

MCH 91-26-3-10

S.A. Constitution,

The SA Const. - H.J. May. 3rd ed. Juta, Cape Town 1955.

the power of legislating for South Africa as a whole. . . . You say that we should consider carefully "whether the Constitution should not be our own Act approved of by the Crown", but without the intervention of the Imperial Parliament there would have to be several identical Colonial Acts of Parliament and the fatal objection would remain that in order to effect the Union, each of these Acts by dealing with the affairs of other colonies, would be *ultra vires* of the legislature which passed it. No such objection would exist to an Imperial Parliament Act.'

De Villiers's advice was accepted without discussion and the Convention unanimously resolved that the constitution be enacted by the Parliament at Westminster.

Another method that might have been chosen to give legal validity to the draft constitution drawn up by the National Convention was for the British Parliament to have passed an Act appointing and enabling the National Convention to agree to a new constitution establishing the union. A third method might have been by Order-in-Council, with privy councillors appointed from the four colonies for that purpose. The Federation of Rhodesia and Nyasaland was brought into being by Order-in-Council after the British Parliament had passed a short Act of two sections providing that 'Her Majesty may by an Order-in-Council — . . . provide for the federation' . . . of the territories concerned. Thereafter an Order-in-Council was made embodying the new federal constitution without further intervention by the British Parliament.

The Convention, which had sat in Durban from 12th October, 1908, until 5th November; and at Cape Town from 23rd November, 1908, until 3rd February, 1909, had prepared the draft constitution. It was then submitted to the four colonial parliaments, and the amendments suggested by them were considered by the reassembled Convention at Bloemfontein from 3rd to 11th May, 1909. The Transvaal did not submit any amendments; the Cape submitted twelve; Natal seventeen in a last attempt to obtain federation; the Orange River Colony submitted three. The reassembled Convention made forty amendments to the draft, the most important being the change from the three-member electoral division to single-member

constituencies. During the months of May and June, 1909, each colonial parliament, except Natal, approved of the final draft of the Convention's work. Natal sent the draft constitution to a referendum, the result of which was the surprising majority of three to one in its favour — 11,121 votes against 3,701. Each parliament thereafter drew up an address to the King praying that the necessary steps be taken to authorize the contemplated union. Delegates were then appointed by each parliament to proceed to London with power to agree to amendments 'not inconsistent with the provisions and principles of the draft act'; they had no power to agree to any amendments which affected the vital principles drawn up by the Convention.

In England fifty-three amendments were made prior to the introduction of the bill in the Parliament of the United Kingdom, but most of them were amendments as to form only, made in consultation between the South African delegates and the secretary of state for the colonies. The bill then passed through Parliament without further amendments. The Act as passed (except for the provisions dealing with the transfer of the Protectorates) can be said to be substantially the draft constitution which the delegates took with them to England. It received the royal assent on 20th September, 1909, and on 2nd December a proclamation was issued declaring that 31st May, 1910, should be the date of the commencement of the Union.

The Union of South Africa came into being exactly eight years to the day on which the Peace of Vereeniging was signed. The Duke of Connaught performed the opening ceremony of the new Parliament on 4th November, 1910; the Appellate Division sat at Bloemfontein for the first time on 4th June, 1910; and de Villiers, the first Chief Justice of the Union, and Chief Justice of the Cape for thirty-seven years, was raised to the peerage as Baron de Villiers of Wynberg, in the province of the Cape of Good Hope, the first and only peer to be created in the Union.

The new Parliament soon found that legislation of a constitutional character was to occupy much of its time. Laws had to be passed regarding many important constitutional matters

- (vi) a member of any council, committee, board or similar body established by or under any law who receives no payment in respect of his services on such council, committee, board or body in excess of an allowance at a rate not exceeding eleven rand for each day on which he renders such services, together with the reimbursement of any travelling expenses incurred by him in the course of such services.

Vacation of seats

56. A senator or member of the House of Assembly shall vacate his seat, if he —

- (a) becomes subject to any of the disabilities mentioned in section fifty-five; or
 (b) ceases to be qualified as required by law; or
 (c) fails for a whole ordinary session to attend without the special leave of the Senate or the House of Assembly, as the case may be, unless his absence is due to his serving, while the Republic is at war, with the South African Defence Force or any other force or service established by or under the Defence Act, 1957 (Act No. 44 of 1957).

Penalty for sitting or voting when disqualified

57. Any person who is by law incapable of sitting as a senator or member of the House of Assembly, and who while so incapable and knowing or having reasonable grounds for knowing that he is so incapable, sits or votes as a member of the Senate or the House of Assembly, shall be liable to a penalty of two hundred rand for each day on which he so sits or votes, to be recovered on behalf of the Treasury of the Republic by action in any division of the Supreme Court of South Africa.

Rules of procedure

58. (1) The Senate or the House of Assembly may make rules and orders with respect to the order and conduct of its business and proceedings.

(2) If a joint sitting of the Senate and the House of Assembly is required under the provisions of this Act, it shall be convened by the State President by message to the Senate and to the House of Assembly.

(3) At any joint sitting referred to in subsection (2) the Speaker of the House of Assembly shall preside and the rules of the House of Assembly shall, as far as practicable, apply.

Powers of Parliament

Powers of Parliament

59. (1) Parliament shall be the sovereign legislative authority in and over the Republic, and shall have full power to make laws for the peace, order and good government of the Republic.

(2) No court of law shall be competent to enquire into or to pronounce upon the validity of any Act passed by Parliament, other than an Act which repeals or amends or purports to repeal or amend the provisions of section one hundred and eight or one hundred and eighteen.

Money Bills

60. (1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly.

(2) A Bill shall not be deemed to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.

(3) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.

(4) The Senate may not amend any Bills so as to increase any proposed charge or burden on the people.

Appropriation Bills

61. Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Recommendation of money votes

62. The House of Assembly shall not originate or pass any vote, resolution, address or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the State President during the session in which such vote, resolution, address or Bill is proposed.

Disagreement between Senate and House of Assembly

63. (1) If the House of Assembly in any session passes a Bill imposing taxation only or dealing with the appropriation of revenue or 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 House of Assembly otherwise directs, be presented to the State President for his assent and shall as soon as it has been assented to by the State President become an Act of Parliament and be taken to have been duly passed by the Senate and by the House of Assembly notwithstanding that the Senate has not consented to it.

(2) There shall be endorsed on every Bill which imposes taxation only or which deals with the appropriation of revenue or moneys for the services of the Government, when it is sent up to the Senate and when it is presented to the State President for his assent, the certificate of the Speaker of the House of Assembly signed by him that it is such a Bill.

(3) If the House of 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 to which the House of Assembly will not agree, the Bill shall, unless the House of Assembly otherwise directs, be presented to the State President for his assent, and shall as soon as it has been assented to by the State President become an Act of Parliament and be taken to have been duly passed by the Senate and by the House of Assembly, notwithstanding that the Senate has not consented to it, provided those sessions were not held in the same calendar year.

(4) When a Bill is presented to the State President for his assent in terms of subsection (3), there shall be endorsed on the Bill the certificate of the Speaker of the House of Assembly signed by him that the provisions of this section have been duly complied with in relation to that Bill.

(5) A Bill shall be deemed to be the same Bill as a former Bill sent up to the Senate in the preceding session if, when it is sent up to the Senate, it is identical with the former Bill or contains only such alterations as are certified by the Speaker of the House of Assembly to be necessary owing to the time which has elapsed since the date of the former Bill, or to represent any amendments which have been made by the Senate in the former Bill in the preceding session, and any amendments which are certified by the Speaker to have been made by the Senate in the second session and agreed to by the House of Assembly, shall be inserted in the Bill as presented to the State President for his assent in terms of this section: Provided that the House of Assembly may, if it thinks fit, on the passage of such a Bill through the House of Assembly in the second session, suggest any further amendments without inserting the amendments in the Bill, and any such suggested amendments shall be considered by the Senate, and, if agreed to by the Senate, shall be regarded as amendments made by the Senate and agreed to by the House of Assembly, but the exercise of this power by the House of Assembly shall not affect the operation of this section in the event of the Bill being rejected by the Senate.

(6) The provisions of this section shall not apply in relation to such a Bill as is referred to in section one hundred and eighteen.

Assent to Bills

64. (1) When a Bill is presented to the State President for his assent, he shall declare according to his discretion, but subject to the provisions of this Act, that he assents thereto or that he withholds assent.

and all notices issued and all regulations or by-laws made by any institution or body contemplated in paragraph (f) of subsection (1) of section *eighty-four*, shall be in both the official languages.

Method of publication of notices, etc., in newspapers

110. Whenever anything is published in a newspaper at the instance of the State or by or under the directions of any body referred to in paragraph (f) of subsection (1) of section *eighty-four* or of the administration of a province, the publication shall take place simultaneously in both official languages and in the case of each language in a newspaper circulating in the area of jurisdiction of the authority concerned which appears mainly in that language, and the publication in each language shall as far as practicable occupy the same amount of space: Provided that where in the area in question any newspaper appears substantially in both of the official languages, publication in both languages may take place in that newspaper.

Administration of Bantu Affairs, etc.

111. The control and administration of Bantu affairs and of matters specially or differentially affecting Asiatics throughout the Republic shall vest in the State President, who shall exercise all those special powers in regard to Bantu administration which immediately prior to the commencement of this Act were vested in the Governor-General-in-Council of the Union of South Africa, and any lands which immediately prior to such commencement vested in the said Governor-General-in-Council for the purpose of reserves for Bantu locations shall vest in the State President, who shall exercise all such special powers in relation to such reserves as may have been exercisable by the said Governor-General-in-Council, and no lands which were set aside for the occupation of Bantu and which could not at the establishment of the Union of South Africa have been alienated except by an Act of the Legislature of a colony which was incorporated in the Union of South Africa in terms of the South Africa Act, 1909, shall be alienated or in any way diverted from the purposes for which they were set aside except under the authority of an Act of Parliament.

Certain rights and obligations under conventions, etc., to vest in Republic

112. All rights and obligations under conventions, treaties or agreements which were binding on any of the Colonies incorporated in the Union of South Africa at its establishment, and were still binding on the Union immediately prior to the commencement of this Act, shall be rights and obligations of the Republic, just as all other rights and obligations under conventions, treaties or agreements which immediately prior to the commencement of this Act were binding on the Union.

Transfer of certain executive powers

113. All powers, authorities and functions which immediately prior to the commencement of this Act were in any of the provinces vested in the Governor-General or in the Governor-General-in-Council or in any authority of the province, shall as far as the same continue in existence and are capable of being exercised after the commencement of this Act, be vested in the State President, or in the authority exercising similar powers under the Republic, as the case may be, except such powers, authorities and functions as are by this Act or any other law vested in some other authority.

Petition by provincial councils necessary for alteration of provinces or for abolition of provincial councils

114. Parliament shall not —

- (a) alter the boundaries of any province, divide a province into two or more provinces, or form a new province out of provinces within the Republic, except on the petition of the provincial council of every province whose boundaries are affected thereby;
- (b) abolish any provincial council or abridge the powers conferred on provincial councils under section *eighty-four*, except by petition to Parliament by the provincial council concerned.

Affirmation in lieu of oath

115. Any person who is in terms of any provision of this Act required to make and subscribe an oath of office may in lieu of such oath make and subscribe a solemn affirmation in corresponding form.

Criminal proceedings and transition provisions

116. (1) (a) All criminal proceedings which immediately prior to the commencement of this Act were required to be instituted in the name of the Queen shall be instituted in the name of the Republic.

(b) Any such proceedings which have not been concluded before the commencement of this Act, or which, having been so concluded, are thereafter reopened, shall be continued in all respects as if this Act had not been passed, except that the proceedings shall thereafter be conducted as if they were instituted in the name of the Republic.

(2) Any civil proceedings instituted prior to the commencement of this Act by or against a Minister as representing the Government of the Union of South Africa or by or against an administrator of a province appointed under the South Africa Act, 1909, which have not been disposed of before such commencement, or, having been so disposed of, are thereafter reopened, may be proceeded with without interruption by or against that Minister as representing the Government of the Republic or by or against the said administrator in his capacity as the person appointed as the administrator of the province concerned under this Act.

(3) Any provision of any law in terms of which any person is required to take an oath or solemn affirmation of allegiance to the King or the Queen, shall be construed as a provision requiring such person to take an oath or solemn affirmation that he will be faithful to the Republic.

(4) Any person who holds an office in the service of the State in respect of which he has prior to the commencement of this Act taken an oath or solemn affirmation of allegiance to the King or Queen, shall, if required to do so on the direction of the State President, take an oath or solemn affirmation that he will be faithful to the Republic.

References in other laws to Houses or certain officers of Parliament

117. (1) References in any law —

(a) to any House or the Houses of Parliament, shall be construed as references to the Senate or the House of Assembly or both the Senate and the House of Assembly, as the context may require;

(b) to the Clerk or the Clerk-Assistant of the Senate or the House of Assembly, shall be construed as references to the Secretary and the Deputy Secretary respectively to the Senate or the House of Assembly.

(2) Any person holding office immediately before the commencement of this Act as the Clerk or the Clerk-Assistant of the Senate or the House of Assembly shall be deemed to have been duly appointed as Secretary or Deputy Secretary respectively to the Senate or the House of Assembly.

Amendment of Act

118. (1) Parliament may by law repeal or alter any of the provisions of this Act: Provided that no repeal or alteration of the provisions contained in this section or in section *one hundred and eight* shall be valid unless the Bill embodying such repeal or alteration is passed by the Senate and the House of Assembly sitting together, and at the third reading is agreed to by not less than two-thirds of the total number of members of the Senate and the House of Assembly.

(2) A Bill passed as aforesaid at such joint sitting shall be taken to have been duly passed by the Senate and by the House of Assembly.

<i>South Africa Act (as amended)*</i>	<i>Constitution Act</i>	<i>South Africa Act (as amended)*</i>	<i>Constitution Act</i>
127 (partly obs.)	103	138 (obs.)	—
128	104	139	95
129 (obs.)	—	140-6 (obs.)	—
130	105	147	111
131	106	148 (partly obs.)	112
133 (obs.)	—	149	114
134	77	150-1 (unrepealed)	—
135	107	152	118
136 (obs.)	—	153	—
137	108	Schedule (unrepealed)	—
137bis	109		

APPENDIX II

ACT

TO CONSTITUTE THE REPUBLIC OF SOUTH AFRICA AND TO
PROVIDE FOR MATTERS INCIDENTAL THERETO*(Afrikaans text signed by the Governor-General.)**(Assented to 24th April, 1961.)*

IN HUMBLE SUBMISSION to Almighty God, Who controls the destinies of nations and the history of peoples;

Who gathered our forebears together from many lands and gave them this their own;

Who has guided them from generation to generation;

Who has wondrously delivered them from the dangers that beset them;

WE, who are here in Parliament assembled, **DECLARE** that whereas we **ARE CONSCIOUS** of our responsibility towards God and man;

ARE CONVINCED OF THE NECESSITY TO STAND UNITED

To safeguard the integrity and freedom of our country;

To secure the maintenance of law and order;

To further the contentment and spiritual and material welfare of all in our midst;

ARE PREPARED TO ACCEPT our duty to seek world peace in association with all peace-loving nations; and

ARE CHARGED WITH THE TASK of founding the Republic of South Africa and giving it a constitution best suited to the traditions and history of our land:

BE IT THEREFORE ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:

PART I

THE REPUBLIC

Republic of South Africa

1. The Union of South Africa consisting of the provinces of the Cape of Good Hope, Natal, the Transvaal and the Orange Free State as they existed immediately prior to the commencement of this Act, shall as from the thirty-first day of May, 1961, be a republic under the name of the Republic of South Africa.

Sovereignty and guidance of Almighty God acknowledged

2. The people of the Republic of South Africa acknowledge the sovereignty and guidance of Almighty God.

Construction of pre-Republican laws

3. As from the date mentioned in section *one*, any reference in any law in force immediately prior to the commencement of this Act, in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate —

(a) to the Union of South Africa or the State, shall be construed as a reference to the Republic;

(b) to the Crown or the King or the Queen or the Governor-General shall be construed as a reference to the Republic or the State President as the circumstances may require;

(c) to the King-in-Council or the Queen-in-Council or the Governor-General-in-Council, shall be construed as a reference to the State President.