

DIE SUID-AFRIKAANSE INSTITUUT VAN INTERNASIONALE AANGELEENTHEDE THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS

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BRIEF REPORT No. 61

For SAIIA Members only
- Not for Publication

THE TRANSITIONAL GOVERNMENT IN NAMIBIA : THE QUEST FOR LEGITIMACY

Since the establishment of the Transitional Government of National Unity (TGNU) on 17 June 1985, the South African Government and the South African-appointed Administrator-General, have expressed the desire to broaden the basis of representation of this body. This desire is nothing new, it has been consistent with a policy followed for more than a decade, aimed at the establishment of a legitimate alternative to SWAPO. However, it has taken on a new urgency, especially since the prospects for the implementation of Security Council Resolution 435 of 1978 are diminishing by the day.

This quest for legitimacy is apparent in the legislative programme adopted by the TGNU since its inception, in conjunction with various attempts by the Administrator-General to engage the opposition parties to the left of the TGNU (notably the Christian Democratic Action Party (CDA) of Peter Kalangula, and the Damara Council of Justus Garoeb) in the TGNU. Moreover, the 'Hearts and Minds' operations of the South African Defence Force, especially in Owambo; the 'Namibianization' of the war; the localisation of the central bureaucracy; and attempts to improve living conditions, education and health are all geared towards enhancing the legitimacy of the fractious TGNU.

LEGISLATIVE PROGRAMME

Despite internal dissension within the ranks of the TGNU over political and socio-economic issues, this body has contributed positively towards addressing some of the pressing problems facing Namibia as a transitional society. Within this context, the Report of the National Assembly on Education, released in October 1985, does signify progress. This Report recommended the establishment of a single Ministry of Education, the integration of teacher training, and the introduction of six years compulsory schooling for all.

In the field of labour relations, the Conditions of Employment Act of 1985 does provide for improved working conditions and a more streamlined labour process.

The Academy Act, giving the Academy of Tertiary Education university status, also signifies progress in an area vital to the training of manpower for the future needs of the society and the economy. As far as labour relations are concerned, the TGNU made progress with the establishment of a National Labour Council, consisting of representatives from both the public and the private sectors.

To its credit, the TGNU has made significant progress in the localisation of a civil service for Namibia. At the time of writing, there are only some 313 seconded key civil servants from South Africa working in the Namibian bureaucracy, compared with some 3 500 in 1980. Clearly, this is an important contribution to the future administration of Namibia.

PROGRAMME OF ACTION FOR 1987

Against this backdrop, the Programme of Action for 1987 issued by the TGNU in February, makes interesting reading. Briefly, this programme provides for actions in the political, economic, social, and information fields. The most significant objectives in the political and administrative fields are as follows:

- 1) The holding of nationwide non-racial elections for Local Authorities.
- 2) Negotiating with the South African Government a condominium arrangement with regard to Walvis Bay.
- 3) The decentralisation of lower courts and the establishment of regional courts.
- 4) The creation of new Ministries and Departments, notably a Ministry of Internal Security responsible for the Namibian Territory Force and the Police.
- 5) The amendment of South African security legislation to bring it into line with the Bill of Fundamental Rights.

The Economic and Social Programme includes some of the following aspects:

- 1) The establishment of entry control points at all major border crossings.
- 2) The formulation of an agricultural strategy.
- 3) The establishment of a National Fishing Company.
- 4) The establishment of a National Mineral and Energy Corporation.

As far as publicity and information is concerned, the TGNU proposed that the SWA/Namibia Broadcasting Corporation and Namibian Television Services (NTS) should report more extensively on the activities of the Cabinet, the National Assembly and the Constitutional Council.

CONSTITUTION-MAKING

Proclamation R101 of 17 June 1985 which provided the legal basis for the establishment of the TGNU, also made provision for a sixteen-member Constitutional Council, assigned to draft a constitution for the country within a period not exceeding eighteen months. Headed by Judge Victor Hiemstra, this body recently reached consensus on a constitutional framework for Namibia.

The most notable features of this draft Constitution not yet made public are as follows:

- (a) Provision is made for a Fundamental Bill of Rights, which, among others, provides for the right of assembly, freedom of movement, equality before the law, and cultural rights.
- (b) A President as Head of State, elected by an electoral college consisting of the members of the National Assembly and the Senate.
- (c) Legislative authority vested in a Parliament, consisting of the President, the Senate, and the National Assembly.
- (d) Provision is made for a twenty-eight member Senate designated to function as an Upper House.
- (e) A popularly elected sixty-member National Assembly with special responsibility for the national budget.
- (f) Executive authority vested in a Cabinet, comprising the Prime Minister, Ministers and Deputy Ministers.
- (g) Provision is made for a system of Local Government comprising Municipal Councils and Regional Councils.

Finally, provision is made for an independent Judiciary and local Supreme Court and Constitutional Court. The latter will have the power to pronounce on the legality of legislation.

While this proposed Constitution indicates significant progress, it must be remembered that it does not reflect a national consensus, because important political parties such as SWAPO, the CDA, and the Damara Council have been excluded from, or have refused to participate in, the process of constitution-making.

Even if this proposed Constitution were to be adopted by the Namibian electorate following a referendum or an election, it will not resolve the problem of legitimacy. It is seen widely as a South African-sponsored exercise.

THE QUEST FOR LEGITIMACY

Despite all attempts by the South African Government over the last decade to enhance the legitimacy of the various transitional arrangements, the reality remains that Pretoria cannot on its own transfer legitimacy to a successor government in Windhoek. The separate international status of Namibia, coupled to the legacies of the legal dispute, itself implies that South Africa cannot act unilaterally on Namibia. Namibian independence will only be internationally recognised if all parties, including SWAPO and the United Nations, play a role in the process leading up to such independence.

The limited legitimacy enjoyed by the TGNU is further undermined by its fiscal dependence upon South Africa, and its reliance for security on the continued presence of the South African Defence Force.

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APRIL 1987