected representatives of the Namibian people have come to the unanimous consensus to bury the past, to get rid of all factors threatening confidence and cooperation to work out a formula for lasting peace and prosperity for our people.”³¹⁵

Organization of the Legislature

Organization of the legislature differs a great deal from state to state. Elster³¹⁶ identifies three stages in the process of evolution of the legislature:

In the first stage, there is a strong monarchy which is perceived as arbitrary and tyrannical. In the second stage, this monarchy is replaced by a parliamentary regime. In the third stage, when it is discovered that parliament can be just as tyrannical and arbitrary as the king, some form of checks and balances is introduced.

As the Constituent Assembly turned its attention to working out details about the nature of the legislature, some of the concerns of the members of the assembly were to bring about accountability and establish a system of checks and balances. However, at the same time, one could see that the reasoning behind non-SWAPO parties arguing for a bicameral parliament was informed not just by their desire to enhance accountability. They believed that under proportional representation, with the whole of Namibia as one constituency, SWAPO would continue to secure a majority in the National Assembly for years to come. However, if a second house were created with equal representation from various regions, with elections based on a constituency system, SWAPO would fail to gain a majority in the second house.

³¹² Windhoek Constituent Assembly, *Minutes of the Meeting of 20 December 1989*.

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*

³¹⁶ Elster, *Arguing and Bargaining in Two Constituent Assemblies*.

Non-SWAPO parties' thinking was based on the belief that the composition of regions would remain the same as that prevailing in the pre-independence era irrespective of their population sizes. As SWAPO's power base was perceived to be restricted to one northern region where most of the Oshiwambo speaking people lived, non-SWAPO parties felt that they stood a good chance of controlling the second house as they could gain majorities in many other regions.

Arguing in favour of a bicameral parliament, Mr Katjiuongua appealed:³¹⁷

Chairman said the first day when he became chairman that it was a process of give and take. Now, I think I have been giving (laughter) and I don't want the people to break the part of their deal. I have been giving and so far I have not scored any point. So really brothers and sisters I must report back home. So, I take it here you will not die here if you do compromise.... to provide mechanisms by which all of us in bigger or smaller numbers feel that we are part of the same process.... That is one reason why I feel strongly that we must have a bicameral legislature.

What the non-SWAPO parties did not realize was that the situation was bound to change once the constitutionally established Delimitation Commission completed its task of redrawing regional boundaries. When the Delimitation Commission created new regions with approximately equal populations, the old Ovamboland was divided into four regions, Otjikoto, Ohangwena, Oshana, and Omusati. This development was sure to change the composition of the second house. In a sense, population concentration in the afore-mentioned regions could ensure SWAPO majority in the house by virtue of the fact that there were to be four times the number of representatives from former Ovamboland. Under the old arrangement, only two candidates could be sent to the National Council from former Ovamboland, but under the new delimitation arrangement, eight could be sent from the same area that had been divided into four regions. However, it needs to be mentioned that it was not clear at the time what the outcome of the work of the yet to be established Delimitation Commission would be. Nevertheless, SWAPO was sure of its popularity in the different regions, but the non-SWAPO parties underestimated its

³¹⁷ Windhoek Constituent Assembly, Committee on the Rules and Standing Orders, *Minutes of the Meeting of 18 December 1989*.

popularity.³¹⁸ SWAPO, therefore, had no difficulty accepting the non-SWAPO parties' proposal of a bicameral parliament.

The concept of bicameralism, as sought and secured by non-SWAPO parties, was ill conceived for various reasons. First, Namibia was conceived to be a unitary state and not a federal state, and regions were administrative rather than political units. Second, as in the United States, this was an attempt to balance rights attached to individuals with rights attached to regions. In Philadelphia, James Wilson had argued against rights attached to states, "Can we forget for whom we are forming a Government? Is it for men or for the imaginary beings called States?"³¹⁹ Advocates of individual rights had argued, "States ought to be represented in the federal assembly proportionally to their population, whereas those who believed in the rights of states argued for equal representation.... In the United States the compromise was equal representation in the upper house and proportional in the lower."³²⁰

In Paris, on the other hand, the principle of bicameralism was rejected after debate. However, with the later addition of a senate to the legislature, France today has a bicameral parliament.

Bicameralism was adopted in Namibia, a unitary state, in the spirit of compromise by SWAPO. However, the attempt of the non-SWAPO parties was to curtail the power of the head of state, and that of the ruling party represented in the National Assembly. In the end, little purpose was served by this provision as short-term expectations of the non-SWAPO parties to control the second house failed to materialize. In future, however, it is entirely possible that two different political parties could control the two houses. SWAPO also accepted the concept of bicameral parliament, because it considered that the regional aspect of the second house would be very useful in bringing democracy closer to the people. This thinking was in tandem with SWAPO's belief in the de-concentration of

³¹⁸ After the first Regional Council elections held in 1992, SWAPO's control of the National Council was assured with an enlarged majority.

³¹⁹ Elster, *Arguing and Bargaining in Two Constituent Assemblies*.

³²⁰ *Records of the Federal Convention of 1786*, p. 483.

power from the centre to the periphery to make decisions more relevant to the developmental needs of the regions.

Bicameralism was accepted by the Constituent Assembly with 72 members of the National Assembly elected on proportional representation basis, and 26 members of the National Council elected, two from each of the thirteen regions, by the regional councillors who themselves had been elected from their constituencies.³²¹

However, in stipulating the administrative working of the two houses, legal draftsmen created a serious mistake in drafting the relevant provisions by largely sticking to the SWAPO draft that provided only for a unicameral parliament. They drafted the article envisaging two houses, but overlooked making the necessary provision for staffing. Article 51(1) of the Constitution provides that the speaker shall appoint a person as the Secretary of the National Assembly. However, no such provision exists for the National Council. This error has come to haunt the executive and the legislature, making it necessary to amend the Constitution in the near future or to seek an interpretation by the Constitutional Court.

Bill of Rights

A Bill of Rights is enshrined in Namibia's constitution. Though inclusion of the Bill of Rights in constitutions, as an element for curtailing the power of the state over citizens, has a relatively long history, it is a new idea in Africa. Subsequent to Namibia's including the Bill of Rights in the Constitution, most other countries in Africa that made transition to democracy during the last decade, including South Africa, incorporated some form of Bill of Rights in their new constitutions.

In the case of Namibia, impetus for the inclusion of the Bill of Rights in the Constitution came from the Constitutional Principles. Furthermore, recognizing that the United Nations had played a very important role in the Namibians' struggle for liberation, it would have been ironic for the new state not to value the provision of human rights.

³²¹ Namibia, *Constitution of the Republic of Namibia*, Chapter 8.

These were also the very principles Namibians had fought for. In fact, the basic rights and freedoms in the Namibian constitution are largely, but not exclusively, derived from the Universal Declaration of Human Rights (1948).³²²

Even if these outside influences were not there, and the constitution did not enshrine human rights provisions, Namibia would certainly have become signatory to the two conventions of the Universal Declaration of Human Rights as it did soon after securing independence. In 1992, Namibia also ratified the OAU's African (Banjul) Charter on Human and People's Rights. However, the framers of the Constitution felt so strongly about human rights that they decided to include them in the Constitution³²³ and protect them against any dilution by providing that:

No repeal or amendment of any of the provisions of Chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect.³²⁴

This provision, however, does not stop the legislature from enhancing fundamental rights provisions.

Framers of American and French Constitutions had, however, thought very differently about human rights, despite the fact that they considered these rights to be important in some ways:

Some of the American delegates thought a Bill of Rights would be dangerous, as it might suggest that every right not included in the enumeration could be freely violated by the government. Because the Constitution restricted the powers of the government by enumerating them, it was felt that enumerating the rights might similarly be viewed as restrictive.³²⁵

³²² A useful source on the human rights provisions in the constitution is: Gino J. Naldi (1995), *Constitutional Rights in Namibia: A Comparative Analysis with International Human Rights*, Cape Town, Juta.

³²³ Namibia, *Constitution of the Republic of Namibia*, Chapter 3.

³²⁴ *Ibid.*, Article 131.

³²⁵ Elster, *Arguing and Bargaining in Two Constituent Assemblies*.

Further, C.C. Pinckney of the South Carolina House of Representatives took a different approach but towards the same end. He argued that a Bill of Rights generally begins “with declaring that all men are by nature born free. Now, we should make that declaration with a very bad grace, when a large part of our property consists in men who are actually born slaves.”³²⁶ A Bill of Rights was consequently left out of the American Constitution.

However, the issue of human rights was not to go away so easily. Just five days before the Philadelphia Convention adjourned, George Mason and Elbridge Gerry raised the question of adding the bill of rights to the constitution. Again, just three days before the convention adjourned, Pinckney and Gerry sought an addition of a clause regarding the liberty of the press. This provision, too, was rejected because “the power of Congress does not extend to the Press.”³²⁷ It has been suggested that “perhaps the lateness of the Convention, perhaps the desire not to present more opportunity for controversy when the document was forwarded to the States, perhaps the belief, asserted by the defenders of the Constitution when the absence of a bill of rights became critical, that no bill was needed because Congress was delegated none of the powers which such a declaration would deny, perhaps all these contributed to the rejection.”³²⁸ Soon thereafter, however, many of the founding fathers urged an amendment to the constitution to include a declaration of rights and consequently, ten amendments were ratified.³²⁹ As regards rights not enumerated in the constitution, the Ninth Amendment stipulates: “The enumeration in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” This amendment is thus a positive affirmation of the rights that are not enumerated but are protected by other provisions.

³²⁶ See the *Records of the Federal Convention of 1786*.

³²⁷ United States, *Amendments to the Constitution: First Through Tenth Amendments*, <http://www.frwebgate4.access.gpo.gov>, accessed 15 December 2002.

³²⁸ *Ibid.*

³²⁹ These amendments deal with freedom of religion, speech, press, assembly, freedom to bear arms; protection against unreasonable searches and seizures, protection against being held answerable for any crime unless on presentment or indictment by a grand jury, speedy and public trial by an impartial jury, and protection against excessive bail, excessive fines, and cruel and unusual punishment.

In Paris, at the Assemblée Constituante, arguments against the inclusion of the Bill of Rights in the constitution reflected the fear of granting too many rights rather than too few. "Two of the most prominent moderates, Lally-Tolendal and Malouet, argued that a Bill of Rights might give the people exaggerated, confused, and dangerous ideas about their liberties, and argued for a postponement."³³⁰

In Windhoek, despite the international character of Namibia's struggle for independence, and despite the framers' commitment to human rights, various political parties had very different purposes for seeing the enshrining of the Bill of Rights in the constitution. SWAPO was concerned with ensuring that apartheid did not re-emerge, and that adequate provision existed to reverse the wrongs of apartheid. It therefore argued in favour of Article 23 dealing with apartheid and affirmative action. DTA, on the other hand, strove to ensure that property acquired by the whites was protected against appropriation. However, partly because of the provisions stipulated in the Constitutional Principles and partly because the provisions sought by various parties were within the framework of the Universal Declaration of Human Rights, general consensus ensued fairly quickly for the inclusion of a Bill of Rights in the constitution.

The Electoral System

The nature of democracy depends on, *inter alia*, the type of representation achieved. As John Stuart Mill pointed out,³³¹

Two very different ideas are usually confounded under the name democracy. The pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented. Democracy as commonly conceived and hitherto practised is the government of the whole people by a mere majority of the people, exclusively represented. The former is synonymous with the equality of all citizens; the latter, strangely confounded with it, is a government of privilege, in favour of the numerical majority, who alone possess practically any voice in the State ... to the complete disenfranchisement of minorities.

³³⁰ *Archives Parlementaires de 1787 a 1860 Premiere Serie (1789 a 1799)(1875-1888)*, pp. 222-23, 320 and 322-23. Quoted in Elster, *Arguing and Bargaining in Two Constituent Assemblies*.

³³¹ John Stuart Mill (1991), *Considerations on Representative Government*, Buffalo, Prometheus Books.

In pre-independence Namibia, “government of privilege, in favour of numerical majority” was denied in favour of government of privilege, in favour of the white minority. As majority rule was sure to follow at the time of independence, members of the Windhoek Constituent Assembly, knowing that the choice of electoral system can influence representation greatly, focused on their own parties’ chances in the parliament.

An understanding of the pros and cons of different electoral systems was therefore important. The United Nations Institute for Namibia had done extensive work on comparative electoral systems,³³² and its work was available to the members of the Constituent Assembly. This work outlined all the different electoral systems and provided pros and cons for each. Rather than making specific recommendations, the study sought to outline the implications of various electoral systems *vis a vis* the philosophy and theory of representation, the franchise, the administrative machinery for elections, determination of results, nature of constituencies, voter registration, election campaigns, voting and voter security, ballot security and counting of votes, and the treatment of results.³³³

Members of the Constituent Assembly also had first-hand knowledge of elections, because elections for the Constituent Assembly had just ended. As the campaign and elections for the Constituent Assembly proceeded, various implications outlined in the United Nations Institute for Namibia study also became clear. Illustrations of some of these implications are outlined in Chapter 3. Because of these experiences and the information available to the members of the Constituent Assembly, there was considerable debate in the Constituent Assembly on the choice of electoral systems.

In considering the choice of an electoral system for Namibia, a consensus had emerged that National Assembly elections should be held on proportional representation basis. Different parties in the Windhoek Assembly had, however, favoured proportional representation for different reasons. SWAPO members had agreed to this system because

³³² Ncube and Parker, *Comparative Electoral Systems and Political Consequences*; and Dieter, *Elections and Electoral Systems*. Both of these documents provide a comprehensive overview of types of electoral systems, as well as of their respective advantages and disadvantages.

³³³ Ncube and Parker, *Comparative Electoral Systems and Political Consequences*, p. 201.

they felt that they, having spent decades out of the country, might not do so well if elections were held on a constituency basis which tends to favour local personalities. SWAPO was also pleased with the proportional representation system used for the election of the Constituent Assembly as it had allowed it to gain a majority in the assembly. Non-SWAPO parties, on the other hand, supported the proportional representation system as it favoured smaller parties' representation in the National Assembly. Thus, the proportional representation system offered something to every party. As the proportional representation system allowed better opportunities for smaller parties to gain seats in the parliament, it was considered a more democratic system than the first-past-the-post system.

Although the framers of the constitution were unanimous in their choice of the electoral system for the National Assembly, there was considerable disagreement in the choice of electoral system for electing members of the National Council. The thinking of various non-SWAPO parties favouring a constituency-based system for electing regional councillors was very similar to their thinking on having a bicameral parliament. They had thought that SWAPO's power base would be eroded with the creation of a second house, and once again they thought that they, being strong in many regions, would do better in elections based on a constituency system. As already explained in this chapter, SWAPO was happy to oblige, knowing well that the delimitation of constituencies would contradict some of the assumptions of the non-SWAPO parties.

Regrettably, in this debate, the most important aspect of proportional representation was completely lost, that "rational underpinning all proportional representation systems is to reduce the disparity between a party's share of the national votes and its share of the parliamentary seats."³³⁴ Reynolds³³⁵ notes, "For ethnically divided states, the prevailing academic wind clearly blows in favour of proportional representation and against plurality." Lijphart³³⁶ also supports the view that divided societies need a proportional

³³⁴ Andrew Reynolds (1999), *Electoral Systems and Democratization in Southern Africa*, Oxford, Oxford Univ. Press, p. 90.

³³⁵ *Ibid.*, p. 93.

³³⁶ A. Lijphart (1993), "Democracy in Divided Societies" *Journal of Democracy*, 4, 4, pp. 18-38.

representation system to protect the interest of the minorities. According to him, the proportional representation system in such societies has consistently posted the best records.

As regards presidential elections, there was unanimity that the president should be elected by direct, universal and equal suffrage, with Namibia as one constituency. Further, the elected candidate must receive over 50% of the votes cast. If necessary, a number of ballots should be conducted until such a result is achieved. This provision was included in the constitution.³³⁷ So far, however, outcome of the first round has resulted in meeting this requirement.

Thus, because of the interplay of the interests of various political parties represented in the Constituent Assembly, Namibia ended up with three electoral systems.

The president is elected based on first-past-the-post system with the condition that the candidate must secure at least 50% of the votes cast. He/she does not have to be the leader of the political party with a majority in the parliament. The president is directly accountable to the people every five years but is not accountable to the parliament. He/she does not sit in the parliament. His/her powers are thus defined and limited only by the constitution that provides for the sharing of executive power with the cabinet.

Members of the National Assembly are elected on a proportional representation basis, based on party list. The party determines the order in which names of candidates appear on the list. Finally, members of regional councils are elected from constituencies on a first-past-the-post system. Regional councillors from each region, in turn, elect two representatives from within themselves to the National Council.

Thus, Namibia's electoral system allows for the possibility that the president is an independent candidate or candidate of one party, and the majority in the National Assembly, and therefore members of cabinet are from another party. This would be

³³⁷ Namibia, *Constitution of the Republic of Namibia*, Article 28.

similar to the situation in France and Russia. If such a situation prevailed in the distant future, it could curtail the president's powers considerably as he/she would be required to exercise his/her powers in consultation with the cabinet with a majority from a different party.

Procedure for Amending the Constitution

Constitutions should strike the right balance between rigidity and flexibility. It should neither be easy nor impossible to change them.³³⁸

On the one hand, 'Constitutions are chains with which men bind themselves in their sane moments that they may not die by a suicidal hand in the day of their frenzy.' On the other hand, we should keep in mind the dictum of constitutional lawyers, ascribed to Justice Robert Jackson: the Constitution is not a suicide pact. It must be possible to unbind oneself in an emergency. Society must not be confined too tightly.³³⁹

Mechanisms for amending constitutions should strike the right balance between rigidity and flexibility. The Windhoek Assembly opted to entrench fundamental rights and freedoms.³⁴⁰ Further, the article stipulating specific majorities required in parliament or in a referendum for amending the constitution may not be repealed.³⁴¹ Any other provisions of the constitution can be repealed or amended by a majority of two-thirds of all the members of the National Assembly and two-thirds of all the members of the National Council. In case an amendment or repeal of any of the provisions of the constitution secures a majority of two-thirds of the members of the National Assembly, but fails to secure such majority in the National Council, the president has the option of subjecting the amendment or repeal of the relevant provision of the constitution to referendum.³⁴²

Mechanisms for amending the constitution chosen by the Windhoek Assembly seem to be very adequate. This standard clause was in fact lifted from the existing constitutions – indeed, similar provisions exist in almost all the constitutions. If anything, Namibia's

³³⁸ *Archives Parlementaires de 1787 a 1869 Premiere Serie (1789 a 1799)(1875-1888)*, p.517.

³³⁹ Elster quoting John E. Finn (1991), *Constitutions in Crisis*, 5; *Terminiello v. City of Chicago*, 337 U.S. 1, 37 (1949).

³⁴⁰ Namibia, *Constitution of the Republic of Namibia*, Article 31.

³⁴¹ *Ibid.*, Article 132.

³⁴² *Ibid.*

constitution is slightly harder to change than most. This provision was also in SWAPO's original draft that was adopted as a basis for drafting the Namibian Constitution. This provision guards against instability so that the constitution remains unaffected even when majorities fluctuate between forty-nine and fifty-one percent.³⁴³ Furthermore, the requirement of a two-thirds majority of all members in both houses ensures serious consideration of the issue.

Adoption of the Constitution

On 25 January 1990, I, as the Standing Committee chairman, tabled the draft constitution of the Republic of Namibia at the Constituent Assembly meeting. Debate of the draft started on 29 January. For the next one and a half days statements were made by different parties, and on 30 January the assembly started considering the draft clause by clause. This debate continued the next day, but before adjourning, Mr Theo-Ben Gurirab moved that independence day should be determined to be 21 March 1990. This motion was carried unanimously. The country was to become independent on the midnight of 21 March 1990.³⁴⁴

Work on the finalization of the constitution continued until 6 February when the draft was finalized. The stage was now set for the adoption of the constitution. One of my concerns was whether the constitution would be adopted by consensus or by majority vote. So far the Constituent Assembly had done everything by consensus; thus, I felt that we should adopt the constitution by consensus as well. Adoption of the constitution by consensus would also send a message of unity and oneness at this historic moment. Therefore I lobbied all members to endorse the constitution by consensus first, and then to enter reservations if any. I feared that if reservations were entered before the adoption of the document, it could have diluted the unanimity that was being sought. All, even by Mr Pretorius, former National Party stalwart, accepted this proposal. In pursuit of this ideal, I also made a last minute dash to see the Baster Kaptein, Mr Hans Diergaard, to persuade him, and he agreed by stating that he had no quarrel with the constitution or the

³⁴³ Elster, *Arguing and Bargaining in the Two Constituent Assemblies*.

³⁴⁴ Windhoek Constituent Assembly, *Minutes of the Meeting of 31 December 1989*.

incoming SWAPO government, but had a quarrel with Mr Pik Botha, the then Minister of Foreign Affairs of South Africa, who had told him that he would not have to abdicate his position if he were to join the Security Council Resolution 435 process.

On the morning of 9 February 1990 in front of the current parliament building, I declared, “We therefore adopt this constitution by consensus. Any objection? No objection,” and brought down the gavel quickly. The constitution was adopted unanimously.³⁴⁵ It must have seemed to those who were not insiders, and who were not aware of behind-the-scene consensus building efforts, that I brought the gavel down quickly so as not to give anybody a chance to change their mind. May be so – but not really.

The miracle of 80 days was accomplished. As the day of independence was set to be 21 March 1990, work on the process of nation building had to start. At the time of adoption of the constitution, I had compared nation building with the building of a house – the Namibian House. I had said that the foundation for that house was the constitution. The building blocks, the different ethnic groups: Damaras, Ndongas, Afrikaners, Hereros, Germans, Ovambos, etc. Mortar to hold these different bricks was composed of the laws passed by the parliament. When one finalises the laying of the bricks, one plasters the wall, paints it with colours. I further said, “We painted our house with the blue, white, yellow sun, green and red, our national colours. Once the house is painted, no one would see the bricks or different ethnicities. All that everyone would see is a strong house in which the children of Namibia will be able to live in peace, security, and harmony.”

All the members of the Constituent Assembly signed the constitution on 16 March 1990.³⁴⁶ In his 16 March 1990 report, the United Nations Secretary General transmitted to the Security Council the full and definitive text of the Constitution of Namibia, together with a comparison between the new constitution and the 1982 Constitutional Principles.³⁴⁷ The Constitution duly met the Security Council’s approval.

³⁴⁵ Windhoek Constituent Assembly, *Minutes of the Meeting of 9 February 1990*.

³⁴⁶ Windhoek Constituent Assembly, *Minutes of the Meeting of 16 March 1990*.

³⁴⁷ United Nations, *Yearbook of the United Nations 1990*, p. 950.

For Namibia, constitutional democracy is a new concept, and its success will largely depend on Namibian society's ability and willingness to internalise the constitution. First steps in this process of internalisation were taken in 1989 when the elected Constituent Assembly comprising citizens of Namibia met within the country in Windhoek³⁴⁸ to draft the constitution, decide on the day of independence and also to elect the first president as a transitional measure, and deem him to have been elected under Article 28 of the constitution.

Furthermore, the way in which the constitution was to be implemented was prescribed in Article 135 which stated that: "This Constitution shall be implemented in accordance with provisions of Schedule 7 hereof." Important provisions of Schedule 7 include the president's appointing the prime minister and administering to him or her the oath or affirmation set out in Schedule 2 of the Constitution; the Constituent Assembly's deciding the day on which the National Assembly would meet, at a time and at a place specified by the prime minister; the members of the National Assembly, with the prime minister as the chairperson, would take the oath/affirmation prescribed by Article 55 before the judge-president or a judge designated by the judge-president for this purpose, and elect the speaker of the National Assembly.³⁴⁹

Constitutional Provisions and Personality Issues

The constitution stipulates in Article 32 (3)(i)(aa) that the president appoints a prime minister. In terms of Article 36, the prime minister is the key advisor and assistant to the president in his execution of the functions of the government.

Although the Constitution is not explicit on the number of cabinet members, it mentions functions of a finance minister, a defence minister and a foreign minister. Therefore the size of the cabinet depends on the president, and, in the carrying out of this function, he

³⁴⁸ Most of the African countries' constitutions were drafted outside the countries and by people comprising the citizens and representatives of the colonizing states. In Namibia, on the other hand, constitution was drafted by Namibians in Namibia.

³⁴⁹ Namibia, *Constitution of the Republic of Namibia*, Schedule 2.

consults with the prime minister as the primary constitutional assistant and advisor to him/her.

Consultations between the president and the prime minister were routine and very useful during the first term and during half of the second term, and executive relations were close. However, after the second elections (1994) when, for the first time, the president was elected directly by the people (as per the constitutional requirement) and received 72% of the votes, relations between the president and the prime minister changed. Perhaps, the president, now having been elected directly by the people, thought that he was mandated to rule and was accountable only to the people.

However, a brave cabinet and also the last SWAPO Party Congress held in August 2002 proved that the president could still be called to order in Namibia.³⁵⁰ There can nevertheless be attempts by presidential coteries to encourage the president to be 'presidential'. These sycophants, who surround the president, are interested in their own survival and seek to please the president by 'informing' him that he was very popular with the people. This sycophancy may be reflected in their behaviour of promoting omnipotence of the presidency. It can take many forms; such as the way the president is addressed (head of state and head of government, commander in chief, tatekulu, revolutionary, founding father, etc.), as had been the case in Zaire under President Mobutu, and in Malawi under President Banda. As Bratton and Van de Walle³⁵¹ put it: "Presidentialism implies systematic concentration of political power in the hands of one individual, who resists delegating all but the most trivial decision-making tasks."

Such a trend seems to be emerging in Namibia. For instance, in 2003, President Nujoma issued a circular stating that all members of government including leaders of the legislative organ should obtain permission from the 'appointing authority', i.e. from him, to travel out of the country. This authority was in the past delegated to the prime minister as the head of government administration. There has been an attempt or desire to take all

³⁵⁰ Members of the Cabinet often disagreed with the president's views.

³⁵¹ Michael Bratton and Nicolas Van de Walle (1998), *Democratic Experiments in Africa: Regime Transitions in Comparative Practice*, Cambridge Univ. Press, p. 65.

decisions at the head of state level. In the same year, the president also assumed the responsibility of the portfolio of information and broadcasting as he wanted to “put that house in order” which presumably no minister could do. Such attempts at micromanagement are the beginning of presidentialism. As Kamuzu Banda of Malawi put it in 1972, “Nothing is not my business in this country: Everything is my business, everything. The state of education, the state of our economy, the state of our agriculture, the state of our transport, everything is my business.”³⁵²

However, in Namibia we have not yet reached that level of assumption of power over everything by one person. At the last SWAPO Congress, many of the ‘impositions’ by the president were resisted and the president, although not happy, had to live with the objections.³⁵³ We are thus at the crossroads of presidentialism. Time will tell which way Namibia will go.

The next two chapters deal with some of the specific aspects of state formation that provide a glimpse of the direction Namibia might take.

Conclusion

Events leading to the adoption of the constitution of Namibia show interplay between the self-interests of various players. As mentioned in Chapter Three, there were many players attempting to manage transition to independence in Namibia in a way that furthered their own interests. Influencing change by influencing the provisions of the constitution was an important aspect of this process. Positions were taken by the Western Five to ensure that Namibia became a liberal democracy with all the attendant rights provisions in its constitution; and almost all the parties drew on the 1982 Constitutional Principles to ensure that their interests were protected. However, it was the spirit of compromise that

³⁵² *Ibid.*, p. 65.

³⁵³ At the Third SWAPO Congress, the president insisted that certain number of women be declared elected without following the laid-down procedure. He insisted on this action as he wanted the women to believe that he cared for them though no woman had been appointed to the top four positions. To make up for that discrepancy, the president sought to increase women’s representation through unconstitutional means. At the Central Committee meeting held in August 2002 the president also tried to endorse four candidates for unopposed acceptance but there was resistance and other nominations were made. The president accepted the decision but other nominees lacked the courage to accept the nominations.

eventually resulted in achieving an outcome satisfactory to all: (1) Namibians were happy with the independence of their country; SWAPO was happy that its many years of struggle had at last borne fruit; and even non-SWAPO parties were happy with the process of reconciliation and inclusivity; (2) at a time when the United Nations was coming under increasing pressure for its alleged ineffectiveness, it was glad to see the culmination of a successful mission; (3) the Organisation of African Unity, the Frontline States and members of the Non-Aligned Movement were happy to see the last colony in Africa become independent; (4) the United Kingdom, France, and Germany managed to protect their economic and settler interests in the region; (5) the United States of America secured its economic and geopolitical interests in the region, and (6) South Africans were glad to see the end of pariah status in the community of nations; and (7) Angola and Cuba were happy to see the end of South African incursions and clandestine support for UNITA.

Keeping in mind that the constitution has been in existence for the last thirteen years, it has proved its value on all fronts. It has ensured fundamental human rights of the citizens, and its provisions for constitutional amendment have worked effectively. Its provisions are enforceable – though time will tell whether Namibia succeeds in meeting this condition. One thing is sure, if attempts are made by influential persons to undermine the constitution, backed by the ruling party having two-thirds majority in the National Assembly, the constitution can be wrecked. So, at present, the integrity of the constitution depends on SWAPO's commitment to it. Survival of the constitution and its effectiveness would depend not just on individuals internalising the constitution but also on the evolution of society and social groups, and, in turn, civil society, that is ready to defend the constitution.

Such developments are already taking place as discussed in Chapters Five and Six. However, the western nations continue to demand from the African states what does not even prevail in their own countries. For example, no elections are perfect – problems arose in the U.S. presidential elections of 2000 as mentioned in Chapter Six. Had that

happened somewhere in Africa, elections would have been subjected to considerable criticism.

Chapter Five

State Formation and Consolidation: The Forming of a Government

The contemporary state in sub-Saharan Africa is not African.... Nor is the African state a state.

*Pierre Englebert*³⁵⁴

Introduction

Africa has a long and illustrious pre-colonial history. Civilizations flourished in many parts of the continent. Great Zimbabwe, rock art, evolution of agriculture and metal working, emergence of trading communities, trade routes, existence of many kingdoms and historically documented political cultures are evidence of those civilizations.³⁵⁵ As Connah³⁵⁶ notes, “There were cities and states in tropical Africa long before the colonial ambitions of European peoples transformed that continent. The appearance of such cities and states was one of the most significant developments of tropical Africa’s history prior to the colonial experience.”

During the pre-colonial era, social and political structures of different societies were evolving on their own timescale and in their own way. Early history of Africa shows that many societies were organized according to democratic values. Citizens used to value consultation and leaders’ accountability to the masses. For instance, in the Asante Kingdom in West Africa, “at the annual meeting of the Asantemanhyiamu, representative assembly of the Asanteman or the Asante nation, the King and Chiefs in Council would

³⁵⁴ Englebert, “The Contemporary African State,” p. 767.

³⁵⁵ See for instance, R.S. Rattray (1923), *Ashanti*, Oxford, Oxford Univ. Press; R.S Rattray (1929), *Ashanti Law and Constitution*, Oxford, Oxford Univ. Press; Ivor Wilks (1975), *Asante in the Nineteenth Century*, Cambridge, Cambridge Univ. Press, 1975; Joseph O. Vogel and Jean Vogel (eds.) (1997), *Encyclopedia of Precolonial Africa*, Lanham, MD, Rowman and Littlefields; Graham Connah (2001), *African Civilizations: Precolonial Cities and States in Tropical Africa – An Archaeological Perspective*, 2nd ed., Cambridge, Cambridge Univ. Press. For Namibia see Frieda-Nela Williams (1991), *Precolonial Communities of Southwestern Africa: A History of Ovambo Kingdoms 1600-1920*, Windhoek, National Archives of Namibia; Brigitte Lau, “Pre-colonial Namibian Historiography: What is to be Done?” in Wood (ed.), *Namibia: 1884-1984*.

³⁵⁶ Connah, *African Civilizations*, p. 6.

discuss 'all matters of political and judicial administration. Chiefs would answer all questions relating to their respective provinces, and were subject to the consequences of appeals, from their local Judicial Courts, to the Supreme Court of the King in Council.'"³⁵⁷

There was a general distrust of power. The assembled people would admonish a newly enstooled person of authority that they did not wish for greediness; nor that his ears should be hard of hearing; nor should he act on his own initiative, but he should consult with representatives of the people and pay attention to other useful maxims of like import.³⁵⁸

Such examples existed in many parts of Africa. In Namibia, too, structured societies existed in the pre-colonial era. In the area that came to be known as Ovamboland, a king's royal power was based on classic coordinating and arbitrating functions. Supreme administrative and judicial powers were exercised by him, but under the supervision of a powerful council of commoners.³⁵⁹

Despite the fact that many African societies had fairly sophisticated political culture, literature on the pre-colonial history of the continent is rather weak. Lau³⁶⁰ notes that in the colonial literature, "the mere word 'pre-colonial' suggests that there is an entirely undifferentiated mass of events and processes about which only one thing is known: its point of termination." Yet, in my view, earlier societies were no stranger to three universalities as follows:

1. First, societies develop institutions to make rules. Nomenclature of such institutions and methods of their operation might differ but they essentially serve the same purpose. In different places they might be called parliaments, Panchaits

³⁵⁷ Davidson, *The Black Man's Burden*, pp. 60-61. Davidson quotes T.B. Freeman (1886), *The Western Echo*, 1, p.8.

³⁵⁸ Davidson, *The Black Man's Burden*, p. 61. Davidson quotes Rattray, *Ashanti Law and Constitution*, p.82.

³⁵⁹ Gervase Clarence-Smith and Richard Moorsom, "Underdevelopment and Class Formation in Ovamboland, 1844-1917," in Wood (ed.), *Namibia 1884-1984*, p. 177.

³⁶⁰ Lau, "Pre-colonial Namibian Historiography," in Wood (ed.), *Namibia: 1884-1984*, pp. 90-99.

and Lok Sabha (in India), Congress (in the United States), or Ohale (a gathering place under the tree in the Oshivambo speaking culture of Namibia).

2. The second universality is that societies create institutions to carry out the adjudication function. This function might be performed by a supreme court, a high court, an elders' council, or a privy council. Each one of these institutions plays the same role of interpreting the laws, customs and practices so as to determine if they are being fairly interpreted and implemented.
3. The third universality is that in every society there is an executive branch that executes the decisions of the 'court', and implements laws of the 'parliaments'. This executive branch may consist of emperors, kings, queens, presidents, prime ministers, chiefs or Gaob (in the Damara>Nama language of Namibia), or Omukaniilwa (King in the Oshindonga language of Namibia) or Oba (in Nigeria). These chief executives are assisted by some form of civil service structure for the execution of state functions.

Indeed, earlier Namibian societies developed differentiated structures to make rules, established institutions for adjudication, and had some form of executive structures.

The Nature of Postcolonial State in Africa

During the colonial period, political structures and practices of Africans were manipulated, distorted, co-opted and even dismantled by the Europeans.³⁶¹ Europe had in fact worked hard to deny Africa its own history. That is why much of the colonial literature talks about the beginning of colonialism being "the point of termination" of the earlier history of Africa. Who knows how state formation in Africa would have progressed had the evolution of societies not been undermined by slave trade and colonization!

As African modern states could not draw on their history, the concept of state, as it exists today, goes back only to the second half of the eighteenth century and is western in

³⁶¹ Naomi Chazan and others (1988), *Politics and Society in Contemporary Africa*, Boulder, Lynne Rienner Publishers, p. 77.

concept. It is therefore no surprise that Englebert³⁶² feels that the contemporary state that emerged in sub-Saharan Africa is not African:

The contemporary state in sub-Saharan Africa is not African. It descends from arbitrary colonial administrative units designed as instruments of domination, oppression and exploitation. No doubt after some 40 years of independence these states have been transformed, adapted, endogenized. Yet, their origin remains exogenous European, not African, and set up against African societies rather than having evolved out of the relationships of groups and individuals in societies.

Badie³⁶³ working with the notion of “the imported state” holds similar views. He argues that many of the features of the imported state drawn from the period of colonial rule continue to characterize today’s African state.

An essential feature of colonial rule had been a functional notion of government that did not distinguish between decision-making and implementation roles.³⁶⁴ Kasfir³⁶⁵ notes, “The political culture bequeathed by colonialism contained the notions that authoritarianism was an appropriate mode of rule and that political activity was merely a disguised form of self-interest, subversive of the public welfare.” As various African countries were decolonised, changes that took place were essentially the rearrangement of the political structures. “The transfer of power, *ipso facto*, implied a shift in the location of control and in the composition of decision-making structures.”³⁶⁶ The new leaders sought to concentrate power at the centre. This consolidation of power with strong authoritarianism occurred throughout the continent.³⁶⁷

At the same time, however, most leaders who had led independence movements and had subsequently assumed political power also believed quite genuinely that they had a mission to build a new society. This conviction supported their belief in building a strong

³⁶² Englebert, “The Contemporary African State,” p. 767.

³⁶³ Bertrand Badie (2001), *The Imported State: The Westernization of the Political Order*, Stanford, Stanford Univ. Press. See also Joel S. Migdal (2001), *State in Society*, Cambridge, Cambridge Univ. Press, for a competent survey of how states and societies transform.

³⁶⁴ Migdal, *State in Society*, p. 40.

³⁶⁵ Nelson Kasfir (1983), “Designs and Dilemmas: An Overview,” in Phillip Mahwood (ed.), *Local Government in the Third World: The Experience of Tropical Africa*, New York, John Wiley, p. 34.

³⁶⁶ Chazan and others, *Politics and Society in Contemporary Africa*, p. 41.

³⁶⁷ *Ibid.*, p. 44.

state. The concept of strong state was, however, narrowly defined in terms of concentration of power. Consequently, their sense of mission and of work not yet completed drove some of the leaders to perpetuate their regimes, curtail opposition, and contain any efforts from any quarter that they considered inimical to the success of their mission. There were, of course, a few who saw their newly gained position as a comfortable job for life and were unwilling to give it up without a fight.

While visionary leaders were needed to help the newly independent countries make transition from subsistence, agrarian, and rural economies to urban, industrial economies, they often failed in ensuring such a transformation. Arat³⁶⁸ claims that this failure was primarily a result of their iron grip that did not allow for the evolution of social institutions. Weakness of social institutions and other mechanisms resulted in the leaders escaping control mechanisms that would hold them accountable. However, that would be a simplistic view. There were many reasons for their failures. These reasons included economic dependence of the newly independent countries on the West, lack of skills and resources necessary for making the transformation, imposition of Cold War geopolitics and acceptance and support of despots by the West.

It also needs to be acknowledged that transformation of societies is an evolutionary process. Transition from subsistence, agrarian, and rural economies to urban, industrial economies can be achieved only with investment in human resource development over a long period of time. Examples of Asian countries show that this time lag before they could make social and economic transformation is close to half a century. Thus, there cannot be any instant gratification in this process of transformation. However, according to Mazrui:³⁶⁹

The problem [in Africa] has always been how to carry out cultural adjustment... This re-adjustment that is needed in culture is a better balance between the continuities of African culture and Africa's borrowing from Western culture. Until now, Africa borrowed Western tastes without Western skills, Western consumption patterns without Western production techniques, urbanisation

³⁶⁸ Arat, *Democracy and Human Rights in Developing Countries*, p. 67.

³⁶⁹ Ali A. Mazrui (2002)i, "Who Killed Democracy in Africa? Clues of the Past, Concerns of the Future," *Development Policy Management Network Bulletin*, Vol. 9, No. 1 (February 2002), p. 17.

without industrialisation, secularisation (the erosion of religion) without scientification.

This shift in cultural values continued to put constraints on Africa's development.

During the sixties, seventies and eighties, the first set of African leaders emerged building an organic state, where claims of the individual were subordinated to the good of the society to help speed up the process of development. This system worked relatively well in promoting the welfare of the society (for example in education and health achievements), but individual rights, such as freedom of expression, freedom of association, and property rights, were very often compromised.

On the other hand, in the nineties, with increased emphasis on globalisation and with the emergence of the United States as the only superpower, emphasis on an individualistic state gained momentum, despite most African leaders' aversion to it. Very often these leaders had little choice but to conform, often unwillingly, as their countries' economic situation had made them dependent on international help, and international help came with strings attached. These leaders came under great pressure to introduce electoral democracies, and their countries' constitutions had to include human rights provisions.

This pressure continued to the extent that the pendulum swung in a direction completely opposite to the organic state. However, institutions of their states were not geared to make this transition smooth. Economies collapsed and unrest became the norm rather than exception. Structural readjustment policies of global financial institutions did not help the matter. These developments compromised the viability of the state. Consequently, there was considerable rethinking to strike a balance between the organic state and the individualistic state as neither of these was seen as the objective, correct view.³⁷⁰ This thinking also began to be embraced by global financial institutions and other donor agencies.

³⁷⁰ Terence H. Qualter (1986), *Conflicting Political Ideas in Liberal Democracies*, Toronto, Methuen, p. 44.

Thus, the nature of state that emerged in Africa was influenced by its colonial predicate, the nature of structures imposed on the new state by the colonizer, the nature of leadership that emerged on independence, and a desire for instant gratification. The state also continued to be influenced by global political and economic changes. These influences pulled the state in different directions.

Consequently, all is not well with the state in Africa. As Schwab³⁷¹ noted somewhat exaggeratingly, “So called nations are currently demarcated solely by civil wars, ethnic conflict, tumultuous tyrannies, cross-border invasions that threaten international peace and security, countless refugees, long-harboured racial animosity, and brutalities that are often of an unspeakable nature.” Englebert’s³⁷² reflection provides some of the reasons for Schwab’s observation as follows:

By the standards of Max Weber’s classical definition, a state is ‘a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.’ Few would argue that, in many respects, most African states fail to meet these criteria: theirs is a dubious community of heterogeneous and occasionally clashing linguistic, religious and ethnic identities; their claim to force is rarely effective and much less monopolistic; their frequent predatory nature fails the test of legitimacy; and their territoriality is generally at best hesitant and contested.

This view is borne out by the prevailing circumstances in many countries in Africa. Many of these challenges could have been met successfully with the states embracing democracy but any such embrace by political leaders was tentative. Of course, most political leaders talked about democracy during the period of struggle for independence but not beyond. Democratic rhetoric during the liberation struggles was nothing more than an instrument that brought about a sense of homogeneity that was necessary for the rise of the nation state. Habermas³⁷³ argues that, during the struggle for independence, the state had to achieve consensus around “an idea that was vivid and powerful enough to

³⁷¹ Peter Schwab (2001), *Africa: A Continent Self-Destructs*, New York, Palgrave Macmillan, p. 29. Out of 54 African states, perhaps just five fall in the category that Schwab describes.

³⁷² Englebert, “The Contemporary African State,” p. 767. For Weber’s definition, see Max Weber, “Politics as a Vocation,” in Max Weber (1958), *Max Weber: Essays in Sociology*, C. Wright Mills (ed.), Hans H. Gerth (tr.), New York, Oxford Univ. Press, p. 78.

³⁷³ J. Habermas, “The European Nation-State: On the Past and Future of Sovereignty and Citizenship,” in Ciaran Cronin and Pablo De Greiff (eds.) (1998), *The Inclusion of the Other: Studies in Political Theory*, Cambridge, MA, MIT Press, pp 105-128.

shape people's convictions and appealed more strongly to their hearts and minds than the dry ideas of popular sovereignty and human rights." Ake³⁷⁴, too, shares this view:

[In Africa] the triumph of democracy may be more apparent than real. Democracy has had an embattled history struggling to survive in an environment in which support for it was rarely ever more than lukewarm and invariably ambivalent, confused or opportunistic, and opposition to it powerful, resourceful and unrelenting. By all indications it would be more appropriate to be lamenting the demise of democracy rather than celebrating its universal triumph.

Diem³⁷⁵ opines that at some point in the development of a nation or nations, desire for self-government sprouts, and in the process a set of myths is developed to explain and justify the creation of a new state, and to simplify the process of socializing its members. Democracy was such a myth created during the period of liberation struggle. In many countries, other myths were created soon after the end of colonialism, such as the myth of 'the importance of having only one party being better for development,' the myth of 'the leaders' importance for the survival of the state,' etc.

As could be expected, another set of myths could easily be created, and were indeed created, to serve as a tool to make the birth of a nation-state difficult. Colonial experiences show that colonizers had created their own myths to serve their ends. Some of these myths included the colonizing states' 'civilizing mission,' 'superiority of the European culture,' 'traditional religions being just superstitions,' 'whites being superior to blacks,' 'blacks not having the ability to manage their own affairs,' and 'hatred between indigenous tribes.'

These negative myths can often become self-fulfilling and quite damaging, and may require the emergence of an extraordinary personage or personages for the renewal of the aspirations of the people not only towards the creation of the nation-state, but also to gain their self-respect and dignity. Many of the first leaders of independent countries in Africa fall in this category. Ghana had Kwame Nkrumah, Kenya had Jomo Kenyatta, Tanzania

³⁷⁴ Claude Ake (2000), *The Feasibility of Democracy in Africa*, Dakar, Senegal, Council for Dev. Of Social Science Res. in Africa, p. 28.

³⁷⁵ Gordon Neal Diem (1999), 'Myths of the Nation-State,' *Formulations* (Spring 1999). Diem's other myths can be seen at <http://libertariannation.org/a/f63d1.html>, accessed 19 May 2003.

had Julius Nyerere, Malawi had Kamuzu Banda, Zambia had Kenneth Kaunda, Namibia had Sam Nujoma, and South Africa had Nelson Mandela.

Influence of such leaders often goes beyond their term of office. Even succeeding leaders seek to be legitimised by their links to the visionaries and founders of the state. In fact, in many countries, most of the ruling elite of today either had worked with the visionaries or subscribe to their thinking. For example, President Moi, in order to gain credibility with the electorate, had to claim that he was following in the footsteps of Jomo Kenyatta.

However, many of the leaders failed democracy at least in the western sense of the word. Some failed because of their conviction that they knew best and there was no need for opposition, some failed because they saw opposition, a natural outcome of democracy, as a threat to their own positions, some failed because of their wholesale reliance on “parliamentary democracy distilled from the fruits of a mature capitalism,”³⁷⁶ and still others failed because of their failure in replacing colonial instruments that were manifestly designed for domination, oppression and exploitation with the ones for popular participation. Often, most of the structures had been retained, with a shift only in the location of control and in the composition of decision-making structures. Any latent benefit for the new state through correct restructuring was therefore lost. This failure occasionally resulted in traditional Africa drawing “back into the defense of individual or clusters of individuals while at the same time extending their effectiveness in many ways subversive of the state.”³⁷⁷

Quite often failure of African states is also attributed to so called tribalism. Tribalism is not unique to Africa. As recently as the 1980s and early 1990s there was a resurgence of nationalism that led to many peoples’ struggles for autonomy in the Soviet Union, and other countries, such as Yugoslavia, Iran, Iraq, and Turkey.³⁷⁸ However, nationalism is not just restricted to Eastern Europe or Central Asia. In Western Europe and North

³⁷⁶ Davidson, *The Black Man’s Burden*, p. 223.

³⁷⁷ *Ibid.*, p. 225.

³⁷⁸ Tom Nairns (1993), “Demonizing Nationalism,” *London Review of Books* (25 February 1993), quoted in Horsman and Marshall, *After the Nation-State*, p. 77.

America where most of the countries are considered to be traditional nation states, nationalism has resurfaced demanding greater autonomy e.g., in Cyprus, the militants among the Basques in Spain and France, the Quebecois in Canada, the Welsh, the Scottish, the Bretons, and the Catalans and other groups within the EU. In Africa, there has been a growth of political movements based explicitly on ethnic background. The Ethiopian province of Eritrea achieved independence after a protracted civil war; civil war between black Christians and Arab Muslims in the Sudan continues; and Zanzibar negotiated a new relationship with Tanzania.³⁷⁹ There was also trouble in Namibia in the Caprivi region, in Zimbabwe in the Matabele region, and in South Africa between the ANC and the Inkata Party. In Rwanda, conflict between the Tutsis and the Hutus resulted in genocide that shamed Africa and the world.

Wilford and Miller³⁸⁰ correctly point out that “nationalism is propelled by an ‘us and them’, insider/outsider, inclusive/exclusive dynamic, this can be carried to exaggerated and dangerous extremes in divided societies: barriers – whether physical, social, material and/or psychological – are erected and inter-ethnic differences can spiral into violence as self-consciously distinctive groups take up arms in order to realize their claims to autonomy.”

Indeed, tribalism and other ‘isms’ can be and often are exploited by politicians to further their own interests but there are also many examples of leaders seeking to achieve inclusivity. SWAPO sought inclusivity in Namibia, United National Independence Party (UNIP) sought inclusivity in Zambia, Chama Cha Mapinduzi sought similar objectives in Tanzania, and Frente de Libertação de Moçambique (FRELIMO) successfully achieved this objective in Mozambique although the FRELIMO government and Resistência Nacional Moçambicana (RENAMO) rebels fought a bitter civil war whose origin could be ascribed not only to tribalism but also to differences in ideology. One characteristic of these success stories has certainly been the leaders’ commitment to inclusivity and

³⁷⁹ *Ibid.*, pp. 80-83.

³⁸⁰ Rick Wilford, Robert L. Miller (eds.) (1998), *Women, Ethnicity and Nationalism: The Politics of Transition*, London, Routledge, p. 2.

discouraging the politics of division. In this context, Wilford and Miller³⁸¹ correctly point out:

Barriers or cleavages, whether structured by region, religion, ethnicity or class, may be bridged – by power-sharing and provision for segmental autonomy (consociationalism), decentralization (regional or local government), the devolution of powers (federalism) and/or an array of public policies that promote, or at least accommodate, multi-culturalism – the politics of divided societies are likely to be unstable.

In Namibia and South Africa, the South African government sought to divide societies through apartheid:

Apartheid foregrounded race and ethnicity in its policies. By so doing, it often created divisions and conflict where none had existed before. For instance, the creation of Bantustan boundaries based on ethnic affiliation belied the melting-pot nature of South African society. Racial and ethnic intermingling had been a feature of its history. There were also strong cultural and religious affiliations that became embryonic nationalisms.... African nationalism ... was an identity which embraced different ethnicities in order to create a single political movement for assimilation into the broader social and political framework.³⁸²

This effort of the South African government was not unique. It was in fact the *modus operandi* of the colonizing states. Mamdani³⁸³

views each group as a creation of the institutional segregation imposed by the colonial system's pattern of indirect rule; each maintained by separate systems within it: the centralized authority and the associated decentralized native authority. In essence, the two different status categories were designed to make the colonial system functional for the colonizer, whose alien rule demanded solutions to the 'native question.'

Thus, the problem is not 'tribalism' but the political system and political leadership that do not strive for inclusivity. There is therefore no reason for Africans to decry their ethnic origins or the concept of tribe in itself. They should in fact be proud of their origin and the part of the culture that comes from it. Regrettably, even when the political system emphasizes inclusivity, some problems arise because of our adding '-ism' to our tribes;

³⁸¹ *Ibid.*, p. 2.

³⁸² *Ibid.* p. 69

³⁸³ Charles Jarmon (1999), "Mamdani, *Citizen and Subject: Contemporary Africa* in a review," *Canadian Review of Studies in Nationalism*, 26.

when we begin to think that we are better than others; or when we decide to blame our own shortcomings on imaginary actions against our own tribes.

For example, in Namibia, the government had invested a considerable amount of development funds in the Caprivi region, and there was a higher percentage of Caprivians in the civil service than the proportion of their population in the country would have warranted, but Mr Muyongo led an aborted rebellion there, alleging that Caprivi was being discriminated against.

Mr Muyongo's action could only be explained by the fact that he, having been a member of the 'ruling' elite during the colonial era, was not happy with being just in the opposition in independent Namibia. To vent his own frustration at not having support, he used his tribe or region, alleging that 'we' were excluded. However, when these same politicians are successful, they are successful not because of their tribe but on their own merit. Success is always in terms of 'I' but personal failure is attributed to the tribe having been discriminated against.

At the practical level, we need to acknowledge that ethnicity is a fact and is not going to go away. "To say that the revival of nationalism is merely a self-deluding, irrational response to circumstance does not diminish the fact that it is a reality, and it is a dangerously misleading approach simply to demonize it."³⁸⁴ Not recognizing this reality has often resulted in great turmoil. Demonising ethnicity, for example, resulted in the massacre of the Jews, of the Tutsis, and of the Kurds. Recognizing the strengths of diversity on the other hand encourages a sense of inclusivity, and a desire to find means to resolve conflicts. Leaders of Africa fighting against colonialism recognized this fact. They sought to be inclusive under the umbrella of nationalism within the confines of the colonial state.³⁸⁵ However, in the post-colonial era, "striving to transform colonial territories into national territories, they would find Africa's wealth of ethnic cultures both

³⁸⁴ Nairns, "Demonizing Nationalism", p. 78.

³⁸⁵ H. Seton-Watson (1977), *Nations and States: An Enquiry into the Origins of Nations and the Politics of Nationalism*, London, Methuen, p.332.

distracting and hard to absorb into their schemes. They would fall back into the colonial mentality of regarding it as 'tribalism', and, as such, retrogressive."³⁸⁶

This failure to absorb ethnic diversity in the independent state's scheme of things cannot itself be a justification for treating ethnic loyalties as retrogressive. More often than not, there are other factors that play on ethnicity. "The glib use of the blanket term nationalism [read tribalism] obscures the range of factors – economic, historical, social – that vary from case to case. Economic dislocation can make populations ripe for the kind of scaremongering, scapegoating and xenophobia that some leaders employ in a bid to gain political power."³⁸⁷ The challenge for Africa is therefore to contain the exploitation of ethnicity for re-traditionalizing the African societies by tribal politics.³⁸⁸

Each one of these factors, colonial heritage, weaknesses of institutions, lack of commitment to openness and democracy, desire for control, and unfettered political ambition, has implications for the process of state formation. How the politicians address the challenges thrown up by these factors will determine the future of the state in Africa.

State Formation in Namibia

It is against this background of African experience that Namibians started the process of state formation in independent Namibia. Many 'nations' existed before the colonization of the territory, but the final territorial shape of the state was completely determined by successive colonial powers, as had been the case with all the African countries. In the case of Namibia, these boundaries were also established by the League of Nations, as the territory became a class "C" Mandate.

Other factors that determined the process of state formation in Namibia were subsets of the colonial predicate characterized by German and South African policies of occupation, racism, and economic exploitation. Key racial policies that had far-reaching implications

³⁸⁶ Davidson, *The Black Man's Burden*, p. 99.

³⁸⁷ Nairs, "Demonizing Nationalism," p. 78. Text within brackets mine.

³⁸⁸ See, Patrick Chabal and Jean-Pascal Daloz (1999), *Africa Works: Disorder as Political Instrument*, Bloomington, Indiana Univ. Press.

for Namibia included the introduction of a 'homelands' policy, thus isolating various ethnic groups; a white-controlled civil service that denied blacks an opportunity to gain administrative positions and therefore experience; and inequity in resource allocation to racially and ethnically-stratified social services, such as education, health, pensions, etc.³⁸⁹ One could also argue that it was precisely these racist policies that helped people galvanize under SWAPO to demand an independent state.

In 1964, the South African government sought to institutionalise apartheid in Namibia by accepting the recommendations of the Odendaal Plan.³⁹⁰ This plan, among other things, recommended the fragmentation of black populations into small ethnic divisions or 'Bantustans'. In recommending the creation of Bantustans, the Odendaal Commission had argued that various ethnic groups harboured "strong feelings against other groups" and wanted their own 'homelands' (As stated earlier, this is a classic example of a myth).

These 'homelands' were to be similar to those whose creation was recommended in South Africa by the 1954 Tomlinson Report.³⁹¹ This report had established the Bantustan concept that led to the 'nominal independence' of the Transkei, Boputhatswana, Venda, and Ciskei homelands. With few resources of their own, these entities were captive pools of labour for South African industries and mines. Similarly, based on the Odendaal Plan, South Africa had tried to create many nations in the territory of Namibia based on ethnicity, keeping the major part of the territory for the whites. This arrangement was primarily designed to create dependence instead of interdependence. Specifically, only 30% of the land, mostly sandveld, was parcelled out to homelands.³⁹² Subsequently, ethnic authorities (as against territorial authorities) were created to 'rule' these 'ethnic' nations. Creation of ethnic authorities not only fragmented the administration along racial lines but also propagated a myth that different ethnic communities didn't get along with each other.

³⁸⁹ For details see South Africa (Republic), *Report of the Commission of Enquiry into South West Africa Affairs, 1962-63*.

³⁹⁰ *Ibid.*

³⁹¹ South Africa (Union) (1955), *Report of the Commission for the Socio-Economic Development of the Bantu Areas Within the Union of South Africa* (U.G. 61/1955), Pretoria, Govt Printer.

³⁹² South Africa (Republic), Native Nations Act No 54 of 1968.

However, in reality these ethnic authorities were only a front for addressing the 'native question,' with most of the control remaining with the white ethnic authority, the Administration for Whites, which was also the central authority. At the same time, South Africa was working towards eventually giving 'independence' to the 'homelands' in a way that created client states of the white state in the territory without the latter having accompanying responsibility for the welfare of the inhabitants of these client states. This ethnicity-based segregation and stratification was in fact aimed at dividing the indigenous population, impoverishing it and making it subservient to white interests. Contract workers who served in 'white areas' were not allowed to bring their families with them, and once their term of work ended, they were forced to return to their homelands. Blacks who worked on white-owned farms were treated as serfs. The end result of this policy of creating a cult of ethnicity was the intensification of resentments and antagonisms.

It was in this climate that the country's aspirations for liberation were born. The struggle for an independent state found its roots in the inhabitants of the territory being unhappy with the contract-labour system. Those working on contract labour in Cape Town formed the Ovamboland People's Congress (OPC), which became the Ovamboland People's Organization (OPO) to protest against contract labour. Of course, victims of this system were not just Ovambos but all the ethnic groups living in the territory. Thus, OPO represented the interests of all the people in the territory despite suggestions in certain quarters that OPO was strictly an ethnic organization.³⁹³ That OPO represented all contract workers and was a multiethnic organization was best illustrated by the fact that its constitution was drafted by Mr Emil Apollus, an Orlaam who was brought up in the Nama culture. Nevertheless, in order to correct any misconception, OPO was rechristened on 19 April 1960 as South West Africa People's Organization (SWAPO) to represent all the Namibians.

³⁹³ See Peter Katjavivi, "The Development of Anti-colonial Forces in Namibia," in Wood (ed.), *Namibia: 1884-1984*, pp. 557-584.

In retrospect, one finds that dynamism in the struggle for the liberation of the territory was to await the emergence of SWAPO, and more significantly, the vision of Messrs Sam Nujoma, Fanuel Kozonguizi and Mburumba Kerina. However, Mr Nujoma outclassed and outlasted the other two. In fact, it was not until he came on the scene that we had an extraordinary personage to fight for the rights of Namibians in a racist society. Until then the focus of SWAPO's predecessors was either regional interests or improvement in the conditions of work of contract workers.

With the birth of SWAPO, the Namibian people's focus shifted to a broader canvas of self-determination and independence not just of the Ovambos or the Hereros or the Damaras, but of the whole territory known as Namibia, and all the people inhabiting it. The creation of SWAPO as a nationalist movement was thus the first attempt at forging a new relationship between various people of the territory. The composition of the executive committee of the liberation movement also showed a clear shift away from that of earlier ethnic parties. Although members of the central committee of SWAPO served on this committee by virtue of their competence, the leadership was not unaware of the importance of a balanced representation of different population groups within its structures.³⁹⁴

³⁹⁴ The composition of SWAPO illustrates that, even during the struggle, it was representative of all the Namibian people. The line up of the leadership of SWAPO during the early years 1969 - 70 was as follows: President was Mr Sam Nujoma, who is an Ovambo from a small group known as Okandjera; National Chairman was Mr M. Kerina and was later on followed by Mr D. Merero, both Hereros; Secretary General was Mr Ismael Fortune, a coloured, who was replaced by Mr J. Kuhangwa, an Ovambo; Information Secretary was Mr E. Appolus, an Orlaam; Administrative Secretary was Mr M. Garoeb, a Damara; and Organizing Secretary was Mr Hage Geingob, a Damara. Similarly, in independent Namibia, line up of the leadership in the SWAPO government and other government institutions was as follows: President, Mr Sam Nujoma, an Ovambo; Prime Minister, Mr Hage Geingob, a Damara; Deputy Prime Minister, Mr Hendrik Witbooi, a Nama; Speaker of the National Assembly, Dr Mose Tjitendero, a Herero; Deputy Speaker of the National Assembly, Dr Z. Kameeta, a Herero, then replaced by Rev. Kandjore, a Nama/Herero; Chairman of the National Council, Mr C. Nehova, an Ovambo; Deputy Chairman Mr M. Mensha, a coloured; Chief Justice, Mr J. Strydom, an Afrikaner; Judge President, Mr T. Peek, a Herero; Ombudswoman, Ms B. Gawanas, a Damara; Auditor General, Mr F. Tjingaete, a Herero; Vice Chancellor, Dr Peter Katjavivi, a Herero. However, majority of the ministers as well as permanent secretaries in the civil service are Ovambo speaking because Ovambo speaking Namibians constitute the majority of the population. Further, and somewhat worrisome is the fact that Namibia's security institutions are not properly balanced because of historical reasons.

Transition to Independence

As described in Chapters Two, Three, and Four, Namibians' struggle under the leadership of SWAPO at international fora, at home, and on the battlefield resulted in Namibia becoming independent on 21 March 1990.

However, the occasion of handing over the instruments of power to the new government provided its own procedural, diplomatic and security challenges. As the chairman of the Independence Committee, I had last minute discussions with the SWAPO leaders on various issues. They were unanimously of the opinion that South African presence in Namibia was illegal, and therefore the illegal regime should have no role in handing over the instruments of power. Consequently, it was decided that the United Nations Secretary General should swear in the president and by so doing confer independence on Namibia.

However, being worried about security on that day and not knowing what the South Africans might do, I proposed that we invite Mr De Klerk to the independence celebrations. My argument was that having Mr De Klerk at the ceremony would guarantee security, as South Africans would not sabotage the celebrations attended by their own president. Some members of the committee opposed my proposal but eventually accepted it.

As a result of this decision, we were faced with two new problems. After we communicated our decision to the South Africans, they were happy with the invitation but were concerned that their president's status would be compromised. They feared that he might be booed and humiliated when speaking. We gave them our assurance that our people would not embarrass him in any way, as he was there on the invitation of their own leaders. Frankly, we were not sure that the masses would behave in the manner we had hoped they would, but the South Africans accepted our assurance. Fortunately, nothing happened on that day to embarrass the new government.

The second problem was with the Frontline States. When I informed their representatives that we had invited Mr De Klerk to independence celebrations, they were deeply

disappointed. Representatives of the Frontline States felt betrayed -- How could SWAPO create a situation to compromise their position when they had supported SWAPO all along! In order to diffuse this situation, I met with Mr Ami Mpungwe, who later became the high commissioner of Tanzania to South Africa and Namibia. I invoked the issue of sovereignty of Namibia, stating, "Comrade, we know that you have been supporting us to decide on our own future namely self-determination. We are now deciding on our own future. We, as sovereign people, have decided to invite Mr De Klerk." For me, this was indeed a sad moment, because we had to disagree with our frontline supporters at this most significant moment. Of course, in line with their principled stand, they refused to attend the pre-independence banquet hosted by Administrator General Pienaar, but they did attend independence celebrations.

Namibia got its independence not exactly at twelve o'clock midnight, but about twenty minutes after midnight. But everyone 'stopped' their watches, as had happened in just about every country that gained independence, to declare Namibia independent at twelve midnight sharp, on 21 March 1990. President Sam Nujoma declared Namibia free forever.

Work on shaping the government of independent Namibia had already been going on in SWAPO settlements, in its health centres, at its schools and at the United Nations Institute for Namibia. SWAPO's structures in exile were in fact largely an embryo of the government, and therefore it was easy for the ministers to operate from their offices on the very first day. It must also be stated that most of the civil servants inherited from the colonial regime were cooperative and helpful. Some of those who were hesitant were the ones in the white administration. Others in the so-called ethnic administrations were very happy.

Besides, a delay of ten years in the implementation of Security Council Resolution 435 was a blessing in disguise as it gave time to both SWAPO and the whites to prepare for change, although regrettably precious lives were lost during that time. During this period, SWAPO moderated its position on many issues in the light of the new geopolitical and

economic realities. Whites also made up their minds whether they accepted the change or not. A small number of whites who did not want to face the change left, and those who remained were psychologically ready to accept a black government, although many wished that it would not be a SWAPO government.

Creating a Civil Service for the Independent State

Until 1979, all public service functions in the territory were administered through South Africa's various government departments based in Pretoria. Personnel sections in the departments concerned carried out appointments, promotions, transfers, payments, and other administrative issues dealing with personnel. On 2 October 1979, South Africa opened a branch of its Public Service Commission in Windhoek, called the Central Personnel Institution, to create an 'independent' civil service in the territory. Government departments were transferred back from Pretoria to Windhoek. Exceptions were the Departments of National Security, External Affairs and Excise and Import Duties, as well as the Police, the South African Defence Force (SADF), and Railways and Harbours.³⁹⁵

On 1 July 1980, the Government Service Act, 1980 (Act 2 of 1980) was promulgated by the then administrator general (head of the colonial government) after its adoption by the 'National Assembly' of the occupied territory. This Act established a three-tier government in Namibia: the first tier to handle central government issues under the supervision of the administrator general; the second tier comprising eleven 'ethnic' governments;³⁹⁶ and the third tier comprising local authority administrations. The Act also provided for a Government Service Commission that started its work on 1 July 1980.³⁹⁷

All personnel who were employees of South African government departments working in the territory were given a choice either to take up employment in the newly created

³⁹⁵ Dierks, *Chronology of Namibian History*.

³⁹⁶ Ethnic governments were for various population groups identified in Section 3 of the Act. They were Basters, Bushmen, Caprivians, Coloureds, Damaras, Hereros, Kavangos, Namas, Ovambos, Tswanas, and Whites. Although some of these representative authorities were established nominally, most of the work continued to be centralized at the Administration for Whites. These structures continued until Namibia became independent.

³⁹⁷ Dierks, *Chronology of Namibian History*.

government service of the occupied territory or stay on as seconded personnel until such time as their services were no longer needed. Those opting for the latter were expected to go back to South Africa once their service ended. Posts not filled with South Africans were filled by persons recruited from within the territory.

Although the administrator general was the head of government at that time, the Government Service Commission, established in terms of section 4(1) of the Government Service Act as an executive body, decided on the establishment or abolition of departments or transfer of functions; control, organization and readjustment of any department; number and grading of posts; number of persons to be employed; issues affecting economy and promoting efficiency in the management and functioning of departments; scales of salaries, wages or allowances; and persons to be appointed, or promoted. The Central Personnel Institution, established as a government department, functioned as the secretariat of the Government Service Commission. As the secretariat of the commission, it exercised all the powers of this government arrangement. Thus, for all practical purposes, it was the *de facto* administration.

On 1 January 1989, public service employees were granted general pay increases by the colonial government. In addition, the Administrator General took certain actions a few days before Namibia was to become independent that had serious implications for the new government. Nujoma³⁹⁸ noted in his autobiography:

As his [Administrator General's] time in the country shortened, he set about doing all he could to benefit those who had run the country with him during the illegal occupation of the apartheid South African regime, by promoting them beyond their proper rank, increasing their pay, and, ... transferring pension funds out of the country and even making it possible for officials to take out lump-sum pensions there and then. In the closing days of the South African colonial administration it became necessary for the Minister [designate] of Finance [of the government of independent Namibia], Dr Otto Herrigel, to dash from one bank to another telling managers not to honour cheques made out on instructions from the Administrator-General.

³⁹⁸ Nujoma, *Where Others Wavered*, p. 438.

As a result of these actions of the departing colonial government, the new government faced numerous challenges of gaining control from the old establishment and developing new structures in keeping with the needs of a sovereign country. However, as mentioned earlier, SWAPO was well prepared to take up the responsibility of running the country on the day of independence. The United Nations Institute for Namibia had already worked out the offices, ministries and agencies that would be needed by the independent country.³⁹⁹ Based on this work, specific recommendations for new offices, ministries and agencies were made in the *Report of the Committee on the Restructuring of the Public Service*.⁴⁰⁰

Immediately after the country became independent, the president, by Proclamation 3 of 1990, amended the Government Service Act by, *inter alia*, abolishing government departments and creating new offices, ministries and agencies in line with the provisions of the Constitution of independent Namibia as recommended by the Committee on the Restructuring of the Public Service. This proclamation also established a national civil service for the country. By the same proclamation, functions, duties and responsibilities of the Central Personnel Institution were transferred to the Office of the Prime Minister. At the same time, a new Public Service Commission was constituted in accordance with the Public Service Commission Act (Act 6 of 1990).

Subsequently, the process of regrouping the administrative departments and collapsing ethnic administrations into new offices and ministries began. The government also started actively pursuing the policy of affirmative action to bring into the civil service those who had been left out of the civil service because of their skin colour.

As a result of the speed with which the new public service was created, and new personnel recruited and posted, a great deal of structural arbitrariness had crept into the

³⁹⁹ United Nations Institute for Namibia, *Namibia: Perspectives for National Reconstruction and Development*, Chapter 21.

⁴⁰⁰ Namibia (1990), *Report of the Committee on the Restructuring of the Public Service*, mimeo., (Chairman: Hage G. Geingob). As I was occupied elsewhere, the report was presented by Dr Mose Tjitendero).

system.⁴⁰¹ Further, the creation of new offices, ministries and agencies,⁴⁰² new recruitments, and the constitutional provision (Article 141) that “any person holding office under any law in force on the date of independence shall continue to hold such office unless and until he or she resigns or is retired, transferred or removed from office in accordance with law”⁴⁰³ resulted in considerable expansion in the size of the civil service. This growth in the size of the civil service put unsustainable fiscal strain on the state. In order to correct this situation it was necessary to streamline the structures, put right people in right jobs, and eventually right-size the civil service.⁴⁰⁴

Therefore, in 1992, the Office of the Prime Minister began the process of restructuring the civil service focusing on the following:⁴⁰⁵

1. making the civil service representative of the diversity in population;
2. curtailing the size of the civil service to ensure that it did not put constraint on the budget to the extent that the government’s ability to invest in goods and services, and capital projects was curtailed;
3. ensuring that the civil service was manned by competent, skilled and dedicated personnel;
4. the introduction of mechanisms for performance evaluation of the senior civil service personnel; and
5. various government offices, ministries and agencies defining their goals and setting targets against which the performance of civil service personnel could be measured.

When undertaking the task of restructuring the civil service, the Office of the Prime Minister had to be mindful of the fact that experiences of many other countries that had replicated colonial administration had not been all that promising. In some of these countries, administration continued to be dominated by the group that was favoured by

⁴⁰¹ Geingob, “From Colonialism to Freedom and Democracy.”

⁴⁰² These offices, ministries and agencies included Office of the President, Office of the Prime Minister, Ministry of Foreign Affairs, Ministry of Defence, the National Planning Commission, and Office of the Ombudsman.

⁴⁰³ Namibia, *Constitution of the Republic of Namibia*, Article 141(1).

⁴⁰⁴ These days calls are being made by SWAPO Youth League that right people be put in right jobs. For the Youth League, “right people” means SWAPO members. If such a situation becomes a reality, it would be a retrogressive step because government must represent and be seen to represent all Namibians, not just SWAPO members. Right people are those who are loyal to the government of the day. See Chrispin Inambao, “Youth League Exhorted to Keep Pushing for ‘Jobs for Comrades,’” *The Namibian* (10 June 2002).

⁴⁰⁵ Geingob, “From Colonialism to Freedom and Democracy.”

the colonial administration. However, Namibia had the advantage of having to rebuild the civil service because inherited ethnic structures were completely unacceptable.

Civil service restructuring is, of course, not a new concept. Many countries have sought to carry out reform of civil service bureaucracies as there is ample evidence across a range of countries that well-functioning bureaucracies can promote growth and reduce poverty through sound policy inputs and delivery of critical public goods and services at least cost.⁴⁰⁶ In the last few decades, emphasis on reforms has, however, been varied. Reforms pursued in the 1980s were primarily concerned with addressing fiscal concerns arising from overstaffing and unsustainable wage bills. Later on, emphasis was on facilitating policy agility in government and ensuring that policies were implemented. More recently, reforms have focused on improving operational efficiency and service quality.⁴⁰⁷ Namibia needed to emphasize and integrate all of these reform initiatives.

The first stage of the restructuring exercise involved the staff of the Office of the Prime Minister determining the existing situation in and responsibilities of various offices, ministries and agencies, followed by making recommendations on staff contingent and reallocation of personnel – all in consultation with various offices, ministries and agencies. In addition, personnel offices were established in all offices, ministries and agencies to coordinate personnel issues with the new Public Service Commission. An essential element of the mandate of the staff of the Office of the Prime Minister was that in carrying out the restructuring exercise they must not touch political offices, and no attempt should be made at speculating the future of any political office.

Subsequently, the report of the restructuring/rationalization study⁴⁰⁸ was presented to the cabinet at its Swakopmund meeting of 14 and 15 December 1992. As the report was produced in record time, I, as the prime minister, could not review it before its

⁴⁰⁶ World Bank (1997), *World Development Report 1997: The State in a Changing World*, New York, Oxford Univ. Press, p. 79.

⁴⁰⁷ Navin Girishankar and Nick Manning (2000), "Strategies and Sequencing in Public Sector Reform," paper submitted to the World Bank on 12 October 2000, <http://www1.worldbank.org/publicsector/civilservice/strategies.htm>, accessed 3 January 2003.

⁴⁰⁸ Namibia, Office of the Prime Minister (1992), *Rationalization of the Civil Service*, Windhoek, Office of the Prime Minister.

submission to the cabinet. In fact, other members of cabinet also did not get an opportunity to go over the report prior to the meeting. Therefore, at the start of the meeting, I made it a point to mention that the report had not been reviewed by anyone, and errors and omissions could be expected.

Almost immediately after the meeting started, it became apparent that the staff members responsible for the report had not taken heed of the instructions about political offices. The report contained specific recommendations about the merger or elimination of certain ministries, such as the Ministry of Information, the Ministry of Labour, and the Ministry of Trade and Industry. This situation resulted in alienating many of the cabinet members who were to decide on the future of the report. Had I not forewarned the president and then the cabinet members at the start of the meeting about errors and omissions, the cabinet would have completely scrapped the civil service reform initiative. However, the crisis was averted, and the cabinet began examining the report's findings.

The cabinet recognised that steps needed to be taken to stem any further expansion of the public service and the related expenditure, to improve the performance of the civil service, and to address the issue of duplication of functions among government bodies. In order to address these issues, the cabinet resolved that (1) each office, ministry or agency should undertake its own rationalization exercise, taking into account the work already done in this area; (2) all vacant posts other than teaching posts should be frozen; and (3) no post should be activated without the express authority of the Prime Minister in consultation with the Treasury.⁴⁰⁹

Again, on 2 November 1993, the cabinet dealt with the issue of the size and cost of the civil service in the context of the budget deficit. It decided that civil service should be rationalized so as to reduce the cost of personnel expenditure to 40% or less of the budget.⁴¹⁰ This concern with the deficit also prompted the cabinet to decide in February

⁴⁰⁹ Namibia (1995), *Report of the Wage and Salary Commission* (November 1995) (Windhoek, Govt. of Namibia, Paragraph 2.22.

⁴¹⁰ *Ibid.* Paragraph 2.23.

1994 to deregulate, commercialise or privatise some of the non-core functions carried out by the civil service.

However, in all these areas progress was slow for various reasons. Primary reason for this slow progress was that the President had let it be known that he did not want to “rock the boat” and that each ministry would be responsible for the restructuring and rationalization of its own operations. In my view, making each office, ministry and agency responsible for its own rationalization was a serious mistake, because it sought only to appease those who were afraid that their ministries might be shrunk or even declared redundant. Consequently, the process of rationalization and its coordination by the Office of the Prime Minister lost direction, and the size of the civil service grew.

In spite of the fact that there was agreement that large civil service was untenable, many actions of the ministries and extraneous issues resulted in the growth of the civil service and growth of expenditure on the civil service as a percentage of the budget. For instance,

1. Ministries demanded more staff for the decentralization of their activities.
2. Coming into force of the new Labour Act in 1992 brought new elements into the restructuring process, such as the role of trade unions, and increase of benefits of civil service staff members.
3. The need for the government to address the unemployment problem faced by the demobilized PLAN cadres and other unemployed youth resulted in the recruitment of some 10 000 Namibians into civil service. In other words, the maintenance of peace required that the government become, at least temporarily, employer of last resort.
4. The absence of quality data on the size of the civil service, the labour market, and the economy (micro as well as macro) added to the complexity of the problem.

These were serious constraints on the rationalization exercise. As Girishankar and Manning⁴¹¹ point out, only about a third of the countries succeeded in achieving satisfactory outcomes of civil service reform and some could not sustain outcomes

⁴¹¹ Girishankar and Manning, “Strategies and Sequencing in Public Sector Reform.”

despite their being desirable. However, they note that comprehensive civil service reforms “seem to work in middle income and transitional countries where governments are motivated by arrangements that enable citizens, particularly the poor to express their preferences and to hold public officials accountable for translating these preferences into results.” They also identified four factors associated with the poor track record of many countries as follows:

1. Quality of data on civil service performance was poor and inconsistent. Standardized indicators were neither fully developed nor operationalised for monitoring and evaluation.
2. Capacity building efforts were overly based on wage enhancements. They did not look sufficiently at the incentives provided in other arrangements, including the significance of job security and pension prospects.
3. Reforms were technocratic as they assumed that the introduction of formal rules would be sufficient to change behaviour. Participatory processes to nurture reform constituencies in government, the private sector, and civil society were largely absent.
4. Reforms did not balance choices with labour market realities – focusing for example on budget scenarios without also looking at how salary levels could affect projected demand for civil service jobs.

These factors were also present in the civil service prior to and during the first few years after Namibia became independent. In order to address these issues, the Office of the Prime Minister established a Wage and Salary Commission on 18 January 1995. Some of its terms of reference included⁴¹²

1. studying and analysing the existing and proposed remuneration policy of the public service, labour markets from which personnel must be recruited, salaries and wages paid in the private sector, government fiscal policy, the current macro-economic environment as well as the macro-economic development objectives, all the relevant policies and laws, and other related matters;

⁴¹² Namibia, *Report of the Wage and Salary Commission*.

2. consulting public service trade unions, permanent secretaries and interest groups; and
3. drafting a remuneration policy for the public service in terms of which salaries in the public service can be developed and maintained.

The commission began its work by collecting and analysing data. As time series on most of the data were not available,⁴¹³ trends were hard to establish. Quality of data even on the size of the civil service was suspect. As per the available figures, at the time of independence, there were 46 651 posts on the establishment, of which 42 562 were filled.⁴¹⁴ This number did not include defence force personnel and some of the police force and other civil service personnel who had gone back to South Africa. The defence force personnel were, of course, members of the South Africa Defence Force and were therefore not a part of the Namibian civil service during the colonial era. Others, e.g., some of the police force members and some civil service staff members, were seconded to Namibia from the South African civil service. They, too, were not reflected in civil service numbers.

Subsequently, by the end of 1991, with the creation of new offices, ministries and agencies and with the promotion of affirmative action, another 15 000 posts were created and filled. By 1995/96, according to the State Revenue Fund Estimate,⁴¹⁵ the number of authorized posts had risen to 78 038 and posts filled were 62 777. However, figures about posts filled were suspect. The Wage and Salary Commission's report⁴¹⁶ pointed out that comparison between the staff-in-post return and payroll information showed considerable discrepancy. On one occasion, a difference of some 4000 posts was discovered. Reasons were many. For instance, the Ministry of Health had included in its returns the staff of mission hospitals, which were grant-aided institutions but were not part of the civil service. Payroll printouts were also inaccurate as they included some of the names more

⁴¹³ Prior to independence, most of Namibian data was subsumed in South African data. In other cases, base had changed (e.g., prior to independence working age was 10 years and above, but soon after Namibia became independent, the age was raised to 14 years and above).

⁴¹⁴ Namibia, *Report of the Wage and Salary Commission*.

⁴¹⁵ Namibia, Ministry of Finance (1995), *State Revenue Fund Estimate 1995/96*, Windhoek, Ministry of Finance.

⁴¹⁶ Namibia, *Report of the Wage and Salary Commission*, Paragraph 3.10.

than once, e.g., once for salary, again for outstanding car or housing loan. In addition, there were instances where the civil servants who had left the civil service continued to appear on payroll printouts because they still had outstanding loans.⁴¹⁷

Furthermore, authorized posts were nowhere near the staff-in-post. The budget (1995/96) made provision for 68 912 posts when the payroll figure was only 62 777. Consequently, expenditure on personnel as a percentage of the budget was considerably overstated.

During 1999 and 2000 there was also considerable pressure on the government to address the unemployment problem. Many of the unemployed were those who were in exile during the liberation struggle. In order to address this problem, the government requested the Cabinet Committee on Defence and Security (CCDS), chaired by me, to establish a Technical Committee of the Security Committee with the mandate to review the overall unemployment situation of ex-PLAN fighters. This committee began the process of review on the basis of a paper submitted by me, entitled "The Peace Plan." Under this plan, there was comprehensive registration of unemployed PLAN cadres. These cadres were to be issued identity papers.

The plan was supported by the cabinet, but was nearly scuttled because the president was misled about the cost of the process of registration of the former fighters. The president was about to recall all the permanent secretaries working on the technical committee. These permanent secretaries, as former commanders of PLAN, were keys to the success of the process.

This development transpired, when I was out of the country. On my return, I took the matter to the cabinet and asked the ministers whether they would like the process to be continued or abandoned. All of them agreed that the process of registration should continue. Subsequently, the process was successfully completed with the civil service hiring 10 000 unemployed cadres. This initiative turned out to be a peace plan in reality;

⁴¹⁷ *Ibid.*, Paragraphs 3.10, 3.12, 3.13

for a possibility that they would have grabbed land, as had happened in Zimbabwe, could not be ruled out.

Because of various reasons already outlined above, by the end of 1999, the number of civil service staff-in-post had risen to 69 060. Breakdown of this number was as follows:⁴¹⁸

- Number of civil servants (excluding teachers and security forces): 29 152
- Teachers: 25 308
- Security personnel (including defence and police force): 14 000

Of course there are no hard and fast rules for deciding the optimal wage scales for the civil service. "The correct framework is a level of pay consistent with the operation of a motivated and professional public service at a scale the country can afford on a sustained financing basis."⁴¹⁹ Similarly, there is no prescribed matrix for determining the size of the civil service. Comparisons with GDP and population are useful only as guides to judgement. Radwan⁴²⁰ suggests that on a very tentative basis, the following measures could be considered:

1. Public sector wage bill as percentage of GDP. For most countries this figure varies between 10% and 25%, with a shift towards the lower end if the government is not involved in any big way in the country's economy.
2. Number of government employees as percentage of total population. This figure can give an idea of the extent to which the government is acting as an 'employer of last resort.' For instance, breakdown of the numbers might indicate that the government has taken on large numbers of civil servants in the lowest grades on meagre wages. These are often the most unproductive government employees, but the extent of such a problem will not be immediately apparent by examining the wage bill alone.
3. Number of government employees as percentage of total employment. This matrix is similar to the preceding one except that it corrects for developing countries that have a relatively high proportion of children in the population, leading to a relatively low public servant to population ratio.
4. Public sector wage bill as percentage of total public sector spending. If this ratio rises over 25%, governments risk reducing their effectiveness by squeezing non-

⁴¹⁸ Namibia, Office of the Prime Minister (2000), *Namibia: A Decade of Peace, Democracy and Prosperity 1990-2000*, Windhoek, Office of the Prime Minister, p. 51.

⁴¹⁹ Ismail Radwan, "Administrative and Civil Service Reform: Common Problems," paper submitted to the World Bank on 8 June 2000, <http://www1.worldbank.org/publicsector/civilservice/common.htm>, accessed 3 January 2003.

⁴²⁰ *Ibid.*

- wage expenditure such as goods and services, maintenance, and capital expenditure.
5. Average government wages compared to per capita GDP. A larger number of dependents and low standards of living imply that this ratio will tend to be larger in developing than developed countries. However, this does not mean that government employees are overpaid.
 6. Recruitment growth rates. When government recruitment grows faster than GDP, revenue or population growth rate, either financial stability (growing deficits) or future performance (through reduced wages or reduced non-wage expenditure) will be jeopardized.
 7. Military spending. Governments that spend a larger proportion of their budget on the military sector are likely to jeopardise future development objectives.

In December 1999, public service wage bill of Namibia as percentage of GDP was 21%. The proportion of core civil service wage bill (excluding teachers and security forces) of Namibia as percentage of government budget was 22.57%.⁴²¹ However, this figure was above 50% if teachers and security forces were considered as part of the civil service.

The size of the civil service (excluding teachers and security forces) as percentage of population was 1.8%. When teachers and security forces were considered as part of the civil service, this figure rose to 4.26%. For the whole of civil service, recruitment growth rate was rather high with an annual growth rate of 4.96%. However, after initial recruitment of 15 000 civil servants in 1990, a substantial portion of whom were recruited in security forces, annual growth rate of civil service had been just 1.82% -- lower than GDP, revenue or population growth rates.

With the exception of the public service wage bill as a percentage of government expenditure, all other parameters were within reasonable limits suggested by Radwan as mentioned above. As regards the public service wage bill, a significant part of this problem lay in the fact that government had been the employer of last resort for a substantial number of civil service staff members. For instance, in 1995, the number of civil servants in the lowest three salary bands was 93.1% of the total. Even the lowest two bands accounted for 69% of the civil servants. The lowest band that included unskilled

⁴²¹ Namibia, Office of the Prime Minister, *Namibia*, p. 52.

workers, such as cleaners and gardeners, accounted for 42.5% of civil servants.⁴²² In the short term, this situation could only be resolved with the creation of labour-intensive jobs in the private sector or the privatisation of labour-intensive activities, such as maintenance of buildings, cleaning services, and lawn/garden maintenance.

Shortage of experienced workforce in the country has also constrained the government in its effort to build quality civil service. One challenge for the government, as in many other countries, has been the difficulty in attracting, motivating and retaining high quality employees. In order to meet this challenge, the government needed to pay particular attention to designing recruitment and training programmes that could address this constraint.⁴²³

Education is certainly the most important component for the development of skills. The government realized this fact not only within the context of the civil service, but in the broader context of improving the lives of the people in every respect. Overcoming the educational deficit created by the Bantu education system needed considerable investment over a long period of time. As a first step, primary education was emphasized, and by the end of 2002, of all the children who should be in school, 97% were in school. Enrolment in secondary schools had also grown steadily. At the tertiary education level (University of Namibia, Polytechnic of Namibia, and colleges of education), enrolment had gone up from 4731 in 1990 to 10 212 in 1999. Enrolment in vocational training centres also saw significant increases from 174 in 1992 to 1151 in 1999. By 1999, tertiary institutions (excluding vocational training centres) were graduating 2300 students annually, with one-third of them being teachers.⁴²⁴ These figures, though far better than those prevailing at the time of independence, indicate a rather small base from which the civil service as well as the private sector attempt to recruit. The civil service also has to compete with the private sector for the best candidates.

⁴²² Namibia, *Report of the Wage and Salary Commission*, Paragraph 3.15.

⁴²³ Linda Van Gelder (1999), "Administrative and Civil Service Reform: Staffing in Countries with Limited Human Resources," paper submitted to the World Bank on 14 July 1999, <http://www1.worldbank.org/publicsector/civilservice/limitedrecruit.htm>, accessed 3 January 2003.

⁴²⁴ Namibia, Office of the Prime Minister, *Namibia*, pp. 173-176.

As the ultimate objective of rationalization and restructuring is to build a competent civil service committed to serving all Namibians, mechanisms were developed so that only those who met the highest standard were recruited and promoted in the public service. With these mechanisms for recruitment and promotion strictly on merit, the system was immunized against too much political say or patronage.⁴²⁵ However, it is recognized that there would always be some element of nepotism, but if meritocracy were not compromised, it would not threaten the maintenance of high standards.⁴²⁶

Introduction of this concept of meritocracy to control the baser, biologically-wired tendencies of nepotism was seen as vital, because the executive recognized that inefficiencies in many countries' public services often emanated from treating public service positions as jobs for friends and relatives. For instance, in Namibia, prior to independence, all high-level civil service positions were reserved for the privileged whites. There was little emphasis on the qualifications of a person. What mattered most was the colour of the skin. In fact, a majority of white civil servants had only high school diplomas.

The government of independent Namibia changed that situation. In order that qualified blacks were not left out of the system because of their lack of experience, the new recruitment policy emphasized training and education more than experience. I used to say in those early days that one could not possibly gain experience when one was excluded, as was the case during the apartheid era. One can gain experience only when one is given

⁴²⁵ The Wage and Salary Commission had, in fact, recommended that the Public Service Act should be amended to stipulate that civil servants would not become members of any political party. As implementation of this recommendation could easily be challenged in a court of law, the Office of the Prime Minister sought legal opinions from the United Kingdom and the United States on the best method of addressing the issue. According to these legal opinions, in the United Kingdom the management staff cannot participate in politics because they deal with policy issue, others can participate. In the United States, all civil service staff are prohibited from participating actively in politics. However, in Namibia because of Article 17 everyone is enjoined to participate in political activity but management cadres have been prohibited to contest for political office. Based on information obtained and extensive discussions, the cabinet decided that anyone in the civil service staff could join political parties and contest elections, but the managerial staff may not contest elections without first going on leave for campaigning. If successful in elections, the staff member must resign from the civil service position. If unsuccessful, he/she can continue to hold his post. This arrangement has so far worked well.

⁴²⁶ See, for instance, Adam Bellow (2003), *In Praise of Nepotism: A Natural History* (New York, Doubleday, Introduction).

a chance. That is why I used to joke in 1991 that I was the most experienced prime minister, although I was in office for just one year. There was no training to become a prime minister. Being on the job gave me the necessary experience.

In order to promote meritocracy, recruitment to even the highest civil service positions is carried out on a competitive basis. Posts are advertised in the national media. Introduction of performance evaluation and measurability, and accountability at both individual and organization levels also ensure that the public service does not sanction mediocrity. Finally, the government's objective is to appoint permanent secretaries for a fixed term with the letter of appointment specifying the targets that must be met. This could, however, be done only after the ministries became focused on outcomes and targets, and the government has developed an integrated approach for supporting the meeting of targets. After all, what is the point of setting targets if the treasury is unable to provide the necessary resources for meeting these targets!

The government had also established the Wage and Salary Commission to review wages and salaries as well as conditions of service so that the best people could be attracted to the civil service. The commission recommended various changes in a number of areas that were endorsed by cabinet as its central initiatives. The focus of the initiatives was to take appropriate actions to right size the civil service and establish a 2% growth rate cap on expenditure on personnel. Altogether the commission had made 54 recommendations dealing with pay policy and pay levels, downsizing of public service, management support, and the Labour Act. By 2002, thirty-nine of the recommendations had been implemented. Salaries and wages within the civil service were made competitive with the private sector. As a result, by 1999, the government had been able to recruit qualified, competent, and dedicated civil servants for senior posts.

The new policy of recruitment also sought to promote equity within the framework of affirmative action provisions of the constitution. By 1999, some 95% of civil service employees were the ones who belonged to disadvantaged groups during the apartheid era. The ratio of men to women also improved from 72:27 in 1992 to 45:55 in 1999. Thus, in

1999, women were a majority in the civil service. At the management level, too, progress had been made. During the colonial era, women were a rarity at this level, but by 1999, 18% of the managers in Namibia's civil service were women. This was still not satisfactory, but progress continued to be made on this front. At non-management levels, the ratio of men to women was 8:10.⁴²⁷ Composition of the civil service was beginning to reflect the population mix at large.

Restructuring the public service could not by itself increase effectiveness. In order to emphasize good management practices, it was decided to introduce performance measurement mechanisms and to train public service personnel. Performance measurement emphasized results and effectiveness and not just process and efficiency. As Osborn⁴²⁸ points out, there is a vast difference between measuring process and measuring results. Outputs do not guarantee outcomes. For instance, the university may graduate a large number of students, but if they cannot be placed satisfactorily, what good is the output?

In order to support an outcome orientation, different ministries' structures were critically examined with a view to enhancing the integration of their activities. For instance, there were at least five ministries or departments that had been engaged in employment generation activities through small enterprises – Ministry of Labour, Ministry of Youth and Sport, Ministry of Regional and Local Government and Housing, Ministry of Trade and Industry and the Department of Women's Affairs. To coordinate their efforts, a Cabinet Committee on Social Issues was created.

In 1997, the Office of the Prime Minister also introduced the General Principles of the Public Service Charter to emphasize service to the public.⁴²⁹ The General Principles focus on:

- Identification of service standards that the public expects;

⁴²⁷ Namibia, Office of the Prime Minister, *Namibia*, p. 52.

⁴²⁸ David Osborn (1993), *Reinventing Government: How the Entrepreneurial Spirit is Transforming the Public Sector*, New York, Penguin.

⁴²⁹ Namibia, Office of the Prime Minister (1997), *Public Service Charter*, Windhoek, Office of Prime Minister.

- Courteous service;
- Ready availability of information;
- Non-discrimination;
- Consultation;
- Value-for-money in service provision to the public; and lastly
- Transparency and accountability in service provision to the public.

The objective of introducing the charter was to stress that the public service employees.⁴³⁰

- worked for better quality in the delivery of services;
- made sure that everyone was told what kind of service they could expect to receive; and
- made sure that people knew what to do if something went wrong.

Concurrently with the introduction of the Public Service Charter, standards were being created to provide quality service with minimum delay.

The government also re-examined its budgetary processes and introduced budgeting for a period longer than one year. Earlier, at the end of each year, many offices and ministries would go on a spending spree to ensure that they spent the monies allocated to them. If they did not spend their allocations, they lost them, or, worse still, had their allocations for the next year reduced. Such an approach was obviously counterproductive. The government therefore introduced the Medium Term Expenditure Framework with a three-year rolling budget. Capital projects were also funded for the life of the project instead of annually. This new approach, it was hoped, would help promote effective planning.

Various initiatives for restructuring the civil service were carried out by the Public Service Commission and its secretariat, Department of Public Service Management with its directorates of human resource management and human resource development, and the Efficiency and Charter Unit.

⁴³⁰ The objective of the Charter is similar to that of the British *Citizens' Charter*.

By Public Service Act (Act 13 of 1995), the Public Service Commission was reconstituted as a recommendatory body instead of an executive body. By this act, the commission is mandated to advise the president and the government on the following:⁴³¹

1. the appointment of suitable persons to specified categories of employment in the public service with special regard to the balanced structuring thereof;
2. the exercise of adequate disciplinary control over such persons in order to assure fair administration of personnel policy;
3. the remuneration and the retirement benefits of any such persons; and
4. all other matters which by law pertain to the public service.

In addition, its mandate includes recommendations to the prime minister on appointments, promotions, transfers on probation, transfer and secondment of staff members, retention of staff members after retirement age additional to the establishment, retirement and discharge of staff members, suspension of staff members, appointment of persons additional to fixed establishment and other specific matters related to conditions of service. The Public Service Commission also considers appeals from public service staff members who are aggrieved by any of the decisions of the government.

The commission reports to the parliament annually. As none of the commission members is a member of parliament, its report is tabled by the prime minister. He is also responsible for answering any questions emanating from the report. Lately, these reports are being debated in the parliament, providing an opportunity to the members of parliament to elicit more information on the functioning of the government. This practice started as a result of one dynamic member of opposition, Ms Nora Shimming Chase, springing a surprise on the prime minister in 2000 with her request to debate the report.

As already stated, one of the challenges Namibia faced and continues to face is the shortage of a professional labour pool the civil service can draw on. Therefore, civil service had to get involved in the management of the public service that included

⁴³¹ Namibia, Public Service Commission Act (Act 6 of 1990), and Public Service Act (Act 13 of 1995).

initiatives for the training and empowerment of staff. The Department of Public Service Management was therefore tasked with the responsibility of strengthening the strategic and management planning capacity of government institutions, advising on value for money, and changing civil service culture through training and empowerment of staff.

The department, through its Directorate of Human Resources Development has, since its inception in the first year after independence, focussed on training and development of all public service staff of Namibia. It delivers a range of training courses and workshops to different offices, ministries and agencies tailor-made to suit their training needs. The directorate also works closely with the University of Namibia's Centre for Public Service Training (CPST) founded in 1994. An average of 300 public service staff members, including many senior managers, has been trained annually by the CPST in conjunction with the Directorate of Human Resource Development.

In 1999, after making an extensive senior management needs assessment in all offices, ministries and agencies, it was concluded that a complete job-modelling programme for the entire public service needed to be initiated. This programme once completed would be able to provide a database on job profiles and competencies needed for these specific jobs. Focussed and meaningful training programmes and plans could then be developed for each job category. This database would also be helpful in building individual career paths and succession plans for each post. The programme would also support the recruitment and selection process.

In 1996, the cabinet also approved the establishment of an Efficiency and Charter Unit (ECU) within the Office of the Prime Minister as a focal point of public service reform. The unit commenced its operations in June 1997. Some of the essential objectives of the unit are

1. to develop charters on the principles enshrined in the Public Service Charter;
2. to introduce efficiency scrutiny in all offices, ministries and agencies as well as to monitor the process and advise the secretary to cabinet;

3. to develop and solicit cabinet's support for outsourcing policy so as to increase organisational effectiveness;
4. to introduce organisational performance management for public service organisations by developing effective methodology for measuring organisational effectiveness; and
5. to provide a routine review of progress on the Wage and Salary Commission recommendations as well as to provide input to the National Development Plan components regarding public service reform.

Growth of the Public Service Charter programme requires that individual customer service charters, relating to specific service delivery functions, be developed. The ECU consulted with all the permanent secretaries within all offices, ministries and agencies to determine priority areas for functional charter development. A charter programme, indicating fifty-nine functional areas, was drawn up. A time schedule for the completion of specific charters was also worked out.

In September 1998, the ECU developed an efficiency scrutiny methodology and published it as a "How to ..." guide. Publication of this document was followed by seminars conducted by the ECU in the use of this guide. Subsequently, the ECU became involved in assisting offices, ministries and agencies in the development of functional charters covering such areas as patients, immigration, foreign missions, customs and excise, and primary and secondary education. The first charter, the Patients Charter, was launched at the end of 1998.

The ECU also performed an analysis of submissions by various offices, ministries and agencies to the High Level Committee (committee comprising the cabinet secretary and all permanent secretaries) on their core and non-core functions. This information provided a baseline for future work on outsourcing. Seventy-three areas were identified that had the potential for outsourcing. However, progress was somewhat restricted because of lack of an agreed policy on outsourcing and because some offices, ministries and agencies had already started their outsourcing activities.

Nevertheless, the ECU continued to provide support to individual outsourcing/commercialisation projects, such as the Ministry of Works, Transport and Communication Project (MWTC 2000)⁴³², laboratory services, the medical stores, the Energy Fund, and the Motor Vehicle Accident Fund. The ECU also became involved in the outsourcing initiatives of the government garage, the National Institute for Educational Development (NIED), Namibia Qualifications Authority, Ministry of Environment and Tourism,⁴³³ veterinary laboratories, financial institutions, agricultural engineering, commercial extension services and research, and rural water resources.

As the absence of coherent and accurate data relating to all offices, ministries, and agencies had been a significant gap in the government information system, various departments in the Office of the Prime Minister have been busy addressing this problem. Eventually, the database will need to be tested when it links to payroll. A treasury committee has been overseeing this facet of the database. By 2000, this data was already being mined to extract performance data.

In April 1999, the Office of the Prime Minister also initiated a performance and effectiveness management programme. In the first phase, starting in September 1999, five ministries (Ministry of Basic Education and Culture, Ministry of Finance, Ministry of Health and Social Services, Ministry of Prisons and Correctional Services, and Ministry of Higher Education, Vocational Training, Science and Technology) were targeted for a pilot implementation phase. This programme would, in the long term, link closely with the outsourcing programme, National Development Plans (NDP1 and NDP2), performance-based budgeting, and the development of strategic plans.

⁴³² This project dealt with the commercialisation of many of the ministry's activities, such as, road maintenance, and management of airports.

⁴³³ This project's focus was the management of wildlife resources, and commercialisation of tourism establishments, such as Namibia Wildlife Resorts.

Effectiveness of the new structures depends on the executive's broad policy commitments and its ability to follow through on policy implementation. Four stages the process of policy formation and implementation goes through have been identified:⁴³⁴

Stage 1: The executive sets broad policy commitments, binding it to implement a particular policy;

Stage 2: Departments prepare policy and budget proposals and deliver broad policy commitments;

Stage 3: The executive provides adequate budgets, removes procedural obstacles, and anticipates the likely reaction of external veto players (legislature, constitutional court); and

Stage 4: Departments implement.

In case broad policy commitments are infrequently implemented, or partially implemented, one goes through these steps to determine the causes of executive policy unreliability. Perhaps the executive has made unrealistic, unaffordable broad policy commitments; or departmental preparation of detailed policies and budgets is characterized by delayed, unplanned, or poor quality proposals; or maybe the executive does not ensure adequate budgets, remove procedural obstacles, or effectively anticipate veto points; or departmental implementation is characterized by delayed, poor quality, or unauthorized initiatives. Failures in Step 1 and Step 3 can be termed as governmental unreliability, and those in Steps 2 and 4, departmental unreliability at individual level (minister/permanent secretary) and at bureaucratic level (departmental officials).⁴³⁵

In Namibia, cabinet makes broad policy commitments. However, in order to (1) ensure that policy is technically correct, (2) examine whether such policy has worked elsewhere, (3) determine whether it can be implemented, and (4) determine whether the actors that must adopt the policy will comply, most of the groundwork for broad policy initiatives is done by one of the standing committees of the cabinet. For this purpose, nine executive committees are in existence as follows:

⁴³⁴ World Bank, "Case Studies: Policy Management Reform within the Core Executive," <http://www1.worldbank.org/publicsector/civilservice/CaseStudiesPolicyMangement.pdf>, accessed 4 February 2003.

⁴³⁵ *Ibid.* See also Gordon Evans and Nick Manning, "Poor Policy Management," paper submitted to the World Bank, <http://www1.worldbank.org/publicsector/civilservice/common.htm>, accessed 4 February 2003.

1. Overall Policy and Priorities Cabinet Committee
2. Cabinet Committee on Defence and Security
3. Cabinet Committee on the Public Service
4. Cabinet Committee on Law and Order
5. Cabinet Committee on International Relations and Protocol
6. Cabinet Committee on Economic Development and Parastatals
7. Cabinet Committee on Legislation
8. Cabinet Committee on Land and Social Issues
9. Treasury Cabinet Committee

Unfortunately some of the committees have never met, and as a result, one of the most strategic elements of good governance has been in disuse. Consequently, coordination of the implementation process of executive policy has been only partially successful.

The Department of Cabinet Secretariat and Policy Analysis supports the work of the cabinet and its standing and *ad hoc* committees through professional and technical support, research and evaluation and monitoring of the implementation of cabinet decisions. Implementing offices, ministries and agencies report to the department that in turn reports to the cabinet on a biannual basis. This system needs to be improved to reduce instances of policy unreliability. Certainly, the standing cabinet committees could become more involved in overseeing the progress of implementation of policy. At this stage, primary inputs from offices, ministries and agencies are obtained by the High Level Committee that seems to work as a buffer between the accounting officers and the cabinet. This buffering reduces the accountability of the executive as well as civil service officials in various implementing agencies. There is therefore a disconnect between policy formulation and implementation.

Promoting accountability is seen as the key to success of policy formulation and implementation. Of course, ministers are accountable to the cabinet on a day-to-day basis, to the parliament particularly during the budget session, and to the citizens during

the elections. Accountability of the senior civil servants should be assessed specifically based on outcome targets established by the executive. As already mentioned, once these targets are stipulated in the letters of appointment of senior civil servants, increased accountability could be brought to bear on them. In turn, such a development would encourage the executive to set realistic policy commitments and provide all the necessary support for successful policy implementation.

After Namibia emerged from an apartheid colonial background, the government of independent Namibia has been putting into practice new initiatives, many of them learnt from other countries, and many drawing on the mistakes of other countries. In Chapter Six, some selected aspects for strengthening the state are considered, duly recognizing the experience of other countries.

Conclusion

State formation in colonial Namibia was impacted greatly by the principle of divide and rule as articulated in the policy of apartheid propagated by South Africa. After the country became independent, the new government's challenge was to replace the imposed apartheid institutional structures with structures that reflected the aspirations of the people of Namibia. Despite all the handicaps, Namibia had the advantage of starting with a clean slate as the apartheid edifice had to be dismantled completely.

Additionally, because the Namibian territory was contiguous with its colonizer, and because of South Africa's intention of incorporating it as its fifth province, some infrastructure development did take place, even if for the benefit of the whites. Once independence was achieved, the same infrastructure including roads, banking institutions, hospitals, and schools were opened up for everyone, and all Namibians became the beneficiaries. The extent of Namibia's head start, provided by the presence of a decent infrastructure, becomes clear when one examines the problems faced by other countries, where the colonizer did not develop any infrastructure. To build on this infrastructure, Namibia's priority has been to maintain it and expand it to the larger population.

In developing its executive and administrative institutions, Namibia has not been able to draw much on the 'pre-colonial' experience of its society, because the colonizers had extensively undermined the evolution of pre-colonial institutions. However, the government began the process of shaping a new society drawing on the experience of other countries in Africa and elsewhere – these experiences flow from the leaders of SWAPO, who had spent many decades outside the country in many parts of Africa and beyond.

The leadership recognized that new relationships between individuals and societies needed to be strengthened through inclusivity. Through its policy of reconciliation, balanced restructuring, and affirmative action, the government laid the foundation for harnessing heterogeneity. Therefore, the essence is not African states' exogenous origins, but how governments transform societies to emphasize statehood and give expression to the aspirations of a heterogeneous society. That is where Sorensen's⁴³⁶ contention, that practical experiences are important for the ways in which government is organized, becomes relevant.

In Namibia, new executive and civil service structures have been established, and new institutions are being created to enhance efficiency, effectiveness, and accountability. It is a long process, but the experience of the last thirteen years has been positive. The outcome of this process will determine whether Namibia remains a viable state or joins the list of failed states.

⁴³⁶ Sorensen, *Democracy and Democratization*, p.4.

Chapter Six

State Formation and Consolidation: Strengthening the Institutions of State

Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.

*Winston Churchill*⁴³⁷

Introduction

Most states were formed on an artificial basis. In Africa, people were forced together, separated, and divided, with cartographers drawing lines on maps, first in Berlin in 1885,⁴³⁸ then in Paris in 1919, and finally after World War II. States so created carried within them seeds of conflict – not only in Africa, but elsewhere too -- in the Middle East, in Europe, in the Balkans, and in Asia. These seeds of conflict included racial, ethnic and religious antagonisms, alien imposition of geopolitical ‘solutions’, endemic poverty, and/or extreme social stratification.

These pathologies posed serious challenges to the state with predictable regularity, such as the Balkan wars of the last decade of the twentieth century, the crisis over Iraq (whose present borders resulted from Franco-British rivalries and casual mapmaking); dispute between Greece and Turkey; and the endless struggle between the Arabs and the Jews over land that each thought had been promised them.⁴³⁹ In Africa ethnic and religious conflicts resulted in numerous civil wars, e.g. in Somalia, Ethiopia, the Democratic Republic of Congo, Rwanda, Burundi, and in numerous other African states. Ethnic,

⁴³⁷ *Hansard* (11 November 1947).

⁴³⁸ “The Berlin Conference of 1884-85, by recognizing the existence of the ‘Congo Free State’, was the signal for France and Britain to extend their sphere of influence, preliminary to creating new colonies and protectorates. The boundaries between one colony and another were often drawn arbitrarily, with scant regard for traditional allegiance; thus, the Bakongo were split between the French Congo, the Belgian Congo and Angola.” See, Tordoff, *Government and Politics in Africa*, 4th ed., p. 25.

⁴³⁹ Richard Holbrooke, “Foreword,” in MacMillan, *Paris 1919: Six Months that Changed the World*, p. ix.

racial, religious and territorial conflicts resulted in what Machiavelli called 'the multitude not holding together.'⁴⁴⁰

Overcoming such pathologies requires work at national level. Reconciliation needs to be emphasized and fundamental reasons of conflict addressed. Many of these fundamental reasons are to be found in people's and groups' perceptions of being left out, and social and economic stratification based on race, ethnicity, and/or religion.

A recent survey⁴⁴¹ carried out in twelve African countries illustrates citizens' specific concerns and expectations, and particularly their expectations from the political and economic processes in their countries. In all of these countries, an overwhelming number of respondents felt that the government should be responsible for meeting basic needs of the citizens.

Significantly, most respondents in all the countries surveyed believed that democracy could deliver on their expectations. They supported a populist view of democracy, emphasizing freedom of speech and responsiveness of the government to the needs of the people. Majority of the respondents in most countries were also predisposed to judging the performance of democracy primarily in terms of its record in improving their social and economic condition. Furthermore, the majority of respondents felt that their countries' problems were economic, with fewer than one out of three expressing any satisfaction with the condition of the national economy. Corruption was seen as pervasive.

For the majority of respondents in Nigeria and Namibia, ethnicity was more important than any other group affiliation. In other countries including Zimbabwe, Zambia, and

⁴⁴⁰ Machiavelli, *Discourses on Livy*.

⁴⁴¹ "Key Findings About Public Opinion in Africa," *Afrobarometer Briefing Paper*, No 1 (April 2002). Afrobarometer.org/papers/afrobrieffno1.pdf (15 October 2002). Countries surveyed included Botswana, Ghana, Lesotho, Malawi, Mali, Namibia, Nigeria, South Africa, Tanzania, Uganda, Zambia and Zimbabwe.

South Africa people thought that the government treated their group unfairly, which suggests that ethnicity is important for them as well.⁴⁴²

In Africa, citizens' preference of socialized democracy has its root in what Osabu-Kle⁴⁴³ calls consensualism. He further argues that an attempt at re-democratisation is more likely to succeed if it is informed by cultural context. In other words, one could say that democracy is not valueless.

Democratic governments include committed socialists and proponents of free markets alike. In fact, discussions on the role of the government in the economy define the "left-right" political spectrum, as we know it today. Social democrats stress the need for equity and social welfare as the core of the government's economic policies, and centrists and conservatives usually put much greater stress on the free-market economy.⁴⁴⁴

In poor countries, the expectation of the people, and indeed their life condition, prompts democracies to concentrate on social elements. At the same time, social democrats, like their centrist and rightist counterparts, recognize that free market is the engine of economic growth and prosperity. However, in African countries where traditional rural societies coexist with industrial ones and the information age, emphasis on free market is viewed with suspicion because of the negative impact of capitalism on Africans' lives.⁴⁴⁵ Saul and Leys⁴⁴⁶ agree with this view:

Africa south of the Sahara exists in a capitalist world, which marks and constrains the lives of its inhabitants at every turn, but is not of it.... This is what explains why sub-Saharan Africa, with some 650 million people, over 10 percent of the world's population, has just 3 percent of its trade and only 1 percent of its Gross Domestic Product; and why income per head—averaging 460 dollars in 1994—has steadily fallen, relative to the industrialized world.... Some forms of capital

⁴⁴² There is a possibility that people's belief that their group was treated unfairly is a result of politicians creating such an impression to gain political advantage.

⁴⁴³ Daniel T. Osabu-Kle (ed.) (2000), *Compatible Cultural Democracy: The Key to Development in Africa*, Peterborough, Canada, Broadview Press.

⁴⁴⁴ Howard Cincotta (ed.), *What is Democracy?* (Washington, D.C., U.S. Dept of State), <http://usinfo.state.gov/products/pubs/whatsdem/homepage.htm>, accessed 10 January 2004.

⁴⁴⁵ L.M. Thompson and L.L. Thompson (2001), *A History of South Africa*, 3d ed., London, Yale Univ. Press, p. 1.

⁴⁴⁶ John S. Saul and Colin Leys (1999), "Sub-Saharan African in Global Capitalism," *Monthly Review* (Jul-Aug 1999).

see plenty of profitable opportunities in sub-Saharan Africa, but the likelihood that the region is going to be developed by capitalism seems smaller than ever.

There are many reasons for this pessimism. Returns from “colonialism imposed cash-crop production for export, and mineral extraction” yield returns that are falling because of falling demand of these goods in the global market. Secondly, Africa, because of skills gap, is so far not ready to benefit from the manufacturing sector. Any attempts at takeoff “into manufacturing for internal consumption is blocked by an inability to compete with imports and by tiny domestic markets; meanwhile collapsing infrastructures, political risk, and poorly trained workforces tend to make manufacturing for export uncompetitive, even at very low wages.”⁴⁴⁷

Consequently, during the last quarter of the twentieth century, a push for free market by the donor community as well as international organizations aggravated the problems of nation states struggling to introduce social democracy. Ake⁴⁴⁸ noted that liberal democracy allowed the subordination of the state to the market by offering a concept of politics which was a radical departure from previous concepts of politics and which nullified the very *raison d’etre* of politics. As capitalism took hold, liberal democracy abandoned political participation in any meaningful sense, embraced competitive elitism and finally, degenerated into apolitical stasis. Thus, liberal democracy undermined the version of democracy that most people sought in the developing world.

Namibia’s Challenges

The Freedom House’s⁴⁴⁹ 1991 survey on freedom, based on a combination of political rights and civil liberties, showed that globally only 41 countries were democratic and the rest were partly democratic or not democratic. The list of democratic countries included

⁴⁴⁷ *Ibid.*

⁴⁴⁸ Ake, *The Feasibility of Democracy in Africa*, pp. 25-26.

⁴⁴⁹ See Freedom House surveys, <http://www.freedomhouse.org>, accessed 30 December 2003. Freedom House survey measures democracy only in liberal democracy terms and does not take into account citizens’ economic rights, other than right to property. I do not agree with this circumscribed approach. However, in the absence of any other index that measures democracy, I have had to rely on this survey to show that some progress has indeed taken place in Africa.

only four African countries: Botswana, Mauritius, the Gambia, and Namibia.⁴⁵⁰ By the end of the century, 119 countries had electoral democracies.⁴⁵¹ By the end of 2003, the list of democratic countries in Africa had expanded to eleven: Benin, Botswana, Cape Verde, Ghana, Lesotho, Mali, Mauritius, Namibia, Sao Tome and Principe, Senegal, and South Africa.⁴⁵² In addition, seventeen African countries had shown considerable improvement and were classified as partly free.

Of course, Botswana and Mauritius had been democratic well before Namibia became independent, but at the beginning of the decade of the nineties Namibia became the lead country in what Huntington⁴⁵³ calls the third wave of democratisation in Africa. Many countries, including South Africa, watched the developments in Namibia with great interest as they sought to bring about multi-party, majority rule in their countries.

Immediately after Namibia became independent, the government prioritised its focus. It committed itself to overcoming past hatreds within races and between communities, consolidating peace and democracy, establishing and consolidating institutions for promoting the welfare of the citizens, and strengthening the economy of the country. This chapter complements Chapter Five in outlining and analysing Namibia's experience in addressing many of these issues.

The Challenge of Reconciliation

In Namibia, South Africa's policy of apartheid colonialism had left considerable negative feelings between different racial and ethnic communities. The colonial government's policies were aimed at protecting the interests of the privileged minority with total disregard for the interests of the majority black population. Apartheid policies also succeeded in driving a wedge between different ethnic groups. Political and civil service

⁴⁵⁰ R Bruce McColm, "The Comparative Survey of Freedom," in *Freedom Review*, Vol. 22, No. 1 (1991), p. 23.

⁴⁵¹ Freedom House (1999), *Democracy's Century: A Survey of Global Political Change in the 20th Century*, Washington, D.C., Freedom House, <http://www.freedomhouse.org/reports/century.html#table1>, accessed 30 December 2003.

⁴⁵² See *Map of Freedom 2003*, http://www.freedomhouse.org/pdf_docs/research/freeworld/2003/map2003.pdf, accessed 30 December 2003.

⁴⁵³ See Huntington, *The Third Wave: Democratization in the Late Twentieth Century*.

structures in the country complemented each other in promoting the policy of divide and rule.

During the struggle for independence, it was not unusual for one person from a family to be a member of the Koevoet (meaning 'Crowbar' – the name given to the South African created 'counter-insurgency' killer force) and the other a fighter with the liberation movement. Independent Namibia's new government's first task was to replace apartheid structures with those that reflected the new reality of independence, and to make a conscious effort at minimizing hatred and mistrust built up over a century of colonialism.⁴⁵⁴

SWAPO therefore committed itself to promoting a policy of reconciliation with the objective of laying the groundwork for peace and harmony in a country that was ravaged by long years of war. In fact, almost a year before Namibia became independent, the President of SWAPO, Mr Sam Nujoma, announced the policy of national reconciliation, neutrality and non-alignment, which the SWAPO Central Committee had adopted. At that time, he said that in our future non-racial democracy, even those who had fought on the side of the South African forces of occupation would be treated as equal citizens.⁴⁵⁵ As mentioned in Chapter Four, the President of SWAPO as well as I, as the chairman of the Constituent Assembly, again emphasized this point at the opening of the Constituent Assembly meeting in Windhoek.⁴⁵⁶

In order to minimize racial and ethnic conflict in new Namibia, the government's policy of reconciliation sought to find solutions to the issues underlying the conflict and worked to alter the adversaries' relationship from that of resentment and hostility to friendship and harmony. The underlying strength of reconciliation as against other conflict handling

⁴⁵⁴ Geingob, "From Colonialism to Freedom and Democracy," p. 211.

⁴⁵⁵ Nujoma, *Where Others Wavered*, p. 375.

⁴⁵⁶ Windhoek Constituent Assembly, *Minutes of the Meeting of 21 November 1989*.

mechanisms, such as force, adjudication, arbitration, negotiation, and mediation, is that it is a voluntary initiative of the conflict parties to acknowledge their responsibility of guilt.⁴⁵⁷

Assefa⁴⁵⁸ identifies the following core elements of reconciliation:

1. Honest acknowledgment of the harm/injury each party has inflicted on the other;
2. Sincere regrets and remorse for the injury done;
3. Readiness to apologize for one's role in inflicting the injury;
4. Readiness of the conflicting parties to 'let go' of the anger and bitterness caused by the conflict and the injury;
5. Commitment by the offender not to repeat the injury;
6. Sincere effort to redress past grievances that caused the conflict and compensate the damage caused to the extent possible; and
7. Entering into a new mutually enriching relationship.

In the case of Namibia, it was not possible to fulfil the requirements of all the core elements of reconciliation identified by Assefa, because most of the perpetrators of apartheid, i.e. South African forces and South African administration personnel, left the country as soon as Namibia became independent.

Nevertheless, in order to ensure that peace and harmony prevailed in the country, SWAPO took a number of actions prior to and soon after independence. First and foremost, under the aegis of the United Nations and the WCG, SWAPO negotiated a blanket amnesty for all before the Namibian exiles returned home. SWAPO felt that its cadres could be targeted for their actions during the liberation struggle. However, negotiating of a blanket amnesty meant that all perpetrators of apartheid atrocities were also given amnesty.

Because Namibia was an international territory prior to independence, the international community, too, was keen to create conditions that would bring about lasting peace, and was therefore in favour of blanket amnesty – so as to close a dark chapter in Namibia's history. As a result of this effort, the Western Contact Group stipulated in its Proposal for a Settlement of the Namibian Situation⁴⁵⁹ that South Africa must free Namibian political

⁴⁵⁷ Hizkias Assefa, "The Meaning of Reconciliation," at www.xs4all.nl/~conflic!/pbp/part1/2_reconc.htm, accessed 15 March 2003.

⁴⁵⁸ *Ibid.*

⁴⁵⁹ United Nations Document S/12636 (10 April 1978).

prisoners, and subsequently Namibians detained outside the country must be released by SWAPO. Specifically, the proposal required that

1. The Administrator-General will make arrangements for the release, prior to the beginning of the electoral campaign, of all Namibian political prisoners or political detainees held by the South African authorities so that they can participate fully and freely in that process, without risk of arrest, detention, intimidation or imprisonment.
2. All Namibian refugees or Namibians detained or otherwise outside the territory of Namibia will be permitted to return peacefully and participate fully and freely in the electoral process without risk of arrest, detention, intimidation or imprisonment.

The South African administration in Namibia was to take the action first, followed by SWAPO. Both parties complied with these requirements.

Although all the parties had accepted blanket amnesty as a practical approach towards reconciling the society, six years later, in 1996, some media in Namibia began criticizing the government for not bringing to book the wrongdoers. This criticism started after the publication of *Namibia: Wall of Silence*⁴⁶⁰ and a German television crew's attempt at making a program on holding a truth commission in Namibia,⁴⁶¹ and gained momentum after South Africa created a Truth and Reconciliation Commission as provided for in the *Promotion of National Unity and Reconciliation Act, No. 24 of 1995*.

Namibian and South African situations were, however, very different. In South Africa, there was no amnesty for returning exiles, and African National Congress cadres did not have an intermediary, such as the United Nations, to protect them. Secondly, officials of the past administration were afraid that they might be held accountable for their actions. Therefore, in South Africa, amnesty had to be negotiated, and establishing a truth commission was seen as the way to proceed. Church leaders in the country agreed with the concept but felt that the commission needed to be recast as the Truth and Reconciliation Commission: "The idea had been for those involved in atrocities committed

⁴⁶⁰ Siegfried Groth (1995), *Namibia: Wall of Silence*, Wuppertal, Peter Hammer Verlag. See also *The Namibian* (26 March 1996).

⁴⁶¹ *FXI Update* (March/April 1996).

under the apartheid regime to disclose their experiences and so become eligible for amnesty under specific legal provisions.”⁴⁶²

However, during the hearings and after the work of the commission was completed, many of the victims and their relatives continued to feel that the Truth and Reconciliation Commission had not helped promote reconciliation. As I had followed the proceedings of the commission with considerable interest, it was agonizing to see late Mr Steve Biko’s wife remark after the testimony of his killers, “Now that I know who killed him, I want justice.” Relatives of many victims repeated such demand for justice.

There was little follow up on justice for the wronged, and therefore there was no closure. In fact, hearings of the commission had opened in East London on 15 April 1996 amidst a threat of legal action by families of certain victims of human rights violations. They were particularly opposed to the granting of amnesty to the perpetrators of human rights abuses, arguing that it deprived the victims of the right to seek redress in the courts.⁴⁶³

Reconciliation efforts therefore lacked an important ingredient:⁴⁶⁴

An attempt at reconciliation without addressing the injustice in the situation is indeed a mockery and belittling the suffering of the victim. Justice and equity are at the core of reconciliation. The central question in reconciliation is not whether justice is done, but rather how one goes about doing it in ways that can also promote future harmonious and positive relationship between parties that have to live with each other whether they like it or not. Justice is a necessary but not sufficient condition for reconciliation.

According to Assefa,⁴⁶⁵ in a number of instances reconciliation commissions obtained voluntary acknowledgement of guilt by offenders but failed to get them to demonstrate sincere remorse, or take active steps to compensate and repair the relationship *vis a vis* the victims. Some compensation could certainly be worked out in the form of better opportunities for the victims through affirmative action.

⁴⁶² United Nations Research Institute for Social Development (1997), *Report of the UNRISD International Conference and Public Meeting*, Geneva, 9-10 July 1997, Geneva, UNRISD.

⁴⁶³ *FXI Update* (March/April 1996).

⁴⁶⁴ Assefa, “The Meaning of Reconciliation.”

⁴⁶⁵ *Ibid.*

Recent studies suggest that reconciliation in South Africa has not worked. “A survey conducted by the Centre for the Study of Violence and Reconciliation suggests that the majority of white South Africans are unconvinced that they played a role in apartheid abuses. And over 40% of those surveyed think apartheid was a good idea, badly executed.”⁴⁶⁶ The same study reports that 57% of the whites place responsibility for the atrocities on the doorsteps of anti-apartheid activists and ‘troublemakers’ in black communities. Further, 81% of whites claimed that there was no moral difference between an act committed in defence of the apartheid system and an act committed as part of the liberation struggle. Worse still, 46% of white South Africans believed that “the TRC was an ANC-inspired witch-hunt to discredit its enemies.” Interestingly, Theissen and Hamber⁴⁶⁷ found that “the results of the survey do not differ considerably from the political culture of West Germany during the first decades after the end of the Nazi regime.”

This approach to expose the wrongdoers through their own public confessions, and then let most of them go free with only limited recourse to justice, for the satisfaction of the wronged was not considered a viable option for Namibia for various reasons. First, such an approach would have negated the provisions of blanket amnesty; second, many of the wrongdoers had left the country and it was impossible to secure their willingness and participation in the process; and, third, those arguing in favour of bringing the wrongdoers to book, based on the ‘revelations’ in *Namibia: Wall of Silence*, had their own political agenda -- they had sought to bring to book any alleged wrongdoers from only one side, i.e., SWAPO. Their objective was to manipulate public opinion against SWAPO. If wrongdoers were to be brought to book, it was reasonable to argue that wrongdoers from all sides must be brought to book, i.e., the South Africans, the colonial administration, the DTA government of occupied Namibia, and SWAPO.

⁴⁶⁶ Gunnar Theissen and Brandon Hamber, “A State in Denial: White South African’s Attitude to the Truth and Reconciliation Commission,” <http://www.und.ac.za/und/indic/archives/indicator/autumn98>, accessed 17 November 2002

⁴⁶⁷ *Ibid.*

However, some of the people who asked for accountability were genuine in their demand. They wanted to know the fate of their family members, a child, a brother or the husband. Nobody told them of the fate of their loved ones. In order to address their concerns, SWAPO published a complete list of all the SWAPO members who had died in exile and the cause of their death.⁴⁶⁸ Yet, some citizens continued to demand a general apology from SWAPO.

Two years prior to the publishing of *Namibia: Wall of Silence*, in my address to the National Assembly I said that no war was good, because it caused enormous suffering to the people. Some innocent people get caught in the crossfire. Therefore, one did not engage in war for the sake of war but as the last resort. If diplomatic efforts failed, one would be justified in going to war. War is the failure of diplomacy. SWAPO took up arms only after all peaceful means, including agitation at home, petitioning at the United Nations, seeking justice at the highest court, the International Court of Justice, had failed. Indeed, in one's lifetime, there might come a time to submit and a time to fight for one's rights. SWAPO decided to fight.

Besides, the Namibian war of liberation was unconventional because of its use of guerrilla tactics -- what the Boers call 'bush war'. As it was a 'bush war', there was no due process of law through which one could ascertain as to who was innocent and who was guilty of spying. Occasionally, innocent people were labelled as spies. Therefore, some people who might have been innocent felt stigmatised. They wanted to have recourse to a mechanism that would clear their names. That is an understandable concern; for, to be accused wrongly is painful.

However, as I argued in the National Assembly, there were others who had also suffered. Many were killed as a result of spies providing information to South Africa. Such treachery resulted in many children and women dying at Cassinga. Those who were labelled wrongly or rightly were still alive and could make their case, but those who died as

⁴⁶⁸ SWAPO (1996), *Their Blood Waters our Freedom*, Windhoek, SWAPO. This document accounted for 7792 people. All of them were declared to be heroes.

a result of betrayal did not stand a chance. Therefore, I argued in favour of closing the chapter and moving on. Closing the chapter meant that no one would be stigmatised. No one would be denied opportunity to work.

Further, the fact is that SWAPO was a party to full amnesty, and the government followed through on that position in independent Namibia. It hired and trained those who were detained outside the country. Some of the top civil servants in Namibia are the ones who were detainees during the struggle. Dauth,⁴⁶⁹ acknowledging SWAPO's commitment to reconciliation, points out, "Regarding the former detainees, Swapo has in fact pursued something of a quiet and unofficial process of rehabilitation and reconciliation, offering many ex-detainees a return to the Swapo fold and employment in the bureaucracy." During my interview with another scholar, I had stated, "Those who have been arrested now have positions. So we have reconciled, we have made up. In our own way.... We do not now stop the reconciliation and start the witch hunt."⁴⁷⁰

Regrettably, however, this issue of detainees comes up like clockwork at election time, and some of the parties have no hesitation in using it as an electioneering ploy regardless of the consequences of their actions. Were the government to abandon the policy of reconciliation, those who tortured Mr Ekandjo, now the Minister of Home Affairs, would not be holding positions in the police force. Amnesty and reconciliation have ensured that Mr Ekandjo and these police officers are talking. If Namibia were to reopen the issue of general amnesty, it would destroy all that has been gained through reconciliation.

Therefore, the SWAPO government chose to stick to the blanket amnesty provisions and encouraged the conflicting parties to 'let go' of the anger and bitterness. Its approach has been to concentrate on redressing past wrongs, and creating conditions for citizens to enter into a new mutually enriching relationship. It was this thinking that prompted the founders of Namibia to incorporate a commitment to reconciliation in the preamble to the

⁴⁶⁹ Timothy Dauth (1996), "Review of Siegfried Groth's *Namibia - the Wall of Silence: the Dark Days of the Liberation Struggle*" (23 April 1996), <http://www.hartford-hwp.com/archives/37/054.html>, accessed 22 February 2004.

⁴⁷⁰ My interview with Mr Peltola on 13 January 1993 in Windhoek. Quoted in Dauth, "Review of Siegfried Groth's *Namibia: the Wall of Silence*."

country's constitution: "We the people of Namibia will strive to achieve national reconciliation and to foster peace, unity and a common loyalty to a single state."

Affirmative Action

The government sought to promote reconciliation by addressing proactively, through the policy of affirmative action, social and economic inequities created by apartheid. Its challenge was, and continues to be, the fact that the victims of social and economic inequities are not a minority but the vast majority. In recognition of this fact, the drafters of the Namibian Constitution provided for the creation of legislative instruments for affirmative action for

the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programs aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defense force, and the prison service.⁴⁷¹

The constitution also recognizes that women traditionally suffered special discrimination, and therefore their rights need to be affirmed.

Promotion of equity requires that all people have access to education and skills, means of production, and other ingredients that equip them to take advantage of the opportunities opening up to them. Over the period 1990-2002, many inequities in the provision of services were corrected. Health, education, old-age pension, and infrastructure are now equally accessible to all.

On the economic front, too, the government has taken concrete actions by vigorously following the policy of economic empowerment of Blacks. For instance, Blacks are being given fishing quotas to help them break into the fishing industry. They are also being given mining rights for smaller scale mines.

⁴⁷¹ Namibia, *Constitution of the Republic of Namibia*, Article 23.

However, allegations have been made by some that only a few are getting rich through this process, with the majority being left out. Questions are being asked if the government's policy is to empower blacks or individuals. "Worryingly, black economic empowerment initiatives are not taking place within a transparent and competitive policy framework."⁴⁷² There is some truth in such allegations. A new economic class is being created without any deep transformation of the society. Those who have already been "affirmed" continue to be reaffirmed again and again.

Application of affirmative action in a society with diverse ethnic groupings requires sensitivity. During the first decade of independent Namibia, the government was attuned to the need for sensitivity in the application of affirmative action provisions. President Nujoma was mindful of keeping a balance in appointing ministers and officials to other high posts. Within the civil service, too, I concentrated on ensuring that its composition reflected the diversity of the population. However, as already pointed out, of late, voices favouring of nepotism are gaining ground.

This development is a matter of concern for effective administration. One does not favour a cousin if he or she cannot handle the job, for to do so would be a disservice to self, to the cousin, to the party, and to the country. SWAPO, of course, has educated all kinds of cadres who can be given positions, because they can do the job, but all Namibians have legitimate claims on the motherland. After all, it is not only SWAPO cadres who pay the taxes that provide the salaries of these people. And it is not only SWAPO that contributed to the struggle -- many Namibians contributed to the struggle in their own different ways. Of course, sober minded Namibians do not doubt that SWAPO members bore the brunt of the struggle -- that is why SWAPO members hold all the ministerial positions, and all permanent secretary positions. The President, the Prime Minister, the Speaker are all SWAPO members. They occupy these positions not only because of their being SWAPO cadres but also because of their competence. SWAPO's contribution is duly recognized

⁴⁷² Robin Sherbourne, *Almost all the Ingredients for Trouble Ahead – The Economics of Corruption: Implications for Namibia* (IPPR Briefing Paper), Windhoek, Inst for Public Policy Research, <http://www.ippr.org.na/Briefing%20Papers/BPCor.pdf>, accessed 20 November 2003.

not only by the government but also by the electorate. This, however, should not mean that political affiliation should be the key to public service employment.

Lately, accusations are surfacing that one ethnic group is being favoured by the government. Paramount Chief Kuaima Riruako of the Herero claimed, "Government and semi-government agencies are dominated by SWAPO and Oshivambo."⁴⁷³ He alleged that all the commanders of the Namibia Defence Force (NDF) are Ovambo; most of the ambassadors are Ovambo; almost all parastatal companies are run by Ovambos. Ovambos also "get most government bursaries, loans for housing and new businesses, and land reform and resettlement projects." Such concerns, real and perceived, are beginning to undermine reconciliation.

If these developments go unchecked, Namibia might have to contend with a serious challenge of ethnic and political nepotism in the years ahead. This may involve both deteriorating effectiveness and increasing popular discontent. SWAPO and the electorate bear an enormous responsibility of either choosing inclusivity, unity, peace and development or divisiveness, nepotism and their attendant evils.

Politicians are at least partly responsible for this problem. As mentioned in Chapter Five, President Nujoma certainly had the foresight to harness heterogeneity by pursuing the policy of inclusivity, but of late this policy is being undermined.

During the last fourteen years, northern Namibia, the traditional area of the Ovambos, received a disproportionately large amount of development funds. Although, this development was a result of the government's seeking to help Namibian businesses tap the Angolan market once Angola's civil war ended, the fact remains that inequity thus created is resulting in undermining the government's initial focus of striking a balance between various groups in expending development funds, and hiring within the civil service and other agencies.

⁴⁷³ *Africa Confidential*, 24, 23.

The SWAPO Youth League, too, has been pushing for restricting government jobs to SWAPO cadres only. Recently it issued a statement⁴⁷⁴ stressing that point:

We would like to call in the strongest possible way upon all Swapo Party Youth League structures ... to scrutinise all the appointments to strategic positions from management cadre upwards in the Swapo Party Government's Ministries and parastatals to see to it that the call is implemented unconditionally and no questionable appointments are carried out. [Loyal Swapo members] have endured the hardships of the struggle both in and outside the country. They have been thrown into the seas, ... have their limbs amputated and languished in jails for endless period of time. It is them and them alone that can claim political ownership of this country. And no newspaper, NGO, and no party other than Swapo can claim that legitimately.

Unfortunately, these demands promoting partisan favouritism have largely gone unchallenged by the government or SWAPO leaders. In the same context, the *Africa Confidential*⁴⁷⁵ reported:

Namibia's delicate inter-ethnic balance, carefully maintained since Independence in 1990 by President Sam Nujoma, is the hot political topic. After much uncertainty, Nujoma will retire next year when his term runs out and a special congress of the ruling South West Africa Peoples' Organisation (SWAPO) will pick his successor. The almost certain winner, Foreign Affairs Minister Hidipo Hamutenya, is seen by his critics as the architect of policies that have made his own people, the Oshivambo (about half of the 1.8 million population) ever more powerful in politics, business, the army and the civil service.... That is why some minority leaders privately urge Nujoma to stay on for a fourth, unconstitutional, five-year term.... Another ex-DTA member of parliament, Paramount Chief Kuaima Riruako of the Herero, campaigns for a federal system modelled on Germany's.... Riruako claims that government and semi-governmental agencies are dominated by SWAPO and the Oshivambo.

Accusing individual ministers, particularly Mr Hidipo Hamutenya, of ethnic nepotism, however, is unwarranted, when President Nujoma as the constitutional and executive head of the government is ultimately in charge of the cabinet and government policy. He can appoint and remove ministers who do not follow his policies. After all, the buck stops with the president!

⁴⁷⁴ *The Namibian* (1 July 2002).

⁴⁷⁵ *Africa Confidential*, 24, 23.

However, it is possible that in the implementation of policy, ministers could undermine or promote inclusivity within the workings of their ministries or in committees they chair. They might grant contracts, loans, quotas, and licences to their own ethnic groups, or offer jobs to people from their own groups. To avoid that happening, I emphasized the importance of the diffusion of the decision-making process.

Such developments have alienated a number of citizens, who feel affirmative action benefits are available only to people belonging to a particular group regardless of whether or not one had been disadvantaged by past discriminatory laws or practices. This issue will most likely be a major electoral issue during the 2004 presidential and parliamentary elections.

The land reform initiative of the government, as a part of its affirmative action effort, also is not meeting its objectives. Certainly, in order to empower the landless, the government has been buying land since 1991 to resettle the landless. It allocated some 20 million Namibian dollars annually on acquiring land. In the 2003 budget, this figure was raised to N\$50 million for the year. Land acquired so far, however, falls far short of the demand of the landless.

If the problems of unemployment and landlessness are not addressed, Namibia's policy of reconciliation could be compromised. When I was the prime minister, I frequently appealed to the whites to release unused land to help settle the landless, but my appeals met with little success. Consequently, the process of change has been very slow. But the landless can become restless for the land they rightly consider their own. This is the challenge that the government and the landowners must address urgently. Therefore, the government established a Permanent Technical Team with the mandate to prepare a policy document to shape Namibia's land reform programme.⁴⁷⁶

Developments in Zimbabwe point to the importance of addressing the issue of land reform. After Zimbabwe became independent, it devoted considerable effort towards promoting

⁴⁷⁶ *The Namibian* (25 August 2003).

reconciliation, but continued economic inequities undermined this effort. President Mugabe sought to reconcile the divided nation by incorporating blacks in the civil service, including white ministers in his cabinet, assimilating some 30 000 freedom fighters in the new army, repealing discriminatory laws, introducing free education and health services,⁴⁷⁷ and even maintaining some trade relations with apartheid South Africa.

He also sought to address the land question and appealed to the western nations for help in addressing this intractable problem. However, such help did not come. As a result, Whites continued to control means of production. In fact, the West supported them in maintaining this control. Under such circumstances, there was little chance of reducing economic inequalities.

As a result, the policy of reconciliation in Zimbabwe lasted only for a few years. Ingham-Thorpe⁴⁷⁸ noted that President Mugabe's policy of reconciliation in Zimbabwe left intact many oppressive and inequitable structures. For example, the land-reform issue was only partly resolved. "Land issue faced the government with an acute dilemma. It needed to satisfy the demand for land of its own Black supporters, including those former guerrillas not absorbed into the army and who, possessing few employable skills, eked out a precarious existence in the urban centres."⁴⁷⁹ Violence, massive youth unemployment and the trauma of unmet expectations since demobilization began to take their toll.

Rather than helping President Mugabe resolve this problem, the West sought to undermine him in order to protect white landowners. The Whites, too, lived under the illusion that Mr Mugabe needed them more than they needed Mr Mugabe. This situation created tensions in the society. It is true that the situation was politicised, but then which politician does not politicise a situation that is a vote getter. Does the capture of Saddam Hussein ring a bell! Soon after Saddam Hussein was captured, President Bush's ratings went up after falling for many months.

⁴⁷⁷ Tordoff, *Government and Politics in Africa*, pp. 229-233.

⁴⁷⁸ Ingham-Thorpe, "Reconciliation in Zimbabwe: Reality or Illusion."

⁴⁷⁹ Tordoff, *Government and Politics in Africa*, p. 230.

It is also being alleged that in Zimbabwe, the situation is still not getting resolved, because land confiscated from the Whites is not being given to the freedom fighters but to the ministers, defence force officials, and other important people⁴⁸⁰ who hardly need reaffirming. Such a development would be a further blow to reconciliation. If this allegation is true, it is, in my opinion, wrong to give land to those who have already been affirmed through having senior positions within the government. Those who have been affirmed should purchase land, as is the usual case in Namibia.

Namibia has been spared the agony of Zimbabwe as it has sought to address the land question through the soft option of willing-seller-willing-buyer. However, the issue is not resolved yet. Melber⁴⁸¹ argues that the Constitutional Principles ensured civic rights but did little to redistribute wealth. According to him, the provisions of the constitution paved the way for democracy that benefited mainly a materially privileged minority by protecting its interests.

His argument is valid. The cause of such a state of affairs lies in the Constitutional Principles imposed upon the Namibians by the Western Contact Group. Regrettably, pieces of legislation dealing with commercial and communal land have also maintained the *status quo*,⁴⁸² despite the fact that the National Land Conference of 1991 raised the expectations of the landless. At the same time, the land conference had concluded, after acrimonious debate, that addressing the question of ancestral land was complicated and attempts at finding any solutions based on ancestral claims would be impractical. For example, questions were asked: Who were the original owners of the land? Should Windhoek be returned to the San, the Damaras, the Namas and the Hereros? The participants also

⁴⁸⁰ I. Currin (2003), "Zimbabwe Land Grab," *Cornwall Park Simmentals News and Views* (7 September 2003). Currin alleges that "Basically the only 'operating' occupied farms now 'belong' to the rich, like the President, his wife, Government ministers, senior Army or Air Force officers, and cronies of the President, many of whom 'own' more than one farm." See

<http://www.cornwall-park-simmentals.co.nz/news.asp?NewsID=137>, accessed 5 February 2004.

⁴⁸¹ Henning Melber, "Liberation and Democracy in Southern Africa: The Case of Namibia," in Henning Melber and Christopher Saunders (2001), *Transition in Southern Africa – Comparative Aspects: Two Lectures*, Uppsala, Nordiska Afrikainstitutet, p. 22.

⁴⁸² Lisa Thompson (1998), "Development and Security in Southern Africa: The Case of Namibia," *Security, Development and Gender in Africa*, Monograph No. 27 (August 1998), <http://www.iss.co.za/Pubs/Monographs/No27/Namibia.html#Anchor-29666>, accessed 15 March 2003.

debated on the nature of land tenure, and it was decided to maintain freehold land ownership. That is how the policy of willing-seller-willing-buyer came into being, and that is why the government has had to acquire land at market prices to resettle the landless.

In 2003, increased militancy is emerging, demanding the resolution of the land issue. In November 2003, Namibia Farm Workers Union's (NAFWU) General Secretary, Alfred Angula, announced that NAFWU would occupy unused land in fifteen commercial farms within a week.⁴⁸³ The plan was supported by the National Union of Namibian Workers (NUNW). Fortunately, this situation was averted before it became unpleasant:

Behind the scenes it was understood that top Swapo leadership had laid down the law to the unions in no uncertain terms, saying if the land invasions had gone ahead, security forces would have been deployed to prevent illegal action. However the message was delivered to the unions, via either Swapo or Government, it has surely had the effect of restoring confidence that the Namibian Government will not allow Namibia to be 'the next Zimbabwe'.⁴⁸⁴

Regrettably, neither the President nor any minister issued any public statement against such an action, other than a mild statement made by the Permanent Secretary of the Ministry of Lands. He said that the illegal occupation of farms was of "no assistance" to government. "Should the farm workers tempt the law, the law will react accordingly."⁴⁸⁵ Evidently, the President did not want to be seen taking position against the unions. As the party had 'laid down the law,' one is left wondering if the government was subordinated to the party, as was the case in Zambia during President Kaunda's time. In Zambia, this subordination was enshrined in the United National Independence Party's (UNIP) Constitution, and political leaders frequently used the phrase 'the party and its government.'

Incidentally, this situation had developed when the National Assembly was debating the amendment to the Agricultural (Commercial) Reform Act to make provisions for taxation on commercial land. I had argued for such a provision five years ago. On 15 January 1998,

⁴⁸³ "Namibia Land Grab Threat," *News24* (5 November 2003), http://www.news24.com/News24/Africa/News/0,,2-11-1447_1440972,00.html, accessed 1 January 2004.

⁴⁸⁴ "Land Reform Key to Respect for Life – MP," *The Namibian* (4 November 2003).

⁴⁸⁵ "Namibia Land Grab Threat," *News24* (5 November 2003).

I had written to Mrs Pendukeni Ithana, who was the Minister of Lands, Rehabilitation and Resettlement at that time, as follows:⁴⁸⁶

I feel that the issue of land tax needs to be addressed comprehensively, keeping in mind the objective to be achieved and giving due consideration to how our efforts might be undermined. As you know, Article 16(2) of the constitution stipulates that “the state may expropriate property in the public interest subject to the payment of just compensation” (please note, *just compensation* and not *market value*) but we had introduced the concept of willing seller willing buyer, and fair market value. However, the result was that the landowners began demanding exorbitant prices overnight. As we contemplate introducing land tax, we have another chance to correct the situation. Therefore it is important that any loopholes that may be exploited by the landowners are plugged. In fact, you can be sure that the landowners would seek out any loopholes just as they undermined the willing seller willing buyer concept. With these concerns in view, some of the mechanisms that come to mind are as follows:

- A commercial agricultural land ceiling could be established for each ecological zone that would be taxed only nominally, and land beyond that ceiling could be taxed punitively. This provision would encourage more productive use of the land within the ceiling and possibly bring the rest of the land to the market. Any exceptions to this provision should be clearly stipulated in advance to eliminate the possibility of *ad hoc* decisions by bureaucrats.
- Sale or transfer of agricultural land to companies or individuals including relatives could be subject to capital gains tax which could be pegged at the marginal tax rate of 35% based on the market value, and land transfer tax. Exemption from capital gains tax may be granted if the land is sold to the government with the result that the government can negotiate to pay for the land, say, 30% less than the market value. Taxation on surplus land beyond land ceiling, capital gains tax and land transfer tax will not only result in making the retention of surplus land non-viable, it would make it impractical to transfer land to other family members or relatives. Consequently, it is hoped, land prices will come down substantially and there would be a rush to sell the land to the government at very reasonable prices.
- Loss or profit from farms may not be offset against another business. Because of the absence of this restriction, many businessmen and professionals own land not to use it productively but only to serve as a profit sink. Introduction of this provision will therefore result in the need by owners to make the farms viable, thereby creating jobs, or, if they do not wish to do that, to sell it, thereby facilitating the acquisition of land by the government to settle the landless. In addition, with this tax loophole plugged, profits from other businesses will be taxed, thus increasing government revenue.

⁴⁸⁶ Personal communication as the Prime Minister to Mrs Pendukeni Ithana, Minister of Lands, Rehabilitation and Resettlement dated 15 January 1998.

I also suggested to the Minister that land reform should go beyond just allocation of land. After settling people on land, an attempt should be made to bring them together in a farming cooperative or a farming enterprise managed by professionals, until such time as the farmers themselves are trained to take over the responsibility of running the farm as a commercially viable entity. Eventually, the farm should become these farmers' property.

Some of the provisions, such as taxation on land, are now being considered in the amendment to the act, but these amendments do not address the issue of establishing a framework for making the farms viable under the new owners.

While the government's actions and proposals emanate from the urgency it attaches to addressing the land issue, providing land to the landless without giving them the necessary skills is unlikely to result in economic emancipation. In a letter to *The Namibian*, Thiessen⁴⁸⁷ argues in a similar vein:

The fatal mistake that is being made is that land ownership is regarded as being synonymous to prosperity.... If we look at most of the resettlement schemes, I am afraid that the Namibian Government is rather promoting poverty, instead of fighting it. Many productive farm units are turned into subsistence units, with government having to carry the burden to keep the resettled people going, not because they are black, no, but because they, to a great extent, lack training and knowledge.

I agree with this view. In my communication of 15 January 1998 to Mrs Pendukeni Ithana, I had also emphasized:⁴⁸⁸

We need to develop strategies for addressing other issues of land reform to ensure that the reallocated land does not just become a place for squatters. I say this because the resettlement efforts so far on the farms purchased by the government have been a serious disappointment. Previously productive farms have been run down by their treatment as other "communal" areas and productivity and output have plummeted. The primary reason for this state of affairs, I suspect, is that we have been rather disorganized in our resettlement effort. Adequate administrative structures were not created to oversee the proper functioning of the farms in terms of the carrying capacity of the land, availability of water, suitability or otherwise of crop production, availability of the relevant technology and its maintenance, housing for the people moved to these farms, imparting skills to these people,

⁴⁸⁷ *The Namibian* (23 December 2003).

⁴⁸⁸ Personal communication to Mrs. Pendukeni Ithana.

extension services, etc. These are equally important issues if the people's lives are to improve.

One could also argue that those who are allocated land, and are resettled on it, do not see land as a panacea. If given a choice between land and a reasonable job in the city, a large number of "land hungry" citizens would opt for a job.

Further, in implementing our affirmative action policy, we must guard against reaffirming the rich and influential by allocating land to them. They should buy land with bank loans if necessary, as many others including me have done. State land and communal lands could be developed for resettling the landless instead of buying land. Funds presently used for buying land could be used to improve state and communal lands. This way, the land problem could be addressed, without disrupting existing productive farms.

Development of lodges on erstwhile farming land should also be encouraged, as hospitality services have the potential of creating many jobs. Eco-tourism provides excellent opportunity to set up tourist lodges, even in the most desolate areas. For instance, when a tourist lodge was built in Twyfelfontein, an area that had no prospect for jobs, sixty jobs were created, thus supporting sixty families or some 600 Namibians.

The government's approach should therefore be to (1) resettle landless who wish to make a living through farming, and provide them with all the necessary skills and help with inputs; (2) for those who have no interest in farming, create jobs in the hospitality industry (game lodges), agro-industries, etc. This way, the country as a whole will develop. This combined approach would, in my view, be a creative way of addressing the land question.

Participation of the Blacks in the economy has been at a very low level. The government's Transitional National Development Plan of Namibia pointed out the challenge in 1992 as follows:⁴⁸⁹

⁴⁸⁹ Namibia, National Planning Commission (1992), *Transitional National Development Plan 1991/1992 – 1993/1994*, Windhoek, National Planning Commission, p.11.

The most striking feature of the formal economy is the lack of participation in it by the majority of the people. It is not just that a small section of the population receives a disproportionate share of the national income, but also that a relatively small number of people produce most of the national income. The need for redistribution is clear but the principle means of achieving general prosperity will be through economic growth and through employing increasing numbers of people.

This low level participation of the majority in the economy resulted in significant disparity between the rich and the poor. In 2002, Namibia's Gini coefficient was estimated to be 0.64. In comparison, Gini coefficients for India and South Africa are 0.28 for urban India, 0.35 for rural India,⁴⁹⁰ and 0.57 for South Africa.⁴⁹¹ Although, the Gini Coefficient has increased over the years almost everywhere, Cardan⁴⁹² notes,

Reported Gini coefficients generally measure pre-tax income rather than after-tax consumption, which means that it systematically overstates the degree of income inequality. Once we consider taxes and transfer payments ("welfare"), it becomes apparent that while the distribution of *income* may be unequal, the distribution of actual *consumption* is more equal than press releases and pundits would have us believe.

Indeed, in mostly agrarian economies, such as those prevailing in most of Africa, rural populations don't rely on monetary economies, thus skewing Gini coefficients. Yet, most governments in Africa have had to cut back on social services, through which transfers take place. Very often such cut backs have been based on IMF prescriptions. These observations suggest that promoting equity requires a more aggressive stance, including guiding and controlling the market. However, donor resistance to guiding and controlling the market has made such an approach difficult. As Thompson⁴⁹³ pointed out:

The [Namibian] government is defining its character according to the neoliberal economic paradigm which is internationally, not regionally oriented, and internationally, not nationally scripted. The orientation is reinforced, implicitly and/or explicitly, by international development agencies. As a result, social

⁴⁹⁰ Mohan Guruswamy (2003), "Population is Not Our Real Problem!" (11 August 2003), <http://www.rediff.com/news/2003/aug/11guru.htm>, accessed 25 August 2003.

⁴⁹¹ James Heintz, "Out of Gear? Economic Policy and Performance in Post-apartheid South Africa," *PERI Research Brief*, Vol. 1 (2003).

⁴⁹² William Art Carden, "What is Wealth Inequality?" (Ludwig von Mises Institute), <http://www.mises.org>, accessed 25 August 2003. I also do not agree with the way Gini coefficients are calculated. In most of these calculations, governments are often not consulted. Therefore, they reflect a one sided view of the disparity.

⁴⁹³ Thompson, "Development and Security in Southern Africa: The Case of Namibia."

security, especially for those in rural areas, remains illusory, both nationally and regionally.

These are some of the challenges that Namibia still faces but national and international constraints will continue to hamper its efforts. For example, any attempt at land redistribution without compensation is not only against the provisions of the constitution,⁴⁹⁴ but would also surely result in undermining our own economy and alienating the donors and international opinion, as has happened in Zimbabwe. However, the government acknowledges the fact that unless the land question is addressed and economic inequity corrected, all the gains made in securing peace, rule of law, and democracy would be lost.

Finally, it must be stressed that affirmative action should not be seen as a permanent fixture. It should be a stopgap measure to correct the inequities. Once the objectives are achieved through equal opportunity and rooting out of discrimination based on colour, provisions for affirmative action should be removed. However, experience elsewhere shows that once introduced it is not easy to do away with affirmative action provisions.

For instance, in India, "it was believed that caste-based discrimination was so pervasive that only a concerted, affirmative government effort could erase caste bonds."⁴⁹⁵ Therefore, drafters of the Indian Constitution provided for affirmative action in favour of those groups listed in one of its schedules. These groups include those who were oppressed as a result of the caste system, and those from areas that lacked facilities. The provision was expected to last for a limited period of time, but those who are listed in the schedule continue to lobby for its retention. As a result of political pressure, the schedule has also been revised many times to include an increasing number of groups.

It is indisputable that there were huge inequities in India, and affirmative action has certainly helped raise the living condition of the scheduled castes, tribes and areas, but corrective measures have created different types of inequities. Today, not only has caste-

⁴⁹⁴ Namibia, *Constitution of the Republic of Namibia*, Article 16.

⁴⁹⁵ Alexander Volokh (1996), "Quotas in India have yet to Create Harmony," *Los Angeles Daily Journal* (5 November 1996).

based affirmative action “succeeded in making people more aware of what caste they belong to”⁴⁹⁶ but has also contributed to compromising meritocracy. Affirmative action should help those who need help and not those who have been scheduled as a group to receive help generation after generation in perpetuity. After fifty years, it may be time to do away with the relevant schedule, but that is unlikely to happen. It is, however, possible that eventually everyone in the country is listed in the schedule, which would be tantamount to doing away with the schedule.

Similarly, in Malaysia, affirmative action was instituted in 1969 as Bhumiputra policy to give Malays preference in business opportunities and university admissions. This policy has helped, but the main reason for its success has been the fact that

The Malaysian economy was growing at a remarkable 6-7 per cent a year during these decades. This growth created new job opportunities to absorb the Bumiputra (“sons of the soil”) into the labour force.... However, even after 20 years of affirmative action, Malays are not proportionally represented in management positions and the professions, and they still find themselves over-represented in the less productive parts of the economy.⁴⁹⁷

Paraphrasing Prime Minister Mahathir’s Book, *The Malay Dilemma*, Vongs⁴⁹⁸ argues that Bhumiputra policy “has not worked because of Malays’ cultural habits. Malays’ relaxed, folksy and fatalistic lifestyle makes it difficult for them to compete with the Chinese.... Mahathir ... knows that Malays will not let the policy go lightly.”

In Namibia, too, it would be difficult to roll back affirmative action because the beneficiaries are unlikely to support any government that curtails their benefits. Legally, too, there could be difficulty with any such rollback as affirmative action is a part of the fundamental human rights and freedoms clauses of the Constitution. These clauses cannot be diluted. While Article 23 provides that the Parliament would enact legislation for affirmative action, the question that arises is whether the relevant legislation can be

⁴⁹⁶ *Ibid.*

⁴⁹⁷ Rachel Jafta, “The High Cost of Affirmative Action,” in David Welsh and R.W. Johnson (eds.) (1999), *Ironic Victory: Liberalism in Post-liberation South Africa*, Oxford, Oxford Univ. Press.

⁴⁹⁸ Mahathir Bin Mohamad (2003), *The Malay Dilemma*, Singapore, Select Books, paraphrased by Pueng Vongs, “Affirmative Action in Other Countries,” in *Alternet.org* (11 July 2003), <http://www.alternet.org/print.html?StoryID=16391>, accessed 30 December 2003.

amended to dilute affirmative action provisions. If ever such a situation arises, it might be necessary to seek the ruling of the Constitutional Court.

The Age of Democracy

If the twentieth century contributed to the promotion of democracy, it also added to the confusion about the concept of democracy. The concept of democracy was trivialized by military dictatorships and totalitarian regimes as they sought to 'legitimise' their power by labelling themselves as democrats, and claiming to have the support of the people.

Recognizing the value people attach to democracy, some political leaders seek to create an illusion of democracy. However, this illusion does not go much beyond these leaders adding ornate phrases, such as 'Democratic Republic,' 'Peoples Democratic Republic,' or 'Socialist Republic' to their countries' names.

What is important is not the name but the values incorporated in the political system. The success of democracy often depends on the democratic values cherished by citizens with whom ultimate power rests. As Ake⁴⁹⁹ points out, 'democracy' as a political concept is extremely precise – it means popular power.

This popular power can be exercised through either direct democracy or representative democracy. Direct democracy works only where groups are small, but if groups are large, representative democracy works better, e.g., at the national level. Under representative democracy, people elect officials to make political decisions, formulate laws and administer the country for the public good. Dahl⁵⁰⁰ defines five standards of democracy:

1. Effective participation: All citizens must have equal and effective opportunities for making their views known to others.
2. Voting equality: Every citizen must have an equal and effective opportunity to vote, and all votes must be counted as equal.

⁴⁹⁹ Ake, *The Feasibility of Democracy in Africa*, p. 7.

⁵⁰⁰ Robert A. Dahl (2001), *On Democracy*, New Delhi, Affiliated East-West Press, pp. 37-38.

3. Enlightened understanding: Each citizen must have equal and effective opportunity for learning about the relevant alternative policies and their likely consequences.
4. Control of the agenda: Citizens must have the opportunity to decide how and, if they choose, what matters are to be placed on the agenda.
5. Inclusion of adults: All adult citizens should have the full rights that are implied by the first four criteria.

Dahl⁵⁰¹ further observes, “No state has ever possessed a government that fully measured up to the criteria of a democratic process. None is likely to. Yet ... the criteria provide highly serviceable standards for measuring the achievements and possibilities of democratic government.”

In addition, to make democracy sustainable, it is necessary to establish certain norms that allow citizens to freely make political decisions by majority rule, ensure the protection of minority rights, limit the power of government, and allow pluralism, i.e., existence of different political parties, organisations and associations. In an authoritarian society these groups are controlled and restricted, but in a democracy, pluralism is encouraged and government’s powers are restricted through constitutional provisions (See Chapter Four).

During the last quarter of the twentieth century, democracy gained considerable ground, because it represents the institutionalisation of freedom. Arguing in favour of democracy, Dahl⁵⁰² lists at least ten advantages of democracy in comparison with any feasible alternatives to it as follows:

1. Democracy helps to prevent government by cruel and vicious autocrats.
2. Democracy guarantees its citizens a number of fundamental rights that non-democratic systems do not, and cannot, grant.
3. Democracy insures its citizens a broader range of personal freedom than any feasible alternative to it.
4. Democracy helps people to protect their own fundamental interests.
5. Only a democratic government can provide a maximum opportunity for persons to exercise the freedom of self-determination – that is, to live under laws of their own choosing.
6. Only a democratic government can provide a maximum opportunity for exercising moral responsibility.

⁵⁰¹ *Ibid.*, p. 42.

⁵⁰² *Ibid.*, pp. 44-61.

7. Democracy fosters human development more fully than any feasible alternative.
8. Only a democratic government can foster a relatively high degree of political equality.
9. Modern representative democracies do not fight wars with one another.
10. Countries with democratic governments tend to be more prosperous than countries with non-democratic governments.

Dahl,⁵⁰³ however, cautions, “Democracy cannot guarantee that its citizens will be happy, prosperous, healthy, wise, peaceful, or just. To attain these ends is beyond the capacity of any government, including a democratic government. What is more, in practice democracy has always fallen short of its ideals,” but “democracy is a far better gamble than any alternative to it.” Churchill, as quoted at the beginning of this chapter, had made similar observation much earlier in 1947.⁵⁰⁴

Simensen⁵⁰⁵ notes that 1989 stood out as a democratic divide in contemporary African history. As late as the beginning of 1989, thirty-eight out of forty-five African countries were under military or one-party regimes, Two years later, thirty-one African countries had become multiparty states with elected assemblies. Huntington⁵⁰⁶ labelled this transformation as the third wave of democratisation.

Democratic Transition in Namibia

Democratic transformation in Namibia started on 1 April 1989, when the process of implementing the United Nations settlement plan started. Elections for a Constituent Assembly were held under the supervision of the United Nations Transition Assistance Group (UNTAG). Subsequently, Namibians elected by the people began the process of drafting the country’s constitution. The process of drafting the constitution has been discussed in Chapter Four. As pointed out in Chapter Four, the constitution had to adhere to prescribed Constitutional Principles. These parameters and SWAPO’s commitment to democracy ensured that Namibia would adopt a democratic constitution.⁵⁰⁷

⁵⁰³ *Ibid.*, pp. 61-62.

⁵⁰⁴ *Hansard* (11 November 1947).

⁵⁰⁵ Simensen, “Democracy and Globalization,” p. 391.

⁵⁰⁶ See Huntington, *The Third Wave: Democratization in the Late Twentieth Century*.

⁵⁰⁷ SWAPO, *Draft Constitution*, 1989.

However, adopting a democratic constitution does not necessarily make a country democratic. It is only a starting point:⁵⁰⁸

A minimum criterion is multiparty elections to a national assembly. But examples abound as to how this can be combined with various forms of discrimination against political opposition, manipulations at elections, curtailment of personal freedoms, limited constitutional powers for the assembly, and continued privileges for military or oligarchic elites. The concepts of 'militarised democracies' in Latin America and 'authoritarian democracies' in Asia indicate the limitations of such 'formal democracies'. There is a clear contrast between these and what we may call 'real democracies' or 'liberal democracies', based on plural societies, rule of law, a neutral military, and personal freedoms.

These issues explain why we tend to refer to one country as being more democratic than the other. Also, it is for these reasons that there were only eleven African countries considered by the Freedom House survey to be democracies in 2003.⁵⁰⁹ This number could easily have been six or sixteen had the cut off point for a functioning democracy established by the Freedom House been different.

Namibians and their political representatives, however, consistently sought to ensure that real representative democracy was established and strengthened in the country. Institutions continued to be set up and strengthened to sustain the five standards outlined by Dahl, *viz.*, effective participation, voting equality, enlightened understanding, control of the agenda, and inclusion of all adults. These five standards require that people can choose their representatives freely or seek to become representatives, have an opportunity to express their views freely, and have freedom of association.

Since 1990, democracy has become firmly rooted in Namibia, with all the political parties and organizations as well as the masses committed to the democratic constitutional system, both in its formal acceptance and in the observation of rules. Initially, the first president of Namibia was elected by the Constituent Assembly by a simple majority of all its members.⁵¹⁰ Subsequently, the country has held two direct

⁵⁰⁸ Simensen, "Democracy and Globalization," p. 393.

⁵⁰⁹ See Freedom House survey, <http://www.freedomhouse.org>, accessed 15 December 2002

⁵¹⁰ Namibia, *Constitution of the Republic of Namibia*, Article 134. Article 134 also provides that "the first president shall be deemed to have been elected." This provision was designed to ensure that election by the

presidential elections and two parliamentary elections at fixed dates. In addition, two regional council elections, and two local government elections have so far been held.

Any organization is free to observe these elections. All who did observe the conduct of elections confirmed them to be free and fair.⁵¹¹ However, from a national perspective, endorsement of the fairness of elections by outsiders is not as important as the citizens' confidence in the fairness of the elections. Perhaps endorsement by foreign observers is important in the initial phase, but I feel that beyond it, continued preoccupation of the international community with the legitimisation of elections every time through foreign observers does not help build confidence of citizens in their own democratic processes, systems or institutions. After all, Africans do not go to the United States or Great Britain to legitimise their elections! The only sustainable guarantee for elections to be free and fair is the internalisation of democratic values by the citizens, a belief that democracy is good for the country, and faith in the established processes, systems and institutions.

Despite its success in holding free and fair elections, the government of Namibia continues to seek ways to strengthen electoral democracy. All the political parties in the parliament are being funded by the state proportional to their representation in the parliament. However, some in the opposition still claim that the ruling party is at an advantage, as it has the support of the state machinery. Some of us, in SWAPO, on the other hand, are concerned that we have so far not been able to devise a mechanism for funding emerging parties, which have not yet secured a seat in the parliament. Perhaps, provision should be made for the emerging parties that wish to contest election for the National Assembly, to have access to threshold government funding.

Constituent Assembly was indeed one of the two terms the president was allowed to serve and also to ensure that his actions during the first five years were legal.

⁵¹¹ For instance, see *Sustainable Democracy: Elections 99*,

http://www.sardc.net/sd/elections99/mozambique/..%5Cnamibia%5Cnam_opener.html, accessed 18 February 2004. Dr Brigalia Bam, team leader of the nine-member SADC electoral commissioners' observation group, said, "Namibian elections had been conducted professionally.... I visited 18 stations and everything looked fine. People waited patiently to vote, without intimidation. All mobile units were accompanied by party agents... People slept overnight to watch the election material... This is good."

Further, women's representation in elected offices is improving considerably. According to March 2003 statistics published by the Inter-Parliamentary Union,⁵¹² Namibia stands eighteenth in world classification of countries based on women in national parliaments. It is surpassed only by South Africa, Seychelles and Mozambique in Africa. In March 2003, 27.8% of the seats in the National Assembly were occupied by women. In the National Council, however, women's representation was just 7.7%. For sub-Saharan Africa, these averages were 13.6% and 13.7% respectively as compared to Nordic countries where 40.1% of the seats in the parliaments were occupied by women

Recognizing that increasing the number of women representatives in the National Council would require involving more women in politics in the thirteen regions, the government decided to improve the situation initially by ensuring that a sufficient number of women contested local government elections. The Electoral Act was amended to provide that at least 30% of the candidates contesting local authority elections on party tickets must be women. During the last local government election, not only did women candidates participate, they won seats far in excess of 30%. In fact, of all the seats won by SWAPO, 41% were won by women. The next step of the government would be to set similar minimums for regional government elections and eventually for national elections.

A democratic culture is also becoming rooted in Namibia. In the 1999 regional government elections, there was one instance where SWAPO and DTA won three seats each in a region. As a result of the tie, the elected representatives could not elect the governor for the region outright. However, the two political parties resolved the issue by sharing the position of governor – with SWAPO governor holding office for the first half of the term, and DTA governor holding office for the remaining half. Such accommodation is compelling evidence of the strength of the system, the culture of tolerance, and a political culture of inclusivity.

⁵¹² Inter-Parliamentary Union, "Women in National Parliaments," <http://www.ipu.org/wmn-e/classif.htm>, accessed 4 April 2003.

During the last presidential and parliamentary elections, we saw another important development. Political leaders of different political parties not only accepted the people's will but also graciously conceded victory to the winner. When results were being declared in the presence of all the presidential candidates, with the exception of the Congress of Democrats (COD) candidate who was represented by another member of his party, it was touching to see the defeated candidates congratulate the winner. Mr K. Kaura, the presidential candidate for the DTA, embraced the president-elect, Mr Nujoma, and congratulated him on his victory. Similarly, Mr Katjiuongua, presidential candidate for DCN congratulated the president elect and assured him of his support.

This development is a refreshing change in Africa, where the losing candidates in many countries refuse to accept electoral results. Where elections have been free and fair, but the losing candidates object to the fairness of the results, violence often ensues. This is one area where many African countries continue to fail. I dub this regrettable phenomenon as the 'Savimbi syndrome' because Mr Savimbi refused to accept electoral defeat.

In countries, where defeated candidates reject the outcome of elections, the problem is much deeper. Rejection of the outcome of elections is tantamount to the rejection of the process or questioning the legitimacy of the process. In Namibia, we believed that the integrity of the process could be ensured only if the electoral commission is strong and transparent. If the commission is and is seen to be transparent, the losing parties will accept the outcome of the elections.

In Namibia, the commission was administratively located in the Office of the Prime Minister, but when I was the prime minister, I favoured the commission's relocation. The government conducted a dialogue with various opposition parties about all aspects of the commission's structure and its functioning. A committee comprising representatives of SWAPO and opposition parties was established to take all parties' concerns into consideration. In my capacity as the Prime Minister, I presided over the committee's first meeting, but Mr Tjiriange, Minister of Justice, chaired subsequent meetings.

The committee established the criteria for the appointment of the members of the Commission, and the Director of Elections. It was agreed that the post of the director would be advertised. The president would choose one candidate for the post of director of elections and forward his/her name to the National Assembly for its endorsement. Further, it was decided that the Commission would have its own vote within the national budget. Now, the Electoral Commission's budget is presented to the National Assembly by the speaker. It could be argued that the success of elections in Namibia could partly be attributed to the government's working with the opposition to create a sense of inclusivity.

Thus, emphasis must not be just on democratic elections but also on processes, systems and institutions of democracy. This three-tiered structure is important as processes stipulate what needs to be done; systems facilitate what needs to be done; and institutions oversee processes and systems and correct the situation if something goes wrong.

The United States presidential elections of 2000 illustrate the point. The elections were flawed, with some people having been excluded by the process. Counting of votes, too, had come under criticism. We, in Africa, ridiculed the process. However, there was transparency, and systems were in place to address the flaw. Everyone knew what the problem was and what the solution could be. Journalists were embedded in the headquarters of both the parties, and each party's representative would appear on the television everyday to explain his/her party's position.

The process had gone awry, but the system did not result in any power vacuum or legitimacy crisis. Mr Clinton was still the President. People had faith in the system, even if the process went wrong. Consequently, no soldiers were marching in the streets. Eventually, the parties to the conflict went to the Court to resolve the situation. Even before the Court ruled, some 76% of those polled by a polling agency said that they would accept the Court's decision. When the Supreme Court ruled, its verdict was accepted by the aggrieved party, Mr Gore, "I accept the finality of this outcome... Now

the US Supreme Court has spoken. Let there be no doubt.... While I strongly disagree with the court's position, I accept it." He also asked his supporters to unite behind his rival, Mr Bush, "We close ranks when the contest is done."⁵¹³

African states need to learn from this example. We need to instil faith in our processes, systems and institutions, but that can be done only by promoting inclusivity, transparency and accountability.

Although Namibia has established a strong and sustainable electoral democracy, some concerns remain about the selection of candidates for inclusion in the party-list. The party-list system depends on the party hierarchy, and the party list reflects this hierarchy. The order on the list does not necessarily mean that the best or most popular candidate is on top. More popular candidates with the electorate might in fact be put nearer the bottom. This situation could result in depriving the electorate of having their favoured candidates representing them in the National Assembly. This weakness does not exist in constituency-based systems. However, in most parliamentary systems that is not the case. Further, as already mentioned in Chapter Four, having a party-list system based on the whole country as a constituency does not promote accountability of the candidates to the electorate, as is the case in constituency-based systems.

In order to overcome some of these weaknesses, SWAPO gave the party president the right to select thirty people for inclusion in the party list. These thirty candidates form the first thirty names on the list, with their hierarchy determined by the party president. The rest of the forty-two positions on the list are contested at the Party Congress. The interested candidates' names are, so to say, 'put in the pot to boil and survive.' Delegates at the SWAPO Congress vote for these candidates. A candidate who gets the maximum number of votes gets to be the 31st candidate on the list, and so on until the party's list of 72 candidates is complete.

⁵¹³ "Partisan Rancour must be put aside," in *The Guardian* (U.K.) (15 December 2000).

As the Westminster type parliamentary system based on proportional representation does not allow independent candidates to contest elections, there have been instances where failed party members created civil society organizations a few days before elections with the sole purpose of contesting elections. They are able to raise funds, often from outside the country, ostensibly for their role within the civil society, but these funds are used for electioneering. Regrettably, such a situation undermines the civil society's credibility.

The Congress of Democrats (COD), one of the opposition parties that contested the last presidential and parliamentary elections, started as a civil society grouping of 'all' Namibians. It was claimed to be a forum for democracy, where all Namibians, regardless of their political affiliation, were welcomed. I stated to my staff members, namely Mr Simataa and others, "Mark my words, the forum will be changed into a political party." Indeed, it happened. It became the Congress of Democrats.

The proportional representation system, however, has one significant advantage -- it increases the representation of smaller parties in the parliament, who are likely to be completely left out in a winner takes all alternative. Therefore, the proportional representation system ensures that there will always be an opposition.

In line with Dahl's five standards of democracy already referred to, democracy needs to go beyond just electoral democracy. It needs a vibrant and free media, and a strong civil society. Free media is necessary for promoting enlightened understanding and effective participation, and a strong civil society is necessary to allow citizens to have effective participation and control of the agenda.

Media Freedom

During Namibia's struggle for independence, some of the representatives of the media played a very important role, despite the fact that they had to work under the constraints imposed by the colonial administration. Particularly, editors of the English language media, such as Ms Gwen Lister of *The Namibian*, and Mr Hannes Smith of the then *Windhoek Advertiser*, were outspoken critics of the apartheid regime and were a source of

great strength and information for the liberation struggle. In the post-colonial era, the media continue to perform an important function of informing the people, educating them about democracy, and challenging state authority on issues that they consider vital for the welfare of the people and for the welfare of democracy.

Prior to Namibia's independence, the media regularly confronted the colonial government. After independence, some members of the media still continue to be confrontational. They have difficulty adapting from colonialism to independence and democracy, to make the transformation from being confrontational to being constructive. What the new environment needs is not speculation but accuracy, not rumours but facts.⁵¹⁴ Ronning⁵¹⁵ correctly argues the new type of sensationalist African newspapers "are highly critical of government, both the new and the old, which personalise political issues, run campaigns against officials and politicians, expose scandals of economic, political and private character ... which often shows poor journalistic judgement and oversteps unwritten, but internationally accepted ethical rules."

The media's obsession with sensationalism weakens the interpretation of journalism as the great leveller, a righter of wrongs, a humbler of the mighty, a watchdog against the abuse of power, an agent to 'comfort the afflicted and afflict the comfortable,' which is very much in question today.⁵¹⁶ "One venue of critique sees journalism as having shifted from watchdog to mad dog, mindlessly attacking authority (especially governments), avoiding 'serious' news about public affairs in favour of scandals, celebrities and 'infotainment.'"⁵¹⁷

⁵¹⁴ During the first quarter of 2003 and beyond, there was considerable speculation that President Nujoma might seek to amend the constitution to accommodate his desire to stay in office for a fourth term. See, for example, *The Namibian* (30 August 2002).

⁵¹⁵ Helge Ronning (1996), "Urban Character of the African Press," in Tore Slatta (ed.), *Media and the Transition of Collective Identities*, Oslo, University of Oslo, pp. 39-40.

⁵¹⁶ Robert A. Hackett, "The News Media and Civic Equality: Watch Dogs, Mad Dogs, or Lap Dogs?" in Edward Broadbent (ed.) (2001), *Democratic Equality: What Went Wrong?*, Toronto, Univ. of Toronto Press, pp. 297-298.

⁵¹⁷ June Callwood (2002), Dalton Camp Lecture delivered at St. Thomas University, Fredericton, New Brunswick (23 October 2002) and excerpted in *The Toronto Star* (2 November 2002).

Often media undermine the government's efforts to communicate with the masses and often threaten the legitimacy of elected democratic authorities.⁵¹⁸ In this obsession with attacking authority, the media have little time for facilitating public discourse on matters of concern to the citizens, despite the fact that such discourse is important for the creation of informed public opinion.

A different critique sees the media not as mad dogs, but as lap dogs, excessively subservient to the economic and political elite. Significantly, the ability of the economic and political elite to brandish anti-establishment views is that they own their own newspapers. As A.J. Liebling famously said, "Freedom of the press is guaranteed only to those who own one."⁵¹⁹ These days it is difficult to see much air between media owners, ruling political parties and the corporate world.

Nevertheless, the media is a powerful instrument for shaping opinion. As Cohen⁵²⁰ points out, media "may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about." The media, thus, sets the agenda through the issues it raises, through the issues it does not raise, e.g., minority opinions, and through producing meanings.

In the developing world, media sometimes choose to be negative to please the outside world. Some even view their role to be in opposition to the government, allegedly because the opposition itself is weak. Others just like challenging the government. I recall that at the 1993 Prime Minister's Consultative Conference with the Media, the Editor of the *Windhoek Observer*, Mr Smith, stated that he likes testing the boundaries as to how far he can go before the government cracks down on him. So far, however, there has been no such crackdown.

⁵¹⁸ See James Fallows (1996), *Breaking the News: How the Media Undermine American Democracy*, New York, Pantheon.

⁵¹⁹ Callwood, Dalton Camp Lecture.

⁵²⁰ Bernard C. Cohen (1963), *The Press and Foreign Policy*, Princeton, Princeton Univ. Press, p. 13.

Namibian print media is either privately owned, or political party owned. All of them are urban based and therefore have small readership. Rural communities don't have access to these newspapers. Consequently, a large percentage of the population remained uninformed about political, social and economic developments in the country, except through radio, word of mouth, or political discussions.

In order to correct this imbalance, the government started its own newspaper to inform Namibians, particularly rural Namibians, about the government's development initiatives and extend them an opportunity to provide their feedback. The government newspaper did not cut into other media's circulation base, as most of its readers are rural Namibians. The government-owned media, of course, focus on government policy, but the government-owned newspaper, the *New Era*, maintains a fair amount of editorial freedom. It also does not hesitate to criticize the government's position when thought necessary. Occasionally it has come under criticism by the politicians for not adequately covering parliamentary debates and other government policy issues.

The government's decision to launch its own newspaper was criticised by the private media and the opposition parties, labelling it as an attack on media freedom.⁵²¹ Just because the government started its own newspaper does not mean that other media's freedom is curtailed. But, at one time, the cabinet had decided that the government offices, ministries and agencies should not advertise in certain newspapers. That was, in my opinion, wrong and could certainly be viewed as impinging on media freedom.

There is also no restriction on electronic media. In fact, in addition to government funded radio stations, a number of other radio stations have sprung up, serving their own communities. An autonomous commission grants licenses for operating radio and television stations. In Namibia, radio and television are more influential than the print media as broadcasting covers the whole country. National Broadcasting Corporation's (NBC) radio services with their call-in programmes provide citizens with a means to interact with government officials. Citizens raise questions and concerns, the talk show

⁵²¹ See *The Namibian* (2 May 2002).

host obtains responses from the government and other sources, and the responses are broadcast the same day.

NBC radio service also used to host "Prime Minister's Question Time", where citizens would write to the prime minister for a response on the radio. This programme ran for seven years, but it was discontinued because of political machinations by certain political elements. Regrettably, there have also been other attempts by government ministers to influence the programming of electronic media. Such interference can be eliminated only if the leadership values media freedom, freedom of expression, and the public's right to know. In this context, Namibia also has to address the issue of right to information.

Independent Namibia made a good start by ensuring the freedom of media, but like all the attributes of democracy, media freedom and promotion of responsible and responsive media need to be cultivated by a new cultural idiom, by making it a part of the country's political vernacular.

Civil Society

Civil society organizations touch upon all the five standards of democracy articulated by Dahl,⁵²² and therefore, establish their importance in a democracy. However, new democracies lack several conditions necessary for the stability of democratic institutions. Some of these conditions include the lack of effective parties, the lack of encompassing unions, the lack of national bourgeoisies, and the lack of a crystallized structure of interests to be represented.⁵²³

Therefore, with renewed interest in democracy, the concept of civil society gained increased prominence, and the literature on civil society burgeoned.⁵²⁴ The primary reason for this increased interest in civil society is the appreciation that it is necessary for the favourable outcome of the future of democracy, for new democracies need "to create

⁵²² Dahl, *On Democracy*, pp. 37-38.

⁵²³ Adam Przeworski (1995), *Sustainable Democracy*, New York, Cambridge Univ. Press, p. 53.

⁵²⁴ Michael Bratton (1994), "Civil Society and Political Transition in Africa," *IDRC Reports*, 11, 6, p. 1. This document has an excellent bibliography on civil society with particular emphasis on Africa.

the channels and the incentives for all the major political forces to process their interests within the framework of representative institutions.”⁵²⁵

While civil society is a set of organizations that serve as channels for processing the interests of different groups, definitions of civil society are diverse and very often ambiguous, because different scholars have sought to focus on normative, non-normative, or empirical definitions.⁵²⁶ Scholars have reflected on whether organizations representing family, clan, race or economic interests should be considered elements of civil society. Shils⁵²⁷ includes economic institutions in the framework of the civil society. Janoski⁵²⁸ views civil society as a set of institutions that overlap the state, public, private, and market spheres. Allen⁵²⁹ is of the opinion that conceptually civil society is

diffuse, hard to define, empirically imprecise, and ideologically laden. Analytically it is vacuous, and concepts such as class or gender contribute far more to understanding recent political change than can 'civil society'. Its popularity and continued employment rest on its ideological underpinning, notably on claims that civil society is necessarily distinct from the state, in opposition to the state, and the source of (liberal) democratic values and pressures. It is thus the proponents of liberal democratic reform, notably those external to African polities that 'need' civil society.

However, pragmatic considerations, such as needing to promote accountability of government, and seeking the support of the donor community, make it necessary for the governments of newly independent states to work with civil society. Civil society in newly independent states is also important because of its contribution to the independence of their countries. Efforts of labour movements, student unions, churches, intermediate elites, e.g., lawyers, academics, and journalists, resulted in the overthrow of the colonial yoke, dictatorships, and one party states in many parts of Africa. Similar examples exist in recent times in Eastern Europe.

⁵²⁵ Przeworski, *Sustainable Democracy*, p. 64.

⁵²⁶ See Bahmueller, “Civil Society and Democracy Reconsidered.”

⁵²⁷ Shils, “The Virtue of Civil Society,” p.3.

⁵²⁸ Janoski, *Citizenship and Civil Society*, pp.12-13.

⁵²⁹ Chris Allen (1997), “Who Needs Civil Society,” *Review of African Political Economy*, 24, 73, pp. 329-337.

For the purpose of this study, Bratton and Diamond's definitions should be adequate because of their precision. Bratton⁵³⁰ defines civil society as "a sphere of social interaction between the household and the state which is manifest in norms of community cooperation, structures of voluntary association, and networks of public communication." He further emphasises that civil society lies beyond the household. Its activity may be motivated by a quest for private advantage, but it is not private. "It is collective action in which individuals join to pursue shared goals, and it takes place in the institutional 'commons' that lie beyond the boundaries of the household."⁵³¹

Diamond⁵³² defines civil society in empirical terms, "Civil society is the realm of organized social life that is open, voluntary, self-generating, at least partially self-sufficient, autonomous from the state, and bound by a legal order or set of shared rules." Thus, civil society operates in a space that is not under the control of the state. It is premised on the notion of voluntary interlocutors that supposedly incarnate different social interests.⁵³³

Bratton⁵³⁴ notes that civil society's roots are to be found in both the liberal and Marxist traditions. De Tocqueville emphasized "the importance of voluntary associations in promoting democratic citizenship," and Gramsci emphasized "the role of social institutions in either buttressing or challenging state power." As "civil society manufactures political consent, it is the source of legitimation of state power. The right of any elite to exercise state power is ultimately dependent upon popular acceptance."⁵³⁵ If, however, citizens believe that ruling elites are abusing the power granted them, some of the citizens might launch an oppositional critique, which becomes popularised and eventually results in bringing about change.⁵³⁶

⁵³⁰ Bratton, "Civil Society and Political Transition in Africa," p. 2.

⁵³¹ *Ibid.*, p. 3.

⁵³² Diamond, *Developing Democracy: Toward Consolidation*, p. 221

⁵³³ *Ibid.*

⁵³⁴ Bratton, "Civil Society and Political Transition in Africa," p. 1.

⁵³⁵ *Ibid.*, p. 9.

⁵³⁶ *Ibid.*

In Namibia, labour unions and other worker organizations, student and teacher organizations, and churches played an important role in Namibians' struggle for independence. As the territory had considerable white colonial settlement, most of the civil society organizations were there, as in other colonies, to serve the interests of the Whites. Black associations that emerged to counter the oppression, therefore, had to struggle against both the colonial state and the white civil society organizations.⁵³⁷

Namibian migrant workers, despite the fact that Namibian workers were denied the right to legally organize themselves, formed the first informal civil society organization of blacks. In 1893, this organization staged its first strike at the Gross Otavi copper mine to protest against working conditions. Subsequently, in 1920, the first African trade union was formed under the aegis of the South Africa based Industrial and Commercial Workers' Union. It was led by Mr Clemints Kandalie and had its headquarters in Luderitz Bay with branches in Windhoek and Walvis Bay, but it was ruthlessly suppressed by the occupation regime. A similar fate met the attempt at opening a branch of the South African Food and Canning Workers Union in 1949.⁵³⁸

As already mentioned in Chapter 5, Namibian contract workers in South Africa formed the Ovamboland Peoples' Congress in 1957 under the leadership of Andimba H. Toivo ya Toivo with the aim of fighting against the hated migrant labour system. This organisation was later transformed into OPO and eventually into SWAPO.

After SWAPO's consultative conference in Tanga, Tanzania in 1969-70, the liberation movement decided to establish the National Union of Namibian Workers (NUNW). Subsequently, SWAPO began the process of training trade unionists for NUNW and established a School of Trade Unions at Nyango in 1978.⁵³⁹ Soon thereafter, internal wings of NUNW were established.

⁵³⁷ Helge Ronning, "Democracy, Civil Society and the Media in Africa in the 90s," in Tore Slatta (ed.) (1996), *Media and the Transition of Collective Identities*, Oslo, Univ. of Oslo, pp. 39, 145.

⁵³⁸ United Nations Institute for Namibia, *Namibia: A Direct United Nations Responsibility*, p. 264.

⁵³⁹ Labour Resource and Research Institute (LaRRI) (1998), *Still Fighting for Social Justice: A Survey of Trade Unions, Women Organisations, Communal Farmers' and Service Organisations in Namibia*, Windhoek, LaRRI, p. 11.

During the 1980s, the colonial government tried to weaken the influence of NUNW by setting up and financing some unions outside the NUNW. As a result, at the time of independence, there were eight trade union federations divided along political lines. However, a majority of workers supported NUNW.⁵⁴⁰ In 1989, the exiled and internal wings of NUNW were merged, during a consolidation congress held in Windhoek,

In independent Namibia, too, the labour movement continues to play an important role in influencing government policy. For instance, at the National Land Conference, of which I was the chairman, NUNW presented its position paper. It stated that the labour movement in Namibia was “fundamentally opposed to any attempt that regards the market as a mechanism for redistributing land from the privileged propertied minority to the landless majority.”⁵⁴¹ The labour movement has also been involved in other issues:⁵⁴²

Namibia’s trade union movement is well aware of the fact that it cannot narrowly pursue the interests of organised workers alone. There have always been and still remain very close links with other socially and economically disadvantaged groups.... As a result of its history as a progressive force during the liberation struggle, the NUNW unions have also maintained close links with other organs of civil society that advocate on behalf of the economically and socially disadvantaged. The NUNW’s affiliation to the Namibia NGO Forum (NANGOF) is a testimony to this link.

While it is true that NUNW has often spoken on behalf of the economically and socially disadvantaged, it has oftentimes been reckless and careless in its comments.⁵⁴³ Their comments about land grabs, attacks on government ministers, and opposition to the privatisation of Air Namibia have been most unfortunate. Labour unions need to realize that such actions are detrimental to nation building – militancy for the sake of militancy is counterproductive. As mentioned earlier in this chapter, I am glad that SWAPO

⁵⁴⁰ *Ibid.* p. 28. See also G. Bauer, “Labour Relations in Occupied Namibia,” in G. Klerk and others (1997), *Continuity and Change: Labour Relations in Independent Namibia*, Windhoek, Gamsberg Macmillan; and P. Peltola (1995), *The Lost May Day: Namibian Workers Struggle for Independence*, Helsinki, Finish Anthropological Society in association with the Nordic African Institute.

⁵⁴¹ NUNW, *NUNW Position Paper*, June 1991.

⁵⁴² Labour Resource and Research Institute (LaRRI), *Still Fighting for Social Justice*, pp. 29-30.

⁵⁴³ See *The Namibian* (2 May 2003, 18 November 2003).

condemned the NUNW threats about land grabs and forewarned the union members that those who attempted to occupy land would be removed and arrested.

NUNW has been opposing the privatisation of Air Namibia in the interest of its members. However, in the larger context, it is doing great disservice to the economically and socially disadvantaged, because Air Namibia is bleeding the government coffers, leaving that much less for social programmes.

Like the labour unions, Namibian churches also played an influential role in first supporting the liberation movement and then, helping the disadvantaged groups. Dobell⁵⁴⁴ notes that “the Namibian churches’ staunch backing of SWAPO provided it with a moral legitimacy enjoyed by few, if any, ostensibly Marxist-Leninist guerrilla movements, and secured for it not only the powerful backing of international church bodies, but widespread support from generally conservative church congregations around the world.”

In this regard, the heroic deeds of many members of the clergy are worth mentioning. Reverend Michael Scott was the first person to petition to the United Nations against South Africa’s occupation of Namibia. Bishop Colin Winter’s opposition to apartheid resulted in his being deported by South Africa. Pastor Gowaseb and Bishop Auala had written an open letter to South African Prime Minister, Mr Vorster, about the evils of apartheid. Reverend Kameeta (now Bishop), Pastor Tjirimue, and many others were members of SWAPO and as such participated fully in the liberation struggle. Pastor Marcos Kooper and Reverend Theophelos Hamutuganelwa were two of the earlier petitioners to the United Nations against apartheid and the occupation of Namibia. These notable members of the Namibian community suffered greatly for their belief in the rights of Namibians.

⁵⁴⁴ Dobell, *SWAPO’s Struggle for Namibia, 1960-1991*, p. 65. See also Erastus Haikali, “Churches and the Liberation Struggle in Namibia,” in Wood (ed.), *Namibia: 1884-1984*, pp. 635-637.

In post-colonial Namibia, churches, in addition to their work for their own religious constituencies, continued to play an important role in educating the masses about AIDS, helping the relief effort during periods of drought, and helping women's organisations in diverse areas. In fact, the Emergency Management Unit in the Office of the Prime Minister works very closely with the churches during drought periods in identifying the most vulnerable individuals, families and groups and involving the churches in distributing food to the vulnerable. However, religious bodies' involvement in politics is limited. "For reasons of innate caution and self-preservation, these established religious bodies tend to prefer *ad hoc* rather than prolonged involvements in national politics."⁵⁴⁵

Another set of civil society organizations dealing with women's issues came into existence during the liberation struggle when various political parties organised women's wings. According to the LaRRI study,⁵⁴⁶ women's groups in Namibia fall in four main categories, *viz.*, religious groups, income-generating groups, women's wings of political parties, and women empowerment groups. Although the first two categories are important and do valuable work at local level, women's wings of political parties and women empowerment groups have a national sway and are involved in influencing government policy. For example, the SWAPO Women's Council argued and won support for having nomination quotas for women for local government elections. Before independence, the then Secretary for SWAPO Women's Council, Mrs Pendukeni Ithana had laid a firm foundation for the women's role in SWAPO and government.

Important women's empowerment groups include Namibian National Women's Organisation (NANAWO), Namibian Women's Association (NAWA), Sister Namibia, Women's Action for Development (WAD), Young Women's Christian Association, and Women Solidarity. These groups work on diverse issues affecting women, such as lobbying for reform of laws to ensure equality for women, promoting women's rights, undertaking empowerment initiatives, helping victims of rape and violence, supporting housing initiatives, educating women about health issues, disseminating information on

⁵⁴⁵ Gyimah-Boadi, "Civil Society in Africa: The Good, the Bad, and the Ugly."

⁵⁴⁶ Labour Resource and Research Institute (LaRRI), *Still Fighting for Social Justice*, p. 31.

AIDS, teen pregnancies and other social issues, and organising self-help groups. However, “class, race and party politics still keep women divided. As a result women’s groups do not lobby as a united front on issues such as women’s representation in government, politics, AIDS, engendering of education and the economy, access to water, inheritance laws, etc.”⁵⁴⁷

Students and teachers, too, had been involved in the struggle for independence. While in the past, protest was unorganised, the formation of the Namibian National Students’ Organization (NANSO) in 1984 resulted in a concerted attempt by black students to fight for equality in education.⁵⁴⁸ With NANSO’s affiliation to SWAPO, the students had taken their place in the wider struggle for independence. However, after the country became independent, NANSO disaffiliated, resulting in the break up of NANSO into NANSO and the ‘Mighty NANSO’, with the latter still affiliated to SWAPO.⁵⁴⁹ Teachers were organised under the banner of the Namibia National Teachers Union (NANTU) and the Teachers Union of Namibia (TUN) to fight for the eradication of inequalities in education and advocate social equality.

There are of course, many other unions and associations operating within the country, such as farmers unions, chambers of commerce and industry, the Cheetah Conservancy Fund, Drug Action Group, Legal Assistance Centre, Media Institute of Southern Africa, Namibia Housing Action Group, Namibia Institute for Democracy, Namibia Nature Foundation, Namibia Sports Council, National Youth Council of Namibia, and many more that are doing excellent work. All of these organisations network through the Namibia Non-governmental Organisations Forum (NANGOF).

Other organizations, such as the Institute for Democracy in South Africa, and the Study and Research Group on Democracy and Social and Economic Development Africa (GERDDES-Afrique) have assisted multiparty democracy initiatives in sub-Saharan

⁵⁴⁷ *Ibid.*, p. 55.

⁵⁴⁸ During the colonial period education had remained racially stratified, with white pupils getting the most qualified teachers and the bulk of resources (See also Chapter Five).

⁵⁴⁹ Labour Resource and Research Institute (LaRRI), *Still Fighting for Social Justice*, p. 35.

Africa. Similarly, there are a number of largely foreign-funded associations with a political focus that have greatly contributed to national development and democracy in Namibia. These include organizations such as the Africa Group of Sweden, the Ford Foundation, the Friedrich Ebert Foundation, the German Development Service, International Cooperation for Development, and Konrad Adenauer Stiftung. Of course, these associations have their own agendas as well, but their primary focus is on Namibia's development.

For the civil society to carry out its role unhindered, it is important that its institutions have autonomy from the state in their functioning and operations. Regrettably, however, inadequate funding of civil society organizations, particularly organizations such as human rights organizations and women's groups, as against church organizations and trade unions, has been a serious constraint on their work in many of the developing countries.

Their ability to raise funds locally is limited as the majority of citizens are poor. Therefore, "they often turn for support to governments and external donors, a compromising strategy that distorts the accountability owed to members. Assistance from western bilateral agencies, the United Nations, and a host of international NGOs such as CARE, Save the Children, Catholic Relief Services, and the African Development Foundation has been crucial for the survival of many local NGOs. Yet, the foreign origins of this assistance render it suspect in the eyes of local authorities."⁵⁵⁰

It is not unusual for the government to feel that donor agencies have their own agendas, which they seek to push through local civil society organizations. These agendas may be politically motivated, or may indeed be very noble, but they are suspect. There have been instances of international donor agencies funding opposition parties allegedly to 'promote' democracy, but such support could easily make the ruling party feel slighted. To the extent that civil society is a battleground where states and other powerful actors seek to "intervene to influence the political agendas of organized groups with the

⁵⁵⁰ Gyimah-Boadi, "Civil Society in Africa: The Good, the Bad, and the Ugly."

intention of defusing opposition,”⁵⁵¹ one can appreciate the reaction of the government to the funding of opposition parties by foreign agencies.

However, the fact remains that civil society organizations need funds to operate effectively. The state could help some of the organizations that are apolitical, but state help for most other organizations could easily compromise their work, as they could be subjected to demands from the state. Indeed, because of certain NGOs’ prominence in the economic and political life of various countries, such as labour unions, governments (including elected ones) might find it difficult to resist controlling them.

Namibia’s civil society organisations face many challenges, such as inadequate funding, lack of skilled personnel, and, above all, near absence of a culture of volunteering one’s time to help civil society organisations. Therefore, many of the initiatives of civil society will continue to be funded by foreign donors. However, with foreign funding come strings. In fact, many NGOs complain that “the work around funding proposals and reporting detracts from the organisation’s work. Some NGOs experienced a lack of understanding for ‘NGO realities’ on the side of the donors who often perceive their own systems as the best and attach little value to local ones.”⁵⁵²

Some of the initiatives, such as violence against women, teen pregnancies, and AIDS education programmes could be funded, at least partly, by the government. These initiatives are being given expression by the Ministry of Women’s Affairs and Child Welfare. Further, as the education level of the Namibians improves, human resource constraint will be relieved. However, a cultural shift would be needed to motivate citizens to contribute time to the society’s welfare. These initiatives are being promoted by environmental groups, the Crisis Help Line, and focused fund-raising projects, for example in establishing cancer care units.

⁵⁵¹ Julie Hearn (2001), “The ‘Uses and Abuses’ of Civil Society in Africa,” *The Review of African Political Economy*, 28, 87, pp. 43-53.

⁵⁵² Labour Resource and Research Institute (LaRRI), *Still Fighting for Social Justice*, p. 31.

Civil society constitutes an arena in which states and other powerful actors intervene to influence the political agendas of organized groups with the intention of defusing opposition.⁵⁵³ Since 1991, governments in Botswana, Ghana, Kenya, and Zimbabwe have proposed or enacted legislation designed to strengthen official authority over NGOs, usually under the guise of developing a national regulatory framework for associations. Other NGOs that are involved in political activism have withered or changed character as key leaders have taken posts in the new post-authoritarian governments or plunged into party politics. Indeed, many of Africa's new democracy-specific civil associations have turned out to be nothing more than "political-action committees" or proto-parties that have more in common with "political" than "civil" society.⁵⁵⁴

Bahmueller⁵⁵⁵ believes that actually or potentially, civil society has other indispensable functions in the democratic order, such as integrating individuals and groups into the larger social order; supplementing or substituting for government programs; mediating between individuals and the state; educating citizens for democracy; and tempering narrow selfishness by extending exclusive loyalties. However, as Bahmueller⁵⁵⁶ points out:

Not every aspect of civil societies as we find them, as opposed to how we might imagine them, is good or desirable. But if the state guaranteed the ethical worthiness of civil associations, it would assault the very liberty that liberal democracy aims to protect.... Nevertheless, the necessity to preserve democratic liberties does not mean that 'anything goes' in the life of civil society if liberal democracy is to remain truly liberal. The actions of hate groups have often crossed the line between the permissible and the forbidden. Irrational, distasteful, or even loathsome speech ought to be protected, but not incitement to violence or violence itself. In principle, liberal toleration extends to every loyalty that allows others their own loyalty.

Therefore, while the state makes civil society liveable, perhaps even possible, it needs to control its excesses.⁵⁵⁷

⁵⁵³ Gyimah-Boadi, "Civil Society in Africa: The Good, the Bad, and the Ugly."

⁵⁵⁴ *Ibid.*

⁵⁵⁵ Bahmueller, "Civil Society and Democracy Reconsidered."

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*

Decentralisation

Decentralisation is increasingly being seen by central governments as an important contributor to good governance. Nations with the best long-term record of democratic governance have also been involved in implementing various forms of decentralisation.⁵⁵⁸ This correlation has prompted many central governments to work towards decentralising political, administrative and fiscal responsibilities to lower-level governments.⁵⁵⁹

Nyiri⁵⁶⁰ points out that the rationale for decentralisation is manifold. Normative arguments in favour of decentralisation include increased citizen participation in public affairs, minority rights protection against majority rule, and increased acceptance of grassroots diversity, such as local customs and traditions. “In addition to the normative-inherent ideas behind administrative decentralization, there exists an instrumental line of argumentation that concerns the organizational outcome of decentralization.” These outcomes include greater efficiency and effectiveness in the management of public affairs, prevention of system overload and breakdown, and prevention of abuse of central government, or provision of a “bulwark against tyranny.”

However, decentralization is not easy to define because of its many forms and several dimensions. “Indeed, a wide variety of institutional restructurings are encompassed by this label, and several variants may be operating at the same time within a country, and even within a sector.”⁵⁶¹ Depending on the mix of these variables, there are many types of decentralization, such as deconcentration, delegation, devolution, and privatisation. Because of such a wide scope of decentralization, it is not unusual to find some components of decentralization present in every country.

⁵⁵⁸ Richard Vengroff (1994), *Decentralization in Africa: A Review of the Experience in Rural Development* (AID commissioned Concept Paper), p. 8.

⁵⁵⁹ Jennie Litvack, Junaid Ahmad and Richard Bird (1998), *Rethinking Decentralisation in Developing Countries*, Washington, D.C., The World Bank. p. 1.

⁵⁶⁰ Zsolt Nyiri, *Decentralization and Good Governance: Ten Years of Hungarian Experience* (Storrs, CT, Univ. of Connecticut), <http://unpan1.un.org/intradoc/groups/public/documents/nispacee/unpan005561.pdf>, accessed 13 April 2003.

⁵⁶¹ Litvack, Ahmad and Bird, *Rethinking Decentralisation in Developing Countries*, p. 4.

Despite the diversity of decentralization options, the history of the development of decentralisation in Africa has been somewhat inconsistent and not very encouraging. “Much of the inconsistency can be attributed to the fact that the correlation between ‘formally’ announced programs of decentralization and a serious and successful effort at its implementation is quite low, or in some cases nonexistent.”⁵⁶² One of the reasons for this discrepancy is that during the 1980s most African countries were preoccupied with reforming their economic systems and seeking to increase the role of the market and the environment in which it operates. “Role of the public sector in promoting development received little attention.”⁵⁶³

However, in some states the policy of decentralization was emphasized partly to encourage democratic sentiment, and partly to promote a development culture from grassroots up. But, paradoxically, at a practical level that has not always been the case. Very often considerable vocal emphasis was placed on decentralization, but in reality attempts were made to concentrate power at the centre. Appropriate legal provisions also helped concretise this contradiction. In addition to talking about ‘participation of citizens,’ ‘promotion of regional or local development,’ and ‘role of regional/local governments in reinforcing democracy,’ constitutions of various countries or constitutions of political parties put stringent limits on what could be ‘delegated’ to regional governments.

Vengroff⁵⁶⁴ notes that many governments believed that centralization of power was important for achieving political integration and development. Secondly, “even when decentralization was implemented, it rarely meant more than deconcentration or delegation.”⁵⁶⁵ Tordoff⁵⁶⁶ argues that the reluctance of central governments to share some of their powers is not based just on their unwillingness to dilute their authority: In recent years sub-national groups were stimulated into activity by the democratic process and

⁵⁶² Vengroff, *Decentralization in Africa*, p. 5.

⁵⁶³ Paul Smoke (2001), *Fiscal Decentralization in Developing Countries: A Review of Current Concepts and Practice*, Geneva, UNRID, p. 1.

⁵⁶⁴ Vengroff, *Decentralization in Africa*, p. 5.

⁵⁶⁵ Nyiri, *Decentralization and Good Governance*, p. 6.

⁵⁶⁶ Tordoff, *Government and Politics in Africa*, pp. 10-11.

made demands for independence or greater autonomy, that state governments had to accommodate or resist. Examples include Zanzibari pressure for greater regional autonomy in Tanzania; the post-1991 experiment in ethnic federalism in Ethiopia and the Ethiopian acceptance of Eritrea's secession; and the anchoring of South Africa's constitution to a layer of potentially strong provincial governments. However, until the 1980s and beyond, most states shied away from such sweeping decentralization measures. Thus, the so-called decentralization undertaken by Zambia in 1968-9 and Tanzania in 1972 really amounted to a deconcentration of administrative authority.

Another reason for not transferring too much power to the regions has been the realization that the process of decentralization opens the governments to political pressures at local level:

Politicians with a regional power base will be able to play on their opposition to the central government, providing in concrete and immediately identifiable terms – a new road, an industrial park, training programmes for the region's unemployed – that they have the interests of the local population to the fore, and that the central government is far too distant to be of any practical and profitable use in the community.⁵⁶⁷

In Namibia, some work on decentralization has been done, but there have been reasons for ambivalence. Namibia is a large country with a small population. In fact, the country has a population density of some two persons per square kilometre. The average population of the thirteen regions is 130 000. There are wide economic and social disparities between these regions, with most of the regions having very little capacity to raise any finances locally. A significant portion of this population already lives under one of the twelve town council jurisdictions. The government also feels that there is a need to strengthen unity in a state that was torn apart by apartheid, there is a shortage of trained human resources, and the burden on the exchequer, resulting from another layer of civil service structure at the local level, could be quite substantial.

There is also concern that if regions have unequal resource bases, those with more resources could well demand a bigger share, or poorer regions could demand a fairer

⁵⁶⁷ Horsman and Marshall, *After the Nation-State*, p. 247.

share. The national government fears that such developments could easily result in divisiveness, as has been the case in Nigeria where oil-producing states have often sought to keep the revenues from oil or complained that they got no benefit from their resources. Though Nigeria is a federal state, one cannot rule out the possibility of such divisiveness emerging even in unitary states if the government opts for extensive administrative and fiscal decentralization.

Such pressures are already beginning to show in Namibia:

A group claiming to represent the Nama in the south is threatening to sue the Namdeb Diamond Corporation (government-De Beers diamond producer) for compensation for huge revenues from the *Sperrgebiet* (prohibited area) of southwestern Namibia over the past century. The chairman of Democratic Action for Namaland (DAN), veteran politician and journalist Emil Appolus, says Oshivambo appoint themselves to senior jobs in town and regional offices in the south. The government, says Appolus, has failed to help the poverty-stricken Nama and located them out of state-backed joint ventures with foreign companies in diamonds, fisheries and grape cultivation.⁵⁶⁸

Galvin and Habib⁵⁶⁹ point out, "Decentralization is an inherently political process. It is favoured by political and socio-economic actors because it is seen to advance their interests." They point out that the interests of various actors are quite different. Societal interest groups are interested in bringing development closer to the people. State technocrats are interested in more efficient delivery of services through decentralization, and economic elites support decentralization "in the hope that it will undermine the regulatory capacity and lead to the shrinkage of the national state."⁵⁷⁰ National leaders, on the other hand, feel that decentralization undermines the management of development resources by the centre.⁵⁷¹

In the case of Namibia, despite its ambivalence, the government has remained committed to decentralization within a unitary state, but the nature of decentralization is somewhat

⁵⁶⁸ *Africa Confidential*, 24, 23.

⁵⁶⁹ Mary Galvin and Adam Habib (2001), *Final Report: Donors, State-NGO Relations, and the Politics of 'Community-oriented' Decentralization: South Africa's Rural Water Supply with an eye to the Namibian Experience*, Durban, Donor Funding Projects, Univ. of Natal, p. 2.

⁵⁷⁰ *Ibid.*

⁵⁷¹ P. Mawhood (ed.) (1993), *Local Government in the Third World: The Experience of Decentralization in Tropical Africa*, Johannesburg, Africa Inst of South Africa.

different. "SWAPO accepted decentralization as an aim, but maintained that this would not in any way compromise Namibia's unitary state."⁵⁷²

The government's commitment to decentralization flows from its commitment to democracy and its desire to seek citizens' participation in national as well as local affairs. At the local level, the government seeks to involve citizens in stipulating developmental initiatives. I have often said that one of the advantages of decentralization is that the citizens know on what door to knock in the neighbourhood, if they have a problem with water or access to education or clinics or problems with the law and order situation. For them, the central government is too far away. The government's objective is, thus, to ensure that in the unitary state developmental disparities in the regions are addressed with concrete local inputs, and support of the centre. However, the process of decentralization does not stop at regional level; it needs also to trickle down to local government levels, including rural settlement areas.

National government has already gone quite far in political decentralization. Structure, establishment, and composition of regional councils and local governments are stipulated in Chapter 12 of Namibia's Constitution. In line with these provisions, the president appointed a delimitation commission with the approval of the parliament to demarcate the boundaries of regions and constituencies. Based on the recommendations of this commission, the country was divided into thirteen regions and ninety-five constituencies in 1992. Members of the regional councils and the local authorities are elected.

Subsequently, the parliament passed a number of relevant pieces of legislation to establish a legal framework for regional and local governments. These include the Regional Councils Act of 1992, the Local Authorities Act of 1992, the Council of Traditional Leaders Act of 1997, and the Traditional Authorities Act of 2000. Since 1992, regional and local government elections have been held regularly. Regional Councillors

⁵⁷² Galvin and Habib, *Final Report: Donors, State-NGO Relations, and the Politics of 'Community-oriented' Decentralization*, p. 2.

also elect two representatives from within the elected council members to represent the region in the twenty-six member National Council, the second house of the parliament.

In 1996, the cabinet approved a detailed decentralization policy, and its implementation started in 1998. The Directorate of Decentralisation Co-ordination created within the Ministry of Regional and Local Government and Housing is spearheading the process of implementation.⁵⁷³ “In this directorate special emphasis would be placed on legislation review and policy formulation to create the necessary framework to devolve functions, authority, and financial responsibility” to the regions.⁵⁷⁴ Other responsibilities of the directorate are to ensure that “policy issues are adequately articulated both at horizontal and vertical levels and there is systematic monitoring of the implementation process.”⁵⁷⁵

The objectives of decentralization in Namibia include extending, enhancing and guaranteeing participatory democracy; ensuring rapid and sustainable development; transferring power to the regional councils and the local authorities based on national ideals and values; and improving the capacity of regional and local government councils to plan, implement, manage and monitor delivery of services to their constituents.⁵⁷⁶

Thus, the government strives to promote participatory democracy, empower the local population to make its own decisions and determine its own destiny. It also aims at improving public sector management, so that in the long run there is close linkage between taxes paid by the people and the quality of services provided. This approach should also enable the citizens at the local level to hold their appointed and elected leaders accountable.

The Ministry of Regional and Local Government and Housing has provided leadership for the implementation process. For example, with the passing of the two acts and the

⁵⁷³ Namibia, Ministry of Regional and Local Government and Housing (2001), *Strategic Plan 2001/2-2005/6*, Windhoek, Ministry of Regional and Local Government and Housing, p. 39.

⁵⁷⁴ Namibia, Office of the Prime Minister, Namibia: *A Decade of Peace, Democracy and Prosperity 1990-2000*, p. 308.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ HABITAT, *National Country Report*, <http://209.88.21.39/main/publications/countryreport.asp>, accessed 2 May 2003.

abolition of the Peri-urban Development Board, decision-making was transferred to elected councils -- a major step towards promoting democratisation and decentralization.

The National Planning Commission has also played an important role in promoting the decentralization thrust, notably through its assistance with the regional planning process, and its insistence on the role of regional councils in the endorsement of sectoral development proposals emanating from the respective regions.

Since 1996, when the cabinet approved the decentralization policy, some progress has taken place in political, fiscal and administrative decentralization as follows.

1. Political Decentralization

Political decentralization in Namibia seems to be on the right track. All the sub-national level governments (regional and local authority councils) have a governmental character. The municipalities have autonomy over their planning and financial matters. For the purpose of effective implementation of decentralization, the government has established different coordinating and development committees and decided their functions as follows: regional development coordinating committees, constituency development committees, local authority development committees, village development committees, settlement committees, and ward development committees.

The coordinating and development committees are formed with representatives from relevant stakeholders including representatives from locally based organizations and NGOs. The grass roots groups of the people's organizations have the opportunity to negotiate and implement their programmes for sustainable development. For example the Shack Dwellers Federation of Namibia is one of the vibrant grass roots organizations, reaching into most of the regions in Namibia, with more than 70 new groups formed during 2002. These are

Savings scheme groups that access blocks of land through negotiations with local authorities on behalf of their members, and give loans to their members from their own savings for income generation, school fees and emergencies

Regional development coordinating committees have been established in every region for the purpose of effective coordination of planning and development; and development committees have been established in every constituency, local authority area and settlement for effective coordination of planning and development of the areas.

Political leaders for both regional and local authority councils, who gained office through direct elections, hold regular meetings with members of regional councils who hold office for a period of six years. The municipalities elect mayors and deputy mayors as well as chairpersons and vice-chairpersons of the councils from among the council members. These officials hold office for a period of one year and may be re-elected for another term.

In the case of regional councils, the chairperson (also called "governor") presides over council meetings. The governor is the political head of the region and represents central government in the region. The regional councils are obliged to form a vital link with their constituencies, settlements, towns and the local communities

2. Fiscal Decentralization

While one of the guiding principles of decentralization is the decentralization of resources, there are difficulties in transferring fiscal control to the regions for various reasons. These reasons include diverse resource bases of the regions, lack of sufficient number of financial managers, and diverse abilities of the regions to raise revenue.

The government also needs to manage resource allocation to overcome the inequities created during the apartheid era. Therefore, fiscal allocation to regions remains the responsibility of the national government, but the government recognizes that fiscal authority must always follow functions -- resources for effecting implementation should accompany all mandates or functions and responsibilities assigned to sub-national governments.

While regional councils depend on the national government for their finances, municipalities enjoy a great degree of autonomy in regard to their finances. However, lower level local authorities, especially of towns and villages, largely rely on the central treasury because of their inability to raise enough resources for developmental needs.

3. Administrative Decentralization

The decentralization policy of Namibia stipulates that each line ministry will appoint officials to regional and local authorities to perform decentralized functions on their behalf. Such officials performing the delegated functions will be placed under the overall charge and supervision of regional officers. The process of administrative decentralization was started with the passing of the Decentralisation Enabling Act of 2000. Administrative decentralization at regional levels is really deconcentration. However, at local government level, the relevant local authorities are responsible for recruiting and administering their own staff.

Thus, Namibia has moved quite effectively in some areas of decentralization. In a recent survey of thirty African countries to determine the level of political decentralization, computed from the mean of the number of elected sub-national tiers, the score for the existence of direct elections for local governments, and the score for turnout and fairness of such elections, only three countries achieved the highest scores, *viz.*, South Africa, Uganda and Namibia.⁵⁷⁷

In the area of administrative decentralization, the progress in Namibia has been slow. As already stated, the national government's position is that administrative deconcentration is a better option for Namibia. However, progress has been made in clearly defining in law the roles of national and local governments, but work still needs to be done on

⁵⁷⁷ Stephen N. Ndegwa (2003), "Decentralization in Africa: Emerging Trends and Progress," in *Findings* (World Bank) (August 2003). This article is based on World Bank (2002), *Decentralization in Africa: A Stocktaking Survey*, Washington, D.C., World Bank.

defining where the responsibility for service delivery resides. In the survey referred to above, Namibia scored quite poorly in carrying out administrative deconcentration.⁵⁷⁸

Work on fiscal decentralization has also moved slowly, and, as already mentioned, it is unlikely that any major fiscal decentralization would take place in the foreseeable future. As things stand, the sub-national tiers control less than 5% of the national public expenditure.

Overall, Namibia ranks seventh in Africa on the Decentralization Index after South Africa, Uganda, Kenya, Ghana, Rwanda and Nigeria. However, I feel that the survey is prescriptive. It takes one set of decentralization norms to rank the countries, but as mentioned at the beginning of this section, decentralization has many hues. What is important is a commitment to decentralization and a follow up on the policy – the nature of decentralization must of necessity take local conditions into account.

Further progress towards decentralization in Namibia will depend on addressing many of the legal, institutional and administrative weaknesses that hinder transparent, predictable, responsive decision making, improvement in local resource generation, proper allocation of resources between levels of government,⁵⁷⁹ and allocation of responsibility for personnel.

Indeed, the process has been slow, but the most positive aspect is the fact that the government recognises that these initiatives are important for enhancing democracy at different levels through popular participation.

⁵⁷⁸ *Ibid.*

⁵⁷⁹ Litvack, Ahmad and Bird, *Rethinking Decentralisation in Developing Countries*, p. 30.

Anti-corruption Initiatives

Just as civil society plays a significant role in strengthening democracy, initiatives to keep the society free of corruption, through enhanced accountability and 'answerability,' are considered vital for the health of the state. J.S. Nye⁵⁸⁰ defines corruption as

Behaviour which deviates from normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. This includes such behaviour as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private-regarding uses).

Similar public-office-centred definitions have been provided by a number of scholars.⁵⁸¹ Others have provided what Heidenheimer⁵⁸² calls market-centred definitions and public interest-centred definitions. Emphasizing a public-interest definition, Rogow and Lasswell⁵⁸³ point out that "a corrupt act violates responsibility toward at least one system of public or civil order and is in fact incompatible with (destructive of) any such system. A system of public or civil order exalts common interest over special interest; violations of the common interest for special advantage are corrupt." Market-centred definitions also recognize that there is an authority that distinguishes between the rules applicable to public officials and those applicable to businesspersons operating in the free market.

In Africa, the West and western financial institutions point to the linkage between corruption and the economies of various countries. In fact, controlling of corruption defined as the misuse of public office or public responsibility for private (personal or sectional) gain has been an important theme of the neo-liberal policies of adjustment, conditionality and democratisation in Africa.⁵⁸⁴ The proponents of structural reform link

⁵⁸⁰ J.S. Nye (1967), "Corruption and Political Development: A Cost-Benefit Analysis," *American Political Science Review*, 61, 2, pp. 417-427.

⁵⁸¹ See, for example, M. McMullan (1961), "A Theory of Corruption," *Sociological Review*, 9, 2, pp. 181-200; and David H. Bayley (1968), "The Effects of Corruption in a Developing Nation," *Western Political Quarterly*, 19, 4, pp. 719-732.

⁵⁸² Arnold J. Heidenheimer (1978), *Political Corruption: Readings in Comparative Analysis*, New Brunswick, Transaction Books, pp. 5-6.

⁵⁸³ Arnold A. Rogow and H.D. Lasswell (1963), *Power, Corruption, and Rectitude*, Englewood Cliffs, Prentice Hall, pp. 132-134.

⁵⁸⁴ Szeftel, "Misunderstanding African Politics: Corruption and the Governance Agenda," pp. 221-240.

political corruption to authoritarianism as an explanation of developmental failure, thereby identifying the arguments for democratisation and good governance with those of liberalization. However, structural reforms have produced disappointing results – corruption has continued to flourish and has even increased in Africa.⁵⁸⁵ In fact, open or covert competition for ‘spoils’ has often been central to the political process in many countries, not least in Africa.⁵⁸⁶

The extent of corruption in Africa has been particularly telling. As Szeftel⁵⁸⁷ observes, clientelism has been a key mechanism through which political interests have built the electoral support necessary to ensure access to the state’s resources. He also feels that there is a need to shift African politics towards issues of social justice and government performance and away from a concern with the division of state’s resources.

Thus, one could argue that one of the reasons for the push towards democracy was a direct result of the economic crises created wittingly or unwittingly by the previous one party regimes and dictatorships. However, the emergence of democracies in Africa did not necessarily counter corruption. Democratic governments inherited the problems and opportunities for ‘accumulating’ the spoils of power. There is a need to learn from “the lessons of cases where democratisation has actually increased the sources and scale of corruption without strengthening countervailing political or institutional capacity.”⁵⁸⁸ Going through the Transparency International’s Corruption Perception Indices (CPI) for the last few years shows that many of the African countries that embraced democracy, so far have not improved their situation measured in terms of the CPI score.⁵⁸⁹

In fact, as the Transparency International’s Corruption Perception Indices show, generally most of the African states have continued to score worse on the CPI index from year to year. Based on a ranking of 10 to 0, with 10 for corruption free states, Botswana

⁵⁸⁵ *Ibid.*

⁵⁸⁶ Baylies, Cohen, and Williams, “The Struggle for Spoils,” pp. 1-3.

⁵⁸⁷ Szeftel, “Clientelism, Corruption and Catastrophe,” pp. 407-441.

⁵⁸⁸ Baylies, Cohen, and Williams, “The Struggle for Spoils,” pp. 1-3.

⁵⁸⁹ Transparency International, *Corruption Perception Index* (7 October 2003), <http://www.transparency.org/cpi/2003/cpi200e.en.html>, accessed 31 December 2003.

scored 6, 6.4, and 5.7 respectively in 2001, 2002, and 2003; and Namibia scored 5.3 in 1998, and 5.4, 5.7, and 4.7 respectively in 2001, 2002, and 2003. In 2001, 2002, and 2003, Malaysia scored 5, 4.9, and 5.2; South Africa scored 4.8, 4.8, and 4.4; Mauritius scored 4.5, 4.5, and 4.4; Egypt scored 3.6, 3.4, and 3.3; Zimbabwe scored 2.9, 2.7, and 2.3; Zambia scored 2.6, 2.6, and 2.5; and Kenya scored 2, 1.9, and 1.9.⁵⁹⁰ These statistics do not paint a rosy picture of African states' efforts to overcome corruption.

However, perception of corruption should not be taken on face value. Botswana and Namibia improved their positions in 2002 but during 2003 there was a decline in their scores.⁵⁹¹ Nothing had changed fundamentally to account for this decline. Zvekic⁵⁹² argues that the perceptions of corruption are out of line with experience of corruption, and surveys have shown that perceptions of government corruption were four times higher than actual experience of corruption in Namibia, and 40 times higher in Botswana. "These discrepancies suggest that perceptions may be shaped more by media reports of a small number of high profile incidents, of the accounts of friends or neighbours, or an overall low level of confidence in the ethics of the public sector, than any direct personal experience."

However, perceptions cannot be dismissed. "Public perceptions will remain part of any standardized methodology, as citizen input provides an important measure of anti-corruption efforts and trends. Once the gap between the perception of corruption and any direct experience of it decreases, it will present an indicative measure in itself of the levels of success and effectiveness of anti-corruption policies, programs and interventions."⁵⁹³

Corruption rears its ugly head when conditions are right for it. These conditions include poverty, declining civil service salaries, political uncertainties, lack of job security,

⁵⁹⁰ Transparency International, *Corruption Perception Index for 2001, 2002, and 2003*, <http://www.transparency.org/cpi/2003/cpi200e.en.html>, accessed 10 January 2004.

⁵⁹¹ *Ibid.*

⁵⁹² "UN Expert Advises on Anti-corruption in Southern Africa," *Xinhuanet* (10 October 2002), <http://english.enorth.com.cn/system/2002/10/10/000432271.shtml>, accessed 14 December 2003.

⁵⁹³ *Ibid.*

absence of social welfare net, and greed. Some structures that promote monopolies also allow or even promote corruption. As corruption breeds, demand for more regulation grows. Additional regulation, in turn, increases the discretionary power of many public officials thus increasing opportunities for more corruption:

This systemic weakness is exacerbated by poorly defined, ever-changing and poorly disseminated rules and regulations, accountability is typically weak, political competition and civil liberties are restricted. Laws and principles of ethics in government are poorly developed, if they exist at all, and the legal institutions charged with imposing them are ill-prepared for this complex job.⁵⁹⁴

Though causes of corruption are complex and are rooted in the particular political and economic conditions of a specific society,⁵⁹⁵ it is relatively easy to point to these causes. However, there is no simple method of dealing with the problem:

A combination of direct and indirect approaches needs to be adopted. On the one hand, broad reforms such as liberalization and democratisation – if applied with sensitivity to specific context and regulated properly – could provide the platform for clean governance and management. However, the fight against corruption also demands specific reforms to create a culture of accountability, introduce public service reforms, raise civil awareness and put incentives for proper behaviour in place. Finally, anti-corruption policy needs to be driven by effective institutional vehicles to direct and carefully prioritise and sequence initiatives. Ultimately, a strategy to counter corruption must target government, civil society and private investors.⁵⁹⁶

Klitgaard⁵⁹⁷ notes that virtually all forms of corruption are proscribed by virtually all countries, and asks why these countries do not take more steps to reduce corruption. He believes that “it may be because they lack sufficient will or sufficient local capacities, such as proper strategies and structures (including incentives), to prevent corruption.”

The World Bank⁵⁹⁸ proposes that corruption can be fought by liberalizing the economy. Rolling back the state, too, seems to be an attractive solution, but the answer is not that simple. Turning over a government agency’s functions to the market merely results in a shift from a public monopoly to a private monopoly, with the corresponding transfer of

⁵⁹⁴ Gray and Kaufmann, “Corruption and Development.”

⁵⁹⁵ Heymans and Lipietz, *Corruption and Development: Some Specific Perspectives*.

⁵⁹⁶ *Ibid.*

⁵⁹⁷ Klitgaard, “International Cooperation Against Corruption,” p.3.

⁵⁹⁸ World Bank, *World Development Report 1997*, pp. 105-106.

rent without much of an improvement in allocational efficiency.⁵⁹⁹ “The answer is not so much a minimalist state and more market, but a transformed state. Such a state would act in limited spheres, with a strengthened regulatory capacity to ‘clean up’ the market sphere and allow it to flourish in a transparent and competitive fashion.”⁶⁰⁰

The initiative for tackling corruption on a broad front requires that a number of reforms and other actions be undertaken as follows:⁶⁰¹

1. Controlled liberalization of the economy backed by the reforming of the state in areas that require the kind of discretion on the part of state officials, which could lend it to abuse. These reforms should take place in the context of clear and enforceable regulatory policies and mechanisms. The reforms could include establishing of regulatory framework for transparent and accountable conduct in the business of government, including simplified tax system, a regulated financial sector, and clearly stipulated procurement procedures.
2. Carrying out of public sector reforms to enhance accountability, civil awareness, incentives for proper behaviour, and provision of institutional vehicles for driving anti-corruption efforts. These reforms should focus on making the departments more effective, sharpening their strategic focus, better equipping civil servants for their tasks, and clear reporting by public institutions of their failures and successes in terms of agreed upon objectives.
3. Strengthening democracy to enhance executive accountability to the legislature, and independent judiciary and decentralized government. “Democracy alone does not mean no corruption. The political leadership in a democracy purposefully needs to develop the means to combat corruption. A vibrant opposition, the free flow of public information and transparent procedures are all vital elements for showing demonstrable political will and developing such a culture of honest government.”⁶⁰²
4. Creation of dedicated institutions to combat corruption. “Experience in countries such as Hong Kong, Singapore, Botswana, Chile, Poland, and Uganda suggest that institutions dedicated to the fight against corruption can and have played a role in combating corruption.”⁶⁰³
5. Promotion of ethics and social responsibility in the public service and the private sector.

The many high profile scandals and bankruptcies in the United States in recent months, from Enron through Global Crossing to WorldCom, underscore the need for there to be far-reaching reforms to strengthen ethics and social responsibility in business.... That is why TI argues for

⁵⁹⁹ Heymans and Lipietz, *Corruption and Development: Some Specific Perspectives*.

⁶⁰⁰ *Ibid.*

⁶⁰¹ Gray and Kaufmann, “Corruption and Development”; Heymans and Lipietz, *Corruption and Development: Some Specific Perspectives*.

⁶⁰² Heymans and Lipietz, *Corruption and Development: Some Specific Perspectives*.

⁶⁰³ *Ibid.*

civil society monitoring of both governments and businesses. They are both part of the problem, and only by engaging with them both together, can we begin to find solutions, and a level playing field for all stakeholders in society, including company employees, the community at large and all those who care about ending poverty and securing a sustainable ecosystem for the future.⁶⁰⁴

6. Above all, there is a need for political will for the success of anti-corruption initiatives. As the chairman of Transparency International observed at the time of launching CPI of 2002:⁶⁰⁵

Politicians increasingly pay lip-service to the fight against corruption but they fail to act on the clear message of TI's Corruption Perceptions Index: that they must clamp down on corruption to break the vicious circle of poverty and graft. Seven out of ten countries score less than 5 out of 10 in the CPI 2002, which reflects perceived levels of corruption among politicians and public officials – and many of these are poorest countries.

Keeping corruption in check thus requires that there is a strong political will and a proper national integrity system with appropriate institutions and practices. Pillars of this national integrity system include an elected legislature that is at the forefront of the fight against corruption; a committed executive; an independent judicial system; the Office of the Auditor-General; the Ombudsman; independent anti-corruption agencies that are more skilled than the police in dealing with sophisticated white-collar crime; a strong civil society; a private corporate sector; and international actors.⁶⁰⁶ In many states where there is one dominant party, as in Namibia and Botswana, it is even more important for the government to strengthen the national integrity system as it would, in turn, strengthen democracy.

Transparency International also identifies the ideal rules and practices for various institutions. These include free and fair elections, provision of judicial review of official actions; public service ethics, monitoring assets and integrity testing; minimizing conflict of interest, nepotism and cronyism; better public procurement procedures as it is in this area that the public and private sectors do business; good financial management; right to information (information, public awareness and public records); giving the citizens a

⁶⁰⁴ Peter Eigen (2002), "Corruption is Unsustainable," statement by Peter Eigen, Chairman of Transparency International on the launch of the *Corruption Perceptions Index 2002* (28 August 2002).

⁶⁰⁵ *Ibid.*

⁶⁰⁶ Transparency International, *TI Source Book 2000*.

voice; putting in place a competition policy that focuses on containing corruption; appropriate laws to fight corruption; and mechanisms for measuring progress.⁶⁰⁷

Indeed, in some parts of Africa considerable effort is being made to tackle corruption but success, if any, has been slow in materializing. Many reasons could be advanced for this failure but three most likely ones are:

1. The existence of forces of authoritarianism, some linked to the constitution itself, and the others who struggle to maintain their political and economic power come what may;
2. Emphasis on lip service to anti-corruption initiatives but little effort to implement the initiatives; and
3. Weaknesses of anti-corruption institutions (lack of competent personnel, political interference, lack of resources).

Namibia's Anti-corruption Efforts

In independent Namibia, the new government emphasized democracy, openness and transparency. I had personally been involved in spearheading anti-corruption initiatives within the civil service. In order to emphasize the government's commitment to fight corruption, a commission (Frank Commission, named after Justice Frank, who was the chairman of the commission) was appointed to look into instances of corruption in both public and private sectors. The mandate of the commission was only to investigate specific instances of corruption. It submitted a four-volume report to the president, and I made recommendations to the Cabinet on the actions that the government could take against those identified as having indulged in financial irregularities. Recommendations included actions such as prosecution, blacklisting businesses (banning them from tendering for government contracts), and disciplinary measures against civil servants. As a result of government's action against erring civil servants, one permanent secretary was dismissed and another one was suspended (until cleared on further investigation, which showed that she was only negligent and inefficient because of her inexperience).

⁶⁰⁷ *Ibid.*

Salaries of civil service staff were improved to bring them in line with private sector remunerations to remove any temptation at “rent seeking”. Civil service staff members were also allowed to have their own businesses, if they so wished, as long as there was no conflict of interest. This policy has, however, come under criticism:

In Namibia the situation is often clouded by the fact that those making the rules that promote black economic empowerment are often those benefiting from them since there are no limitations on the business interests a public servant can have. Furthermore, in a situation where whistle blowers are likely to come from the established business community, there is always the danger that such actions can be written off as the work of disgruntled racists and issues of corruption quickly become issues of race.⁶⁰⁸

This allegation still has to be proven. In the meantime, the government has taken concrete actions against corruption. When irregularities at the National Housing Enterprise were brought to the attention of the cabinet, the matter was taken to the court. Similarly, when irregularities in the use of funds for boreholes were reported in the media, a commission was appointed to examine these irregularities, and the cabinet took corrective actions based on the commission’s findings. Only recently, when the husband of a parliamentarian, who was a civil servant, was accused of embezzlement, he was sentenced to 22 years imprisonment by the high court. Four state enterprises, Social Security Commission, Roads Authority, Road Fund Administration and the Namibia Airports Company, where indications of financial malpractices were detected, are also under investigation. Learning about the possibility of malpractices at these corporations, President Nujoma said, “Those who are found guilty of such malpractices must face the full wrath of the law.”⁶⁰⁹

Indeed, independence of the judiciary has greatly helped promote a culture of accountability. This independence is evidenced by the fact that the government loses

⁶⁰⁸ Robin Sherbourne, “Almost all the Ingredients for Trouble Ahead – The Economics of Corruption: Implications for Namibia,” in *IPPR Briefing Paper*, Windhoek, Inst for Public Policy Research, <http://www.ippr.org.na/Briefing%20Papers/BPCor.pdf>, accessed 9 January 2004.

⁶⁰⁹ Chirstof Maletsky, “Nujoma Returns, Breathing Fire Against Those Who ‘Milk System’,” in *The Namibian* (30 January 2004).

almost half of the cases in the courts of law and has always abided by the courts' rulings.⁶¹⁰

However, Advocate R. V. Rukoro⁶¹¹ was quite critical of the inefficiencies in the process of countering corruption:

Government responded to the allegations of impropriety in the public sphere by establishing *ad hoc* commissions or committees of inquiries, ... [but] it could be said generally that the government's response has not always met desired standards of transparency and accountability. In some cases, the media and the public were left with the impression that government sought to either cover up wrongdoing or was not diligent in its efforts to address the problem.

I agreed with Mr Rukoro's criticism. The process was indeed slow. Until 1997, government's actions to counter corruption were largely *ad hoc*. When the Cabinet decided that institutional mechanisms needed to be devised to address the issue of corruption in a coherent way, I was tasked with the responsibility of taking the anti-corruption initiative further. One of my proposals was for the political leaders to declare their assets.

As mentioned in Chapter Five, in 1997, the Office of the Prime Minister also introduced the General Principles of the Public Service Charter to emphasize the service element of the public service. Subsequent to the introduction of the General Principles of the Public Service Charter, various ministries and departments that deal directly with the public have been drafting their individual charters, such as the Patients Charter.

In the same year, Namibian parliamentarians produced a document entitled *Agenda for Change* that calls for the adoption of a parliamentary code of conduct.

In 1997, an *Ad Hoc* Committee on the Promotion of Ethics and Combating of Corruption and its Technical Committee were established under my chairmanship with the mandate

⁶¹⁰ The fact that the government loses so many cases might suggest that the government's investigative and prosecution competencies are limited.

⁶¹¹ R.V. Rukoro (1997), "Namibia's Initiative to Combat Corruption and to Promote Ethical Behaviour," paper presented at Eighth International Anti-Corruption Conference (1997). Adv. Rukoro was at that time the Attorney General of Namibia.

to address the requirements for countering corruption and promoting ethics in a holistic way. Mr Rukoro was asked to send two Namibians to examine anti-corruption initiatives in other countries. He himself went to Hong Kong, which had achieved considerable success in countering corruption. The government also hired the person who had developed Hong Kong's anti-corruption legislation.

Subsequently, the Technical Committee of the *Ad Hoc* Committee on the Promotion of Ethics and Combating of Corruption crisscrossed the country to get feedback from the citizens, and held an international conference on combating corruption. I recall one of the United States representatives having said after the conference, "So far so good. Now we will see how you act on the proposals."

The proposals were submitted to the Cabinet. One of the proposals was to establish an independent anti-corruption commission, but the Cabinet, on the advice of an expert, felt that there was no need for such an anti-corruption commission. The ombudsman or the prosecutor general could easily carry out this responsibility. The Cabinet felt that the prosecutor general's office would be the best place where responsibility for countering corruption could rest.

However, there was general displeasure with this decision. The general feeling within the government was in favour of establishing an independent anti-corruption commission. Subsequently, in March 2000, the Cabinet changed its thinking and approved the establishment of an independent anti-corruption body, and in September 2001, the parliament passed the anti-corruption legislation, establishing the basis for the creation of an anti-corruption body.

Clearly, the challenge of containing corruption requires continuous effort. In Namibia, the process was started in the immediate postcolonial period with the establishment of an elected legislature, holding of free and fair elections at regular intervals, providing for an independent judiciary, establishing offices of the auditor general, and of the ombudsman, promoting the Public Service Charter to emphasize service to the public, strengthening

local government structures, ensuring the independence and freedom of the media, providing political space to the civil society, providing opportunity and freedom for citizens to have a voice through chat shows, enacting the Public Service Act to secure the accountability of public officers, promulgating anti-corruption legislation (that also provides for the establishment of anti-corruption agencies), and facilitating a more representative private corporate sector (National Chamber of Commerce and Industry⁶¹²).

The General Principles of the Public Service Charter and other initiatives have forced various departments to re-examine what they do and why. That in turn has resulted in significant restructuring for enhanced efficiencies, effectiveness and accountability. Improvement in the ranking of Namibia in TI's Corruption Perceptions Index until 2002 indicates that progress was being made.

Specifically, the fight against corruption requires that the government continue to be on guard and keep on creating conditions for strengthening various institutions. Some of the issues that the government still needs to focus on include:

1. Stringent application of the provisions of the Public Service Act in securing the accountability of public service officers.
2. Drafting and implementation of the various public service charters.
3. Establishment of the anti-corruption agency.
4. Strengthening government's auditing standards.
5. Articulating ethical principles for judges.
6. Promoting ethical business practices and corporate code of conduct through agencies, such as the Chamber of Commerce and Industry.
7. Stipulating guidelines for multinational and national aid agencies, multinational corporations, and NGOs.
8. Promoting Code of Conduct for African Parliaments (1998).

⁶¹² Prior to government's action, black businessmen and women were not allowed to join the Chamber of Commerce and Industry.

Threats to Democracy

Today, more people in Africa live in democratic countries than ever before. One may disagree about the nature of democracies in many countries, but the fact remains that these countries have made considerable strides towards democratisation. It would therefore be wrong to view Africa in terms of what some call Afro-pessimism.⁶¹³

There are also many countries in Africa that are brutalized by civil wars and controlled by dictators, a condition that emphasizes the need for global effort to resolve conflicts and promote democracies in these countries. But equally, it is important to ensure that the countries that have made transition towards democracy have a chance to let it flower. This requires building institutional structures that ensure accountability of elected officials, subordination of the military and police to the elected officials, an independent and respected judiciary, political and legal equality of citizens, state officials who are themselves subject to the law, and respect for individual and group liberties.⁶¹⁴

In addition, people should be free to organize, demonstrate, publish, petition, and speak their minds. Newspapers and electronic media should be free to report and comment, and to expose wrongdoing. Minority groups should be able to practice their culture, their faith, and their beliefs without fear of victimization, and executive power is constrained by other governmental actors.⁶¹⁵ Mazrui⁶¹⁶ refers to these requirements as “the four fundamental ends of democracy.” These are accountable rulers, actively participating citizens, an open society, and social justice.

It is not that rulers in Africa don't know these requirements of democracy; yet, as Lewis⁶¹⁷ states, “The search for stable and legitimate government, the quest for unity among heterogeneous societies, and the aspirations for economic attainment have been perennial themes since the end of the colonial era.”

⁶¹³ See also Chester Crocker (1994), "Stop the Pessimism about Africa," *USA Today* (12 September 1994).

⁶¹⁴ Diamond, *Developing Democracy in Africa: African and International Imperatives*, <http://democracy.stanford.edu/Seminar/DiamondAfrica.htm>, accessed 25 April 2003.

⁶¹⁵ *Ibid.*

⁶¹⁶ Mazrui, "Who Killed Democracy in Africa?" pp. 15-23.

⁶¹⁷ Peter Lewis (ed.), *Africa: Dilemmas of Development and Change*, Boulder, Westview Press, p. 1.

Therefore, a question that is more relevant is not why the progress of the fundamental ends of democracy is so slow, but why the political leaders have failed, or chosen not to promote accountability, allow citizen participation in the affairs of the state, open up the society, and bring about social justice in line with the citizens' desire for peace, accountability, honesty, a say in the government, freedom to choose, and economic development.

Zakaria⁶¹⁸ notes that Freedom House's survey has "separate rankings for political liberties and civil liberties, which correspond roughly with democracy and constitutional liberalism, respectively." While most countries do better on political liberties, most do poorly on civil liberties. Zakaria⁶¹⁹ further argues, "To date few illiberal democracies have matured into liberal democracies.... Thus the problems of governance in the 21st century will likely be problems within democracy. This makes them more difficult to handle, wrapped as they are in the mantle of legitimacy [of elections]."

Part of the problem lies in the fact that in most African countries, politics is the only game in town. This situation has resulted in most people seeking to secure a piece of the pie that power or association with power might offer. Consequently, as Ake⁶²⁰ notes, "The use of state power for accumulation, associated as it is with statism, monopoly power, and the interposition of coercion in the labor process, raised to new heights the premium on the capture of state power." He further notes that "every interest group is out for itself; each wants to appropriate and privatise state power to its own benefit."⁶²¹ The Cold War preyed on this weakness, with the East and West often supporting despots for their own political ends.

Indeed, there is also a belief that aligning oneself with the winning political party would be good for one's own welfare. This, in turn, results in one party becoming dominant to

⁶¹⁸ Fareed Zakaria (1997), "The Rise of Illiberal Democracy," *Foreign Affairs* (Nov./Dec. 1997).

⁶¹⁹ *Ibid.*

⁶²⁰ Ake, *Democracy and Development in Africa*, p. 6.

⁶²¹ *Ibid.*, p. 94.

the extent that the country becomes a *de facto* one party state. Political elites, too, begin to delude themselves into believing that they are the popular choice. Regrettably, in many cases in Africa, democratisation has meant replacing a self-appointed dictator with an elected one.⁶²² Diamond⁶²³ points out that “When countries have been brutalized and devastated as horribly as Sierra Leone, Liberia, and Angola, it is conceivable that the electorate will give power to a warlord like Charles Taylor simply to sue for peace. Such an election may bring peace, but not likely democracy (as recent Liberian experience is showing).”

Another consequence of ‘the only game in town’ hypothesis is that leaders, even if they are committed to democracy, are reluctant to relinquish power, as they see no financial and personal security, or role for themselves beyond their political position. If they consider their future secure, they might be more likely to accept limitation of their power and be responsive to the demands of accountability, open society and participation by citizens. In other words, they would be more willing to promote good governance (efficient and effective civil service, anti-corruption initiatives, and protection of human rights).

Such threats to democracy that have their roots in the need for individual financial and personal security can be overcome by strong legislative instruments and other institutions. For instance, there need to be effective mechanisms to ensure financial and personal security of leaders beyond their terms of office, to keep the military professional, the judiciary free, and the police force competent in protecting citizens’ rights and effective in ensuring that citizens have faith in its ability to protect them against crime. In addition, social and economic development policies need to be attuned to the needs of the people.

⁶²² Ake, *The Feasibility of Democracy in Africa*, p. 187.

⁶²³ Diamond, *Developing Democracy in Africa*.

Mazrui⁶²⁴ believes that Africa has copied the West, much to its detriment. He further argues that Japan modernised without culturally westernising, so did Turkey. "Africans decided to culturally Westernise without economically modernising." His observation is valid, as not much can be achieved in any effort towards neutralizing threats to democracy without considerable investment in skills development. Diamond⁶²⁵ notes that the elements of what Linz and Stepan⁶²⁶ call "useable" bureaucracy "that African countries most lack is a cadre of highly trained, professional economic technocrats who understand the dynamics of markets domestically and internationally and the basic requirements for generating economic growth." For overcoming this constraint, Irele⁶²⁷ suggests that:

The contemplative life entailed by the intellectual and moral function of the university must be given greater weight in our context, through forms of action that are geared towards the improvement of our society. In other words, the process of reflection has to serve not only as the mobilization of consciousness but also as the arming of our collective will and the strengthening of our resolve for building a new and better world in Africa.

Thus, threats to democracy come from politicians feeling insecure about their future, weak legislature, lack of professionalism in the military and police force, and weak economies. Overcoming these threats and weaknesses is essential to strengthening democracy.

Democratic Audit

In 1788, James Madison, U.S. democrat and president, said, "But what is government itself, but the greatest of all reflections on human nature.... In framing a government that is to be administered by men over men the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on government: but

⁶²⁴ Mazrui, "Who Killed Democracy in Africa?"

⁶²⁵ Diamond, *Developing Democracy in Africa*.

⁶²⁶ Juan J. Linz and Alfred Stepan (1996), "Toward Consolidated Democracies," *Journal of Democracy*, 7, 2, pp. 20-21.

⁶²⁷ F. Abiola Irele (2000), "The Political Kingdom: Toward Reconstruction in Africa" (19 June 2000), <http://www.africahome.com/community/africanist/categories/scholar/ecopolitics/EpEAZAupAZdEYAxAwf.shtml>, accessed 14 April 2003.

experience has taught mankind the necessity of auxiliary precautions.”⁶²⁸ This statement sums up the necessity of establishing mechanisms that strengthen the government’s ability to govern, citizens’ ability to hold the government accountable, and the necessity of mechanisms to hold the government accountable. Therein lie the appeal and importance of democracy – people governing their own society.

Of course, in a modern society, people govern through their elected representatives, but in recent times, with citizens becoming more informed, there is high level of distrust of politicians, as well as the felt outrage over shortcomings in government performance because of the high demands citizens put on their politicians and the political system.⁶²⁹

In Sweden, economists who conduct an annual survey of the economy have also “pointed to the problems within the political system as one explanation for weak economic performance.”⁶³⁰ Similar concerns have been expressed in Africa where apartheid, dictatorships and institutional inefficiencies undermined democracy as well as economies. However, democracy does not automatically guarantee economic success.⁶³¹ As the Executive Secretary of the United Nations Economic Commission for Africa⁶³² points out:

The relationships between free markets, democracy, development and poverty reduction are complex. I will advocate the market approach but in the context of a strong and capable state.... A capable state is far more likely than not to be found in a situation of deepening and genuine democracy.... How can democratisation help to ensure the creation of capable states? The predominant test of good governance in recent years has been whether competitive elections and smooth transitions take place. But, as a recent World Bank report on Africa notes, "a sharp distinction should be drawn between formal and real democratisation."... We have not yet reached a stage in Africa where governments that perform poorly are sure to be forced out of office through public opinion and the ballot box; or where the mere threat of this serves as a deterrent to bad governance.

⁶²⁸ Clinton Rossiter (ed.), *The Federalist Papers*, New York, Mentor/Penguin Books.

⁶²⁹ Micheletti, *Democratic Audit of Sweden*.

⁶³⁰ *Ibid.*

⁶³¹ Heymans and Lipietz, *Corruption and Development: Some Specific Perspectives*.

⁶³² K.Y. Amoako (2000), *The Market, Democracy and Development in Africa: Keynote Address at the 40th Anniversary of the Africa Confidential* (19 April 2000), London.

This condition has garnered considerable interest in developing some mechanism for a 'democratic audit.' According to David Beetham,⁶³³ for the democratic system of government to fulfil its representational obligations, it ought broadly to seek to satisfy the two basic principles: popular control over political representatives and processes of decision-making; and political equality in the exercise of that control. In order to carry out democratic audit, Beetham's two principles could be extended into a set of questions which may then be applied to render a descriptive analysis of a given state's institutional arrangements in systematic terms, and measuring systematically how far the two principles are satisfied across a wide spectrum of institutional processes and practices.⁶³⁴ Beetham writes that democracy is not an 'all-or-nothing' affair but a matter of degree.⁶³⁵ The approach being sought therefore needs to be both qualitative as well as quantitative benchmarking.

Three main criteria have been identified for such benchmarking by the Swedish Democratic Audit study.⁶³⁶ These include (1) popular government – Are people free to govern themselves in an organized fashion? (2) constitutional government – Does the legal system satisfy certain fundamental requirements that are respected by administrative authorities and the general public? and (3) effective government – Does the political system have the institutional capacity to carry out its decisions? Similarly, Beetham⁶³⁷ identifies four factors that facilitate democratic consolidation – the experience of transition itself, a country's economic system, its political culture, and its constitutional arrangements.

Defining democracy this way has several implications. First, the benchmarks include more than just a minimal definition of democracy. This means that democracy is more than a bundle of minimum requirements or threshold values. It is more than universal

⁶³³ Beetham, *Auditing Democracy in Britain*.

⁶³⁴ Stuart Weir (1994), *British Democracy in Balance: How Britain Compares with Five other Democratic Nations*, London, Charter 88 Trust, p. 3.

⁶³⁵ Beetham, *Auditing Democracy in Britain*.

⁶³⁶ "Demokrati och Dialog," quoted in Micheletti, *Democratic Audit of Sweden*.

⁶³⁷ Beetham, "Conditions for Democratic Consolidation," pp. 157-172.

suffrage, free elections, and the liberal freedoms of speech, press, and association.”⁶³⁸

These are only threshold requirements:

Democracy is not simply popular government – the political system has also to meet requirements to do with constitutional and effective government. Democracy does not only mean effective government – the need for effective leadership also has to be weighted against the need for popular consent and for legal objectivity. It is obvious that good democracy requires that a balance be struck between popular, constitutional, and effective government. Too much of one criterion can lead to a deficit in another. The balance that is struck is also time-bound. New political problems and new time periods require a reassessment of the balance between popular, constitutional, and effective government.⁶³⁹

Another important aspect of any democratic audit is that it must be carried out by agencies independent of the government if undue bias is to be avoided. However, this is not to suggest that perceptions are not important. Government must not only be democratic, it must be seen to be democratic. Using the Swedish model of democratic audit that draws on standards articulated by Dahl and mentioned earlier in this chapter, what follows is a glimpse of how Namibia’s democracy has done since 1990. However, there is a caveat: Just because I am using the Swedish normative tools to carry out the audit for Namibia does not mean that it is necessary to draw parallels between an established and mature democracy and a new democracy. Beetham’s assertion, that democracy is not an ‘all-or-nothing’ affair, suggests that it is the progress that matters.

The African Union’s New Partnership for Africa’s Development (NEPAD) also recognizes the importance of sustaining progress in political, economic and corporate governance. In July 2002, African heads of state and government adopted the African Peer Review Mechanism (APRM).⁶⁴⁰ Among other things, “the mandate of the African Peer Review Mechanism is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM is the mutually agreed instrument for self-monitoring by the

⁶³⁸ Micheletti, *Democratic Audit of Sweden*.

⁶³⁹ *Ibid.*

⁶⁴⁰ See http://www.au2002.gov.za/docs/summit_council/aprm.htm, accessed 5 January 2004.

participating member governments.” The primary characteristics of process of review include:⁶⁴¹

- periodic reviews of the policies and practices of participating states to ascertain progress being made towards achieving mutually agreed goals and compliance with agreed political, economic and corporate governance values, codes and standards;
- spurring countries to consider seriously the impact of domestic policies not only on internal political stability and economic growth but also on neighbouring countries. It will promote mutual accountability, as well as compliance with best practices; and
- keeping in mind that African countries are at different levels of development, on joining the mechanism, a country will be assessed (the base review) and a timetable (Programme of Action) for effecting progress towards achieving the agreed standards and goals must be drawn up by the state in question, taking into account the particular circumstances of that state.

Thus, democratic review is just one aspect of this broader approach taken by the leaders of African governments. So far, eighteen countries have asked to participate in this process. Regrettably, Namibia is not one of them. On 4 April 2003, Prime Minister Gurirab stated, “Thinking through time, let me now take up the much talked about but manifestly deceptive issue of the NEPAD’s so-called Peer Review Mechanism (PRM). Firstly, I shall, with due respect, consign it to the dustbin of history as a sham. Secondly, PRM is an unworkable notion. I see it as a misleading, new name for the old, discredited structural adjustment fiasco, under which African leaders have been clustered between good guys and bad guys.”⁶⁴²

⁶⁴¹ *Ibid.*

⁶⁴² Theo-Ben Gurirab (2003), *Address at the Dinner of the Chamber of Mines of Namibia* (4 April 2003), <http://www.sarpn.org.za/documents/d0000291/index.php>, accessed 5 January 2004.

His concern is not with NEPAD getting involved in issues of economic growth, investment, employment creation, capacity building and social transformation but with NEPAD's involvement in political, security and conflict resolution issues.⁶⁴³

My perspective, however, is different for the simple reason that economic growth, employment creation, capacity building and social transformation take place only in the correct political milieu. Therefore, political issues cannot be left out of the African Peer Review Mechanism (APRM). Therefore, it would be important to conduct an audit at regular intervals, and then determine if Namibia is becoming more democratic and more prosperous or less so over time.

The sections that follow provide an assessment of Namibia's democratic audit based on the categories identified by the Swedish democratic audit study.

Popular Government

Control of the Agenda: In a representative democracy, the legislative assembly should have the deciding say over its own agenda. That would require the assembly to be proactive rather than reactive. However, in Namibia that is not the case for two reasons. First, most of the agenda of the National Assembly is determined by the executive, for the simple reason that the ministers and deputy ministers combined form a disciplined majority in the National Assembly. Second, there is very inadequate debate in the parliament on various issues by political parties in opposition. However, during the budget session, some very stimulating debates take place. During this debate, expenditure of every cent is questioned. There have been other occasions, too, when lively debates have taken place, e.g., on a motion for constitutional amendment to allow a third term for the president, on married persons' equality bill, and on commercial and communal land bills.

Enlightened Understanding: "Popular government is realized through free and open public debate. Democracy is a method for solving conflicts through dialogue and

⁶⁴³ *Ibid.*

deliberation. This means that democracy requires a functioning public sphere.”⁶⁴⁴ In Namibia, currently the most important institution in the public sphere is the mass media. However, as elsewhere, “We see an American trend, where journalists dramatize events in such a way that citizens cannot really assess the facts of a case. There is a focus on political personalities and an overexposure of political wrong-doings.”⁶⁴⁵ There is also lack of public fora for debate on national and regional issues.⁶⁴⁶

The state-owned Namibia Broadcasting Corporation (NBC) has provided a forum through its programmes, such as the Chat Show, the Open Line, Talk of the Nation, and the Feedback Programme (where government representatives respond the same afternoon to issues raised in the Chat Show in the morning).

However, NBC has been criticized often by the civil society as well as politicians.⁶⁴⁷ According to the Director of Legal Assistance Centre, “Civil society representatives feel that interference in television programming by State House and ruling party politicians has severely compromised the editorial policy of the Namibian Broadcasting Corporation (NBC).”⁶⁴⁸ At a Media Institute for Southern Africa (MISA) conference, the Director of the Legal Assistance Centre also pointed out that people with dissenting viewpoints are not given airtime on NBC.⁶⁴⁹ Politicians, depending on the party they belong to, either feel that NBC does not do enough to inform the citizens about the government’s initiatives, or believe that NBC is the mouthpiece of the political party in power.⁶⁵⁰

Despite these real or perceived limitations of NBC, its work and programming are helping involve the citizens in debating national issues. That cannot be said about other electronic media operating in Namibia. The fact is that in Namibia government-owned media exist along with the privately-owned as well as opposition-owned media, and

⁶⁴⁴ Micheletti, *Democratic Audit of Sweden*.

⁶⁴⁵ *Ibid.*

⁶⁴⁶ “African Media on Wrong Track, Charges President” *The Namibian* (7 May 2001).

⁶⁴⁷ *Ibid.*; “African Media Workers Lament Slow Progress,” *The Namibian* (8 May 2001).

⁶⁴⁸ *The Namibian* (20 November 1002).

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *Ibid.*

influence of the government on the programming of NBC is not much different from the influence exerted by owners of other media.

Namibian law also protects the media practitioners' right of freedom of expression. In fact, throughout independent Namibia's history, no journalist has ever been arrested, no cameras have been confiscated, and there is no censorship. It is in recognition of these reasons that MISA chose to establish its headquarters in Namibia. Hopefully, with increased education and the evolution of a healthy political culture, other electronic media would also become an instrument for promoting a more direct democracy.

Effective Participation: Effective participation is the most important ingredient of democracy and finds expression in election campaigns, through which those in power are called into account. Though participation in election campaigns was high soon after Namibia became independent, some observers have expressed concern at the low level of attendance at rallies, and fewer citizens exercising their franchise at the polling booth.

Low turnout might be seen as an expression of satisfaction with the performance of the government, or lack of any real issues on which public is divided. I recall that when the Congress of Democrats appeared on the scene, there was excitement during the electoral campaign. Voters turned out in large numbers to support their respective parties. Thus, when voters' interests are at stake, they do come out to vote.

Local and regional self-governments provide another ingredient for effective participation, as they are important arenas for citizen involvement and training in democracy.⁶⁵¹ The constitution also provides for the National Assembly to initiate, approve, or decide to hold referenda on matters of national concern.⁶⁵² However, during the past thirteen years, no referendum has been held. Perhaps the primary reason for this has been that one party controls both the houses of parliament with a considerable majority.

⁶⁵¹ Micheletti, *Democratic Audit of Sweden*.

⁶⁵² Namibia, *Constitution of the Republic of Namibia*, Article 63(2)(g).

In Namibia, as in the rest of Africa, the institutionalisation of a viable multiparty political system is proving to be a formidable task. Over the last thirteen years, there has been a steady shift away from smaller parties. For instance, since 1989, SWAPO's share of votes in National Assembly elections has steadily gone up from 57.3% to 76.3% in 1999; and votes secured by the DTA have fallen from 28.34% in 1989 to 9.40% in 1999. Other political parties have also lost ground. The government has sought to facilitate the evolution of credible political parties by funding their parliamentary offices and their election efforts. However, this has not helped. The primary reason for this failure of non-SWAPO parties is that they lack a specific agenda for Namibia. It can only be hoped that the situation will improve over time. However, the proportional representation system has ensured that even smaller parties find a seat in the parliament.

Decision-Making Equality: This requirement demands that "all citizens and social groups should have the same right to participate in the political community. This means that systematic under-representation of any social group can be a serious problem for democracy."⁶⁵³ Indeed, Namibia's Constitution recognizes and enshrines equality for all, and it goes further by recognizing the need for affirmative action to help those who were disenfranchised in the past, such as women. The Constitution recognizes that women's equality needs to be actively promoted. In order to carry out these tasks, the civil service was restructured with the enactment of the Public Service Act of 1995. Several other relevant laws have been passed by the parliament to promote equality. The Labour Act of 1992 improved the position of Namibian workers. As a result of demand by all parties in their election manifestos it is now stated policy of all the parties that the party lists should include at least 30% women.

Citizen Tolerance: Citizen tolerance deals with citizens' views and perceptions about issues that may not be to their liking. Therefore, citizen tolerance deals with citizens' rights and freedoms. As mentioned earlier in this chapter and in Chapter Five, in Namibia, the policy of reconciliation has helped reduce hatreds of the past. But there is

⁶⁵³ Micheletti, *Democratic Audit of Sweden*.

evidence in certain quarters of strong likes and dislikes, e.g. dislike of homosexuals⁶⁵⁴ but no gay person has been persecuted in the country. Indeed, society could tolerate such likes and dislikes, as long as rights of individuals are not compromised. Not long ago, even in the United States, homosexuals could not come out of the closet, and the debate on the rights of homosexuals continues. In fact, in February 2004, President Bush appealed for the enactment of a Constitutional Amendment that would prohibit gays from marrying each other.⁶⁵⁵ Namibia is going through a slightly earlier phase of intolerance. There are also other issues that pose difficult dilemmas in assessing citizen tolerance. For instance, it is debatable whether the freedom of expression implies tolerance for pornography or racist associations.⁶⁵⁶

Constitutional Government

The second basic principle of democracy is limitation of state power. Three indicators of constitutional government may be used, viz., rights and freedoms, rule of law or due process, and separation of powers. Namibia's constitution has been recognized "as the linchpin of Namibia's multiparty democracy."⁶⁵⁷ According to Bauer:⁶⁵⁸

This is because the Namibian constitution contains entrenched clauses guaranteeing fundamental human rights including freedoms of association and expression and an uncensored press. The constitution also includes the proscription of arbitrary arrest, detention without trial, and the death penalty and it enshrines the right of individual property ownership.... At its adoption in 1989, Namibia's constitution was hailed as one of the most democratic in Africa and the world.

Bauer further observes that "until fairly recently, the ruling party SWAPO had carefully observed provisions of the constitution."

In the observance of the provisions of the Constitution, some criticism of the ruling party has come, because the government sought to amend the constitution to allow the

⁶⁵⁴ "President Urges 'Gay Purge'," *The Namibian* (20 March 2001); "SWAPO Women add Voice on Homosexuality, Prostitution," *The Namibian* (28 May 2001).

⁶⁵⁵ *The New York Times* (25 February 2004)

⁶⁵⁶ Micheletti, *Democratic Audit of Sweden*.

⁶⁵⁷ Economist Intelligence Unit (1998), *Country Profile 1997-98*, London, ECU, p. 7.

⁶⁵⁸ Gretchen Bauer (2001), "Namibia in the First Decade of Independence: How Democratic?" *Journal of Southern African Studies*, 27, 1, p. 37.

incumbent president to contest elections for the third term. Despite the fact that the amendment was in line with the provisions stipulated in the constitution, and the incumbent won the third term in office with 76% majority, it was alleged by the critics that the implication for the third term would be increasing concentration of power within the Office of the President.⁶⁵⁹ This argument, however, is not supported by examples elsewhere, e.g., in the United Kingdom and Canada where there are no limits on the terms of office. However, there is one significant difference. Unlike the president of Namibia, prime ministers of the United Kingdom and Canada sit in the parliament and are accountable to it. Further details on this theme are provided in Chapter Four.

While it is difficult to find correlation between the third term and the concentration of power in the Office of the President, there have been some instances where the President exceeded his authority. For instance, the President sent Namibian troops to the Democratic Republic of Congo (DRC) without consultation with the cabinet. There were charges that “President Nujoma violated the constitution by failing to consult with Parliament before sending Namibian troops to the DRC in August 1998, given that Article 96 of the constitution calls for the settlement of international disputes by peaceful means.”⁶⁶⁰ However, “this article ... is merely one of several ‘principles of state policy’ and therefore is not binding.”⁶⁶¹

In any case, as soon as the National Assembly met, I, as the prime minister and leader of government business in the parliament, made a statement informing the legislators of the development. I stated that in the light of the fact that dissidents in the Caprivi region had received weapons from Savimbi’s UNITA, it was a matter of national security for Namibia to ensure that a pro-UNITA government did not take power in the DRC.

⁶⁵⁹ *Ibid.*

⁶⁶⁰ *Ibid.*

⁶⁶¹ *The Namibian* (19 October 1998)

There was, of course, debate on the government's stand, but, as Keulder⁶⁶² points out, the National Assembly is little more than the executive in disguise. He further points out that ministers and deputy ministers in the National Assembly outnumber ordinary SWAPO members of the National Assembly. As this would almost always be the case with any majority government, this criticism cannot be seen as a criticism of SWAPO but of the opposition for continually faring so badly in elections, and perhaps of the size of the National Assembly or cabinet. The argument certainly gives one pause that there might be a justification for combining the two houses of parliament and increasing the number of elected representatives in a unicameral parliament.

The government also came under criticism for allegedly exceeding its powers in its response to the attempted Caprivi secession particularly with regard to the declaration of emergency proclamation. However, such allegations are baseless. Article 3(f) of the constitution empowers the president to "declare martial law or, if it is necessary for the defence of the nation, declare that a state of national defence exists: provided that this power shall be exercised subject to the terms of Article 26(7) thereof." In terms of Article 26(7): "The President shall have the power to proclaim or terminate martial law. Martial law may be proclaimed only when a state of national defence involving another country exists or when civil war prevails in Namibia: provided that any proclamation of martial law shall cease to be valid if it is not approved within a reasonable time by a resolution passed by a two-thirds majority of all the members of the National Assembly." As some elements had taken up arms against the state in support of the Caprivi succession, the president was fully justified in issuing an emergency proclamation.

Effective Government

This principle concerns strong government. Effective government might be measured by three indicators, viz., resource control, decision-making capability, and outcome control.

⁶⁶² C. Keulder (1999), *A Review of the Namibian Budget Process: A Report for the National Democratic Institute*, Windhoek, Univ. of Namibia, pp. 5-7. See also Christof Maletsky (2001), "Nujoma Keeps Nation Guessing on Fourth Term," *The Namibian* (7 June 2001).

Economic conditions are considered by many to have significant implications for the success or failure of democracy.⁶⁶³ Bratton and Van de Walle⁶⁶⁴ suggest that very few democracies in Africa appear economically prepared for democracy. They are of the view that Namibia is one of the democracies that is prepared for democracy.

Ever since the country became independent, the government has attempted to manage the economy without resorting to excessive borrowing from outside the country.⁶⁶⁵ The budget deficit, which had increased to almost 6% in 1997-98, by 2003, once again had been brought within the manageable limit of 3%.⁶⁶⁶ Similarly, the annual real GDP growth rate, that averaged 5% during the first five years after independence, but subsequently dropped, is beginning to improve. However, the country continues to face the very serious challenge of diversifying its economy, and promoting distributive justice.

So far, the government's record regarding decision-making capability has been quite effective, as it has a majority in the parliament. Even in instances where a consensus of opposition parties is desired, the government has consulted freely to secure consensus.

Finally, effective government requires that the government have the capacity and capability to successfully initiate and implement laws. Bauer⁶⁶⁷ observes that

a significant amount of what could only be called progressive legislation has been promulgated since the country gained its independence in 1990. Among other things, such legislation has facilitated political participation and representation, has empowered previously disadvantaged groups of people, has enabled the operation of many organizations of civil society, and has helped to keep government accountable.

In addition, as mentioned earlier in this chapter and in Chapter Five, public service charters are being developed to enhance effectiveness and accountability of the government.

⁶⁶³ Bauer "Namibia in the First Decade of Independence: How Democratic?" p 50.

⁶⁶⁴ Bratton and de Walle, *Democratic Experiments in Africa*, p. 240.

⁶⁶⁵ Bank of Namibia (2000), *Annual Report 2000*, Windhoek, Bank of Namibia.

⁶⁶⁶ Namibia, Ministry of Finance, *Government Budgets for the years 1990 to 2003*.

⁶⁶⁷ Bauer "Namibia in the First Decade of Independence: How Democratic?" p. 40.

An attempt has been made to outline positive and negative developments that define the progress of democracy in Namibia. However, an overall assessment cannot be made in absolute terms. What is needed is the establishment of a foundation dedicated to assessing the progression of democracy from year to year to point out strengths and shortcomings – to inform and educate. As John Patten, a British government Minister said in 1991, constitutional codes “are meaningless unless they exist within a country which has a political culture that renders them viable ... the greatest protector of citizen’s rights ... are citizens themselves.... The protector of freedom in the end is the political culture, not some document, however weighty.”⁶⁶⁸ The African Peer Review Mechanism, initiated by the African Union, should be able to address some of these concerns if Namibia eventually decides to support it.

Conclusion

Since 1990, the Namibian government has been able to forge a stable, coherent, viable, and durable state. Democracy has been concretised. Reconciliation is largely a reality, and individual freedoms have been guaranteed.

However, a number of issues still need to be addressed. Human rights will need to be not just rights but embedded in culture. There has, for instance, been some criticism of rights for homosexuals. Though there have been no instances of any victimization, it is necessary to promote a culture of tolerance, even if the majority of Namibians don’t agree with certain social practices or lifestyles.

Second, the process of decentralization needs to be continually pursued to enhance participation of citizens at the local level. Indeed, implementation of the policy of decentralization is seen to be essential for the growth and internalisation of democracy. This process needs to be accelerated.

⁶⁶⁸ J. Patten (1991), *Conservative Political Centre lecture: Political Culture: Conservatism and Rolling Constitutional Changes*, London, CPC.

Third, there is a need to ensure that policies and institutions are not undermined with every cabinet reshuffle. Recent events of cabinet reshuffle and the latest statements by the leadership in the government have cast doubt on the predictability of Namibia's future policies.⁶⁶⁹ The issue is not whether the president has the power to reshuffle the cabinet, for, according to the constitution, it is the president's prerogative to appoint and dismiss political office bearers, but the matter of concern is that frequent reshuffles create uncertainties and rob the ministers of the motivation to improve their ministries.

Fourth, Namibia's democracy has so far not been fully tested. Though elections have been held regularly, Namibia has not gone through the succession process. However, now that the president has declared that he will no longer be available for candidacy in the 2004 presidential elections, an important aspect of democracy may soon be tested.

Anti-corruption initiatives have been taken up, but this aspect too needs to be strengthened by rethinking many of the processes to enhance accountability and reducing discretionary powers of state employees. The anti-corruption legislation has already been passed, and hopefully the necessary institutional structure for combating corruption will be put in place in the not too distant future.

Fifth, Namibia's economy is stuck at an average annual GDP growth rate of some 3%. Resource-based, location-specific investment has been forthcoming, but skills-based investment, particularly in manufacturing, has stagnated despite the very generous investment incentives. Governments within southern Africa also need to focus on increased regional cooperation for developing national economies. In 2000, the African Union was formed to enhance such cooperation, and a New Economic Partnership for African Development was launched under the African Union umbrella. Only time will tell whether this cooperation can take place equitably, as there is some concern that smaller countries with low skills bases could be inundated by South Africa, the largest economy in the southern African region.

⁶⁶⁹ *The Namibian* (23, 24 and 25 August 2002).

Overall, Namibia has done well on the democratic front but needs to be vigilant. I also hope that, as time goes by, there will be more democracy within the party's decision-making mechanisms. Specifically, there is a need to bring about more democracy in the party's process of selection of candidates for elections or for any office. Current practice is that candidates for regional elections put forward by SWAPO branches in the regions are vetted by party leaders at SWAPO headquarters. This practice is not liked by party structures in the regions, is not democratic, and polarizes communities, particularly if party leaders at the headquarters favour a person who is not a native of that region. Imposition of a candidate is seen by the people in the regions as the negation of their own wish.

Chapter Seven

Conclusion

This case study was undertaken to examine the process of state formation in Namibia. This examination was divided into two distinct phases – the pre-independence phase and the independence phase. For the pre-independence phase, the starting hypothesis was that the West's manipulation of events leading to Namibia's independence, and Namibians' response to this manipulation were designed as acts of self-interest in managing change in Namibia.

From the western states' perspective, this self-interest included access to resources, preservation of the interests of the settler communities, and regional geopolitical advantages. Actions of the West during the pre-independence era had far-reaching impact on the process of evolution and the nature of the Namibian state. Since independence, Namibians sought to build a modern state, but the influence of events preceding independence continued to impact the decisions political leaders of independent Namibia took to respond to the new challenges.

Chapters Two and Three provide the colonial context within which various actors had played their parts. Namibia was colonized to give expression to imperial Germany's expansionist ambitions. The West endorsed the occupation of Namibia by Germany to keep the West's hegemony over Africa, through the Berlin Conference of 1884-85. After the occupation of Namibia, Germany proceeded to confiscate lands and cattle of the Blacks to facilitate the settlement of immigrant Germans, who were given not only free land but also substantial grants. With the help of forced labour of the blacks, German settlers prospered.

Even when Germany lost its colonies after World War I, Namibia continued to be hostage to the European states' policy of ensuring continued regional hegemony. Consequently, Namibia continued to be occupied – this time by the British who were expected to administer Namibia as the League of Nations' 'C' Mandate. The British

exercised this mandate through South Africa. South Africa built on the policies initiated by Germany and sought to integrate the territory into South Africa. Creation of 'homelands' in the territory, under the policy of apartheid, was partly designed to achieve this objective, and partly to 'solve' the 'native' problem.

The League of Nations, dominated by the European states, did little to ascertain the desire of the inhabitants of the territory. Therefore, the response of the inhabitants of the territory to their oppression through the contract labour system, ethnic segregation, and political, social and economic disenfranchisement was the emergence of the liberation movement, SWAPO. SWAPO's actions for gaining the country's independence included mobilizing international opinion, and diplomatic and armed struggles.

Various civil society organizations within and outside Namibia played a significant role in mobilizing the masses in this effort under the banner of SWAPO. As a result of SWAPO's efforts, and the changed composition of the United Nations, new hope for the inhabitants of the territory was ignited. However, South Africa's machinations and the West's Cold War imperatives continued to undermine Namibians' efforts towards securing independence. In fact, the West's preoccupation with the Cold War resulted in various western states exercising their veto powers at critical times for over two decades on issues related to Namibia.

Time and again, efforts of the international community (the United Nations General Assembly, OAU, NAM, Frontline States) were thwarted by the West, because of its economic and geopolitical interests in the region. However, when the pressure of the international community increased at the diplomatic front, the western nations tried to manage an outcome that would be favourable to them. Attempts were made to maintain the *status quo* by deferring many decisions to South Africa. When many of the buffer states to the north, viz., Zimbabwe, Angola, and Mozambique, wrested control from the colonizing powers and became independent, little attempt was made to stop South Africa from destabilizing these countries in an effort to contain what it saw as 'communist menace'.

In fact, keeping South Africa in good humour was an important ingredient of some of the international players' policy of retaining southern Africa in their sphere of influence. Many attempts at the implementation of the Plan for the Independence of Namibia also had false starts because of threats to the West's geopolitical interests. South Africa and its allies saw no particular advantage in going along as long as they had upper hand in Angola.

In order to accommodate South Africa's security concerns, the Reagan administration devised the plan to link the Namibian question to the withdrawal of Cubans from Angola. The linkage issue was in many ways a brilliant strategy, as it addressed South Africa's concerns and gave the Reagan administration important geopolitical advantage. Significantly, the linkage issue had coincided with Mr Gorbachev's coming to power in the Soviet Union.

Independence for Namibia was, however, to await deeper involvement of the Cuban forces in southern Angola and the entrapment of South African Defence Forces there. President Castro informed me during my visit to Havana on 7 September 2001, and almost certainly the West sensed it, that the Cubans were willing and ready to take the fight for the independence of Namibia to the Orange River and beyond. This turned the tide in favour of a negotiated settlement.

The independence of Namibia, through the implementation of Security Council Resolution 435 of 1978, also shifted the focus of the West towards influencing the outcome of elections, and imposing on Namibians a constitution drafted by the West. Subsequently, a compromise was reached with SWAPO agreeing to certain Constitutional Principles. After the Western Contact Group got what it wanted as the Constitutional Principles, it sought assurances of job guarantees for the Whites in the civil service. This was in addition to guarantees for the protection of property rights to ensure that the Whites did not lose their economic privileges. In addition, in promoting specific electoral systems, efforts were made by the members of the WCG and South

Africa to ensure that SWAPO did not get two-thirds majority in Constituent Assembly elections, and that, minority ethnic parties would be represented in the legislature.

In order to ensure that the Constitutional Principles were adhered to at the time of drafting of the constitution, the settlement of the Namibian question stipulated that the constitution would have to be approved by the Security Council, thus, once again, allowing the western powers to exercise their veto if need be. Because of these restrictions, many compromises had to be made in the drafting of the constitution.

SWAPO also felt that it was better to compromise and secure the independence of the country as soon as possible. Therefore, SWAPO accepted the Constitutional Principles prescribed by the Western Contact Group. It also agreed to assume a R800 million debt, that South Africa had claimed it spent in Namibia (although, this debt was written off after a long delay when an ANC Minister of Finance was finally appointed), and the postponing of the reintegration of Walvis Bay and islands in the territorial waters of Namibia into Namibia, until the decisive change in government took place in South Africa. Subsequently, Walvis Bay and offshore islands were reintegrated into Namibia.

Thus, constructs that directed South African, western and Namibian responses to the West's machinations were straightforward. South Africa and the West's actions were driven by their desire to 'formalize' their control over the territory, to maintain control over the territory's economy, to engineer transition to democracy that would be favourable to the West, and to continue to maintain some influence in independent Namibia. In this effort, interests of the indigenous population of the territory were often negated. Namibians, on the other hand, fought at the international fora and on the ground for their emancipation – to be able to shape their own destiny.

The type of state that emerged in Namibia on 21 March 1990 is a consequence of various actors influencing events in their own interest. In the postcolonial era, too, the West continues to influence the options available to the new state. An understanding of these

influences is important if the government of independent Namibia is to emphasize the self-interest of the citizens of Namibia.

For the government of independent Namibia, the consequences of such compromises have been far reaching. For instance, land reform has been made increasingly expensive if not impossible. Affirmative action within the civil service, an effort to balance the civil service, and attempts at reducing the size of the civil service were greatly hampered. Members of the WCG had made the demands, but did not think it necessary to provide the finances to carry out land reform and civil service reform initiatives.

This study has been particularly focussed on helping to recognise the interaction of various players' self-interest in Namibia's state formation. This recognition allows the policy makers to develop better strategies for meeting various challenges of nation building.

Finally, it needs to be emphasized that actors will change, but the manipulation of events to serve their interests will continue with significant consequences for a country like Namibia. However, Namibians too can play their part in ensuring that they, knowing that self-interest is the prime driving force in international politics and economy, are ready to give weight to their own self-interests to ensure social, political and economic development on their own terms.

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Abbreviations

ACN	Aksie Christelik Nasionaal
ANC	African National Congress
CDA	Christian Democratic Action for Social Justice
CPI	Corruption Perception Index
DTA	Democratic Turnhalle Alliance of Namibia
ECU	Efficiency and Charter Unit
FAPLA	FORCAS Armadas Populares de Libertacao de Angola
FCN	Federal Convention of Namibia
FLS	Frontline States
FNLA	Frente Nacional de Libertacao de Angola
FRELIMO	Frente de LibertaVão de Mozambique
IMF	International Monetary Fund
LaRRI	Labour Resource and Research Institute
MDP	Movimento Democratico Portugues
MFA	Movimento das Forcas Armadas
MISA	Media Institute for Southern Africa
MPLA	Movimento Popular de Libertacao de Angola
MWTC 2000	Ministry of Works, Transport and Communication Project
NAFWU	Namibia Farm Workers Union
NAM	Non-Aligned Movement
NANAWO	Namibian National Women's Organisation
NANGOF	Namibia NGO Forum
NANSO	Namibian National Students' Organization
NANTU	Namibia National Teachers Union
NAPLA	Namibian People's Liberation Army
NAWA	Namibian Women's Association
NBC	Namibia Broadcasting Corporation
NDF	Namibia Defence Force
NDI	National Democratic Institute for International Affairs
NEPAD	New Partnership for Africa's Development
NIED	National Institute for Educational Development
NNDP	Namibia National Democratic Party
NNF	Namibia National Front
NPF	Namibia Patriotic Front
NUNW	National Union of Namibian Workers
OAU	Organisation of African Unity
OPC	Ovamboland People's Congress
OPO	Ovamboland People's Organization
PCP	Partido Comunista Portugues
PLAN	People's Liberation Army of Namibia
PRM	Peer Review Mechanism
RENAMO	Resistencia Nacional Mocambicana (RENAMO)

SACTU	South African Congress of Trade Unions
SADF	South African Defence Force
SWALA	South West Africa Liberation Army
SWANLIF	South West African Liberation Front
SWANU	South West Africa National Union
SWANUF	South West Africa National United Front
SWAPO	South West Africa People's Organisation
SWAPO-D	SWAPO-Democrats
TI	Transparency International
TUN	Teachers Union of Namibia
UDF	United Democratic Front of Namibia
UN	United Nations
UNIP	United National Independence Party
UNITA	Uniao Nacional para a Independencia Total de Angola
UNTAG	United Nations Transition Assistance Group
US	United States
WAD	Women's Action for Development
WCG	Western Contact Group
ZANU	Zimbabwe African National Union
ZAPU	Zimbabwe African People's Union