

DIÉ SUID-AFRIKAANSE INSTITUUT VAN INTERNASIONALE VERHOUDINGE
THE SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS



Southern

Africa **Record**

Numbers 7 and 8

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Compiler: Alan Begg

Published by the South African Institute of International Affairs. Four issues per year. Subscription rate R23,00 per annum (South Africa). R33,00 overseas (surface), R50,00 overseas (airmail). Price per copy R6,00 (plus postage for overseas airmail).

Uitgegee deur die Suid-Afrikaanse Instituut van Internasionale Aangeleenthede. Vier uitgawes per jaar. Intekengeld R23,00 per jaar (Suid-Afrika). R33,00 buiteland (land pos), R50,00 buiteland (lug pos). Prys per eksemplaar R6,00 (plus posgeld vir buitelandse lugpos).

ISSN: 0377 5445

SOUTHERN AFRICA RECORD

Numbers Forty-seven and Forty-eight, 1987

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BIBLIOGRAPHICAL SERIES

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PROCLAMATION

by the
ADMINISTRATOR-GENERAL FOR THE TERRITORY OF
SOUTH WEST AFRICA

(Approved by the State President on 17 April 1980)

No. AG.8

1980

GENERAL PROVISIONS APPLICABLE IN RESPECT OF REPRESENTATIVE AUTHORITIES ESTABLISHED FOR POPULATION GROUPS

Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Annexure.

G. van N. VILJOEN
Administrator-General

Windhoek, 17 April 1980

ANNEXURE

Definitions

1. (1) In this Proclamation, unless the context indicates otherwise —
 - (i) “Assembly” means the National Assembly of South West Africa;
(viii)
 - (ii) “constitution”, in relation to any representative authority or legislative authority or executive authority, means the law by which the representative authority concerned is established; (iii)
 - (iii) “defined matter” means any matter referred to in section 14(1)(a)(i); (v)

- (iv) "election", in relation to members of a legislative authority, includes an election of political parties or organizations for the right to designate such members; (ix)
 - (v) "executive authority" means the executive committee or other body established in terms of the constitution of the representative authority of a population group, in which the executive power of that population group vests in terms of such constitution; (vii)
 - (vi) "legislative authority" means the legislative assembly or other body established in terms of the constitution of the representative authority of a population group, in which the legislative power of that population group vests in terms of such constitution; (xi)
 - (vii) "*Official Gazette*", in relation to —
 - (a) the Administrator-General, means the *Official Gazette* of the territory;
 - (b) any representative authority, means the official gazette of such authority, when one is published, or the *Official Gazette* of the territory, when no such official gazette is published; (iv)
 - (viii) "population group" means a population group mentioned in section 3, and, in relation to any power to make laws or the application of any law in respect of a population group, includes any member or members, or any category of members, of such population group; (i)
 - (ix) "representative authority" means a representative authority established as such by law for a population group and consisting of the legislative authority and executive authority of that population group, and includes the administration managing the affairs of a population group in relation to defined matters; (x)
 - (x) "Republic" means the Republic of South Africa; (vi)
 - (xi) "territory" means the territory of South West Africa. (ii)
- (2) In the definition of any matter in the Schedule "the particular population group" means the relevant population group whose legislative authority has been or, as the circumstances may require, is to be or may be empowered as contemplated in section 14 to make ordinances in relation to such matter, and "the representative authority", "the legislative authority" and "the executive authority" mean the representative authority, the legislative authority and the executive authority of that population group, respectively.
- (3) Any reference in this Proclamation or any other law to a matter defined in the Schedule shall in the case of any particular population group or the representative authority, legislative authority or executive authority of any particular population group, be construed as a reference to the relevant matter according to the definition thereof in the Schedule as read with subsection (2) in the relevant case.

PART I

APPLICATION OF THIS PROCLAMATION; POPULATION GROUPS AND MEMBERSHIP THEREOF

Application of this Proclamation

2. This Proclamation shall apply in respect of every representative authority except, in the case of any particular representative authority, in so far as may be otherwise provided in its constitution.

Population groups

3. The population groups for which representative authorities may be established shall be—

- | | |
|----------------------------|---------------------------|
| (i) the Basters; (i) | (vii) the Kavangos; (vii) |
| (ii) the Bushmen; (iii) | (viii) the Namas; (ix) |
| (iii) the Caprivians; (iv) | (ix) the Ovambos; (x) |
| (iv) the Coloureds; (viii) | (x) the Tswanas; (xi) |
| (v) the Damaras; (v) | (xi) the Whites. (ii) |
| (vi) the Hereros; (vi) | |

Membership of a population group

4. (1) For the purposes of this Proclamation, the constitution of a representative authority, and any ordinance of a legislative authority, a person shall be deemed to be a member of—

- the population group indicated in any manner whatsoever on the identity document issued to him under section 3 of the Identification of Persons Act, 1979 (Act 2 of 1979), of the Assembly;
- in the case of a person who is not a member of a population group in terms of paragraph (a) of this section the population group, if any, of which he is a member according to any identity document referred to in paragraph (b) or (c) of the definition of "identity document" in section 1 of the said Identification of Persons Act, 1979, and issued to him;
- in the case of a person who is not a member of a population group in terms of the provisions of paragraph (a) or (b) and who is married to, or is in terms of the traditional laws and customs applied by a particular population group, a partner in a customary union with, a person who is a member of a population group in terms of the said provisions, the population group of which the last-mentioned person is a member as aforesaid;
- in the case of a person under the age of sixteen years who is not a member of a population group in terms of the provisions of paragraph (a),

(b) or (c), the population group, if any, of which his mother is in terms of the said provisions a member;

- (e) in the case of a person who is not a member of a population group in terms of paragraph (a), (b), (c) or (d), the population group, if any, of which he is generally accepted to be a member.

(2) If the executive authority of a population group is of the opinion that any person who, by virtue of an identity document issued to him under any provision of the said Identification of Persons Act, 1979, is a member of the population group concerned in terms of paragraph (a) or (b) of subsection (1), is in fact not a member of that population group, that executive authority may request the registering officer referred to in that Act to issue a new identity document, on which that population group is not indicated, to such person under section 5 of that Act, and the said registering officer may accede to the request if, after such inquiry as he may consider necessary and with due regard to the provisions of subsection (1) of this section, he is satisfied that the identity document issued to that person as aforesaid is incorrect in respect of the population group indicated thereon.

PART II

THE LEGISLATIVE AUTHORITY

Minimum qualifications for right to vote in respect of legislative authority

5. (1) No person shall be qualified to vote at any election for a member of the legislative authority of a population group—

(a) unless—

- (i) he is a member of the population group concerned; and
- (ii) he is of or over the age of eighteen years; and
- (iii) an identity document has been issued to him under section 3 of the Identification of Persons Act, 1979 (Act 2 of 1979), of the Assembly; and
- (iv) he has been ordinarily resident in the territory for a continuous period of not less than one year on the polling day determined for the election concerned in terms of the laws relating thereto or on the day falling within a polling period so determined on which he wishes to vote;

(b) if—

- (i) he is a South African citizen; and
- (ii) he is in terms of the laws of the Republic entitled to have his name included in a valid list of voters for an election of a member of the Legislative Assembly or the Coloured Persons Representative Council of the Republic or a member of a legislative assembly established in the Republic under the Black

States Constitution Act, 1971 (Act 21 of 1971), of the Republic; and

(iii) his name appears on any such list of voters; or

- (c) if he is not a South African citizen and is, by virtue of the fact that he complies with the requirements for the exercise of the right to vote in terms of the laws of a country other than the Republic or the territory, entitled to vote at an election for a member of a legislative body of such other country.

(2) The provisions of subsection (1) shall not be construed as prohibiting any legislative authority from prescribing by ordinance additional disqualifications or qualifications in respect of the right to vote at any election of a member thereof, and the provisions of subparagraphs (ii) and (iv) of paragraph (a) of that subsection shall not be construed as prohibiting any legislative authority from so prescribing a higher age or a longer period of ordinary residence in the territory than that specified in the relevant subparagraph, as a requirement for the right to vote at any such election.

(3) Notwithstanding the provisions of subsection (1)(a)(iv), a legislative authority may provide for the grant of the right to vote at an election of a member of that legislative authority to any person who —

- (a) is not ordinarily resident in the territory but domiciled in it and otherwise complies with the requirements for the grant of such right; and
- (b) is in the service of the administration of the Administrator-General or of a representative authority or of a statutory body as defined in section 1 of the Exchequer and Audit Act, 1975 (Act 66 of 1975); and
- (c) performs any functions outside the territory in connection with the affairs of the territory or the representative authority or statutory body concerned; or
- (d) has been seconded to the service of the government of any other country or territory,

and to the wife or child of any such person who resides with him.

(4) If any person is required, for purposes of registration or continued registration as a voter, or nomination of any candidate (including the registration of any political party or organization) for election, in terms of any law relating to the election of members of the legislative authority of a population group, or for purposes of complying with any other requirement of such a law or a requirement of any other law, to prove that he is qualified to vote at such an election on the ground of his ordinary residence in the territory as contemplated in subsection (1)(a)(iv) or in an ordinance contemplated in subsection (2), he shall for the purposes concerned be deemed to be so qualified—

- (a) in any case where the polling day or polling period for the election

concerned has been determined in terms of any such law, if he is ordinarily resident in the territory on the day on which he is required to prove that he is qualified as aforesaid and, provided he does not in the meantime become ordinarily resident outside the territory will be so qualified on the polling day or on a day during the polling period; and

(b) in any other case, if he would have been so qualified on the day on which he is required to prove his qualification as aforesaid, had that day been a polling day for such an election.

(5) In any proceedings (except proceedings in a court of law) in terms of any law relating to the election of members of a legislative authority, and unless any such law provides otherwise, any person who is in the territory at any time and is in possession of an identity document issued to him under section 3 of the said Identification of Persons Act, 1979, and specifying a date as the date on which he became a resident, shall be deemed to be ordinarily resident in the territory and to have been so resident for the entire period that elapsed since that date, unless he indicates the contrary or the contrary is alleged in a declaration in writing under oath or affirmation by any other person entitled to vote at such an election.

(6) For the purposes of this section a person shall be regarded as being ordinarily resident in the territory if his home or the place where he normally lives and to which he returns regularly after any period of temporary absence, is in the territory.

General disqualifications in relation to right to vote in respect of legislative authority

6. (1) Unless a legislative authority provides otherwise, no person shall be qualified to vote at an election of any member of such legislative authority —

(a) if he has been convicted in the territory or the Republic of murder or treason; or

(b) if he —

(i) has been convicted in the territory or the Republic of any offence (except murder or treason) in respect of which he has been sentenced to a period of imprisonment without the option of a fine; or

(ii) has been ordered to be detained under the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1974), or under any other law applying in the territory or the Republic and having as its object the combating of the abuse of dependence-producing drugs and alcoholic liquor; or

(iii) is detained as a mentally ill person under the Mental Health Act, 1973 (Act 18 of 1973), or any other law, and the period of his detention by virtue of such sentence or order or under a law referred to in subparagraph (iii) has not expired.

(2) For the purposes of subsection (1) —

- (a) a person who has been granted amnesty or a free pardon shall be deemed not to have been convicted of the offence concerned;
- (b) a period of imprisonment means the full term of a sentence of imprisonment, notwithstanding any remission of the whole or any portion of the sentence; and
- (c) a sentence of imprisonment which has been suspended and is thereafter put into operation shall be deemed to have been imposed on the date on which it is so put into operation.

Offences and penalties

7. (1) Any person who, being disqualified in terms of the provisions of paragraph (a)(iv) or (b) or (c) of section (5)(1), or the provisions of section 6(1), or the similar provisions of any other law applicable to him from voting at an election of a member of any legislative authority, votes at any such election or by applying for a ballot paper or in any other manner attempts to vote at any such election, shall be guilty of an offence and liable on conviction of a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Upon a charge of contravening subsection (1) it shall be no defence that the accused did not know that he was disqualified in terms of any provision mentioned in that subsection from voting at the election in respect of which the charge is brought.

(3) If upon a charge of contravening subsection (1) it is alleged that an election of any member or members of a legislative authority took place on a particular day or during a particular period, a copy of the *Official Gazette* of the territory or of the *Official Gazette* of the representative authority concerned, as the case may be, in which that day is determined as the polling day or that period is determined as the polling period for the election concerned, shall upon its mere production be conclusive proof that such election took place on that day or during that period.

(4) Any person who in any declaration in writing contemplated in section 5(5) makes a false statement knowing it to be false or without reasonable ground (the onus of proof of which shall be on him) for believing it to be true, shall be guilty of an offence and liable on conviction to the penalties which may in law be imposed for perjury.

Disqualifications for membership of legislative authority

8. (1) Unless the legislative authority of a population group provides otherwise —

- (a) no person shall be qualified to be elected, nominated or otherwise designated or to sit as a member of such legislative authority unless he is qualified to vote at an election of a member of that legislative authority; and

- (b) a member of that legislative authority shall vacate his seat if he becomes disqualified from voting at such an election.
- (2) No person who —
- (a) is a member of the executive authority of any population group, shall be qualified to be elected, nominated or otherwise designated as, or to be, a member of the legislative authority of any other population group;
 - (b) is a member of the body referred to in section 3(5) of the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), shall be qualified to be elected, nominated or otherwise designated as, or to be, a member of the legislative authority of any population group.
- (3) The provisions of subsections (1) and (2) shall apply in addition to, and not in substitution of, the provisions of any other law relating to disqualification or qualification for membership of, and the vacating of seats in, any legislative authority.
- (4) Any person who is by law disqualified from sitting as a member of a legislative authority of a population group and who, while so disqualified and knowing or having reasonable grounds for knowing that he is so disqualified, sits or votes as a member of such legislative authority, shall be liable to a penalty of fifty rand for each day on which he so sits or votes, which may be recovered in the South West Africa Division of the Supreme Court of South Africa by or under the authority of the executive authority of that population group for the benefit of the revenue fund of the relevant representative authority.

First election of members of legislative authority

9. (1) Notwithstanding anything to the contrary in any other law contained, including the constitution of any representative authority and any ordinance of a legislative authority —

- (a) the first election of members of any legislative authority after the coming into operation of this section, shall be conducted under a law made for that purpose by the Administrator-General;
- (b) any person who —
 - (i) is not in terms of section 5(1) disqualified from voting at an election of a member of a legislative authority; and
 - (ii) is not subject to a disqualification mentioned in section 6(1), shall be entitled to vote at the said first election upon compliance with, and in the manner prescribed by, the provisions of the law contemplated in paragraph (a) of this subsection;
- (c) the persons who are elected as members of the legislative authority concerned at the said first election, shall for the purposes of the

constitution of that legislative authority be deemed to have been elected at an election contemplated in that constitution.

(2) If the law contemplated in subsection (1)(a) provides for the compilation of lists of persons who are not disqualified from voting at the first election in terms of subsection (1)(a) of section 5 read with subsections (4) and (5) of that section, the information necessary for the compilation of such lists shall be obtained from the particulars appearing on applications for the issue of identity documents in terms of section 3 of the Identification of Persons Act, 1979 (Act 2 of 1979), of the Assembly.

Duration of legislative authority

10. (1) Subject to the provisions of subsections (2) and (3), a legislative authority shall continue for such period as may be determined in terms of its constitution, and shall not be dissolved save by effluxion of time.

(2) (a) A legislative authority may be dissolved by the Administrator-General by proclamation in the *Official Gazette* at any time.

(b) A dissolution of a legislative authority under paragraph (a) shall be deemed for all purposes to be a dissolution thereof by effluxion of time.

(3) Notwithstanding any dissolution of a legislative authority —

(a) every person who at the date of the dissolution is a member of the legislative authority concerned shall remain a member thereof;

(b) that legislative authority shall remain competent to perform its functions; and

(c) that legislative authority may be summoned in terms of its constitution for the dispatch business,

during the period following such dissolution up to and including the day immediately preceding the polling day or first polling day for the election held in pursuance of such dissolution, or, if the constitution of the legislative authority concerned does not provide for the designation of all or some of its members by election, the day immediately preceding the first day on which any person, by virtue of his office or through nomination or designation in some other manner, becomes a member in terms of that constitution, of the new legislative authority constituted as a result of such dissolution, in the same manner in all respects as if such dissolution did not take place.

Sessions of legislative authority

11. (1) At least once in each financial year of a representative authority there shall be a session of the relevant legislative authority, which shall commence within a period of twelve months as from the date of the last sitting of the last session held in the immediately preceding financial year.

(2) Sessions of the legislative authority shall be convened in accordance with the provisions of its constitution.

Procedure in legislative authority

12. (1) A legislative authority shall from time to time adopt standing rules and orders not inconsistent with its constitution or this Proclamation, for the regulation and conduct of its proceedings and dispatch of business, for the passing, entitling and numbering of ordinances and for the presentation of ordinances to the Administrator-General for his assent.

(2) Subject to the provisions of such standing rules and orders —

- (a) there shall be freedom of speech and debate in any meeting of the legislative authority or any committee thereof;
- (b) the proceedings of a legislative authority shall be open to the public.

(3) No member of a legislative authority or an executive authority shall be liable to any legal proceedings by reason of his speech or vote in any meeting of the legislative authority concerned or any committee thereof.

Offences relating to legislative authority

13. Subject to the provisions of the constitution of a particular representative authority, any person who —

- (a) threatens, obstructs or insults a member of a legislative authority proceeding to or from any sitting thereof or on account of his conduct therein, or endeavours by force, insult or menace to compel a member of a legislative authority to declare himself in favour of or against any proposition or matter depending or expected to be brought before such legislative authority; or
- (b) while a legislative authority is sitting, creates or joins in any disturbance therein or in the vicinity thereof, whereby the proceedings of such authority are or are likely to be interrupted; or
- (c) is guilty of an act or omission which in terms of the rules and orders of a legislative authority constitutes contempt of such authority,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Legislative powers of legislative authority

14. (1) Subject to the provisions of this Proclamation and of the constitution of the representative authority established for any population group, the legislative authority of such population group may —

- (a) make laws, to be called ordinances, in relation to —
 - (i) any matter defined in the Schedule and any other matter defined in the said constitution for the purposes of this subparagraph; and
 - (ii) with the consent of the Administrator-General previously obtained for the purposes of this subparagraph in any particular

case and communicated to the legislative authority by the member thereof who in terms of that constitution presides at meetings thereof, any matter that is not so defined;

- (b) in any ordinance made under paragraph (a) amend or repeal any law, including a law made by the Parliament or the State President of the Republic or by the Administrator-General or the Assembly, which is in force in the territory of any part thereof immediately before the day of which the provisions of this subsection come into operation, in terms of a proclamation issued under subsection (2), with reference to the legislative authority in respect of a defined matter specified in the proclamation, in so far as such law relates to the matter so specified, except a law specified in subsection (7).
- (2) (a) The provisions of subsection (1) shall come into operation with reference to a particular legislative authority, subject to the provisions of its constitution and of paragraph (b) of this subsection, on a date to be determined by the Administrator-General by proclamation in the *Official Gazette*.
- (b) The Administrator-General may under paragraph (a) —
- (i) issue different proclamations in respect of different legislative authorities;
 - (ii) with reference to any particular legislative authority, issue different proclamations in respect of different defined matters or in respect of different subjects falling under a defined matter and defined in the proclamation concerned, and determine different dates in respect of different such matters or subjects.
- (c) Any reference in this Proclamation or any other law to a defined matter or a matter defined in the Schedule or in the constitution of any representative authority, shall be construed as including a reference to any subject falling under such a matter and defined in a proclamation issued under this subsection, as contemplated in paragraph (b)(ii).
- (3) If the power to make ordinances in relation to any defined matter is conferred upon a legislative authority by its constitution as from a date other than a date determined by proclamation under subsection (2), then, for the purposes of this Proclamation, such other date shall be deemed to have been determined by a proclamation issued under that subsection in respect of such defined matter, and that constitution shall be deemed to be such a proclamation.
- (4) Notwithstanding the provisions of subsection (2), a legislative authority may at any time amend any existing law that relates to a defined matter, in order to —
- (a) adjust it so as to give effect to the provisions of sections 23 and 25;
 - (b) apply it to the population group concerned in any part of the terri-

- tory in which it does not so apply, or throughout the territory; or
- (c) to bring it into harmony with the provisions of this Proclamation or the constitution of the representative authority concerned, in such other manner as may be approved by the Administrator-General:

Provided that such an amendment shall not come into operation before the date on which the legislative authority becomes empowered, by virtue of a proclamation issued under subsection (2), to make ordinances on the matter concerned.

- (5) (a) Subject to the provisions of paragraphs (b) and (c), an ordinance made by a legislative authority in relation to any defined matter shall be valid so long and as far only as it is not repugnant to or inconsistent with a law of the Assembly made on or after the date on which the legislative authority becomes empowered, in terms of a proclamation issued under subsection (2), to make ordinances in relation to such defined matter.
 - (b) If any ordinance of the legislative authority of any population group relates to a defined matter, or a subject falling under a defined matter, in respect of which the Assembly, in terms of a proclamation issued under the provisions of section 3(2)*bis* of the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), may not make laws without the consent of the Administrator-General granted in accordance with the said provisions, is repugnant to or inconsistent with a law of the Assembly which is made on or after the date referred to in paragraph (a) of this subsection, and from which it does not appear that it was made with such consent and applies to or in respect of such defined matter, the provisions of such ordinance shall prevail notwithstanding the repugnancy or inconsistency.
 - (c) An ordinance of a legislative authority made with the consent of the Administrator-General previously obtained for the purposes of this paragraph in any particular case and communicated to the legislative authority by the member thereof who in terms of the constitution thereof presides at meetings thereof, shall be valid even though it may be repugnant to or inconsistent with a law of the Assembly referred to in paragraph (a), including any such law made with the Administrator-General's consent referred to in paragraph (c), before the date on which such ordinance comes into operation.
- (6) The legislative authority of a population group may not make any ordinance by or under which a member of that population group is or may be prohibited from making use of a service which is available to him in terms of any law of any other legislative authority or the Assembly or any other com-

petent authority instead of the corresponding service provided by the executive authority of that population group for members thereof.

(7) A legislative authority may not amend or repeal—

- (a) section 38 of the South West Africa Constitution Act, 1968 (Act 39 of 1968), of the Parliament of the Republic;
- (b) Proclamation 181 of 1977 of the State President;
- (c) the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), of the Administrator-General; or
- (d) any other law in force in the territory or any part thereof immediately before the date referred to in subsection (1)(b) and specified by the Administrator-General for the purposes of this subsection by proclamation in the *Official Gazette*,

or make any ordinance which is inconsistent therewith or with this Proclamation or the constitution of the relevant representative authority.

Languages in which ordinances to be submitted

15. Every draft ordinance shall be submitted to the legislative authority in the English language and in the Afrikaans language and, if any other language is in terms of the constitution of the representative authority concerned an official language of the population group for which that representative authority has been established, also in such other language.

Assent to or remittal of ordinances by Administrator-General

16. (1) Every proposed ordinance passed by a legislative authority shall be submitted to the Administrator-General for his assent, together with such explanatory observations as may be necessary to indicate its scope and effect and the reasons for passing it.

(2) The Administrator-General may on presentation to him of a proposed ordinance declare that he assents to it, or refer it back to the legislative authority for further consideration in the light of such information or advice as may be given.

Promulgation of ordinances

17. An ordinance assented to by the Administrator-General shall be promulgated in the *Official Gazette* of the representative authority concerned in accordance with the provisions of the constitution of the legislative authority which passed such ordinance.

Coming into operation of ordinances

18. An ordinance shall come into operation on the date on which it is promulgated as contemplated in section 17, unless the ordinance itself provides that it shall come into operation or shall be deemed to have come into operation on another date or on a date to be fixed by notice thereunder.

Signature and enrolment of ordinances

19. (1) As soon as possible after an ordinance has been assented to by the Administrator-General, fair copies of such ordinance in each of the languages in which it was passed by the legislative authority concerned (of which either the copy in the Afrikaans language or the copy in the English language shall have been signed by the Administrator-General) shall be enrolled of record in the office of the Registrar of the South West Africa Division of the Supreme Court of South Africa in accordance with the provisions of the constitution of that legislative authority.

(2) The copies of an ordinance so enrolled shall be conclusive evidence of the provisions of the ordinance and in the case of conflict between any such copy and the copy signed by the Administrator-General, the latter copy shall prevail.

(3) The validity or coming into operation of an ordinance shall not be affected by any failure to cause copies to be enrolled as aforesaid.

Validity of ordinances

20. (1) The South West Africa Division of the Supreme Court of South Africa shall have jurisdiction in all matters in which the validity of an ordinance of a legislative authority shall come into question.

(2) No magistrate's court or other inferior court shall be competent to pronounce upon the validity of an ordinance of a legislative authority.

PART III

THE EXECUTIVE AUTHORITY

Membership of certain bodies is disqualification for membership of executive authority

21. (1) No person who—

- (a) is a member of the executive authority of any population group, shall be qualified to be elected, nominated or otherwise designated, or to be, a member of the executive authority of any other population group;
- (b) is a member of the Assembly, shall be qualified to be elected, nominated or otherwise designated as, or to be, chairman under whatever title of the executive authority of any population group;
- (c) is a member of the body referred to in section 3(5) of the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), shall be qualified to be elected, nominated or otherwise designated as, or to be, a member of the executive authority of any population group.

(2) The provisions of subsection (1) shall apply in addition to, and not in substitution of, the provisions of any other law relating to disqualification or qualification for membership of any executive authority.

Administrative control of population group affairs by executive authority

22. (1) Subject to the provisions of this Proclamation, the administration of the affairs of a population group in relation to a defined matter shall be carried on by the executive authority of that population group as from the date on which the legislative authority of that population group becomes empowered, by virtue of a proclamation issued under section 14(2), to make ordinances in relation to that matter.

(2) An executive authority may delegate any power vesting in it in terms of this Proclamation or any other law, to any of its members.

(3) The provisions of subsection (2) shall not affect any power to delegate conferred upon an executive authority by any other law.

Transfer to executive authority of certain rights, powers, duties, obligations and functions

23. (1) All rights, powers, duties, obligations and functions which relate to a defined matter and which vested in the State President or a Minister of the Republic or in the Administrator-General or the existing executive body referred to in section 39 immediately before the date on which the legislative authority of a population group, by virtue of a proclamation issued under section 14(2), becomes empowered to make ordinances in relation to that defined matter, shall as from that date and until that legislative authority provides otherwise vest in the executive authority of that population group in so far as the relevant right, power, duty, obligation or function relates to that defined matter.

(2) The provisions of subsection (1) shall not apply in relation to any power to make any laws (except any regulations, rules, by-laws, instructions or determinations referred to in the proviso to section 38(2) of the South West Africa Constitution Act, 1968 (Act 39 of 1968)).

Administrative divisions may be instituted

24. Subject to the provisions of the laws on government service in the territory, an executive authority may allocate the powers, duties and functions to be performed or exercised in respect of the different matters on which the competent legislative authority may make ordinances, to different administrative divisions, and may assign and allocate the administration of the different divisions to the several members of the executive authority.

Transfer of certain legal powers, duties and functions

25. The powers, duties and functions which—

- (a) under any law relating to a defined matter; and
- (b) immediately before the date on which the legislative authority of a population group becomes empowered, by virtue of a proclamation issued under section 14(2), to make ordinances on that defined matter,

vested in any authority or person in the Republic or the territory other than an authority referred to in section 23(1), shall, as from that date and until that legislative authority provides otherwise, in so far as such law relates to that defined matter vest in the corresponding authority or person exercising or performing similar powers, duties or functions in the service or under the control of the representative authority of that population group.

Agreements

26. (1) An executive authority may enter into an agreement with one or more other executive authorities or with the Administrator-General providing for the exercise or performance, on such terms and conditions as may be agreed upon —

- (a) by any such other executive authority, or by the Administrator-General, as the agent of the first-mentioned executive authority; or
- (b) by the first-mentioned executive authority as the agent of any such other executive authority or of the Administrator-General; or
- (c) by the first-mentioned executive authority in co-operation with such other executive authority or executive authorities or with the Administrator-General,

of any power, duty or function conferred or imposed in terms of any law upon the first-mentioned executive authority or upon any such other executive authority or upon the Administrator-General, as the case may be.

(2) Subject to the provisions of any ordinance of a competent legislative authority relating to the execution of any such agreement as is contemplated in subsection (1), any power, duty or function which in terms of any such agreement has been exercised or performed by the Administrator-General or any executive authority or any person or body in the service or under the control of the Administrator-General or any representative authority and which, in terms of any law to which the agreement relates, is conferred or imposed on an authority or a body or person other than the Administrator-General or the executive authority, person or body concerned, shall be deemed to have been exercised or performed by such other authority, body or person.

Supplying of services by executive authority to persons who are not members of its population group

27. (1) Unless and until an agreement under section 26 or an ordinance of the competent legislative authority provides otherwise, any executive authority may supply any service which it may in terms of the provisions of this Proclamation or any other law supply to the population group for which it has been established, also to any person who is not a member of that population group as if such person were such a member.

(2) Subject to the provisions of subsection (3), an executive authority may, in respect of the supply of any service to such a person, recover —

- (a) the amount, if any, which is payable by or in respect of such person and which cannot be recovered from the person by whom it is payable; and
- (b) a reasonable amount, determined by or on the authority of such executive authority, in respect of its expenses in connection with the supply of such service, including the maintenance, management and control of any institution in or at which such service is supplied, in so far as such an amount has not already been included in the amount referred to in paragraph (a),

from the executive authority or other authority which at the time of the supply of such service is responsible in terms of any law for the supply of such service to persons who are members of the population group or other category of persons of which the person concerned is a member.

- (3) (a) No amount shall be recoverable under subsection (2) from any executive authority or other authority in respect of the supply of a service to any person if at the time of such supply an adequate service of the nature in question, provided by such executive authority or other authority, is available to such person.
- (b) Paragraph (a) shall not apply with reference to the supply of health services.

Supplying of health services in certain institutions

28. An executive authority which, on or after the date on which the competent legislative authority becomes empowered, by virtue of a proclamation issued under section 14(2), to make ordinances in relation to the matters defined in paragraph (c) of Item 14 of the Schedule, supplies any health services in any hospital, clinic or other institution (except any institution exclusively connected with a school or a home for the aged or other establishment in connection with the matters defined in Item 3 or 5 of the Schedule) in respect of which a prohibition contemplated in Item 18 of the Schedule was maintained immediately before that date, shall take all steps necessary for the revocation of such prohibition, to the satisfaction of the Administrator-General, by means of agreement under section 26 or legislation under the said Item 4 or in any other suitable manner.

Appointment and discharge of officers and employees

29. Until such time as the competent legislative authority shall provide otherwise, and subject to the laws on government service in the territory, the appointment and discharge of persons in the service of a representative

authority shall vest in the executive authority, which may delegate such appointment or discharge to any other authority.

Administrator-General may make officers and employees available to representative authority

30. The Administrator-General may, with due regard to the laws on government service in the territory and the public service of the Republic, make officers and employees of his administration available to any representative authority.

Claims against representative authority

31. (1) Any claim against a representative authority which would, if that claim had arisen against a person, be the ground of an action in a competent court, shall be cognizable by such court, whether the claim arises out of any contract lawfully entered into on behalf of such representative authority or out of any wrong committed by any servant of such representative authority acting in his capacity and within the scope of his authority as such servant.

(2) (a) In any action or other proceedings instituted by virtue of the provisions of subsection (1), the member of the executive authority who in terms of section 24 is in charge of the administrative division concerned or, if there is no such member, the member who in terms of the constitution of the executive authority presides at meetings thereof, may be cited as the nominal defendant or respondent.

(b) No member of the legislative authority who is not a member of the executive authority shall be cited as aforesaid.

(3) No execution, attachment or like process shall in any such action or proceedings be issued against the nominal defendant or respondent or against any property of the representative authority, but the amount if any, which may be required to satisfy any judgment or order given or made against the nominal defendant or respondent in any such action or proceedings, may be paid out of the revenue fund of the representative authority.

(4) Nothing in this section contained shall affect any provision if any law which —

(a) limits the liability of a representative authority or any division of its administration in respect of any act or omission of its servants; or

(b) prescribes specified periods within which a claim is to be made in respect of any such liability; or

(c) imposes conditions on the institution of any action.

PART IV
THE REVENUE FUND

Revenue fund of representative authority

32. (1) For each representative authority there shall be a revenue fund, into which shall be paid all revenue raised by or accruing to the representative authority concerned, as well as all other moneys which in terms of any law are to be paid into it.

(2) In subsection (1) "revenue" means all taxes, imposts, rates and duties and all casual and other receipts accruing to the representative authority from whatever source arising, and includes the proceeds of all loans made to the representative authority.

Appropriation of revenue fund by legislative authority

33. (1) The revenue fund of the representative authority of a population group shall be appropriated, in the manner prescribed by this Proclamation, by the legislative authority concerned —

- (a) for the administration of the affairs of that population group in relation to the defined matters on which that legislative authority may make ordinances by virtue of a proclamation issued under section 14(2), generally; or
- (b) in the case of moneys paid over by the Administrator-General for a particular purpose, for that purpose.

(2) The legislative authority of a population group may not originate or pass any ordinance, vote or resolution —

- (a) which has the effect of appropriating any part of the revenue fund of the representative authority concerned; or
- (b) which imposes any tax, duty, due or charge or burden upon that population group,

unless such ordinance, vote or resolution is introduced or moved by a member of the executive authority concerned or has been first recommended to the legislative authority, during the session of the legislative authority in which it is introduced or moved, by the executive authority by written message signed by the member thereof who presides at meetings thereof in terms of the relevant constitution.

Requirements for withdrawal of moneys from revenue fund

34. (1) Save as is otherwise provided in this Proclamation, no moneys shall be withdrawn from the revenue fund of any representative authority except under appropriation made by law.

(2) The executive authority may —

- (a) until moneys have been appropriated in respect of any financial year but during a period not exceeding three months after the com-

mencement of such financial year, authorize the withdrawal of moneys from the revenue fund without an appropriation made by law, in order to meet expenditure on services in respect of which there was an appropriation in the immediately preceding financial year, or in respect of which provision is made by any law;

- (b) authorize the withdrawal of moneys from the revenue fund by special warrant—
- (i) to defray expenses of a special nature which is not provided for in an expropriation ordinance and which cannot without serious detriment to the public interest be postponed until adequate provision can be made therefor by the legislative authority; or
 - (ii) to meet an excess on any head of expenditure in an appropriation ordinance.

(3) The total amount which the executive authority may authorize under subsection (2)(b) shall not at any time exceed an amount equal to two per cent of the total amount appropriated by the then current appropriation ordinance, and the relevant expenditure shall be submitted to the legislative authority for appropriation not later than its next ensuing session.

(4) No moneys shall be withdrawn from the revenue fund except in pursuance of a warrant signed by the member of the executive authority who is responsible in terms of section 24 for the financial matters of the representative authority or, if there is no such member, the member who in terms of the constitution of the executive authority presides at meetings thereof.

Annual estimates of revenue and expenditure

35. The annual estimates of revenue and expenditure of a representative authority shall be prepared and submitted for appropriation to the legislative authority by the executive authority.

Loans

36. (1) Unless the competent legislative authority provides otherwise, and subject to any ordinance of that authority, any executive authority may raise loans for the administration of the matters on which that legislative authority may make ordinances.

(2) No loan shall be raised by any executive authority except with the prior consent of the Administrator-General obtained in each particular case, and subject to the conditions, if any, determined by the Administrator-General.

(3) The Administrator-General may guarantee, on such conditions as he may determine, the repayment of the capital sum of, and the payment of the interest on and any expenditure incurred in connection with, any loan raised or to be raised by an executive authority.

Remuneration and allowances of members of legislative authority and executive authority payable out of revenue fund

37. A member of the executive authority of a particular population group and a member of the legislative authority of that population group who is not a member of that executive authority, shall be paid out of the revenue fund of the representative authority concerned such remuneration or allowances as the Administrator-General may from time to time determine in the case of the authority concerned: Provided that such remuneration or allowances of different members of the authority concerned may differ according to the different offices held by them in that authority or the different functions performed by them from time to time.

Auditing and financial control

38. (1) Unless the competent legislative authority provides otherwise —

- (a) the accounts of any representative authority of all bodies established by or under any ordinance made by such legislative authority as well as those of all accounting officers and persons entrusted with the receipt, custody, expenditure or issue of public moneys, stamps, securities or stores of such representative authority shall be examined, enquired into and audited by the Auditor-General referred to in the Exchequer and Audit Act, 1975 (Act 66 of 1975).
- (b) the provisions of the said Act and the regulations, instructions and rules issued under sections 38, 39, 40 and 51 thereof, shall, subject to the provisions of subsection (2) of this section, govern the administration and control of the revenue fund of any representative authority in so far as they can be applied and are not inconsistent with the provisions of this Proclamation;
- (c) the accounts and report referred to in section 45 of the said Act as applied by paragraph (b) of this subsection, shall be transmitted to the executive authority and submitted by a member thereof to the legislative authority.

(2) Where any provision of the said Exchequer and Audit Act, 1975, or regulations, instructions or rules as applied by subsection (1)(b) prescribes for or in connection with the performance of any act or function the authority, approval or decision of—

- (a) the Administrator-General or the Treasury, such provision shall be construed as referring to the relevant executive authority;
- (b) any officer (except the Auditor-General), such provision shall be construed as referring to the appropriate officer of the relevant representative authority.

PART V

TRANSITIONAL PROVISIONS

Existing institutions

39. Any reference in this Part to the existing legislative body, the existing executive body, the existing government or administration and the existing revenue fund, in relation to any population group, representative authority, legislative authority or executive authority or the revenue fund of any representative authority, shall be construed as a reference —

- (a) in the case of the Basters, to the Legislative Authority, the Kaptein's Council, the Government and the Revenue Fund of Rehoboth, respectively;
- (b) in the case of the Whites, to the Legislative Assembly, the Executive Committee, the Administration and the Revenue Fund of the territory, respectively;
- (c) in the case of the Caprivians, to the Legislative Council, the Cabinet, the Government and the Revenue Fund of Caprivi, respectively;
- (d) in the case of the Damaras, to the Damara Representative Authority, the Executive Council, the Government and the Revenue Fund of Damaraland, respectively;
- (e) in the case of the Kavangos, to the Legislative Council, the Cabinet, the Government and the Revenue Fund of the Kavango, respectively; and
- (f) in the case of the Ovambos, to the Legislative Council, the Cabinet, the Government and the Revenue Fund of Owambo, respectively.

Existing institutions are not representative authorities

40. Subject to the provisions of section 43 and of the constitution of any particular representative authority —

- (a) no existing legislative body, executive body, government, administration or revenue fund mentioned in section 39, and no other body or fund instituted by any law and existing at the coming into operation of this Proclamation shall be regarded as a legislative authority, executive authority or a revenue fund of a representative authority for the purposes of this Proclamation;
- (b) the relevant existing legislative body, executive body, government, administration or revenue fund mentioned in section 39 shall cease to exist on the date on which the law by or under which it was established is repealed or amended by virtue of the coming into operation of the constitution of the representative authority of the population group concerned;

- (c) every person who was a member of the existing legislative body or existing executive body immediately before the said date, shall on that date cease to be such a member.

Power of existing legislative body to amend existing laws

41. (1) If the constitution of the representative authority of a population group mentioned in section 39 does not come into operation on the date on which it is promulgated in the *Official Gazette* of the territory, the existing legislative body may as from that date and until in terms of section 40 it ceases to exist, make laws to be called ordinances, for any purpose for which the legislative authority would under section 14(4) be empowered to do so, and for that purpose the existing legislative body shall, notwithstanding anything to the contrary in any other law contained, have the same powers as those which are or may be conferred upon the legislative authority concerned in terms of this Proclamation or the relevant constitution.

(2) Notwithstanding anything to the contrary contained in any other law save section 38(2) of the South West Africa Constitution Act, 1968 (Act 39 of 1968), the provisions of sections 15 and 16 of this Proclamation and the provisions of section 19 thereof relating to the signature of a copy of any ordinance, shall apply in respect of any ordinance made by the existing legislative body under this section instead of the corresponding provisions of the law by or under which the legislative body concerned has been established, but any such ordinance shall be promulgated and enrolled of record in the office of the Registrar of the South West Africa Division of the Supreme Court of South Africa *mutatis mutandis* in accordance with the provisions of the latter law.

(3) An ordinance made by an existing legislative body under the provisions of this section, shall not come into operation on the date on which it is promulgated as contemplated in subsection (2), but shall provide that it shall come into operation on a date to be fixed by notice in the *Official Gazette* of the relevant representative authority by an authority indicated in the ordinance, and which may not be a date earlier than the date referred to in the proviso to section 14(4).

(4) Any ordinance made by the existing legislative body under this section shall be deemed to have been made by the legislative authority.

Arrangements by existing executive body for transfer of administration

42. The existing executive body may with the approval of the Administrator-General make all such arrangements as that body may deem necessary or expedient in order to enable the executive authority to carry on the administration of any defined matter when it shall become competent for the executive authority to do so in terms of its constitution or this Proclamation.

Executive authority deemed to be the existing executive body for certain purposes

43. (1) In order to cause the administration of the affairs of the territory or

any part thereof in relation to any matter which was managed by the existing executive body or the existing government or administration, and in respect of which any expenses were defrayed from the existing revenue fund, immediately before the date on which that executive body, government, administration or revenue fund ceases in terms of section 40 to exist, to be continued as from that date without interruption or disruption —

- (a) the executive authority shall as from that date be deemed to be the existing executive body with all the rights, powers, duties, obligations and functions which immediately before that date vested in the existing executive body in terms of any law or otherwise in relation to any such matter, as if the laws, referred to in section 40(b), which relate to that body, government, administration or revenue fund had not been repealed or amended and that body, government, administration and revenue fund had not ceased to exist: Provided that the existing executive body shall for the purposes of this paragraph be deemed to have been constituted and to have functioned in the manner in which the executive authority is constituted and functions; and
 - (b) any power, duty or function which by or under any law relating to any such matter vested in the member of the existing executive body who presided at meetings thereof or in any other member thereof immediately before that date, shall as from that date vest in the member of the executive authority who in terms of the constitution thereof presides at meetings thereof, or such other member thereof as the executive authority may designate for that purpose, as the case may be.
- (2) Any right, power, duty, obligation or function vesting in the executive authority or any member thereof in terms of subsection (1), shall be exercised or performed by such authority or member in accordance with the instructions, if any, issued by the Administrator-General from time to time.
- (3) Subsection (1) shall cease to apply to the executive authority, any member thereof and the administration of any matter thereunder —
- (a) in so far as such administration of any defined matter is concerned, on the date on which the legislative authority becomes empowered, by virtue of a proclamation issued under section 14(2), to make ordinances in relation to the relevant defined matter;
 - (b) in so far as such administration of any matter other than a defined matter is concerned, on a date determined by the Administrator-General by proclamation in the *Official Gazette*: Provided that different proclamations and different dates may be issued or determined under this paragraph in respect of different matters, and that a proclamation may be so issued in respect of all such other matters

generally or all such other matters in respect of which no date has on the date of such proclamation been so determined.

(4) If the administrative control, powers, duties and functions in relation to any matter other than a defined matter, vests in the Administrator-General in terms of the constitution of a representative authority as from a date other than a date determined by proclamation under the provisions of subsection (3)(b), then, for the purposes of this Proclamation, such other date shall be deemed to have been determined in respect of such matter by a proclamation issued under those provisions and that constitution shall be deemed to be such a proclamation.

Transfer of funds on transfer of administration of defined matter

44. (1) On or as soon as possible after the date on which the administrative control, powers, duties and functions in relation to any defined matter vest in the executive authority of a population group in terms of sections 22 and 23, there shall be paid into the revenue fund of the representative authority, out of—

- (a) the existing revenue fund; or
- (b) any other existing revenue fund of which moneys have been appropriated for services which are supplied also in relation to such defined matter and which are no longer financed from such moneys as from or at any time after that date; or
- (c) the Central Revenue Fund,

the amount or amounts, if any, determined by the Treasury referred to in section 1 of the Exchequer and Audit Act, 1975 (Act 66 of 1975), after consultation with that executive authority and the authority controlling such other existing revenue fund, and which shall represent the unexpended portion of, or the receipts after that date in respect of, the amount which has been appropriated by law in respect of the financial year in which that date falls for services in relation to such defined matter as a charge to the existing revenue fund or such other existing revenue fund or the Central Revenue Fund, as the case may be.

(2) Any amount paid into the revenue fund of a representative authority in terms of subsection (1), shall for the purposes of section 34 and unless the legislative authority provides otherwise, be deemed to have been appropriated by law, in respect of the financial year mentioned in that subsection, for the services for which it was appropriated by law as contemplated in that subsection.

Transfer of property on transfer of administration of defined matter

45. As from the date on which the administrative control, powers, duties and functions in relation to any defined matter vest in the executive authority

of a population group in terms of sections 22 and 23, the ownership and control of all movable and immovable property —

- (a) of which the ownership and control vested in the existing executive body or the existing government or administration, or in the executive authority in its capacity as the existing executive body in terms of section 43(1), immediately before that date and which relate to such defined matter; or
- (b) which on that date is registered in any deeds office in the name of the Government of the territory and immediately before that date was used exclusively in relation to such defined matter by or under the control of the Administrator-General,

shall vest in the representative authority of that population group.

Transfer of administrative control and certain legal and executive powers in respect of non-defined matter

46. (1) The administrative control and all the rights, powers, duties, obligations and functions in relation to any matter other than a defined matter, which in terms of the provisions of subsection (1) of section 43 vest in an executive authority or a member thereof, shall vest in the Administrator-General as from the date on which those provisions, in terms of a proclamation issued under subsection (3)(b) of that section, cease to apply in respect of that executive authority and any member thereof and the administration of such matter under the said subsection (1).

(2) The powers, duties and functions which immediately before the date referred to in subsection (1), vested in any authority or person other than an authority or person referred to in that subsection, or in any officer, under any law relating to the matter in respect of which that date is determined in the relevant proclamation, shall as from that date vest in the corresponding authority, person or officer exercising or performing similar powers, duties or functions in the administration of the Administrator-General.

Transfer of funds on transfer of administration of non-defined matter

47. (1) On or as soon as possible after the date on which the administrative control, powers, duties and functions in relation to any matter other than a defined matter vest in the Administrator-General in terms of section 46, there shall be paid into the Central Revenue Fund out of the relevant existing revenue fund the amount or amounts, if any, determined by the Treasury referred to in section 44(1) after consultation with the executive authority concerned, and which shall represent the unexpended portion of, or the receipts after that date in respect of, the amount appropriated by law in respect of the financial year in which that date falls for services in relation to that matter as a charge to that existing revenue fund.

(2) Any amount paid into the Central Revenue Fund in terms of subsection

(1) shall for the purposes of the laws governing that fund, be deemed to have been appropriated by law, in respect of the financial year mentioned in that subsection, for the services of the territory in relation to the matter in respect of which it was appropriated by law as contemplated in that subsection.

Transfer of property on transfer of administration of non-defined matter

48. As from the date on which the administrative control, powers, duties and functions in relation to any matter vest in the Administrator-General in terms of section 46, the ownership and control of all movable and immovable property in the territory of which the ownership and control vested in the existing executive body or existing government or administration concerned, or in the executive authority concerned in its capacity as the existing executive body in terms of section 43(1), immediately before that date, and which relate to such matter, shall vest in the Government of the territory.

PART VI
GENERAL

Registration of immovable property

49. (1) Immovable property —

- (a) which in terms of section 45 vests in any representative authority; or
- (b) which in terms of section 48 vests in the Government of the territory,

shall be transferred to such representative authority or, as the case may be, to the Government of the territory without payment of transfer duty, stamp duty or any other fee or charge, but subject to any existing right, charge, obligation or trust on or over such property.

(2) The registrar of deeds shall upon production to him of—

- (a) the title deed of immovable property referred to in subsection (1)(a); or
- (b) the title deed of immovable property referred to in subsection (1)(b) from which it does not already appear that the property concerned has been transferred to the Government of the territory by way of registration or endorsement,

endorse the relevant title deed to the effect that the immovable property described therein vests in the representative authority concerned or, as the case may be, in the Government of the territory, and shall make the necessary entries in his registers, and thereupon that title deed shall serve and avail for all purposes as proof of the title of that representative authority or of the Government of the territory to the property concerned.

(3) Notwithstanding anything to the contrary in any other law contained but

subject to the provisions of section 45 and subsection (2)(a) of this section, any property which vests in the *Government of the territory in terms of the provisions of this Proclamation or any other law or under any title deed registered in a deeds office*, shall for the purposes of any law be deemed to vest in the State and to be State property.

Continuation of existing laws

50. (1) Subject to the provisions of this Proclamation and the constitution of any representative authority, every law which immediately before—

- (a) the date on which the relevant legislative body ceases to exist in terms of the provisions of section 40; or
- (b) where there is no existing legislative body, the date on which the power to make ordinances on any defined matter is conferred upon any legislative authority by virtue of a proclamation issued under section 14(2),

was in force in the territory or any part thereof or in respect of persons belonging to any population group or other category of persons in the territory or any part thereof, shall continue so to be of force until repealed by a competent authority.

(2) If any power, duty or function which in terms of any law referred to in subsection (1) is conferred or imposed upon any particular authority, officer or person, vests in some other authority, officer or person in terms of any provision of this Proclamation or the constitution of any representative authority as from a date mentioned in such provision, anything done by such particular authority, officer or person by virtue of the power, duty or function concerned before the date so mentioned, shall be deemed to have been done by such other authority, officer or person.

Administrator-General may determine certain matters

51. If the Administrator-General considers it to be necessary, he may for the purposes of sections 14, 22, 23, 25, 43, 45, 46 and 48 from time to time, in such manner as he may deem fit, and whether generally or in any particular case, determine—

- (a) whether any particular subject falls under any defined matter or under any matter other than a defined matter;
- (b) whether and to what extent any particular law or right, power, duty, obligation or function relates to any defined matter or to any matter other than a defined matter;
- (c) whether and to what extent any particular movable or immovable property relates to, or is or was at any time used in relation to, any defined matter or any matter other than a defined matter.

Repeal of Act 54 of 1968

52. (1) Subject to the provisions of subsections (2) and (3) and of the consti-

tution of a representative authority contemplated in subsection (2), the Development of Self-government for Native Nations in South West Africa, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation —

- (a) in the areas of Hereroland and Kaokoland referred to in paragraphs (b) and (c) of subsection (1) of section 2 of the said Act, on the date on which the constitution of a representative authority of the Hereros comes into operation;
- (b) in the area of Kaokoland referred to in paragraph (d) of the said subsection, on the date on which the constitution of a representative authority of the Kavangos comes into operation;
- (c) in the area of Eastern Caprivi referred to in paragraph (e) of the said subsection, on the date on which the constitution of a representative authority of the Caprivians comes into operation;
- (d) in the area of Owambo referred to in paragraph (f) of the said subsection, on the date on which the constitution of a representative authority of the Ovambos comes into operation; and
- (e) in any other part of the territory, on a date to be determined by the Administrator-General by proclamation in the *Official Gazette*: Provided that different proclamations and different dates may be issued or determined under this paragraph in respect of different parts of the territory.

(3) Notwithstanding the repeal of the said Act in any part of the territory mentioned in subsection (2) as from the date so mentioned —

- (a) any law which was made under any provision of that Act or was under any such provision deemed to have been so made, and was in force in the relevant part of the territory immediately before such date and which is not repealed by or inconsistent with the relevant constitution mentioned in that subsection, shall continue in force until repealed by any competent authority, and the provisions of section 50(2) shall apply in respect of any such law;
- (b) any other thing done under any provision of that Act, which may be done under a corresponding provision of this Proclamation, shall be deemed to have been done under such corresponding provision.

Short title

53. This Proclamation shall be called the Representative Authorities Proclamation, 1980.

SCHEDULE

DEFINITIONS OF MATTERS WHICH, SUBJECT TO THE PROVISIONS OF SECTION 14, FALL WITHIN THE LEGISLATIVE POWERS OF LEGISLATIVE AUTHORITIES

Item 1 The acquisition, alienation, grant, transfer, occupation and possession of land, or any right to land —

- (a) which in terms of the constitution of the representative authority or any other law is communal land of the particular population group; or
- (b) which is not communal land as aforesaid but which is acquired by the representative authority as owner under a title deed registered in a deeds office, if it appears from such title deed or from an endorsement made thereon, and on any relevant documents in such deeds office, under the authority of the Administrator-General, that such land was so acquired as communal land of the particular population group with the consent of the Administrator-General.

but excluding —

- (i) the acquisition, alienation, grant, transfer, occupation or possession of any surveyed piece of such land or any portion thereof or any right in respect thereof, if the ownership of such piece of land has at any time been transferred to any person, by or under the authority of the executive authority or under any law of the legislative authority or any other law administered by or under the control of the executive authority, by means of the registration of a title deed in any deeds office, and a period of fifteen years has elapsed after the date of such registration, regardless of the registration of any other transfer of such land or any portion thereof, to whomsoever, during such period;
- (ii) the amendment, repeal or replacement of the Abolishment of Racial Discrimination (Urban Residential Areas and Public Amenities) Act, 1979 (Act 4 of 1979), including the extension of any provision thereof relating to a public amenity, as defined therein, to any other amenity institution, service or activity on any land, or of any such provision relating to a residential erf, as so defined, to any other land in a township, as so defined;
- (iii) any matter relating to the registration of deeds in connection with land, the extent of the units into which unsurveyed land is divided by survey for the purposes of such registration, the subdivision of surveyed land by survey, or the acquisition, alienation, grant, transfer or possession of undivided shares in surveyed land;

- (iv) the expropriation of land or any right in respect of land, or the making available of land for public or official purposes to any authority established by or under any law (except to the executive authority or any authority established by or under a law administered by or under the control of the executive authority);
- (v) any matter relating to mineral rights or prospecting or mining for minerals;
- (vi) any matter relating to soil conservation (except any measures additional to and consistent with the laws on soil conservation of the Assembly or any other competent authority), protection of water sources, or nature conservation and conservation of the environment.

Item 2 (1) Farming settlements on land which, as contemplated in Item 1(a) or (b), is communal land of the particular population group or has been acquired as such communal land or of which the representative authority or any member of the particular population group is the owner.

- (2) Forestry, within the limits of any law relating to a matter referred to in paragraph (vi) of Item 1, on land which, as contemplated in paragraphs (a) and (b) of that Item, is or has been acquired as communal land of the particular population group.
- (3) The rendering of assistance, including assistance by means of the staying of legal proceedings or any compromise with creditors, to members of the particular population group carrying on or undertaking to carry on farming operations, the exercise of control in respect of any such assistance being rendered, and the protection of the interests of the authority rendering such assistance, including such protection by means of the endorsement of documents registered or kept in any deeds office and the attachment and sale of property without an order of court, but excluding —
 - (a) the rendering of assistance by means of subsidies on the cost of any works on surveyed land or on the interest payable on loans for any such works, if the maintenance of such works forms a burden on the land;
 - (b) any matter relating to the application of the Land Bank Act, 1944 (Act 13 of 1944), or the amendment, repeal or replacement of that Act.
- (4) Applied research and tests in connection with farming engaged in by members of the particular population group or with a view of the extension of the farming activities of such members.
- (5) The provision to members of the particular population group car-

rying on or intending to carry on farming operations, of information, instruction, advice and training in connection with farming methods, practices and management techniques and the utilization and protection of the soil and other resources.

Item 3 (1) The provision to members of the particular population group of education of any standard up to and including the standard ordinarily required for an examination for the tenth standard, but excluding —

(a) the provision of such education under courses of study and syllabuses;

(b) the conduct of examinations; or

(c) the form and issue, in respect of examinations, of certificates, which do not comply with such minimum standards and minimum requirements as may be prescribed by or under any law of the Assembly or any other competent authority in respect of such education in schools and other institutions in the territory generally.

(2) The training of persons as teachers for the provision to members of the particular population group of education of a standard not higher than the standard ordinarily required for an examination for the fourth standard.

(3) The establishment, erection, maintenance and management of, and the control over, schools, training colleges, hostels and other institutions for or in connection with the provision of education or training contemplated in paragraph (1) or (2).

Item 4 The provision (within the limits of any law of the Assembly or any other competent authority in relation to the prevention and combating of infectious or communicable diseases, or the co-ordination of health services, in the territory generally) to members of the particular population group of health services aimed at the treatment, cure, correction or mitigation of physical or mental defects, illnesses or deficiencies in man, or the immunization or treatment otherwise of any person in order to prevent his contracting any such defect, illness or deficiency, including —

(a) district surgeon and district nursing services and such health services at schools under the control of the executive authority;

(b) maternity services and pre- and post-natal care; and

(c) the establishment, erection, maintenance and management of, and the control over, hospitals, clinics and other institutions for the provision of such services,

but excluding any matters in relation to —

(i) the registration of medical practitioners, dentists, nurses, midwives, chemists and other persons practising any profession having as its object the prevention, treatment, cure,

correction or mitigation of physical or mental defects, illnesses or deficiencies in man, and the control over their respective professions;

- (ii) the control over and the registration of medicines and other substances used or intended for use for or in connection with the prevention, treatment, curing, correction or mitigation of such defects, illnesses or deficiencies, and poisonous substances, dependence-producing substances and other substances that are dangerous or injurious to the physical or mental health of man.

Item 5 (1) The provisions to members of the particular population group of social welfare services, including —

- (a) family and child welfare and the adoption of children;
- (b) social care or rehabilitation of juveniles, aged persons, physically or mentally handicapped persons, indigent persons, maladjusted persons, alcoholics and drug addicts;
- (c) social and emergency relief; and
- (d) the establishment, erection, maintenance and management of, and the control over, homes, other institutions and schemes for or in connection with the rendering of such services,

but excluding any matters in relation to —

- (i) the registration of welfare organizations;
 - (ii) the registration of social workers, and control over their profession;
 - (iii) the collection of money or other contributions for such services or for charity, from members of the public.
- (2) Old age, blind person's disability, war veteran's and similar social pensions and allowances for members of the particular population group.

Item 6 The provision of sub-economic or subsidized housing to members of the particular population group, the planning and implementation of, and control over, schemes for such housing, the conversion of any such housing or schemes being provided or implemented, into economic housing or schemes for economic housing, and the continued implementation of and control over such schemes.

Item 7 Matters having as their object the promotion of art and culture in relation to the particular population group, including the establishment, erection, maintenance and management of, and the control over, art galleries, theatres, libraries, museums, archives, herbariums, botanical gardens, zoos, aquariums and similar institutions, and any services in connection therewith, but excluding any matter referred to in Item 1(ii).

Item 8 The establishment of and control over associations and organizations, and the assignment of powers, duties and functions and the provision of financial and other assistance to such associations or organizations or to tribal, community or regional authorities referred to in Item 9, in connection with civil defence and local security in relation to communities established outside the area of jurisdiction of any local authority (as defined in any law on civil defence in the territory generally) on land belonging to members of the particular population group or which, as contemplated in Item 1(a) or (b), is or has been acquired as communal land of the particular population group, and the provision of instruction to members of such communities in connection with civil defence and local security.

Item 9 The recognition, establishment, replacement, constitution and powers of tribal, community and regional authorities in respect of tribes or other communities on land which, as contemplated in Item 1(a) or (b), is or has been acquired as communal land of the particular population group, including the recognition, appointment, deposition and dismissal, with the prior approval of the Administrator-General, of paramount chiefs, chiefs or headmen, and the discipline, retirement, pensioning and other conditions of service of paramount chiefs, chiefs or headmen, but excluding any matter affecting the constitution of the legislative authority or the executive authority.

Item 10 The administration of justice in accordance with the traditional law and customs observed by tribes and communities referred to in Item 9, including the exercise of civil and criminal jurisdiction in accordance with such law and customs by persons or bodies acting in terms of such law and customs.

Item 11 Elections for members of the legislative authority, and the registration or identification of members of the particular population group as voters, including the determination of the right of voting and the qualifications to be complied with by any candidate for election.

Item 12 (1) Direct taxes on the income of, and personal taxes on, members of the particular population group, apart from any such taxes levied in terms of any law of the Assembly or any other competent authority.

(2) Moneys payable for services rendered by or on behalf of the executive authority.

Item 13 The collection of and control over all revenue and moneys accruing to the representative authority.

Item 14 (1) The raising of loans by the executive authority with the prior consent of the Administrator-General obtained in each particular case, and subject to the conditions, if any, determined by the Administrator-General.

(2) The making or receiving of donations by the executive authority.

Item 15 Estimates of revenue and expenditure of the executive authority, and the appropriation of moneys for the purposes of such estimates, but excluding such appropriation of moneys for any purpose other than the purpose for which such moneys are made available by or in terms of any law of the Assembly or any other competent authority for such appropriation.

Item 16 The planning of and control over the work connected with the exercise or performance of the powers, duties and functions of the executive authority and the services provided by it, and the acquisition, provision and maintenance of and the control over supplies, services, buildings, works and accommodation, transport and other facilities for the purposes of the performance or rendering of such work and services or the work connected with the exercise or performance of the powers, duties and functions of the legislative authority.

Item 17 The appointment, training and promotion of officers and employees in the service of the representative authority, and the conditions of service duties, rights and privileges of such officers or employees in relation to official duties, the hours of attendance for duty, transfer, special treatment for outstanding service or ability, settlement of grievances, inefficiency, misconduct, discipline, discharge as a disciplinary measure, bursaries and other financial assistance for purposes of study, work outside the service of the representative authority, secondment for service with some other authority or institution, and other matters relating to officers or employees in their individual capacities, but excluding the creation of posts, the qualifications for appointment or promotion to posts created, the scales of salaries and allowances, the conditions of service, duties, rights and privileges of such officers and employees in relation to leave, retirement, pensions and gratuities, and such other matters as may be prescribed in respect of such officers or employees or any particular category of such officers or employees by or under any law of the Assembly or any other competent authority in relation to service for representative authorities in the territory generally.

Item 18 The making available and rendering by the executive authority to, and the use by, persons who are not members of the particular population group, of services provided by the executive authority for members of the particular population group in terms of the laws administered by it or under its control, in so far as such making available, rendering or use is not regulated by any agreement contemplated in Item 19, but excluding the imposition or maintenance of any prohibition on such making available, rendering or use to or by any person of any health services (save health services in any institution exclusively connected with any school or any old age home or other establishment in connection with matters defined in Item 3 or 5), merely on the ground of his race or colour or on account of the fact that he is a member of a population group other than the particular population group.

Item 19 The execution of agreements which under any law of the Assembly or any other competent authority may be or have been entered into by the executive authority with one or more other executive authorities established for any population group or population groups or with the Administrator-General, in connection with the exercise or performance—

- (a) by any such other executive authority or by the Administrator-General, as the agent of the executive authority; or
- (b) by the executive authority as the agent of any such other executive authority or of the Administrator-General; or
- (c) by the executive authority in co-operation with any such other executive authority or authorities or with the Administrator-General, of any power, duty or function conferred or imposed in terms of any law upon the executive authority or upon any such other executive authority or upon the Administrator-General, as the case may be.

Item 20 The imposition of penalties, and provision for the forfeiture of property, for the purposes of enforcing any law made by the legislative authority or any law administered by or under the control of the executive authority, including penalties that may be imposed in accordance with the laws and customs referred to in Item 10 by the persons or bodies so referred to.

Draft Constitution of the Transitional Government of National Unity of SWA/Namibia, accepted by the Constitutional Council, 30 July 1987

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ACT OF THE CONSTITUTION

Preamble

In a deep sense of acknowledgement of the sovereignty and guidance of Almighty God we, the people of Namibia, declare that —

Independence

WHEREAS we desire independence free from outside domination and wish to constitute our own government;

Peace and Reconciliation

WHEREAS we likewise urgently desire national reconciliation and lasting peace;

Individual Rights

WHEREAS we are united in the belief that all men are born free and equal and endowed by their Creator with human dignity and inalienable rights and responsibilities;

Diversity

WHEREAS lasting peace, stability and progress depend on the recognition of and respect for the rights of all in the prevailing cultural, linguistic and religious diversity of our society;

Unity

WHEREAS it is the desire of the people to achieve unity in diversity, with common loyalties to a single state;

Purpose and Powers of Government

WHEREAS governments are instituted among men for the purpose of promoting the safety and welfare of the people, from whose consent those governments derive their powers and capacities;

Free and full development of personality

WHEREAS every person within the country shall enjoy the opportunity for free and full development of his personality in the exercise of the duties and responsibilities which he owes to the community;

NOW THEREFORE we, the people of Namibia establish for ourselves a sovereign independent republic which accepts the principles of democracy and the rule of law.

Chapter 1

1. *Establishment of the Republic of Namibia* — (1) Namibia is a sovereign independent republic founded upon the principles of democracy, fundamental freedoms and responsibilities, the rule of law and an economy based on private, public and co-operative ownership and initiative, social justice and equality of opportunity for all the people in the process of production and distribution.

(2) The country pursues a foreign policy of non-alignment and does not belong directly or indirectly to any military power-block. It will call on outside military aid only when threatened by outside power.

(ss. (2) not yet approved by Council.)

(3) The seat of the central government shall be Windhoek.

(4) The name of the country shall be Namibia in both official languages but the derivatives in Afrikaans shall be Namibies and Namibiër.

(ss. (4) stands over to the end of the draft.)

2. *National Flag* — The national flag shall be in accordance with a design to be determined by Parliament.

3. *Coat of Arms* — The coat of arms shall be in accordance with a design to be determined by Parliament.

4. *National Anthem* — The national anthem shall be a song designated as such by Parliament.

5. *Languages* — (1) English and Afrikaans shall be the official languages of the country, but instruction in schools may be provided in a mother-tongue other than the official languages, subject to the provisions of the Education Act.

(2) All records, journals and proceedings of Parliament shall be kept in both official languages, and all bills, acts and notices of general public importance or interest issued by the government shall be in both official languages: Provided that it shall be sufficient if the record of debates in Parliament be kept only in the language of delivery.

(3) It shall be lawful for all governmental and semi-governmental authorities including municipalities and district councils to use, in addition to an official language, any other language as far as they consider it useful and desirable in the public interest.

(s. 5 as a whole stands over until again put to the vote by the chairman.)

6. *Territory* — The territory of the country shall be the territory known as South West Africa at the enactment of this constitution, and including additional territory as may be agreed upon by the relevant authorities.

7. *Constitutional Law* — (1) This constitution shall be the supreme law of Namibia, and legislation is subject thereto.

(2) The Constitutional Court of Namibia shall be competent to inquire into and pronounce upon the validity of an Act of Parliament in pursuance of the question —

(a) whether the provisions of this constitution were complied with in regard to any law which is expressed to be enacted by Parliament; and

(b) whether the provisions of any such law do not abolish, diminish or derogate from any fundamental right set out in Chapter 2.

(3) When the Constitutional Court finds that an Act of Parliament was not passed in conformity with the formal requirements of this constitution, as envisaged by subsection (2)(a), or infringes any fundamental right as envisaged by subsection (2)(b), it may declare such Act or any portion thereof null and void or, in its discretion, allow the Government a specified time to rectify any specified shortcomings in such Act. In the latter event, until such rectification or until the expiry of the time limit set by the Court, whichever is the shorter, the relevant law shall be deemed to be valid.

(4) Any law which in terms of section 93 continues to be in force after the commencement of this constitution may be submitted to the Constitutional Court by the Cabinet or by decision of the National Assembly for a ruling on the compatibility of such a law with the fundamental rights set out in Chapter 2 and when such a law has been so submitted for a ruling, no legal proceeding based on any relevant provision of such a law may be instituted or continued until the Constitutional Court has given its ruling.

(5) Where legal proceedings have been instituted, either of the parties may request the court before which the matter is pending to refer the question whether a law on which the result of the proceedings will depend, is compatible with the fundamental rights set out in Chapter 2, to the Constitutional

Court, and the Court before which the matter is pending may also do so *mero motu*. In such a case the proceedings shall be stayed until the Constitutional Court has given its ruling. The costs of the hearing on the validity of the relevant law shall be borne by the state.

(6) Save as provided in sub-section (2) no court of law shall be competent to inquire into or pronounce upon the validity of an Act of Parliament.

8. *Seal* — (1) There shall be a Seal of the Republic of Namibia, showing the coat of arms circumscribed with the words “Namibia” and the motto of the country.

(2) The Seal shall be in the custody of the President and shall be used on such official documents as the Cabinet may determine.

Chapter 2

Bill of fundamental rights

We, the people of Namibia reserve for ourselves and our descendants the following fundamental rights which shall be respected and upheld by successive governments and shall be binding upon the Government and all its agencies and enforceable by the courts —

9. *The right to life* — (1) Everyone has the right to life.

(2) No one shall be deprived of his life except on the grounds established by statutory law, and a sentence of death may only be executed pursuant to a final judgement by a competent court.

(3) Nothing in this article shall be invoked to prevent the abolition of capital punishment.

10. *Liberty, security of person and privacy* — (1) Everyone has the right to liberty, privacy and security of the person.

(2) No one shall be subject to arrest or detention nor be deprived of his liberty except on such grounds and in accordance with such procedures as are established by statutory law.

(3) (a) Anyone arrested or detained shall be informed at the time of his arrest or detention of the reasons therefor and be brought before a judicial officer as provided by statutory law.

(b) He shall be entitled to a fair and proper trial within a reasonable period of time or to release when a reasonable time is exceeded.

(4) No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

(5) No one shall be subject to interference with the privacy of his home, correspondence or communications, except as provided by statutory law for reasons of public welfare, public order, morals or national security.

11. *Equality before the law and in the administration* — (1) All people shall be equal before the law.

(2) No one shall be discriminated against nor privileged by any branch or organ of government nor any public institution on the grounds of his ethnic or social origin, sex, race, language, colour, religion, or political conviction.

(3) Everyone shall have the right of access to medical care without discrimination based on race, colour or ethnic origin.

12. *Fair trial* — (1) (a) Any person arraigned on a criminal charge is entitled to a fair and public hearing by an independent, impartial and competent court established by law: Provided that such a court may exclude the press and/or the public for all or any part of the trial for reasons of morals, the public order or national security.

(b) Judgments in criminal cases shall be given in public, except where state security or the interests of juvenile persons otherwise require.

(c) Everyone charged with an offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses and cross-examining those called against him.

(d) Everyone shall be afforded adequate time and facilities for the preparation and presentation of his defence, before the commencement of and during his trial.

(2) No one shall be liable to be tried, convicted or punished again for any criminal offence for which he has already been convicted or acquitted according to law, by a court of record.

(3) No one shall be tried or convicted for any criminal offence or on account of any act or omission which did not constitute a criminal offence at the time when it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

13. *Freedom of expression* — Everyone has the right to freedom of expression of opinion, conscience and religious belief, including freedom to impart information and ideas through the press and other media: Provided that this right may be limited by statutory or common law intended to ensure that such expression does not impinge upon the rights of others, advocate violence, unjustly attack the honour of another, impair the public order or morals, or constitute a threat to national security.

14. *Peaceful assembly* — Everyone has the right to freedom of assembly for peaceful purposes, and without carrying weapons: Provided that restrictions may by law be placed on this right which are necessary for the protection of national security, public order, health or morals or the rights of others.

15. *Freedom of association* — (1) Everyone shall have the right to form and maintain associations and societies provided that the purposes and activities thereof do not conflict with the criminal laws, and are not directed against the constitutional order or the concept of international understanding.

(2) Associations and societies not complying with the requirements of subsection (1) can be declared unconstitutional by the Constitutional Court on application by the Ombudsman and be ordered to dissolve.

(3) No one may be compelled to associate with others nor be prevented from so associating.

(4) (a) The right to form and maintain associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades and professions.

(b) Agreements which restrict or seek to abridge this right shall be null and void, and measures directed to this end shall be unconstitutional.

16. *Political activity* — (1) In elections for governmental bodies which have legislative or administrative powers, every citizen who has attained the age of eighteen years shall have the right to vote by secret and free ballot, subject to the relevant electoral laws and provisions: Provided that he shall be eligible for political office only at the age of twenty-one.

(2) Every citizen shall have the right to participate in peaceful political activity but he must refrain from provoking ethnic or religious enmity, from incitement to discrimination and from endangering national security.

17. *Cultural rights* — All ethnic, linguistic and religious groups and all persons belonging to such groups, shall have the right to enjoy, practise, profess, maintain and promote their cultures, languages, traditions and religions, insofar as these do not impinge upon the rights of others or the public order and the national interest.

18. *Freedom of movement and residence* — (1) Everyone lawfully present within the borders of the country shall have the right to freedom of movement and choice of residence subject to the obligation not to infringe the rights of others and to observe such provisions as are properly prescribed by law in the interests of public health and public order.

(2) No citizen shall be prevented from entering or leaving the country except on grounds of public order or national security, laid down by statute.

19. *Property* — (1) (a) Everyone has the right to acquire, own and dispose of movable, immovable and immaterial property, alone or in association with others: Provided that those who have not yet gained Namibian citizenship may acquire such property only on terms provided by law.

(b) Everyone shall have the right to leave his property to his heirs or legatees.

(2) Expropriation shall only be permitted in the public interest and on a non-discriminatory basis and if properly authorised by statutory law, subject to fair and non-discriminatory compensation.

(3) Where business is conducted with the public on premises under licence granted by an organ of the state, no one who wishes to do such business on the relevant premises may be refused access on grounds of race, colour or ethnic origin.

20. *Education* — (1) Everyone has the right to maintain existing private schools or to establish new ones, which shall be registered by the government provided that they are not inferior to state schools in their educational aims or standards.

(2) Restrictions upon the admission of pupils shall not include restrictions based on race, colour or faith.

(3) There shall be free and compulsory primary education.

21. *Military service* — All citizens who have attained the age of eighteen years may be required to serve in the armed forces.

22. *Juristic persons* — The fundamental rights shall, to the extent to which the nature thereof is apposite, apply also to juristic persons.

23. *Forfeiture of fundamental rights* — (1) Whoever advocates violence or abuses freedom of expression of opinion, in particular freedom of the press, freedom of assembly, freedom of association, and privacy of posts and telecommunications in order to combat the free democratic order, shall forfeit these fundamental rights. Such forfeiture and the extent thereof depends upon the pronouncement thereof by the Supreme Court on application by the attorney-general.

(2) Where it is permissible to abridge a fundamental right by law, such a law shall be in conformity with the principles of fundamental justice and shall not go further than is necessary for the protection of the interests of a democratic society.

24. *Enforcement of fundamental rights* — (1) Any person aggrieved may apply to the Constitutional Court by appropriate proceedings to enforce the rights conferred under the provisions of this constitution.

(2) The Court shall have the power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any rights conferred on him under the provisions of the constitution.

(3) In case of victimization in a way which transgresses section 11, any person aggrieved shall have *locus standi* to approach the court for relief, including monetary compensation for damage resulting directly from such victimization.

Chapter 3

The President

25. *The head of the state and his powers* — (1) The head of the state shall be the President, and unless expressly otherwise stated in this constitution or any other law he exercises his executive powers only on the advice of the Cabinet.

(2) Subject to the provisions of this constitution the President shall have power —

- (a) to dissolve the National Assembly or the Senate or both simultaneously;
- (b) to appoint Ministers and Deputy Ministers;
- (c) to appoint and to accredit, to receive and to recognize ambassadors, plenipotentiaries, diplomatic representatives and other diplomatic officers, consuls and consular officers;
- (d) to appoint the times for the holding of sessions of the Assembly and the Senate, and to prorogue such sessions;
- (e) to pardon or reprieve offenders, either unconditionally or subject to such conditions as he may deem fit;
- (f) to enter into and ratify international conventions, treaties and agreements.

(3) At his own discretion he shall have power to confer honours.

(4) Executive orders by the President shall be expressed in writing under his signature and every such instrument signed by him shall be countersigned by a Minister or a Deputy Minister.

26. *Election of the President* — (1) The first President shall be elected by an electoral college consisting of the members of the National Assembly and the Senate, at a meeting to be called in accordance with the provisions of this section and presided over by the Judge-President or a judge designated by him.

(2) Thereafter the election of a President shall be presided over by the Chief Justice of Namibia or a judge designated by him.

(3) The election shall be held at a time and place to be fixed by the Speaker of the Assembly or in his absence by the Secretary of the Assembly.

(4) The date so fixed shall in respect of the first such election be a date within two weeks from the completion of the composition of the Senate, and in the case of any subsequent election a date not less than one month and not more than three months before the termination of the term of the President then holding office: Provided that if the President dies or for any other reason vacates his office before expiration of his term, and his successor has then not yet been elected, a date within one month after the office became vacant shall be so fixed: Provided further that if the President resigns and intimates in his resignation that he will vacate his office on a future date, a date which is earlier than the date on which the office will become vacant, may be so fixed.

(5) A member of the Assembly or the Senate is eligible, but if the candidate is from outside any of the two Chambers, he must be qualified to be elected as a member of the Senate.

(6) If a person elected President holds a public office in respect of which he receives remuneration out of public funds, or is a member of the staff or

board of a public company, he shall vacate such office with effect from the date on which he is elected.

27. *Method of election* — (1) Written nomination of candidates for election as President shall be called for at the meeting at which the election is to take place, by the person presiding thereat.

(2) Every nomination shall be signed by two members of the electoral college and also by the person nominated, unless he has in writing or by telegram signified his willingness to accept nomination.

(3) The names of the persons duly nominated shall be announced to the meeting by the person presiding thereat, and no debate shall be allowed.

(4) If only one candidate be nominated, a secret ballot shall nevertheless take place and the candidate shall be declared elected only if he has obtained at least 45 votes; if not, nominations shall again be called for.

(5) (a) If no candidate obtains at least 45 votes, the candidate who received the smallest number of votes shall be eliminated and a further ballot taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives at least 45 votes. He shall thereupon be declared duly elected.

(b) Whenever two or more candidates being the lowest on the poll have received the same number of votes, the electoral college shall by separate vote, to be repeated as often as may be necessary, determine which of those candidates shall for the purposes of paragraph (a) be eliminated.

(6) Whenever only two candidates have been nominated, or whenever after the elimination of one or more candidates in accordance with the provisions of this section, only two candidates remain, and they poll an equal number of votes, the person presiding at the meeting shall exercise a casting vote, and the candidate for whom he votes shall be declared President.

28. *President's term of office* — (1) (a) The President shall hold office for a period of six years from the date upon which he took the oath of office, and shall not on termination of his period of office be eligible for re-election, unless it is expressly otherwise decided by the electoral college.

(b) The President shall cease to hold office on a resolution passed by a simple majority by the Senate and the National Assembly in joint sitting, declaring him to be removed from office.

(2) (a) No resolution shall be taken under subsection (1)(b) except after consideration of a report of a joint committee of the Senate and the Assembly appointed by the Speaker and the Chairman of the Senate in pursuance of a resolution of the Assembly which has been concurred in by the Senate.

(b) The Assembly shall not adopt a resolution that such a committee be appointed, unless there has previously been submitted to the Speaker a petition signed by not less than 15 members of the Assembly, requesting that such a committee be appointed.

(c) In connection with any resolution contemplated in subsection (1)(b) no debate shall be allowed.

(3) The President may resign by lodging his resignation in writing with the Speaker, who shall forthwith advise the Prime Minister of such resignation.

(4) The President shall not be absent from the country except with the prior consent of the Cabinet.

29. *Acting President* — Whenever the office of President is vacant or the President is for any reason unable to perform the duties of his office, the Chairman of the Senate shall serve as Acting President, and, if the office of Chairman of the Senate is vacant or the holder of that office is unable to act, the Speaker of the National Assembly or, if his office is vacant or he is unable to act, a person appointed by the Cabinet shall serve as Acting President.

30. *Oath of office or solemn affirmation by President and Acting President* —

(1) The first President shall before assuming office and if a Chief Justice has then not yet been appointed, make and subscribe before the Judge-President of the late mandated territory of South West Africa, an oath or solemn affirmation in the following form:

In the full realization of the high calling which I assume as President in the service of my people, I, A.B., do swear/solemnly affirm to be faithful to the Republic of Namibia and do solemnly and sincerely promise at all times to promote its advancement, to oppose all that may harm it, to obey and uphold the Constitution and all other laws of the country, to discharge my duties with all my strength and ability, and, true to the dictates of my conscience to do justice unto all and to devote myself to the well-being of my people.

(2) In the case of an oath the words "In the presence of Almighty God and" shall be prefixed, and the oath shall be closed off with the words: "May the Almighty by His grace guide and sustain me in keeping this oath with honour and dignity. So help me God."

(3) After the office of Chief Justice has been created by Parliament and a Chief Justice has been appointed, the said oath or solemn affirmation shall be made and subscribed to before him.

(4) An Acting President shall make and subscribe to the same oath in adapted wording before the Judge-President or Chief Justice as the case may be.

Chapter 4

Parliament

31. *Legislative Power* — (1) The legislative power of Namibia shall be vested in the Parliament of the country, which shall consist of the President, the Senate and the National Assembly.

(2) The members of Parliament shall be representatives of the whole people and shall in the performance of their duties be guided by the public interest and by their conscience.

32. *Political Parties* — (1) Political parties shall be regarded as essential to the proper functioning of the constitution and to the forming of the political will of the people.

(2) Parties may be freely established, but they shall register themselves with the Department of the Interior against payment of a registration fee to be fixed by regulation by the Minister of the Interior. A party which is not registered is barred from all elections. Registration must take place at least two months before an election, failing which, the party is barred from such first succeeding election.

(3) A party which, by reason of its aims or the behaviour of its adherents seeks to impair or abolish the free democratic basic order or to endanger the existence of the Republic of Namibia may be declared unconstitutional by the Constitutional Court on application by the Ombudsman, or another political party whereupon it shall be barred from all elections and shall forfeit all its assets to the state.

(4) Parties shall publish annual accounts revealing the source of their income failing which they are liable to be barred from elections by order of the Supreme Court on application by the Ombudsman, or another political party.

(5) A party deriving any portion of its income from sources outside the country may be declared illegal and be barred from elections on order by the Supreme Court on application by the Ombudsman. All members who represent such a party in Parliament, a regional council or a municipal council shall immediately forfeit their seats.

33. *Sessions of Parliament* — (1) The President shall appoint the times for holding sessions of Parliament and the sessions may be terminated at the discretion of the Prime Minister.

(2) There shall be at least one session of Parliament in every year, so spaced that less than a year will elapse between the last sitting of one session and the first sitting of the next session.

OR

(2) There shall be at least two sessions of Parliament in every calendar year.

(3) One third of the members of the National Assembly or of the Senate may demand a session of the respective Chamber for the discussion of a matter of national importance.

The Senate

34. *Constitution of the Senate* — (1) The Senate shall consist of twenty-eight members designated as follows —

- (a) (i) three from each constituency referred to in section 44, elected by an electoral college according to the principle of proportional representation as set out in Schedule 1.
- (ii) the electoral college shall consist of the members of municipal councils within the constituency, regional councils within the constituency, and those members of the National Assembly who have been elected for the constituency.
- (b) Four able persons who are prominent in national life, upon nomination by the President on the advice of the Cabinet: Provided that for the first Senate such nominations shall be made by the Senators elected in terms of paragraph (a).

35. *Term of office of senators* — (1) Subject to subsection (2), elected senators shall hold their seats for eight years from the date of their election, unless the Senate be sooner dissolved.

(2) In regard to the first Senate, the senators of four constituencies to be designated by the Prime Minister shall hold their seats for four years only.

(3) The Prime Minister shall make such designation within three years after the election of the first Senate, and there shall be an election in the said four constituencies, the relevant senators being eligible for re-election.

(4) The senators so elected or re-elected shall thereafter hold their seats for eight years unless the Senate be sooner dissolved.

(5) If the seat of an elected senator becomes vacant, the relevant electoral college shall elect a person to hold the seat until the completion of the period for which the person in whose stead he is elected, would have held the seat. The procedure set out in Schedule 1 shall be followed.

(6) Nominated Senators shall hold their seats for eight years from the date of nomination, unless the Senate is sooner dissolved.

(7) When the seat of a nominated senator becomes vacant, the President shall nominate another person with approximately the same qualifications to hold the seat until the completion of the period for which the person in whose stead he is nominated, would have held the seat.

36. *Dissolution of the Senate before the expiry of its term* — If the Prime Minister vacates his office before the term of the National Assembly has expired and another person becomes Prime Minister, such new Prime Minister may advise the President to dissolve the Senate. The President shall then be under a duty to dissolve the Senate, whereupon a new Senate shall be constituted as provided in section 34.

37. *Qualifications of senators* — No person shall be qualified to be a senator unless he —

- (a) is a registered voter as defined in the Electoral Act;
- (b) is of or over the age of 40 years; and
- (c) is not subject to a disqualification set out in section 58.

38. *Chairman of the Senate* — (1) The Senate shall, before proceeding to the dispatch of any other business, choose a Senator to be the Chairman, and as often as the office of Chairman of the Senate becomes vacant the Senate shall again choose a Senator to be the Chairman. On such occasions the oldest member acts as Chairman.

(2) The Chairman of the Senate shall cease to hold office if he ceases to be a Senator and he may be removed from office by a vote of the Senate, or he may resign his office in writing addressed to the President.

(3) Prior to or during any absence of the Chairman the Senate may choose a Senator to perform his duties in his absence.

39. *Resignation of senators* — (1) A senator may in writing addressed to the President resign his seat.

(2) Whenever the seat of a senator becomes vacant, whether in consequence of his resignation or otherwise, the President shall as soon as practicable cause steps to be taken to have the vacancy filled.

40. *Quorum* — The presence of at least fifteen senators other than the Chairman or other presiding senator shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

41. *Voting in the Senate* — All questions in the Senate shall be determined by a majority of votes of senators present other than the Chairman or the presiding senator, who shall, however, have and exercise a casting vote in the case of an equality of votes.

The National Assembly

42. *Constitution of the National Assembly* — The National Assembly shall consist of sixty members elected by the registered voters as defined in the Electoral Act.

43. *Elections* — At any general election of members of the National Assembly, polling shall take place throughout Namibia over three days, such days to be appointed by the President.

44. *Delimitation of constituencies* — (1) Immediately after the commencement of this constitution and thereafter at intervals of not less than five years and not more than ten years, the President shall appoint a delimitation commission consisting of a judge as chairman and two other members, with the assignment to do a delimitation of constituencies in accordance with the principles set out in Schedule 1.

45. *Powers and duties of delimitation commission* — (1) The delimitation commission shall submit to the President —

- (a) a list of constituencies with the names given to them by the commission and a description of their boundaries;
 - (b) a map or maps showing the boundaries of the constituencies;
 - (c) the number of seats allocated to each constituency;
 - (d) such further particulars as it considers necessary or desirable.
- (2) The President shall by proclamation make known the names and boundaries of the constituencies as recommended by the commission, and thereafter, until there is a re-delimitation, the constituencies as named and defined shall be the constituencies of Namibia.
- (3) If any discrepancy arises between the description of the constituencies and the aforesaid map or maps, the description shall prevail.

46. *Qualifications of members of the National Assembly* — No person shall be qualified to be a member of the National Assembly unless he —

- (a) is a registered voter in terms of the Electoral Act;
- (b) is of or over the age of 21 years; and
- (c) is not subject to a disqualification set out in section 58.

47. *Allocation of seats* — In each constituency polling shall take place according to the system of proportional representation and seats shall be allocated as set out in Schedule 1.

48. *First sitting of the National Assembly* — (1) The first sitting of the National Assembly shall take place as soon as possible after the announcement of the results of the election, and at a time and place appointed by the Judge-President.

(2) The Judge-President acts as chairman at the first sitting of the first Assembly, and at the first sittings of later Assemblies the Chief Justice of Namibia acts as chairman.

49. *Speaker of the National Assembly* — (1) At the first sitting of a newly elected National Assembly and before proceeding to the dispatch of other business, the Assembly shall elect a Speaker, and as often as the office of Speaker becomes vacant, the Assembly shall again choose a member to be Speaker.

(2) After the Speaker has been chosen the Judge-President or the Chief Justice, as the case may be, leaves the chair and the Speaker takes over as chairman of the Assembly.

(3) The Speaker shall cease to hold his office if he ceases to be a member of the Assembly, he may be removed from office by resolution of the Assembly, or he may resign his office or his seat in writing under his hand addressed to the President.

(4) Prior to or during the absence of the Speaker, the Assembly may choose another member to perform his duties during his absence.

(5) When a new Speaker has to be elected on an interim occasion, the Secretary of the Assembly shall act as chairman.

50. *Secretary and other officers of Assembly* — (1) Subject to the provisions of the laws on the government service and the directions of the National Assembly, the Speaker shall appoint a person, or designate a person in the government service made available for that purpose, as the Secretary of the Assembly, who shall perform the functions and duties assigned to him by his constitution or by the Assembly or the Speaker.

(2) Subject to the laws governing the control of public moneys, the Secretary shall perform his functions and duties under the control of the Speaker.

(3) The Secretary shall be assisted by officers of the Assembly who shall be persons in the government service made available for that purpose.

51. *Quorum* — The presence of at least thirty members of the National Assembly other than the Speaker or other presiding member shall be necessary to constitute a meeting of the Assembly for the exercise of its powers.

52. *Voting in the National Assembly* — Subject to contrary provisions of this constitution, all questions in the Assembly shall be determined by a majority of votes of members present other than the Speaker or the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

53. *Oath or solemn affirmation* — (1) Every member of the first National Assembly shall make and subscribe before the Judge-President an oath or solemn affirmation in the following form —

I, A.B., do swear/solemnly affirm to be faithful to the Republic of Namibia and solemnly promise to uphold the objects of the Bill of Fundamental Rights and to perform my duties as a member of the National Assembly to the best of my ability.

(In the case of an oath)

So help me God.

(2) For subsequent Assemblies, after a Chief Justice has been appointed, this function shall be performed by the Chief Justice.

54. *Duration of National Assembly* — Every National Assembly shall continue for five years from the first sitting thereof, and no longer, but may before the expiry of its term be dissolved by the President by proclamation if so advised by the Prime Minister in terms of section 73.

55. *Vacating of seats by members of National Assembly* — When a member for any reason whatever vacates his seat in the National Assembly, the vacancy shall be filled in the manner set out in Schedule I.

56. *Effect of dissolution of National Assembly* — Notwithstanding any dissolution of the National Assembly under this constitution, whether by effluxion of time or otherwise —

- (a) every person who at the date of the dissolution is a member of the Assembly, shall remain a member thereof and be competent to perform his functions; and
- (b) the President shall have power to summon Parliament for the dispatch of business

during the period following such dissolution up to and including the day immediately preceding the first polling day for the election held in pursuance of such dissolution, in the same manner in all respects as if the dissolution had not occurred.

57. *Vacating of seats by members and powers of Ministers in Senate and National Assembly* — (1) A member of the Senate who is elected as a member of the National Assembly shall vacate his seat in the Senate with effect from the date on which he becomes a member of the Assembly.

(2) A member of the Assembly who is elected as a member of the Senate shall vacate his seat as a member of the Assembly with effect from the date on which he becomes a member of the Senate.

(3) A Minister or Deputy Minister who is a member of the Senate or the Assembly shall have the right to sit and speak in the Senate and the Assembly but shall vote *only in the Chamber where he is a member*.

(4) A Minister who is not a member of any of the two Chambers may sit and speak in either but may not vote in either.

58. *Disqualifications from being a member of the Senate or the National Assembly* — No person shall be capable of being elected as a member of the Senate or the National Assembly if he —

- (a) has at any time been convicted of any offence for which he has been sentenced to imprisonment without the option of a fine, unless he has received a *free pardon* or unless such imprisonment has expired at least ten years before the date of his election; or
- (b) is an unrehabilitated insolvent; or
- (c) is of unsound mind and has been so declared by a competent court; or
- (d) is a remunerated member of the civil service of Namibia.

59. *Vacating of seats* — A Senator or a member of the National Assembly shall vacate his seat if he —

- (a) becomes subject to any of the disabilities mentioned in section 58; or
- (b) ceases to be qualified as required by sections 37 and 46 respectively; or
- (c) fails for a whole ordinary session to attend without special leave of the Senate or the National Assembly as the case may be, unless his absence is due to military service with the Namibia Defence Force.

or unless his absence is condoned by the Chamber of which he is a member, or

(d) resigns his seat in writing addressed to the Speaker.

60. *Rules of procedure* — (1) The Senate and the National Assembly may make rules of procedure for their respective business and proceedings.

(2) Pending the acceptance of such rules of procedure, the rules and orders adopted under section 12 of the National Assembly Proclamation AG 12 of 1979, as they existed on 18 January 1983, shall apply *mutatis mutandis* and with such amendments, additions or adjustments as the Speaker or the President of the Senate respectively may approve, with reference to the business and proceedings of the Senate and the Assembly respectively as far as they are apposite.

Powers of Parliament

61. *Powers of Parliament* — (1) Parliament shall be the sovereign authority in and over Namibia and shall have full power to make laws for the peace, order and good government of the country.

(2) Namibia may transfer sovereign powers to intergovernmental institutions, and enter a system of mutual collective security; in doing so it will consent to such limitations upon its rights of sovereignty as may bring about and secure a peaceful and lasting order among the nations.

62. *Appropriation Bills* — (1) Any bill which appropriates moneys for the ordinary annual services of the government or imposing taxation, shall deal with such appropriation or taxation only and may be introduced by a Minister only and only in the National Assembly.

(2) Other bills may originate in either Chamber.

63. *Agreement between Senate and the National Assembly* — Before a bill is presented to the President for his assent, it shall be passed by each of the two Chambers in identical wording.

Or in the alternative

63. *Disagreement between Senate and National Assembly* — (1) If the National Assembly in any session passes a bill imposing taxation only or dealing only with the appropriation of moneys for the services of the Government, and the Senate in the same session rejects or fails to pass it, the bill shall, unless the Assembly otherwise directs, be presented to the President for his assent and shall as soon as it has been assented to, become an Act of Parliament and be taken to have been duly passed by the Senate and the National Assembly.

(2) Every bill of the nature set out in subsection (1) shall, when it is sent to the

Senate and when it is presented to the President for his assent, bear a certificate by the Speaker of the Assembly that it is such a bill.

(3) If the Assembly in two successive sessions (whether of the same Parliament or not) passes a bill other than a bill referred to in subsection (1), and the Senate in each of those sessions rejects or fails to pass it or passes it with amendments with which the Assembly will not agree, the bill shall, unless the Assembly otherwise directs, be presented to the President for his assent, and when assented to become an Act of Parliament notwithstanding that the Senate has not consented to it: Provided those sessions were not held in the same calendar year.

(4) Every bill of the nature set out in subsection (3) shall, when it is presented to the President for his assent, bear a certificate by the Speaker of the Assembly that it is such a bill.

Alternative to sub-sec (3)

The Speaker shall arrange for a joint sitting of the two Chambers and if the bill is passed at such a joint sitting it shall be submitted to the President for his assent.

64. *Assent to bills* — (1) When a bill is presented to the President for his assent, he shall declare according to his discretion and his conscience that he assents thereto, or that he withholds assent.

(2) When the President withholds assent on grounds other than those stated in subsection (5), he shall return the bill to the Speaker together with any amendments which he may recommend, or with a message that he withholds assent, for reasons given.

(3) The Speaker shall —

(a) where amendments are recommended by the President, have them debated in the Assembly and if they are adopted, or substantially adopted, forward the bill to the Senate;

(b) where the President withholds assent, have the bill debated in the Assembly once more and, if passed by a majority of all the members, forward it to the Senate.

(4) If the Senate passes the bill by a majority of all the members, it shall be presented to the President, and the President shall signify his assent.

(5) When the President withholds his assent on the ground that in his opinion the bill derogates from any of the fundamental rights set out in Chapter 2, he shall so inform the Speaker, giving the grounds for his opinion, and the Speaker shall thereupon take appropriate steps to have the matter decided by the Constitutional Court.

65. *Signature and enrolment of Acts* — (1) As soon as may be after any bill has been assented to by the President by his signature, it becomes an Act of Parliament and the Secretary of Parliament shall cause two fair copies of such

Act, one being in English and the other in Afrikaans (one of which shall have been signed by the President), to be enrolled of record in the office of the Registrar of the Supreme Court of Namibia, and such copies shall be conclusive evidence of the provision of every such Act.

(2) In the case of conflict between the two copies so enrolled, that signed by the President shall prevail.

66. *Tribal law* — (1) Tribal law shall remain valid in so far as it does not conflict with this constitution.

(2) Tribal law may be overruled by Parliament, but such laws shall give due regard to established principles of tribal law and shall endeavour to respect the prevailing cultural, linguistic and religious diversity of Namibia.

Chapter 5

Executive Government

67. *Executive government* — (1) Executive power is vested in the Cabinet which shall consist of the Prime Minister and the Ministers appointed under section 69 for the time being holding office.

(2) The Prime Minister shall determine, and be responsible for, general policy guidelines.

(3) Within the limits of this general policy, each Minister shall conduct the business of his department autonomously and on his own responsibility.

68. *Election of Prime Minister* — (1) A Prime Minister shall be elected by the members of the National Assembly.

(2) Nominations shall be called for by the Speaker, and shall be submitted in writing, signed by two members of the Assembly and by the person nominated, thereby indicating that he makes himself available for election.

(3) No debate on the merits or demerits of persons nominated shall be allowed.

(4) If only one candidate be nominated he shall be declared to be Prime Minister.

(5) If more than one candidate be nominated a vote shall be taken by secret ballot, and if no candidate obtains an absolute majority of all the votes cast, the candidate who received the smallest number of votes shall be eliminated and a further ballot taken in respect of the remaining candidates, this procedure being repeated as often as may be necessary until a candidate receives a majority of all the votes cast, whereupon he shall be declared duly elected as Prime Minister.

69. *Appointment of Ministers* — (1) The President shall appoint persons nominated by the Prime Minister to administer such departments of state as the

Prime Minister may wish to establish. Ministers may be appointed from any of the two Chambers of Parliament and also from outside any of the two Chambers.

OR

(a clause compelling him to appoint a Minister from each party or coalition of parties which has gained at least ten seats)

(2) Whenever any Minister is from any cause whatever unable to perform any of the functions of his office, the President shall appoint any other member of the Cabinet nominated by the Prime Minister to act in the said Minister's stead, either generally or in the performance of any particular function.

(3) A Minister shall before assuming his duties as such make and subscribe an oath or a solemn affirmation before the President or a person designated by him, in the following form:

I, A. B., do hereby swear/solemnly affirm to be faithful to the Republic of Namibia, to hold my office as Minister and as a member of the Cabinet with honour and dignity, to respect and uphold the constitution and all other laws of the Republic; not to divulge directly or indirectly any matters brought before the Cabinet and entrusted to me under secrecy, and to perform the duties of my office conscientiously and to the best of my ability.

(In the case of an oath)

So help me God.

70. *Appointment of Deputy Ministers* — (1) The President shall appoint persons nominated by the Prime Minister from the National Assembly as Deputy Ministers of specified departments of state, to exercise or perform on behalf of the Minister concerned, any of the powers, functions and duties which may be assigned to him from time to time by the said Minister.

(2) Any person appointed under this section shall before assuming the duties of his office make and subscribe before the President or a person designated by him for the purpose, an oath or solemn affirmation in such form as the President may determine.

71. *Termination of appointment of Ministers and Deputy Ministers* — The appointment of a Minister or a Deputy Minister shall be terminated by the President at the request of the Prime Minister.

72. *Vote of no confidence* — (1) The National Assembly can, when it has lost confidence in the Prime Minister, express such lack of confidence only by electing a successor with a majority of all its members.

(2) The President is then under a duty to dismiss the Prime Minister and to appoint the person elected as successor.

(3) One week must elapse between the motion and the vote thereon.

73. *Dissolution of Assembly before the end of its term* — (1) If a motion by the Prime Minister for a vote of confidence is not assented to by the majority of the members of the National Assembly, the President may, upon the proposal of the Prime Minister, dissolve the Assembly within 21 days.

(2) The right to dissolve shall lapse as soon as the Assembly with a majority of all its members elects another Prime Minister.

(3) One week must elapse between the Prime Minister's motion and the vote thereon.

74. *Tenure of office of Prime Minister* — (1) The tenure of office of the Prime Minister shall end on his resignation and in any event on the first meeting of a new National Assembly, and simultaneously the terms of office of all his Ministers and Deputy Ministers shall end.

(2) The tenure of office of a Minister or a Deputy Minister shall also end on any other termination of the tenure of office of the Prime Minister.

(3) When the term of a Cabinet is thus terminated the Speaker shall as soon as possible arrange for the election of a new Prime Minister as set out in section 69.

(4) At the request of the President, the Prime Minister and any Minister or Deputy Minister shall be bound to continue to transact the affairs of his office until the appointment of a successor.

75. *Standing committees* — (1) (a) There shall be standing committees, called area committees, one for each constituency, consisting of those members of the National Assembly who were elected by or assigned to the respective constituencies.

(b) Each area committee elects its own chairman and is charged with the duty of investigating the problems and development potential of its respective area and to take appropriate steps thereanent.

(c) The chairman of each area committee shall report annually to the Prime Minister in regard to the activities of his committee.

(2) The National Assembly and the Senate may from time to time establish other standing committees for various matters as it may deem fit, and any Minister may at any time with due regard to the rules of the Assembly or the Senate as the case may be, move that any matter be referred to such a committee for investigation and report.

Chapter 6

Local Government

76. *Local government* — (1) Local government shall be exercised by —

- (a) municipal councils as governed by the Municipal Councils Act;
 - (b) regional councils as governed by the Regional Councils Act.
- (2) The Cabinet has the power to disallow any municipal regulations enacted by a Municipal Council.

Chapter 7

The Administration of Justice

77. *The judiciary* — (1) The judicial power shall be vested in the judges, who shall be independent and subject only to the law.

(2) There shall be a Supreme Court of Namibia, constituted as laid down in the Supreme Court Act, consisting of as many judges as may be necessary, presided over by the Chief Justice of Namibia.

(3) (a) Whenever it may in the opinion of the Chief Justice be necessary to constitute a Constitutional Court by reasons of the number of constitutional issues presented for adjudication, or the urgency thereof, he may constitute such a court, consisting of not less than three and not more than five judges.

(b) Judges of the Supreme Court may be assigned by the Chief Justice for duty in the Constitutional Court or he may recommend to the Government the appointment *ad hoc* of persons from outside the Supreme Court, who by reason of their special knowledge of constitutional law, can serve on the Constitutional Court.

(c) In the case of judges appointed *ad hoc* from outside the Supreme Court it shall not be necessary that they be Namibian citizens, and at the discretion of the Chief Justice the Constitutional Court may wholly consist of *ad hoc* judges.

(d) The Chief Justice may at his discretion personally preside over the Constitutional Court or he may nominate anyone of the judges constituting the court to preside over it.

(4) Decisions of the Constitutional Court shall be final.

78. *Administrative functions relating to the administration of justice* — All administrative powers, functions and duties affecting the administration of justice shall be under the control of the Minister of Justice.

Chapter 8

The Civil Service

79. *Civil service* — (1) There shall be a visibly independent, impartial and capable Civil Service Commission, under the direct authority of the Prime Minister, with the powers and duties necessary to ensure an adequate, satis-

fied and efficient government service which has merit as its basic principle, and ensures equal opportunity for all.

(2) Regulations governing the civil service and the Commission may be promulgated by the Prime Minister.

80. *Ombudsman* — There shall be an Ombudsman operating under the Ombudsman Act.

81. *Auditor-general* — There shall be an Auditor-general.

(Section to be expanded to emphasize his independence from government interference.)

Chapter 9

Finance

82. *Existing debts and liabilities of the State* — Nothing in this constitution contained shall affect any debts, liabilities or claims of first and second tier authorities of the mandated territory as existing immediately prior to the commencement of this constitution, and they shall become debts, liabilities and claims of the Government of Namibia.

83. *Assets of Representative Authorities* — The movable and immovable assets belonging to the Central Government and to Representative Authorities established in terms of Administrator General's Proclamation 8 of 1980 shall vest in the Government of Namibia upon the commencement of this constitution.

84. *State Revenue Fund* — (1) State Revenue Fund of the mandated territory of South West Africa instituted in terms of section 3 of the Treasury and Audit Proclamation 1979 (Proc. 85 of 1979) and section 31(1) of Proc. R101 of 1985 shall continue as the State Revenue Fund of Namibia.

(2) All income accruing to the Central Government shall be deposited in the State Revenue Fund and the disposal thereof shall vest in the Central Government of Namibia.

(3) The accounts of the State Revenue Fund shall be investigated, checked and audited in terms of the provisions of the State Finance Act.

(4) No money shall be withdrawn from the State Revenue Fund except in accordance with an Act of Parliament.

85. *Principles of the budget* — (1) All revenues and expenditures of the State must be estimated for each fiscal year and included in the budget for such fiscal year, the forecast for the following five years included.

(2) The budget for the fiscal year shall be established by a law before the beginning of the fiscal year. It must be balanced as regards revenue and expendi-

ture, and expenditure shall be authorized for one year, except in special cases. Otherwise no provisions may be inserted in the budget law which extend beyond the fiscal year or which do not relate to the revenues and expenditures of the State or its administration.

(3) Property and debts shall be set forth in an appendix to the budget.

(4) In respect of enterprises and special funds owned by the State, only allocations to or remittances from them need be included.

86. *Payments before approval of budget* — (1) If by the end of a fiscal year, a budget for the following year is not established by law, the Cabinet may, until such law comes into force, make all payments which are necessary —

- (a) to maintain institutions existing by law and to carry out measures authorised by law;
- (b) to meet the State's statutory and treaty obligations;
- (c) to continue building projects, procurements and other services, or to continue to grant subsidies for these purposes: Provided that pertinent amounts have already been appropriated in the budget of a previous year.

(2) The expenditures shall not exceed the amount of the last annual budget which is approved by a law, and monthly expenditures shall not exceed one-twelfth of the expenditures authorized under such budget.

87. *Expenditure in excess of budgetary estimate* — Expenditures in excess of budgetary appropriations and extra-budgetary expenditures shall require the consent of the Minister of Finance. Such consent may be given only in the case of an unforeseen and compelling necessity.

(Sections 85 to 87 are being considered by fiscal experts in the RSA.)

Chapter 10

State of war, martial law

88. *Proclamation of war and martial law* — The President has, upon the advice of the Cabinet, the power to declare war and make peace and proclaim and terminate martial law.

89. *Competence of the President in war and under martial law* — After declaring war or proclaiming martial law, the President upon advice of the Cabinet shall by proclamation enact all legislation and all other measures including the restriction of fundamental rights necessary for the maintenance of public order, and the security of the state.

90. *Peace and termination of martial law* — The President shall proclaim peace or the termination of martial law upon advice of the Cabinet or upon resolu-

ution of the National Assembly and the Senate by a majority decision of each chamber in separate sittings.

Chapter 11

Amendment of the constitution

91. *Amendment of the constitution* — The constitution can be amended only by a law which expressly amends or supplements the text thereof. Any such law shall require the affirmative vote of two-thirds of the members of the National Assembly and two-thirds of the members of the Senate, such votes to be taken at the third reading in separate sittings.

92. *Essentials of the constitution* — Amendments of the constitution abridging the protection of citizens through fundamental rights or the freedom to establish political parties or the right to peaceful opposition shall be inadmissible.

Chapter 12

Transitional and concluding provisions

93. *Validity of laws* — Save and except for such laws as are expressly repealed by this constitution, all laws which were validly in force immediately before the commencement of this constitution shall remain to be of full force and effect until repealed or amended by Parliament.

94. *Repeal of laws* — The laws set out in Schedule 2 are hereby repealed to the extent there indicated.

95. *Short title and commencement* — This Act shall be called the Constitution Act and shall come into operation on the date when the Republic of South Africa renounces its mandate over South West Africa.

Schedule 1

1. *Delimitation of constituencies* — (1) The elections for both Chambers of Parliament take place in eight constituencies.

(2) The delimitation commission mentioned in section 44 of the Constitution Act divides the country into eight electoral divisions called constituencies, in such a manner that no region demarcated under the Regional Council Act will be situated partly in one and partly in another constituency.

(3) For the purpose of delimitation a quota shall be fixed by dividing the total number of voters in the country by eight.

(4) While taking the quota of voters as the basis of division, the delimitation commission may depart therefrom in the manner following —

(a) in thinly populated areas and with the purpose of reducing the geo-

graphical size of constituencies, the boundaries of constituencies may be so determined that the number of voters within them is below the quota by not more than 30 per cent;

- (b) in more thickly populated areas the boundaries of constituencies may be so determined that the number of voters within them is above the quota by not more than 30 per cent.

2. *Method of determining number of voters* — When doing the first delimitation after the commencement of this constitution, the delimitation commission may within its discretion and for the purpose of calculating the number of voters encompassed by certain boundaries, make use of the 1981 census results of Namibia, of particulars in regard to the place where identity documents were issued, and of such further statistics as may be in the possession of various departments of state.

3. *Election for the National Assembly* — (1) Forty-eight of the sixty seats in the National Assembly are allocated to the various constituencies mentioned in section 1 of this Schedule, in the manner following:

- (a) The total number of voters in the country is divided by 48 and the result is the quota per seat.
- (b) The number of voters in a constituency is divided by the quota per seat and the result is the number of seats to be allocated to the constituency. If the total of seats thus allocated to all the constituencies comes to less than 48, additional seats are allocated to the constituencies where the highest unused surplus of voters occurred.

(2) Twelve members are elected on a national basis as set out in subsection (4)(b).

(3) Registered parties nominate candidates in each constituency on a party list, in the sequence reflecting the party's preference for the various candidates.

(4) Counting of votes takes place in two stages:

- (a) The votes cast for each of the competing parties are counted separately for each constituency. The total of valid votes cast for all the parties taken together in a constituency is divided by the number of seats to which the constituency is entitled. The result is the quota for the constituency. The votes received by each party is then divided by the quota for the constituency and the result is the number of seats gained by the party. If not all the seats can be distributed in this way they are awarded in sequence of the highest surplus of votes. This is an example with imaginary figures:

Number of votes cast in a constituency for all parties	58 500
Number of seats	7
Quota per seat	8 357

Votes gained by parties:			
Party A	Party B	Party C	Party D
25 000	20 000	7 000	6 500

Seats allocated thus:

Party A	25 000 votes
2 seats	16 714 votes
surplus	8 286 votes
Party B	20 000 votes
2 seats	16 714 votes
surplus	3 286 votes
Party C	7 000 votes
no seats	0 votes
surplus	7 000 votes
Party D	6 500 votes
no seats	0 votes
surplus	6 500 votes

Only four seats could be allocated. The remaining three are allocated in sequence of the highest surplus, therefore one to Party A, one to Party C and one to Party D, with the following result:

Party A	3 seats
Party B	2 seats
Party C	1 seat
Party D	1 seat

The same surpluses are taken into account for the allocation of the 12 seats referred to in subsection (2) above.

- (b) When the foregoing process is complete, 48 seats in eight constituencies will have been allocated to the competing parties. Thereafter the surplus votes in all eight constituencies for all parties are totalled and divided by 12. The result is the national quota. The total of surplus votes received by each party is then divided by the national quota and the result is the portion of the 12 seats won by the party. These are called national seats.

(5) In each constituency the seats won by the party are allocated to the candidates in the sequence in which they appear on the party list. The national seats gained by each party are allocated firstly to the first-following unsuccessful candidate in the constituency where the party received the largest number of surplus votes, and thereafter to the first-following unsuccessful candidate in the constituency where the party received the second-largest surplus, and so on. This is called the "best loser principle".

(6) When a member of the National Assembly vacates his seat before the end of his term, the next candidate on the relevant party list in the constituency where the departing member was elected, takes his place. This is done even if the departing member may have changed his party allegiance after being elected.

4. *Election of the Senate* — (1) In each constituency the parties nominate candidates on a party list in sequence of preference.

(2) The total of valid votes is divided by the number of seats (three) to determine the quota. Thereafter the number of valid votes for each party is divided by the quota and the result is the number of seats gained by each party. These are allocated in the sequence of candidates on the party list.

(3) If a vacancy arises before the expiry of the relevant senator's term, a by-election is held and each party is then entitled to nominate only one candidate.

(4) If more than one seat should become vacant at the same time the election is held as set out in subsections (1) and (2), provided that if there are two vacancies, the quota will be half the total of valid votes.

5. *The same candidate in more than one constituency* — For the Senate as well as for the National Assembly a party may place the same candidate or candidates on its list in more than one constituency. If such a candidate is successful in more than one constituency he shall make his choice where he wants to serve, and the seat or seats then vacated by him are filled by the next candidate on the relevant list or lists.

Text of Resolution 566 (1985) of the United Nations Security Council, 19 June 1985

The Security Council,

Having considered the reports of the Secretary-General,

Having heard the statement by the Acting President of the United Nations Council for Namibia,

Having considered the statement by Mr Sam Nujoma, President of the South West Africa People's Organization,

Commending the South West Africa People's Organization for its preparedness to co-operate fully with the Secretary-General of the United Nations and his Special Representative, including its expressed readiness to sign and observe a cease-fire agreement with South Africa, in the implementation of the United Nations plan for the independence of Namibia as embodied in Security Council resolution 435 (1978),

Recalling General Assembly resolutions 1514 (XV) of 14 December 1960 and 2145 (XXI) of 27 October 1966,

Recalling and reaffirming its resolutions 269 (1969), 276 (1970), 301 (1971), 385 (1976), 431 (1978), 432 (1978), 435 (1978), 439 (1978), 532 (1983) and 539 (1983),

Recalling the statement by the President of the Security Council of 3 May 1985, on behalf of the Council, which, *inter alia*, declared the establishment of the so-called interim government in Namibia to be null and void.

Gravely concerned at the tension and instability created by the hostile policies of the *apartheid* régime throughout southern Africa and the mounting threat to the security of the region and its wider implications for international peace and security resulting from that régime's continued utilization of Namibia as a springboard for military attacks against and destabilization of African States in the region,

Reaffirming the legal responsibility of the United Nations over Namibia and the primary responsibility of the Security Council for ensuring the implementation of its resolutions, in particular resolutions 385 (1976) and 435 (1978) which contain the United Nations plan for the independence of Namibia,

Noting that 1985 marks the fortieth anniversary of the founding of the United Nations, as well as the twenty-fifth anniversary of the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and expressing grave concern that the question of Namibia has been with the Organization since its inception and still remains unresolved,

Welcoming the emerging and intensified world-wide campaign of people from all spheres of life against the racist régime of South Africa in a concerted effort to bring about an end to the illegal occupation of Namibia and to *apartheid*,

1. *Condemns* South Africa for its continued illegal occupation of Namibia in flagrant defiance of resolutions of the General Assembly and decisions of the Security Council;
2. *Reaffirms* the legitimacy of the struggle of the Namibian people against the illegal occupation of the racist régime of South Africa and calls upon all States to increase their moral and material assistance to the Namibian people;
3. *Further condemns* the racist régime of South Africa for its installation of a so-called interim government in Windhoek and declares that this action, taken even while the Security Council has been in session, constitutes a direct affront to the Council and a clear defiance of its resolutions, particularly resolutions 435 (1978) and 439 (1978);
4. *Declares* that action to be illegal and null and void and states that no recognition will be accorded to it either by the United Nations or any Member State or to any representative or organ established in pursuance thereof;
5. *Demands* that the racist régime of South Africa immediately rescind the aforementioned illegal and unilateral action;
6. *Further condemns* South Africa for its obstruction of the implementation of Security Council resolution 435 (1978) by insisting on conditions contrary to the provisions of the United Nations plan for the independence of Namibia;
7. *Rejects once again* South Africa's insistence on linking the independence of Namibia to irrelevant and extraneous issues as incompatible with resolution

- 435 (1978), other decisions of the Security Council and the resolutions of the General Assembly on Namibia, including resolution 1514 (XV);
8. *Declares once again* that the independence of Namibia cannot be held hostage to the resolution of issues that are alien to resolution 435 (1978);
 9. *Reiterates* that resolution 435 (1978), embodying the United Nations plan for the independence of Namibia, is the only internationally accepted basis for a peaceful settlement of the Namibian problem and demands its immediate and unconditional implementation;
 10. *Affirms* that the consultations undertaken by the Secretary-General pursuant to paragraph 5 of resolution 532 (1983) have confirmed that all the outstanding issues relevant to resolution 435 (1978) have been resolved, except for the choice of the electoral system;
 11. *Decides* to mandate the Secretary-General to resume immediate contact with South Africa with a view to obtaining its choice of the electoral system to be used for the election, under United Nations supervision and control, for the Constituent Assembly, in terms of resolution 435 (1978), in order to pave the way for the adoption by the Security Council of the enabling resolution for the implementation of the United Nations plan for the independence of Namibia;
 12. *Demands* that South Africa co-operate fully with the Security Council and the Secretary-General in the implementation of the present resolution;
 13. *Strongly warns* South Africa that failure to do so would compel the Security Council to meet forthwith to consider the adoption of appropriate measures under the Charter, including Chapter VII, as additional pressure to ensure South Africa's compliance with the above-mentioned resolutions;
 14. *Urges* States Members of the United Nations that have not done so to consider in the meantime taking appropriate voluntary measures against South Africa, which could include the following:
 - (a) Suspension of new investments and application of disincentives to that end;
 - (b) Re-examination of maritime and aerial relations with South Africa;
 - (c) Prohibition of sale of krugerrands and all other coins minted in South Africa;
 - (d) Restrictions on sports and cultural relations;
 15. *Requests* the Secretary-General to report on the implementation of the present resolution not later than the first week of September 1985;
 16. *Decides* to remain seized of the matter and to meet immediately upon receipt of the Secretary-General's report for the purpose of reviewing progress in the implementation of resolution 435 (1978) and, in the event of continued obstruction by South Africa, to invoke paragraph 13 of the present resolution.

Adopted at the 2 595th meeting by 13 votes to none, with 2 abstentions (United Kingdom of Great Britain and Northern Ireland, United States of America).

Zimbabwe

Text of speech by Deputy Prime Minister Cde Simon Muzenda, Victoria Falls, 8 July 1987

It gives me great pleasure to address your annual congress for 1987. The theme you have chosen for this congress is a very appropriate one, namely, "Manufacturing — the Key to National Development". The manufacturing sector can indeed play a leading role in achieving rapid and sustained overall economic growth and development. It is a sector which has the capacity to restructure the Zimbabwean economy, and help reduce the dependence on imported goods. This strategy can be fulfilled in a number of ways often overlooked by those who argue that the manufacturing sector is not the key for achieving rapid and sustained overall economic growth and development.

Saying that manufacturing has a leading role to play in the economic transformation of the Zimbabwe economy does not mean that other productive sectors have no role to play. In fact all sectors are interrelated and depend on each other. If we increase the manufacturing processes of our agricultural output, and further beneficiation of our mineral output, our Gross Domestic Product (GDP) will increase as well as our export earning capacity. This will also increase the amount of job creation within our economy, which is a pressing issue particularly among school-leavers.

Thus, for manufacturing to play a leading role in national development, the sector has to develop further its linkages with agriculture, mining, construction, transport and so on. Central to this strategy is the local manufacture of many of the currently imported goods particularly within the capital and intermediate goods sectors. Some of the projects to be implemented by Government during the First Five Year National Development Plan period fall within this category. Government is inviting joint participation from local and foreign private and public enterprises. Private sector firms are also urged to invest in the downstream industries which will result from the implementation of the major projects. A relatively well-developed manufacturing and technology base exists in Zimbabwe. What is necessary is to develop all this further.

Within the past few years, some industrialists have implemented what I would term exciting import substitution and export oriented industrial projects. This is to be commended. However, my observation is that it is not many industrialists who are that industrious as some tend to have a pessimistic outlook. If all industrialists were to adopt an innovative spirit and work towards achieving the goal of making the manufacturing sector the key to national development, I am confident that our economy would grow from strength to strength.

A few weeks ago, Government implemented a number of economic measures to stimulate the economy. These measures are aimed at saving foreign exchange, increasing investment and job opportunities, as well as avoiding negative growth with all its attendant problems. The measures are also directed at encouraging firms to make the best use of locally generated investible income in new investment and expansion programmes. Firms with access to external funds are being called upon to utilize such funds for procurement of raw materials and capital equipment to enhance their production capacities.

However, it should be noted that these economic measures are temporary adjustments which were necessitated by the current severe internal and external balances caused by the drought, the bunching of debt repayments, poor commodity prices and the resultant squeeze on foreign exchange allocation. To overcome the foreign exchange constraint, it is necessary for those firms with access to external funds, as well as the use of profits to procure raw materials, capital equipment and so on under No-Currency Involved Licences (NCI). *In this way the economy will be stimulated towards growth through the multiplier effect.* This will also help reduce the level of shortages of products on the domestic market, apart from stimulating exports. It is pleasing to note that Randalls Holdings (Pvt) Ltd and its foreign shareholder, Whitecroft PLC, have worked out an arrangement whereby the foreign shareholders have agreed to utilize their dividends to procure the company's imports. This move is to be commended, and it is my fervent hope that other industrialists will shortly be emulating this noble move.

Allow me to pass a few comments on profits. It has been wrongly suggested that Government views the term "profit" as a dirty word. Government fully recognizes the importance of profit to the economic viability of enterprises. Indeed, Government is on record as stating that the losses being made by parastatals have at least to be reduced. In fact, Government has gone further to appoint the Justice Smith Commission to look into the operation of parastatals, and I believe you are all well aware of the fact that some of the commission's recommendations have already been implemented. What I am saying is that profit as such, is not a contentious issue. The problem area, from Government's point of view is, "to what use are profits channelled into?" Is it to improve on the welfare of the workers? Is it for reinvestment

within the enterprise with a view to expand and or diversify into new product lines? Are they being channelled into the procurement of much needed spares, raw materials and capital equipment or are profits only for shareholders' dividends — both local and external? Government would like to see companies utilize their generated surpluses into more productive activities, particularly in our present circumstances where the bunching up of external loan repayments and so on has caused a reduction in conventional import allocations.

Another misconception centres on Government's economic policy and philosophy which implies a growing public involvement in development and the contributory components of the Gross Domestic Product. This Government policy has been interpreted both locally and overseas as a determination on the part of Government to stifle the private sector. This, of course, is not correct. Although Government policy is to expand state involvement in industry, at the same time it recognises the existence of the private sector and the contribution made by this sector in all economic activity and growth. Government also accepts that this contribution must be spread out and developmental.

It is therefore Government policy to have, alongside the developing public sector, a strong and viable private sector, a private sector that is understandably inspired by the economic return to investment. A private sector that is also conscious of and dedicated to the economic and social advancement of the state of Zimbabwe and its people, to the promotion of production, employment, development, training and the adequate supply at reasonable prices of the goods and services needed domestically and for export. In short, Government would like alongside the growing public sector, a private sector capable of coming to the assistance of Government in order to overcome the problems currently facing the economy, a private sector which is truly "Zimbabwean" in both character and deed.

Apart from the problem of foreign exchange shortages, peace within the region is threatened by South African backed economic and political destabilization. It is common knowledge that the South African regime is engaged in sabotage attacks of economic infrastructure within the Frontline States. As the political events within South Africa deteriorate, it is most likely that the frantic attempts by the Botha regime to keep political power in its hands will be accompanied by more desperate sabotage and political machinations. In this respect, industrialists and other businessmen are being urged by Government to make more use of the Mozambique ports.

Whilst it may be partly true that some of our trade partners and local companies for one reason or another prefer to use the South African ports, it is Government policy, and within the SADCC co-operation framework for Zimbabwe to use the Mozambique ports. The Mozambique routes are the shortest distance from the sea, and at any rate, we have all witnessed delaying

tactics one way or another by the South African Railways and Harbours in moving Zimbabwe's and other SADCC states' cargo. Such manoeuvres are meant to, in one way or another, induce political concessions, apart from having severe repercussions on production as the availability of the requisite inputs into manufacturing, mining, agriculture and so on will depend on the "goodwill" of the South African regime.

This we cannot allow, and I would like to urge companies to explore new export markets, as well as to make full use of the capacity at the Mozambique ports. If more trade is diverted from South African to the Mozambique routes, this will result in a large flow of goods which will then make it possible for more ships to call more frequently at the Mozambique ports.

Having said this, I would like, however, to express my sincere thanks to those firms who subscribed for the shares in the Beira Corridor Project, and these investing in Mozambique in other areas. This is to be commended as a growing Mozambique economically will create favourable conditions for more trade between the two countries. As Government has always stressed, the success of such projects depends on a joint action by both the public and private sectors of the economy. In this respect, Government is also urging industrialists to source as much of their inputs as possible from within the country and from the SADCC or PTA regional market.

I would like to take this opportunity to once more call upon all businessmen — whether in manufacturing, commerce, agriculture, mining and so on to invite Government to your enterprises as an exposure to the nature of your undertakings, problems experienced and so on with a view for serious discussions aimed at redressing the economic and social problems currently facing our economy. The importance of such an exercise is, I believe, obvious to any management team for the simple reason that, for a correct decision to be made, all pertinent facts have to be made accessible to the decision maker. Equally so, Government can only be in a position to make the necessary economic decisions based on a more than adequate submission from industrialists, farmers, and so on. Hence my call upon you industrialists assembled here this evening for the congress, to view Government requests for information as part of the input into the decision making process, as opposed to the current situation whereby Government's requests for information and economic policy measures are viewed with suspicion. If we are to work in an environment clouded by suspicion and mistrust, whether on the part of the public or private sector, then, we will not achieve much. On the contrary, if the private and public sectors work as a strong symbiotic relationship, working as one single entity, only then will we be able to achieve much of the goals set out in the First Five Year National Development Plan. It is my fervent hope that businessmen will keep this in mind during the deliberations of the congress and whenever they have discussions with Government officials.

Lastly, I would like once again to emphasize that the manufacturing sector

is expected to play the central role in our economic restructuring and transformation in the years to come. Government will spearhead the restructuring and transformation process but the private sector is expected to play an important complementary role. I urge you to use this opportunity to map out your strategy to ensure that the manufacturing sector does play a decisive role in the national economic development of Zimbabwe, taking into account the guidelines enunciated in the First Five Year National Development Plan.

With these remarks I now declare the 1987 Congress of the Confederation of Zimbabwe Industries open.

Department of Information
P. O. Box 8150
Causeway

9 July 1987

USSR and Southern Africa

A paper delivered by Dr V. Gontcharov, Deputy Director, Institute of African Studies, USSR Academy of Sciences, in Harare June 1987.

Soviet Union and Southern Africa: *the issues of ensuring regional security*

Trying to impede the deepening of the acute political and socio-economic crisis the racist regime of South Africa in the framework of the so-called "total strategy" resorts widely to repressive measures aimed at fighters against apartheid inside the country and at the neighbouring African states, which support their struggle.

Lately racists have passed from the open backing of armed bands in Angola and Mozambique and anti-government groupings in Zambia and Zimbabwe to direct aggressive actions against the neighbouring African states. The military adventurism has become an integral feature of South African regime. At the same time, in spite of the universal condemnation of apartheid as a crime against humanity, the aggressiveness of the racists tends to increase.

As a result of these a tense, explosive situation, which continues to persist and represents a serious threat for international peace and security of African states, has arisen in Southern Africa. As it was repeatedly stressed, the main cause of a conflict in this region is the existence of apartheid in South Africa, the ignoble system, which violates all norms of human morality and generally accepted principles of international relations.

Denying to grant independence to Namibia, illegally occupied by its forces, and carrying out a direct aggression and subversive actions against Angola, Mozambique and other independent African countries the regime of South Africa defies all the world.

The Soviet Union has repeatedly spoken for activization of collective searches of the ways of unblocking the conflict situation in Southern Africa with participation of all those, who not in words, but in deeds call for securing independence, sovereignty, and territorial integrity of African states, for liquidation of the insane apartheid system.

In particular, the fundamental principles of the comprehensive system of international security, put forward by the 27th Congress of the CPSU, provide for: in political sphere, the true political settlement of international crisis and regional conflicts; in humanitarian sphere, the eradication of genocide, apartheid, propagation of fascism, and other sorts of racial, national or religious exclusiveness, as well as of discrimination on these grounds.

At the same time it is necessary to point out that in the Soviet Union the situation in Southern Africa is considered not in the light of confrontation between East and West, as many western politicians try to present, but as a logical process of struggle between the forces of national and social liberation, from one side, and the forces of colonialism, racism, and neocolonialism from the other. The current conflict in this area of the world is, primarily, the result of development of the internal socio-economic and political process in the region, the natural consequence of decomposition of the exhausted vicious system of social relations itself.

Nevertheless, the conception of confrontation between East and West is actively propagandized by supporters of the bankrupt policy of "constructive engagement" between USA and RSA. For some people in USA it serves as a pretext for interference in the region, giving financial and military aid to bandit forces in Angola. This conception offers the Pretoria regime the possibility to shift off the responsibility for unsettled conflict to two superpowers and, thus, to extend its existence. Both in Washington, and in Pretoria they fan for many years the myth of Soviet military threat to sea routes of the West around the Cape of Good Hope, the "total expansion of communism" in Southern Africa in order to deny the West an access to strategic minerals. And all these measures are taken to declare that this region is the sphere of the vital interests of the United States, and that Pretoria is its historical ally.

Meanwhile, even people not possessing profound military knowledge, realise that in the nuclear-missile age, if the Third World War breaks out it will have a transient character and its outcome will not be so much dependent on regular supplies of the needed mineral resources, as it was during previous world wars. In these conditions the idea to intercept goods traffic around the Southern tip of the African continent, including oil supplies from the Middle East, itself has become out of date from the military point of view. It is notable that members of the consultative group, which prepared their report on the USA policy towards South Africa to the Secretary of State, G. Shultz, in January 1987, have admitted that the danger for these sea routes is minimal and that the possible consequences of cessation of some strategic minerals supplies can not be considered as a "sufficient ground" for defining the USA policy towards South Africa.

For the Soviet Union, the Secretary General of the CPSU Central Committee, M. Gorbachev, said, while meeting a group of foreign affairs minis-

ters of Frontline States of Southern Africa, that the Soviet Union has not any particular interests, except for a desire that peoples and countries of the region receive, at last, the possibility to solve the issues of their development, their internal and external affairs, in a sovereign way, in the atmosphere of peace and stability. We consider the cause of the Southern African nations to be the just one, take their part, provide them with help and support. It will be so in future also.

The Soviet Union has no so-called "vital" interests in Southern Africa. Our country has at its disposal a big amount of mineral resources, by which are so rich the entrails of this region, and the Soviet Union is not interested in the undermining of the world economic relations. The Soviet Union doesn't seek to infringe upon somebody's legitimate interests including interests of the western countries in the region. Here I must specify that we reject the conception of division of regions to the spheres of influence, at the same time we accept that some states in course of established historic or other ties, nevertheless could have legitimate interests in correspondent countries. In this regard we expect our opponents in the region to recognize our legitimate interests in this region and to pass from the policy of confrontation to the searches of a mutually acceptable solution with respect of the objectively present political realities.

The problem of ensuring regional security in Southern Africa is a multifaceted one. It includes the liquidation of the apartheid system in South Africa, settlement of the Namibian problem, and ensuring the security for independent states of the region, and creation of prospects for their normal socio-economic and political development. These problems are so interrelated that solution of each of them is linked inseparably with the solution of the main problem, namely, the eradication of the apartheid system. Although ten years ago existed the opinion, according to which settlement of the Namibian problem could be achieved irrespective of the development of the internal political situation in South Africa, nowadays it is difficult to find a specialist, who makes bold to assert that without resolute measures of the international community the decolonization of Namibia could be realised before the liquidation of the apartheid system.

The political settlement in the region is possible if it is based on the following principles: firstly, the unconditional respect of the sovereignty, independence, the right of every nation to choose independently the way for development; secondly, the respect of the legitimately elected governments; thirdly, the respect of obligations and agreements, concluded between states in full accordance with the international law.

From the Soviet point of view, in order to achieve the just political settlement in Southern Africa it is necessary to put an end to aggressive actions of Pretoria against independent African states, to ensure granting of

independence to Namibia in accordance with the corresponding resolutions of the United Nations, to liquidate the regime of apartheid in South Africa, which represents the initial cause of the conflict situation in the region.

The Soviet Union maintains friendly relations with the states of this region of the world, and has treaties on friendship and co-operation with Angola and Mozambique.

Between the USSR and these states commercial, economic and cultural relations continue to develop. For example, in Angola the construction of a hydroelectric scheme "Capanda" with hydro power plant with production capacity of 500 thousand kW has been started. The effectuation of this project, biggest since independence, will allow to double the output of verbatim of the Republic. Soviet organizations render Mozambique their assistance in the field of coal-mining development, having begun the co-operation in development of two coal-fields for production of up to 4,5m/t of top grade coal per year, and two coal-mines with total production capacity of 0,5m/t per year. A ship-repair yard in Maputo has been made operational. They have built or prepared for construction factories for automobile repairs, tractor repairs, farming machinery repairs, etc. in Angola and in Mozambique. Soviet organizations are also engaged in creation of joint construction enterprises in Angola.

The conduction of complex researches (hydrogeological, hydrological, soil studies, and geobotanical) by Soviet organizations is of great importance for development of farming schemes. Such researches are under way in Mozambique and in Zambia. During the study of water resources in the Limpopo valley some underground water resources were found, and water-wells for securing safe water for local population were built. With technical assistance of Soviet specialists approximately 400 wells were built or reconstructed in Zambia, securing water for more than 30 per cent of the population of the droughty Eastern province of the country. Soviet organizations participated in construction and development of fish-catching and processing facilities, as well as of port facilities in Angola and in Mozambique.

In Mozambique there have been completed work on the General Scheme of farming development and complex use of Limpopo valley, provided for the area of 8m/ha. According to this project, the area under irrigation schemes will be enlarged up to 250 thousand ha, or 3,7 times. In Angola they have completed irrigation scheme projects for various provinces of the country. They comprise of creation of special irrigation services, reconstruction and building anew some hydro facilities, organization of water supplies for pastures, etc..

During the visit to the USSR of Angolan President Dos Santos in May 1986 they have discussed in details issues of bilateral co-operation in economics and trade, examined the ways for further upgrading its efficiency in such priority areas as energetics, construction, farming, mining, off-shore

fishing, health services, training of national personnel. But the realization of these and many other projects is held up by an unstable internal political situation in these countries, what speaks once more for the fastest political settlement in the region.

In this regard and facing the direct and indirect aggression from RSA towards Angola, Mozambique and other Frontline States, the assistance in the field of strengthening their defence capabilities, provided by the USSR, appears to be of the utmost importance.

In accordance with its obligations under international treaties, and in conformity with the known resolutions, adopted by the UN Security Council, the Soviet Union speaks for resolute suppression of the aggressive encroachments on sovereignty and territorial integrity of the People's Republic of Angola. Taking into consideration the growing aggressiveness of Pretoria towards Angola, the Soviet Union sticks firmly to its principled position, agreed on during the trilateral Soviet-Angolan-Cuban consultations in Moscow in January 1986, during which the readiness of the USSR to take co-ordinated steps for defending independence, sovereignty and territorial integrity, was confirmed.

They do not stop subversive actions against the People's Republic of Mozambique. Despite the "Nkomati Accord" RSA continues to render assistance to banditry mobs of the so-called "Mozambique National Resistance", supplying them with arms and military equipment. The Soviet Union supports the decision of the heads of states and governments of the non-aligned countries, adopted in Harare, to render diplomatic, political, financial, and material support to the people and government of Mozambique for strengthening its defence capabilities, and reconstruction of economy.

During discussions with the group of ministers of Frontline States of Southern Africa in Moscow in April 1987 the Soviet side reaffirmed its unshaken solidarity with the Frontline States, suffering from direct and indirect aggression of racist RSA, which seeks to destabilize situations in these countries, to undermine their economies. In this verbatim that Frontline States' ministers expressed their gratitude to the people and to the government of the Soviet Union for support of their goals in the struggle against the remnants of colonialism and racism in Africa.

By joint efforts of representatives of many countries and peoples the United Nations Organization managed to draw an internationally accepted basis for peaceful settlement of the Namibian issue. Its main points are in the resolutions of the UN Security Council No 385 of 30 January 1976, and No 435 of 29 September 1978. The political mechanism of realization of these resolutions has also been drawn up. But up to nowadays the people of Namibia are still under yoke of colonialism and disgusting apartheid system.

The main reason for continued shameless Pretoria's disregard of UN de-

cisions, further atrocities on the occupied territory, policy of destabilization of independent countries of the region, is that it enjoys the direct connivance and open support of its allies in the West. Sometimes, on advice from the same allies, Pretoria adopts a "peacemaking pose", trying to show off its peace-loving and readiness for settlement of the problem, but on the grounds, which are insulting to the countries of the region, and unacceptable because of this.

A real stumbling-block on the way of political settlement appeared, when the USA began their attempts to link the solution of this issue with Cuban internationalists' withdrawal from Angola, where they stay on request of the sovereign government and in full conformity with paragraph 51 of the UN Charter. The international conference for immediate independence for Namibia, which took place in July 1986 in Vienna, evaluated these attempts as rude and arbitrary interference into affairs of Angola, aimed at delaying granting independence for Namibia and at derailment this issue into the sphere of global confrontation between East and West, for not considering this problem as a decolonization issue, which is to be solved in accordance with the UN Charter, and with the Declaration on granting independence to colonial countries and peoples.

The Soviet Union, constantly following its principled line towards full and final eradication of colonialism and racism in all its forms and appearances, speaks firmly and consistently for realization, without further delays, and without further conditions, by Namibian people of its unseparable right for self-determination and national independence in a single and territorially integral Namibia, including Walvis Bay, and off-shore islands, for immediate and complete withdrawal from its territory of all armed forces and of administrative bodies of South Africa.

USSR supports governments and peoples of all the states of the world, which speak for immediate introduction of comprehensive mandatory sanctions against South Africa for its effective isolation in political, economic, military, and cultural fields. There is no other exit for the international community in the situation present nowadays at the South of African continent.

The Soviet Union greets the decision of Vienna International conference for immediate independence for Namibia, which urges all the states, organizations and UN bodies, intergovernmental organizations, and individuals to activise political, diplomatic, military and material assistance to Namibian people, represented by SWAPO, in its struggle for self-determination. What concerns the USSR, it has constantly given, and will give full support to the just struggle of the people of Namibia under the leadership of its legitimate representative, the South West Africa People's Organization, which is accepted as a sole and authentic representative of the people of Namibia.

We are sure that the just cause of Namibian people will win, and Namibia will get a genuine independence. But to accelerate this process, from international community new co-ordinated and urgent efforts for further pressure

on the regime of apartheid are needed. We also think that the whole process of political settlement is to be under constant and effective control of the Security Council. The duty of United Nations is that all efforts are to be taken for putting an end to another manoeuvres of racist South Africa and those states, which put artificial blocks in the way of Namibia's self-determination.

In its policy in the region of Southern Africa the Soviet Union always came from the assumption, that problems of South Africa and Namibia are, in their essence, colonial ones. Approach towards apartheid in South Africa as to the system of colonial racial domination, so as to special type of colonialism, has a principled importance. According to our opinion, openly racist, colonial character of Pretoria's regime, massive by their scale repressions, not only cannot let to consider the issue of apartheid to be the internal question of South Africa, but, quite oppositely, give all the grounds for qualifying apartheid policy and practice as a crime against humanity, in struggle against which any means are legitimate.

That is why in full agreement with the decisions of United Nations and Organization of African Unity the Soviet Union recognizes the right of national-patriotic forces of South Africa and Namibia to get self-determination and independence for their peoples by means of armed struggle. For decades ANC used the tactics of non-violent action. South African patriots were forced to take arms only after racist regime campaign of mass terror and repressions was unleashed. The same kind of situation was in Namibia.

The Soviet assistance to ANC is multilateral. Friendly ties with long history are maintained between ANC and CPSU. As tokens of solidarity with the freedom fighters of Southern Africa they hold in the Soviet Union conferences, meetings, and film shows. Organizations of Soviet public play great role in these manifestations of solidarity, they also provide scholarships for studies in the USSR for young ANC activists. They send to ANC goods of general use, food, clothing, medical equipment and medicine, transportation equipment, teaching aids, etc. USSR, Ukraine, and Byelorussia regularly contribute to the International Defence and Assistance Fund for Southern Africa, and Soviet Peace Foundation gives constant assistance to OAU in its struggle against racism and colonialism in Southern Africa.

In response to appeal from Harare forum, the Soviet Union decided to contribute 65m roubles to "AFRICA" fund, to create three centres of vocational education in Frontline States for training 400 qualified workers in each of them yearly, and to give additional 1 100 scholarships for studies in Soviet universities to countries of the region, ANC and SWAPO.

Soviet state immutably supports the right of all nations to determine their socio-economic state of today and to build their future without any outside interference. The attempts to deny this sovereign right to peoples, to get a social revenge against countries, liberated from the colonial yoke, against national liberation movements are hopeless and doomed to failure.

Victor Gontcharov

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