

fh12.7

TRANSITION TO DEMOCRACY ACT, 1992Explanatory Note**INTRODUCTION**

The Transition to Democracy Act (Transitional Law) is designed to provide the legal and constitutional framework to lead South Africa from the present dispensation (The Republic of South Africa Act, No. 110 of 1983, the National States Act of 1971, the Status of Transkei Act, the Status of Bophuthatswana Act, the Status of Venda Act, the Status of Ciskei Act, as well as the constitutions of the TBVC states) to a new united non-racial non-sexist democratic state.

ABOLITION OF PRESENT GOVERNMENT SYSTEM

The Transition to Democracy Act abolishes the whole tricameral Parliament, the distinction between Own Affairs and General Affairs, the all-powerful Presidency, the Executive Authority, the Presidents Council, and other features of the tricameral system. The transitional law achieves this result by deleting major provisions contained in the Republic of South Africa Act, No. 110 of 1983.

TBVC STATES

It is envisaged that Transkei, Bophuthatswana, Venda and Ciskei will simultaneously make appropriate provisions so as to ensure the implementation of a uniform agreed plan for the reincorporation of those territories into the new democratic South Africa. Provision is made for the participation of the people of the TBVC states in all transitional arrangements under this Act as well as in all constitution-making processes including elections provided for in the Transitional Law.

PARLIAMENT

The Transitional Law makes provision for a Parliament which consists of a single House made up of 400 women and men elected on the basis of one person one vote of equal value by all persons of the age of 18 years and over, who are citizens of South Africa or who would have been citizens but for the various bantustan laws. An electoral law will, inter alia, make provision for an electoral system based on proportional representation system so as to ensure that parties are represented in Parliament in direct proportion to the number of votes won by them.

Parliament will perform two functions:

1. It will act as the country's constitution-making body;

2. It will act as the law-making body during the period of transition from the time elections have taken place until the installation of the first government under the new constitution.

The two functions are defined in such a way as to ensure that there is no confusion between these two separate functions. The function of drawing up and adopting a new constitution must not become enmeshed with governing the country in the transitional period. When Parliament sits as the Constitution-making body it will be known as the Constituent Assembly. When it sits as the law-making body it will be known as the Legislature. The Law makes provision for an Executive Authority based on the principle of a government of National Unity. The Executive during this phase of transition will be made up of representatives of parties which have won 5% or more of seats in Parliament in proportion to their number of seats in Parliament.

DECISION-MAKING, DEADLOCK-BREAKING AND TIME-FRAMES

The Transitional Law seeks to provide for a transition period which is not indefinite. In other words the task of constitution-making must be completed within a defined period of time. This requires that the decision-making formula must be clear and must include time frames and a deadlock-breaking formula.

The Transitional Law, therefore, provides that when Parliament sits as Constituent Assembly it will adopt each Article of the Constitution and the Constitution as a whole by a two-thirds majority. It must do so within a period of nine months from the date of commencement of its first meeting. If a two-thirds majority cannot be obtained, a procedure is created which will ensure that a Constitution is finally adopted within a defined period. Firstly, fresh elections will be held to create a new Constituent Assembly. This provision is an inducement upon members to agree to a duly proposed constitution. This second Constituent Assembly will have only 6 months within which to agree on a new constitution which also would have to be adopted by a two-thirds (2/3) majority. Should this second Constituent Assembly fail to adopt a new constitution then a constitution enjoying the support of a simple majority of the Constituent Assembly shall be put to the people of South Africa for approval by way of a referendum at which the constitution must enjoy a majority of 55% to be adopted. If this constitution also fails to obtain the necessary support then finally, a fresh election will be held for a third Constituent Assembly. This Constituent Assembly shall have the power to adopt a new constitution by a simple majority.

During the period that it takes to draw up and adopt the Constitution, Parliament will also act as interim legislature. In this capacity decision-making will be by a simple majority.

ADDITIONAL MEASURES

In addition to the Transition to Democracy Law a number of other measures will be necessary to take South Africa through the transitional period to a new and democratic order. These measures will have to give legal effect to all agreements designed to level the playing field and to guarantee that elections are fair and free. They will make provision for various structures to be set up during the pre-election (or preparatory) period eg. a Multi-Party Commission to take control over security forces, an independent Media Commission to ensure fair access and fair reporting, an independent Electoral Commission to take responsibility for the conduct of elections and all aspects relating to elections.

The measures will also have to make provision to facilitate the process of re-unifying South Africa and the reincorporation of all the homelands.

REGIONS

The important issue of provincial or regional and local government during the transitional period must also be provided for. The ANC is of the view that the whole issue of demarcation of new regions, the distribution of powers functions as well as regional structures is the prerogative of the Constituent Assembly. Nothing should be done in the transitional period to undermine the work of the Constituent Assembly or its sovereignty in this regard. Therefore and pending the demarcation of regions by the Constituent Assembly the present provincial system with appropriated adjustments to include the homelands should be retained during the transitional period. Interim structures, consistent with the ultimate objective of a united democratic South Africa will have to be set up and given legal effect through appropriate measures.

CONCLUSION

The amendments proposed to the existing Act 110 of 1983 in the Transitional Law concentrate largely on aspects required to create a legitimate constitution-making body. It is that body, namely the Constituent Assembly, which will have the right and duty to address the various questions of constitution-making such as the Anthem, language, religion, culture and other incidental matters. To get to an elected Constituent Assembly as quickly as possible these issues need not be addressed at this stage. If, however, it is decided to address these issues at the present stage, then provision will have to be made for them. This proposed transitional law, however, adopts the approach that those matters must await the Constituent Assembly.

TRANSITION TO DEMOCRACY ACT
ACT

To amend the Republic of South Africa Constitution Act (No.110 of 1983)

The Republic of South Africa Constitution Act No. 110 of 1983 is hereby amended as follows:

Preamble

Whereas it is necessary:

To create a legal framework for the orderly and peaceful transition to democracy;

To establish democratic mechanisms and procedures through which a non-racial, non-sexist constitution based on democratic principles can be brought into being;

To ensure that elections for the above proposes are free and fair and that participants take part on a basis of equality;

To guarantee that fundamental rights and freedoms are respected during the transition and enshrined in the new constitution, and to secure the engagement of all sectors of society in a common endeavour to bring about national reconstruction, economic growth, social justice and peace.

We hereby adopt this Transition to Democracy Act.

Nkosi Sikelela i'Afrika/

Morena boloke sechaba se yeso.

Ons vir jou Suid Afrika.

God bless our country.

[Explanatory Note:

The substitution is clear. In view of the interim and transitional nature of the constitution it is not necessary to retain the existing preamble except in as much as it is desired to establish the purpose of the amendment - to provide for a legitimate constitution-making process. Further, the existing preamble is in many senses inappropriate in that it uses apartheid categories and excludes non-Christians from its embrace.]

2. Article 1

Article 1 is hereby deleted and substituted by the following:

"The Republic of South Africa shall consist of the territories as defined in the Union of South Africa Act of 1909 (excluding Walvis Bay)".

[Explanatory Note:

The current definition of the Republic of South Africa excludes the TBVC states. The amendment restores the integrity of the country by including those territories as part of South Africa.]

3. Insert the following new article 1(a):

Article 1 (a) - Guaranteed Rights and Freedoms for Free Political Activity

(1) Notwithstanding anything to the contrary contained in any other law, all persons shall have the following rights, which shall be exercised subject to the provisions of subsection (2) hereof.

(a) Freedom from racial discrimination and the right of both men and women to enjoy equal rights in all areas of public and private life.

(b) Freedom of speech and expression which shall include the freedom of the press and other media.

(c) Freedom of thought, conscience and belief.

(d) The right to personal freedom including the right not to be detained without trial.

(e) The right to personal privacy, including freedom from arbitrary search and seizure, integrity of the home and the inviolability of personal communications.

(f) The right to assemble and demonstrate peaceably without arms, including the right to hold public meetings, gatherings and processions and to participate in peaceful political activity intended to influence the composition and policies of governments.

(g) The right to form trade unions, employers' organisations and to engage in collective bargaining.

(h) The right to form and join associations and political parties.

-
- (i) The right to freedom of movement, including the right to leave and return to South Africa.
- (j) Respect for human dignity.
- (k) The right of a person to use the language and to participate in the cultural life of his/her choice.

(2) Nothing in subsection 1 hereof shall affect the operation of any existing law insofar as such law imposes reasonable restrictions on the exercise of the rights and freedoms conferred by the said subsection and which are necessary in a democratic society, in the interest of the security of the state, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Save as aforesaid, any provision of any law that is inconsistent with this Act shall be deemed to have been repealed.

(3) Subject to subsection 2 hereof the Executive and agencies of the government, including institutions of local and regional government shall not exercise any powers that they have or otherwise act in or refrain from acting in any way which takes away or abridges the rights and freedoms specified in subsection 1 hereof.

4. Article 3 - National Flag

Substitute the words "There shall be an Interim National Flag, the design of which is set out in the schedule hereto" (for Section 4).

[Explanatory Note:

The present Flag is unacceptable to the majority of the people. An Interim National Flag should be designed.

5. Article 4 is deleted in whole.

6. Article 5 - National Anthem - amend by substituting the words "anthems" for (anthem) and by inserting the words "Nkosi sikelel iAfrica and" before "The call of South Africa".

[Explanatory Note:

See comment in 4 above]

7. Article 6 - State President

Article 6 is hereby amended by substituting in subclause 6(3)(a) the words "the

National Assembly" for the words (any House, or the Houses at a joint sitting).

8. Article 7 - Election of State President

Article 7(1) is hereby amended by the substitution of the words "of all members of the National Assembly" for subclauses 7(1)(b)(i), (ii) and (iii) and the deletion of the remainder of subclause (b) and the deletion of subclause (c).

[Explanatory Note:

The State President will be elected by simple majority by the National Assembly. Provision already exist for an acting State President who serves when the State President is unable to act, or dies. No provision is made for permanent Deputy or Vice President. The possible benefit of having such an office may be considered.

9. Article 9 - Tenure of office of State President Article 9 is amended by the substitution of the words "the National Assembly" for the words (each of these Houses) in 9(3)(a), (any Houses) in 9(3)(c), (a House) and (each House) in 9(3)(d) and (House in question) in 9(3)(e).

[Explanatory Note:

The amendments above simply replace references to tri-cameral chambers by reference to the National Assembly. The tenure of the State President is the same as that of the National Assembly as provided for below.]

10. Articles 14 to 18 are hereby deleted including the heading (PART IV - OWN AFFAIRS and GENERAL AFFAIRS)

[Explanatory Note:

The deletion is self-explanatory. The amending Act does away with the distinction between the own (ethnic) affairs categories which were the responsibility of the different "Houses" in the tri-cameral Parliament. Such abolition obviously does away with the tri-cameral Houses.]

11. The heading ("Part V") shall become "Part IV"

12. Article 19 (Executive Authority) is hereby amended by deleting the whole of the section and replacing it with the following:

"19 Executive Authority

(1) The executive authority of the Republic shall vest in the State President acting in consultation with the Ministers who are members of the Cabinet.

(2) Except in sections 20(c), 24, 25, 26, 33 and 37 or where otherwise expressly stated or necessarily implied, any reference in this Act to the State President is a reference to the State President acting as provided in subsection (1)."

[Explanatory Note:

The original clause allowed the State President to take certain decisions on his/her

own and some only with the support of cabinet. The amendment simply brings these provisions into line with the other changes. Articles 19, 20 and 21 make it clear that the executive will operate in the transition on the basis of a 'government of national unity'. It will be composed in proportion to party support in the National Assembly.

13. Article 20 - Cabinet

Delete subclause 20(d)

14. Article 21 Substitute the following for the whole of clause 21:

"21(1) The cabinet shall be composed of nominees of political parties whose representation in the National Assembly exceeds 5% of the total membership of the Assembly.

(2) Cabinet appointments shall be in proportion to the representation of the parties concerned in the National Assembly; provided that a political party may decline to participate in the Cabinet, in which event, its membership in the National Assembly shall be excluded for the purposes of calculating the proportional representation of the parties in the Cabinet.

(3) All Cabinet appointments shall be made by the State President in consultation with the leader of the political party from which the Cabinet member will be appointed."

[Explanatory Note:

See note to Paragraph 16 (Article 19) above. The agreement of 5% is intended to limit the size of the cabinet to manageable proportion. The provision generally ensures the appointment of a multi-party cabinet during the transition period.]

15. Article 23 - delete from 23(2) the words (on the advice of a minister's council) and ('a member of the ministers council in question or, as the case may be.)

16. Article 24 - Appointment of Ministers

Delete the words (for general affairs) in article 24(1) and substitute article 24(2) with the following:

"24(2) Persons appointed under subsection (1) shall be a minister of the Republic of South Africa and any such persons shall only be removed from office by the State President acting in consultation with the leader of the political party which nominated such member.

[Explanatory Note:

In line with the principle of a 'government of national unity' the State President's powers to 'hire and fire' ministers will be subject to the agreement of other parties in respect of their nominees to the Cabinet]

17. Article 26 - delete (population group or) in Article 26(1)(b) and delete

Article 26(2).

18. Article 27 - Deputy Ministers

Delete (subject to subsection 2) in Article 27(1)(a) and whole of Article 27(2).

[Explanatory Note:

Deputy Ministers need not be members of National Assembly and are not members of the cabinet. The proportionality principle does not apply to Deputy Ministers. The effect of the above will be to allow wider choice from excluded groups, even from civil society.

19. Article 28 - Delete (population group) in 28(2)b.

20. Substitute "Part V Parliament" for (Part VI Legislature) and delete (Parliament) after heading article 36.

21. Article 30 - 69

Delete articles 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 62, 64, 66, 67, and insert the following new articles.

Article 30 Reconstitution of Parliament. - (1) Parliament shall be reconstituted as one House, the National Assembly, which shall have sovereign legislative authority in and over the Republic

(2) Parliament, reconstituted in terms of subsection (1) hereof, shall function both as a Constituent Assembly, with power to draft and adopt a new constitution, and as legislature, with the power to make laws for the peace, order and good government of the Republic.

"**Article 31 Sitting of Parliament.** - (1) Parliament shall commence its first session seven days after the last polling day for the election.

(2) Parliament may adjourn its sittings from time to time, but shall remain in session until it has completed its primary task of adopting a new constitution, or until it is dissolved by effluxion of time in accordance with the provisions of this Act.

(3) After completing its task of drafting a new constitution, Parliament will continue to function of a Legislature for a period (not exceeding five (5) years from the date it was first elected) unless it agrees by a two thirds majority to an earlier dissolution.

Article 32 Duration and dissolution of Parliament. - (1) Parliament shall continue until a new constitution has been adopted as contemplated in section 41 (1) of this Act, provided that if a new constitution has not been adopted within a period of 9 months from the date on which the first sitting of Parliament commenced, it shall be dissolved, and an election shall be held for a

new Parliament in accordance with the provisions of this Act.

(2) If the National Assembly newly elected in terms of Article 32(1) above has not adopted a new constitution within a period of six months as contemplated in Section 41(1) from the date of the first sitting of such an Assembly, it may by resolution passed by a single majority within a further seven days, put a constitution which has the approval of such majority to a general referendum.

(3) The general referendum referred to in 32(2) shall be held on a date to be fixed by the State President by notice in the gazette, which shall not be later than one month after the passing of such resolution.

(4) The referendum shall be conducted in accordance with the provisions set out in the Schedule to this Act.

(5) If at least 55% of the votes cast in the general referendum are in favour of the adoption of the proposed constitution, it shall be deemed to have been adopted in accordance with the provisions of this Act.

(6) If the proposed constitution is not adopted in terms of section 32(5), or if a resolution is not adopted in terms of article 32(2), fresh elections for a new National Assembly shall be held within one month of the publication of the result or within one month of the date by which the National Assembly was to have adopted a constitution in terms of article 32(2), and a constitution adopted by a simple majority of this National Assembly shall be deemed to have been properly adopted in accordance with the terms of this Act.

(7) The National Assembly referred to in article 32(6) shall remain in session until a new constitution is adopted in terms of article 32(6) save that if a new constitution is not adopted within two years fresh elections will take place for a new National Assembly which will function as if elected in terms of article 32(5).

Article 33. Effect of dissolution. - Notwithstanding the dissolution of Parliament by effluxion of time or otherwise, the State President shall have the power by proclamation in the gazette to summon Parliament for the dispatch of urgent business during the period following such dissolution up to and including the day immediately preceding the day on which polling for the election held in pursuance of such dissolution commences.

Article 34. Constitution of the National Assembly. - The National Assembly shall consist of four hundred members to be elected by qualified voters by secret ballot. All persons who are South African citizens, or who are deemed to be South African citizens in accordance with the provisions of the schedule to this Act, shall be qualified and entitled to vote in the election for members of the National Assembly.

[Explanatory Note:

The schedule will specify that all citizens of the TBCV States will be regarded as South African citizens. The schedule will also make provision for exiles and those

persons who have been resident in South Africa for many years such as migrants.]

Article 35. Elections for the National Assembly.- The members of the House of Assembly shall be elected by proportional representation in accordance with the following principles:

(1) There will be a National Assembly consisting of 400 members elected on a single ballot, of whom:
200 will be elected from national party list according to proportional representation;
200 members will be elected from regional party list according to proportional representation;

(2) The 200 regional seats will be allocated between the regions in proportion to the number of votes cast in each region.

Article 36. Disqualifications for membership of the National Assembly -(1) No person shall be capable of being elected to or of sitting as a member of the National Assembly unless such person is qualified in accordance with the provisions set out in the schedule to this Act to hold such office.

[Explanatory Note:

The schedule would expressly cater for persons who currently could not stand for elections because they have criminal convictions arising out of political activities.]

(2) Any member of the National Assembly who, after having been elected to the House, ceases to be qualified for membership, shall vacate the seat.

Article 37. Assent to bills. - (1) A bill which has been passed by the National Assembly shall be presented to the State President for her/his assent.
(2) The State President shall assent to a Bill which has been passed in accordance with the provisions of this Act, and shall withhold her/his assent if the provisions of this Act have not been complied with.

Article 38. Validity of Acts of Parliament. - (1) A bill referred to in section 37 to which the State President has assented shall be an Act of Parliament.

(2) (a) The Constitutional Tribunal referred to in Section 41 (4), shall, subject to the provisions of sections 41(6) and 41(7), be competent to inquire into and pronounce upon the question as to whether the provisions of this Act relating to the procedure for the passing and enactment of legislation were complied with in connection with any law which is expressed to be enacted by the State President and Parliament.

(3) Save as provided in this Act no court of law shall be competent to inquire into or pronounce upon the validity of an Act of Parliament.

Articles 39. **Signature and enrolment of Act.-**

(1) As soon as may be after any law has been assented to by the State President, the Secretary to Parliament shall cause two fair copies of such law, one being in English and the other in Afrikaans language (one of which copies shall have been signed by the State President), to be enrolled of record in the office of the Registrar of the Appellate Division of the Supreme court of South Africa, and such copies shall be conclusive evidence as to the provisions of every such law, and in case of conflict between the two copies so enrolled that signed by the State President shall prevail.

(2) Parliament may decide on additional languages for the purposes of enrolment and signature as referred to above.

[Explanatory Note:

Subsection 1 is the unamended article 35 of the existing Act. The whole question of language will have to be decided at the Constituent Assembly. See Note to Article 89.]

Subsection 2 would allow for legislation to be published in African languages.

Article 40. **Seat of Legislature** - Cape Town shall be the seat of the National Assembly.

[Explanatory Note:

The seats of the Executive and Legislature have been left at Pretoria and Cape Town respectively.]

PARLIAMENT SITTING AS A CONSTITUENT ASSEMBLY

Article 41. (1) Save as set out in the Act when Parliament sits as a Constituent Assembly for the purposes of adopting a new constitution, all questions shall be determined by a majority of two thirds of the votes of members present provided that the Constitution to be adopted shall in all respects conform with, and shall not in any respect contradict the constitutional principles set out in the Schedule to this Act.

(2) The general constitutional principles set out in the Schedule to this Act shall limit the power of Parliament sitting as a Constituent Assembly, and no repeal or amendment of such principles shall be permissible under this Constitution.

(3) Should any political party represented in the National Assembly contend that

Article 44. **Committees of the National Assembly** - The National Assembly may appoint committees consisting of its members in order to perform functions assigned to them by the assembly provided that no party represented in the Assembly shall be excluded from any such committee, and provided further that the committees shall as far as possible be composed in a way which gives parties representation in proportion to their representation in the Assembly.

Article 45. **Rules of Procedure.**- (1) The National assembly may make rules and orders in connection with the order and conduct of its business and proceedings as a Constituent Assembly and as a Legislature.
(2) the rules and orders may provide for the manner in which committees appointed by it in terms of section 44 shall conduct their affairs and take their decisions, and may authorise any such committee to meet and exercise or perform its powers duties and functions at a place beyond the seat of Parliament.

Article 46. **Public Access to Sittings.**- All sittings of the National Assembly shall be held in public and members of the public and the media shall have access to such sittings; provided that reasonable safeguards may be instituted to search or refuse entry to persons in order to protect the safety of members or other persons present in the National Assembly.

[Explanatory Notes:

The original deletions in paragraph 21 abolishes the tri-cameral Parliament, and the new provisions provide for a National Assembly acting as legislature and as a Constituent Assembly, and provide for the deadlock breaking mechanisms, time frames, the binding general constitutional principles, the role of the courts and the constitutional tribunal, amendments to this Act. Some of the provisions simply re-insert the necessary formal provisions relating to procedure.]

22. Articles 56 - 69 The following article numbers are amended as follows: articles (56 - 61) are amended to numbers "47 - 52" (63) to "53", (65) to "54" and (68) to "55" and (69) to "56".

23. Article 56 (new Article 47) Penalties
Substitute "the National Assembly" for (a House) and (the House in question) respectively.

24. Article 57 (new Article 48) Oath
Substitute the "National Assembly" for (a House) and (House of Assembly/Representatives/ Delegates) respectively.

25. Article 58 (new Article 49) Speaker of Parliament
Substitute a "National Assembly" for (a House) throughout and for (House of which he was a member at the time of his election as a speaker) and substitute

"the chairperson of the National Assembly" for (every chairman of a House)

26. Article 59 (new Article 50) Function of Speaker

Delete article 59 and replace with new article 50.

(1) The Speaker of Parliament shall preside at meeting of the National Assembly.

(2) The Speaker shall when presiding at a meeting be vested with all the process duties and functions of the Chairperson of the House.

27. Article 60 (new Article 51) Chairman

Substitute "the National Assembly" for the words (the House) (Every House) (House in questions) (that House).

[Explanatory Note:

The original Act is incurably sexist in its terminology. But, like other features this aspect might best be tackled in the Constituent Assembly. In this proposal we use non-sexist terminology but the principal Act will continue to contain "Chairman", "his" etc.]

28. Article 61 (new Article 52) Quorum

Substitute the whole of article 61 with the following:

"Quorum To constitute a meeting the National Assembly either as the Constituent Assembly or the legislature shall require the presence of at least 100 members for the determination of a question"

29. Article 65 - Substitute the National Assembly for (any House) and delete 65(2), (3) and all the words after word 'vote' in 65(1).

30. PART VIII PRESIDENT'S COUNCIL

Delete the whole of Part VIII, from articles 70 to 78 inclusive.

[Explanatory Note:

This amendment abolishes the President's Council. That Council was a special mechanism designed to facilitate the operation of the tri-cameral legislature.]

31. PART IX FINANCE amend to read PART VIII FINANCE

Amend the numbering of articles 79 to 86 to read Articles 57 to 64.

32. Article 82 (new article 60) Accounts of State Revenue Fund

Delete 82(1)(b) and 82(2)

[Explanatory Note:

The provisions deleted refer to the financing of 'own affairs' matters]

33. PART X - GENERAL amend to read Part VIII General.

Renumber Articles 87 - 91 to read Articles 65 - 69.

Renumber Articles 94 - 97 to read Articles 70 - 73

Renumber Articles 100 - 103 to read Articles 74 - 77

34. Article 89 (new article 67) Equality of Official Languages

Substitute whole of Article 89(3) with the following:

"(3) Notwithstanding the provisions of subsection (1) an Act of Parliament or a proclamation of the State President, issued under an Act of Parliament may provide for the recognition of one or more languages as an additional official language or as additional official languages for use in a designated region for official purposes prescribed by or under that Act or by any such proclamation.

[Explanatory Note:

The provision allows for the official use of several languages in designated areas, rather than English and Afrikaans only].

35. Article 92 - Offences in respect of National Flag

Delete whole of article 92.

[Explanatory Note:

Original provision is inappropriate in a transitional phase]

36. Article 93 - Administration of Black Affairs

Delete whole Article 93.

[Explanatory Note:

This provision which inter alia grants the President the many powers derived from colonial and apartheid legislation is inappropriate.]

37. Article 97 (new article 73) Construction of certain references

Substitute the National Assembly for (House of Assembly) and ('Parliament or the House or a member of the House, as the case may be or the circumstances may require') in 97(c), and delete all the words after 'Cabinet' in 97(d) and delete 97(e).

38. Article 98 Administration of existing Laws

Delete whole of article 98

[Explanatory Note:

This article refers to tri-cameral or provincial structures.]

39. Article 99 Amendment of Act (Constitution)

Delete whole of Article 99

[Explanatory Note:

This has been dealt with in Part V above.]

40. Article 100 Definitions

Delete the following definitions in whole

"coloured persons"

"general affairs"

"general law"

"House"

"Indian"

"Own affairs"

"population group"

"the Coloured Persons" "Indians" or "the white persons"

"white persons"

Delete the words after "other act of" in line 6 and replace with the National Assembly.

[Explanatory Note:

These amendments do away with certain apartheid categories]

41. Article 102 (new article 76) Transitional Provisions

REGIONAL ADMINISTRATION IN THE TRANSITIONAL PERIOD

1. The Cape of Good Hope, Natal, Orange Free State and Transvaal with the boundaries as created at the time that the Union of South Africa was formed in 1910 shall serve as a basis of regional government until the new constitution has been adopted and new regional authorities have been established.
2. An Independent Commission on Regions shall be established with the function of delimiting boundaries for the purposes of regional list in respect of elections to the Constituent Assembly.
3. Such Regional Commission shall further make recommendations to the Constituent Assembly in respect of boundaries, powers and functions for regions in the new constitution.
4. After receiving the report of the commission on regions the Constituent Assembly may either accept the report or may refer the matter back for reconsideration by the Commission on Regions which shall then make further recommendations.
5. The Constituent Assembly shall thereupon decide on the boundaries, powers and functions of regions for the new constitution.

SCHEDULE 1

CONSTITUTIONAL PRINCIPLES BINDING PARLIAMENT IN THE

CONSTITUTION-MAKING PROCESS

The Constituent Assembly shall draft and adopt a new Constitution for South Africa on the basis of and within the framework of the following Constitutional Principles:

- (a) South Africa shall be a united, sovereign state in which all shall enjoy a common South African citizenship.
- (b) South Africa shall be a democratic, non-racial and non-sexist state.
- (c) The Constitution shall be the supreme law of the land.
- (d) There shall be separation of powers between the legislature, the executive and the judiciary with appropriate checks and balances.
- (e) The judiciary shall be independent, non-racial and impartial.
- (f) Provision shall also be made for a Constitutional Court which enjoys the respect of all South Africans and draws on the experience and talents of the entire population.
- (g) All shall enjoy universally accepted human rights, freedoms and civil liberties, which shall be guaranteed by an enforceable and justiciable Bill of Rights.
- (h) The general principles of the constitution including the terms of the Bill of Rights shall apply to each level of government.
- (i) There shall be representative and accountable government at all levels embracing multi-party democracy, regular elections, universal adult suffrage, a common voters role and, in general, proportional representation.
- (j) There shall be freedom of association, including the right to form, join and maintain organs of civil society, including trade unions, religious, residents', students', social and cultural societies.
- (k) The diversity of languages, cultures and religions shall be acknowledged.
- (l) Special provision may be made for the appropriate recognition of traditional institutions at regional and local level.
- (m) The Constitution shall maintain a foundation for the emergence of national unity while respecting the linguistic, cultural and religious diversity of the nation.

(n) The rights provided for in the Constitution may be made subject to reasonable limitations.

(o) The Constitution shall outlaw all forms of racism and discrimination based on race and gender in public and private life, within the principles of the Equality clause referred to hereunder.

(p) There shall be an equality clause which shall provide that:

(1) Every individual shall be equal before and under the law and shall have the right to equal protection and equal benefit of the law without discrimination, and in particular without discrimination based on the grounds of "race", colour, language, gender, creed or sexual orientation.

(2) Subsection 1 shall not preclude any law, programme or activity that has as its object the amelioration of disadvantaged individuals or groups, including those that are disadvantaged on grounds of race, colour or gender.

(3) All rights and freedoms contained in the constitution shall be guaranteed equally to all male and female persons.

(q) No property shall be compulsory acquired by the state save in accordance with statute. Any law providing for the compulsory acquisition of property by the state shall provide for equitable compensation which shall take into account the public interest, available public resources, the circumstances of the prior acquisition and use of the property as well as the interests of the party or parties affected by the acquisition.

Any statute providing for such acquisition shall establish mechanisms and tribunals to determine the manner and amount of compensation but shall not exclude the right of the courts to hear an appeal against any amount so awarded.

These provisions shall not in any way impair the rights of the state to enforce such laws as it deems necessary for the regulation or control in the public interest of the use of property.

(r) Government shall be structured at national, regional and local levels.

(i) At each level there shall be democratic representation.

(ii) At each level of government there shall be appropriate and adequate legislative and executive powers and functions that will enable each level to

function effectively; within the context of a united, democratic state. Such powers and functions at central and regional levels shall be entrenched in the constitution.

(iii) In addition to powers and functions entrenched in the constitution, each level of government may delegate powers and functions to lower levels of government.

(iv) Powers and functions may either be exclusive or concurrent.

(v) The national government shall have overriding power in those matters that are not allocated exclusively in the Constitution to the regional level of government.

(vi) Special procedures involving the consent of regional representatives will be required for changes to the powers or boundaries of the regions.