

**GRONDWETLIKE VOORSTEL INGEDIEN DEUR**

AKSIE CHRISTELIK NASIONAAL BY  
DIE GRONDWETGEWENDE VERGADERING  
DESEMBER 1989

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**CONSTITUTIONAL PROPOSAL SUBMITTED BY**

ACTION CHRISTIAN NATIONAL AT THE  
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# BILL

**To establish the Republic of South-West Africa, to introduce a constitution for the Republic of South West Africa and to provide for matters incidental thereto.**

## PREAMBLE

IN HUMBLE SUBMISSION To Almighty God, Who controls the history and destinies of people and nations; and

### Independence

WHEREAS we, the people of South West Africa, desire independence, free from outside domination or direction and wish to establish our own government;

### Peace and reconciliation

WHEREAS we likewise urgently desire freedom, lasting peace and national reconciliation;

### Individual rights and responsibilities

WHEREAS we are united in the belief that all people are born free and equal and are endowed with human dignity, rights and responsibilities;

### Diversity

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

### Unity

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

### Purpose and powers of government

WHEREAS governments are instituted among people for the purpose of promoting the safety and welfare of the population, and are obliged to exercise their powers in accordance with the will of the population and the prescriptions of the law;

Free and full development of personality

WHEREAS every person within the country should enjoy the opportunity for free and full development of his personality in exercising his duties and responsibilities towards the community;

Self-determination

WHEREAS the self-determination of groups and peoples should be respected, promoted and protected; and

Distinctive character

WHEREAS we desire to establish the Republic of South West Africa and to give it a Constitution which provides for democracy and which is best suited to the traditions, history and circumstances of our fatherland —

THEREFORE WE accept, on behalf of the people of South West Africa, this Constitution for South West Africa, which shall be respected and upheld by those governments which succeed us:

CHAPTER 1

CONSTITUENT PROVISIONS

**1. Establishment of the Republic of South West Africa —** (1) South West Africa shall be a sovereign independent Republic, founded upon the principles of democracy, fundamental freedoms, the rule of law, and economy based on private and communal ownership of land, and on free enterprise.

(2) The seat of government shall be Windhoek.

(3) The territory of the Republic shall be the territory known as South West Africa at the date of independence.

**2. State symbols —** There shall be a National Flag, National Anthem, Coat of Arms and official Seal of South-West Africa as determined by Parliament by a law or laws.

**3. Groups and official languages —** (1) For the purposes of this Act, the following voluntary and historical groupings shall be recognized in the population of South-West Africa, namely, the Basters, the Bushmen, the Caprivians, the Coloureds, the Damaras, the Hereros, the Kavangos, the Namas, the Ovambos, the Tswanas and the Whites: Provided that this subsection shall not detract from the voluntary grouping of those members of the population in a so-called "open group".

(2) Subject to the right in respect of language as referred to in section 13, English and Afrikaans shall be the official languages.

(3) All State institutions shall be permitted to use German or another language used in South-West Africa, besides the official languages, for official purposes insofar as it be considered advantageous and expedient in the public interest.

**4. Constitution is supreme law** — This Constitution shall be the supreme law of South-West Africa and all organs of the state shall be subject thereto.

## CHAPTER 2

### BILL OF FUNDAMENTAL RIGHTS

**5. The right to life** — (1) Every person shall have the right to life and the life of no person shall be taken arbitrarily.

(2) The sentence of death shall only be executed by law pursuant to a final judgement imposed by a court of law in respect of the most serious offences.

**6. The right to personal liberty, security and privacy** — (1) No person shall be arbitrarily arrested or detained.

(2) No person shall be deprived of his freedom, except on such grounds and in accordance with such procedures as are established by law.

(3) No person shall be detained for an indeterminate period of time without a fair and proper trial by a court of law.

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

(5) No person shall be subjected to indiscriminate interference with his privacy, the privacy of his place of residence, correspondence or communications.

**7. The right to equality before the law** — Subject to the other provisions of this Act, all people shall be equal before the law and no organ of government or any public institution shall discriminate against or privilege any person on the grounds of his ethnic, or social origin, sex, race, language, colour, creed or political conviction.

**8. The right to a fair trial** — (1) In order to ascertain his rights and obligations in any civil case as well as in any criminal charge against him, each person shall be entitled to a fair and public hearing by an independent, impartial and competent court established by law.

(2) Such court of law may exclude the press and the public for the entire trial or any part thereof for reasons of moral consideration, the public order and national security.

(3) Any judgement in a criminal or civil case shall be made public, except where the interests of juvenile persons require otherwise.

(4) Every person charged with a punishable offence shall be presumed innocent until proven guilty according to law, after having had the opportunity of calling witnesses in his favour and cross-examining those giving evidence against him.

(5) Before the commencement and for the duration of his trial, each person shall be afforded sufficient time and facilities for the preparation and presentation of his defence.

(6) Each accused shall be entitled to legal representation.

(7) No person shall be liable to be tried, convicted or punished for an offence for which he has already been tried, convicted or acquitted according to law.

(8) No person shall be tried or convicted for an offence in respect of an act or omission which did not constitute an offence at the time it was committed, nor shall a penalty be imposed exceeding that which was applicable at the time when the offence was committed.

**9. The right to freedom of expression** — (1) Every person shall be entitled to freedom of expression of his ideas and realization of his religion, culture, language and traditions, including the freedom to collect, receive and impart information and ideas through the press and other media.

(2) This right shall only be limited by the obligation to ensure that such expression does not impinge upon the rights of others, undermine the public order and morals or constitute a threat to national security.

**10. The right to peaceful assembly** — All persons shall have the right to assemble for peaceful purposes; and, except that insofar as it may be necessary for the protection of public order, health or morals, the rights of others or national security, and it is properly prescribed by law, no restrictions shall be placed on this right.

**11. The right to freedom of association** — (1) Every person shall have the right to free association with any other person or group.

(2) No person or group shall be compelled to or be prohibited from associating with others.

(3) Each individual shall have the right to form or join trade unions for the protection of the interests of employees.

(4) Subject to the other provisions of this Act, this right shall not be restricted, except insofar as it may be necessary in the interests of national security, public order, public health or morals, and the protection of the rights and freedom of others and the provisions duly prescribed by law.

**12. The right to political activity** — (1) Every citizen over the age of eighteen years shall be entitled to participate in peaceful political activities intended to influence the composition and policies of the government.

(2) Every citizen over the age of eighteen years shall be entitled to form political parties and, by means of political parties, to participate in peaceful political activities and, subject to compliance with requirements prescribed by law, to participate in the conduct of public affairs, whether directly or through freely chosen representatives.

(3) The exercise of the right to participate in politics shall be limited by the obligation to refrain from any advocacy of ethnic, racial or religious enmity and any incitement to discrimination, hostility or violence.

**13. Rights within a group context** — Each group referred to in section 3 and each member of such group, as well as of other voluntary groupings of people shall, notwithstanding the provisions of sections 7 and 11, be entitled to enjoy, practise, maintain, protect and promote their cultures, languages, traditions, religions and other common interests within a group context, insofar as these do not impinge upon the rights of others or are in conflict with the national interest.

**14. Rights of movement and residence** — (1) Every citizen lawfully present in the country, shall be entitled to freedom of movement and choice of residence.

(2) The exercise of this right shall not infringe upon the rights of others and shall be subject to such conditions as are prescribed by law in the interest of public health and order as well as national security.

(3) No citizen shall be arbitrarily denied the right to enter the country and every person shall be entitled to leave the country in accordance with procedures duly prescribed by law.

**15. The right to own property** — (1) Every person shall have the right to acquire, own and dispose of movable, immovable and immaterial property, whether individually or in partnership with others.

(2) Every person shall be entitled to bequeath his property to his heirs or legatees.

(3) No person shall be arbitrarily deprived of his property.

(4) Expropriation shall only be permitted in the public interest and if properly authorized by law.

(5) Fair compensation shall be payable in all cases of expropriation.

**16. The right to education** — (1) Every person shall have the right to establish private schools, to register them by law and to maintain them, unless the standard of education is inferior to that of public schools.

(2) Parents shall have a say in the education of their children who are pupils, provided that education in public schools is based on a Christian creed.

CHAPTER 3  
THE PRESIDENT

**17. The President and his powers** — (1) The head of the Republic of South-West Africa shall be the President.

(2) Unless expressly stated otherwise in this Act or any other act, the President shall exercise his executive powers only on the advice of the Cabinet.

(3) The command-in-chief over the Defence Force shall be vested in the President.

(4) Subject to the provision of this Act, the President shall have the power —

- (a) to dissolve the National Assembly with due regard for the provisions of this Act;
- (b) to appoint Ministers and Deputy Ministers;
- (c) to appoint and to accredit, to receive and to recognize ambassadors, plenipotentiaries, diplomatic representatives and diplomatic officers, consuls and consular officers;
- (d) to appoint the times for the holding of sessions of the National Assembly 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;
- (g) to declare or terminate martial law;
- (h) to declare war or conclude peace;
- (i) to confer honours;
- (j) to make such appointments as he deems fit in terms of the powers vested in him by law, and to exercise such powers and to perform such functions as may be conferred upon or assigned to him in terms of this Act or other legal provisions.

(5) Executive action by the President shall be in writing under his signature, countersigned by a Minister or Deputy Minister and the authenticity of the document shall be confirmed with the Seal as referred to in section 2.

**18. Election of the President** — (1) The President shall be elected by an electoral college which consists of the members of the National Assembly, at a meeting called in accordance with this section, under the chairmanship of the Chief Justice of South-West Africa.

(2) The election shall be held at a time and place fixed by the Speaker of the National Assembly and made known by notice in the *Government Gazette* not less than fourteen days before the date of the election.

(3) The date fixed in respect of the first election of the President, shall be within two weeks after the constitution of the National Assembly and, in the event of elections following thereon, no less than one month and not more than three months before the end of the term of office of the serving President: Provided that, should the President die or for any other reason vacate his office before the expiry of his term of office and his successor has then not yet been elected, the election shall take place within one month of the office having become vacant: Provided further that, if the President resigns and intimates in his resignations that he will vacate his office at a future date, a date earlier than the day on which the office becomes vacant, may be fixed.

(4) No person may be elected or serve as President unless he is qualified to be elected and take his seat as a member of the National Assembly and shall in any event be at least 45 years of age.

(5) Any person who holds a public office in respect of which he receives any remuneration or allowance out of state funds or who serves on the directorate or personnel of a public company, and who is elected as President, shall vacate such office with effect from the date on which he is elected.

**19. Method of election** — (1) Written nominations of candidates for election as President shall be called for at the election meeting by the person presiding as Chairman.

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

(3) The names of the nominees shall be announced by the Chairman and no debate shall be allowed.

(4) If in respect of any election only one nomination has been received, a vote shall nevertheless be taken by secret ballot and the candidate shall only be declared elected if he has received at least 48 votes, failing which, nominations shall be requested anew.

(5)(a) If no candidate receives at least 48 votes, the candidate who received the least number of votes shall be eliminated and a further vote on the remaining candidates shall be taken: Provided that this procedure shall be repeated as often as necessary until a candidate polls at least 48 votes, which candidate shall then be declared duly elected.

(b) When two or more candidates receive the lowest, but equal, number of votes, the electoral college shall by separate secret ballot, to be repeated as often as necessary, determine which of those candidates shall for the purposes of paragraph (a) be eliminated.

(6) Whenever only two candidates have been nominated or, after the elimination of other candidates as provided in this section, only two remain and there is an equality of votes between those two candidates, the chairman shall cast a deciding vote and declare as President the candidate for whom he voted.

(7)(a) The Chief Justice shall make rules in regard to the procedure to be observed at a meeting of any electoral college constituted in accordance with the provisions of this section, including rules prescribing the form in which any nomination shall be submitted and rules defining the duties of the presiding officer and any person appointed to assist him, and prescribe the manner in which a ballot at any such meeting shall be conducted.

(b) Such rules shall be made known in such a manner as the Chief Justice may consider necessary.

**20. 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 be eligible for re-election for the following term of office.

(b) The President shall vacate his office if at least 54 members of the National Assembly vote in favour thereof during an ordinary sitting of the National Assembly.

(2)(a) A resolution in terms of subsection (1)(b) shall only be taken after consideration of a report of a committee of the National Assembly, appointed by the Speaker in terms of a resolution taken by the National Assembly with a majority of two-thirds of the members of the National Assembly present during an ordinary sitting of the National Assembly.

(b) The National Assembly shall not resolve to appoint a committee unless a petition, signed by at least 18 members of the National Assembly, is submitted to the Speaker requesting that such a committee be appointed.

(c) No debate shall be allowed in connection with any resolution referred to in subsection (1)(b).

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

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

**21. Acting President —** (1) The President shall, when he assumes office, appoint a Minister to serve as Acting President, whenever the President is for any reason unable to perform the duties of his office, or vacates his office.

(2) Any Acting President may, should circumstances so require, serve as Acting President for the whole of the remaining term of office and shall, in such a case, be subject to the provisions of subsections 20(1)(b) and (2).

(3) Whenever it is for any reason not possible for the Minister appointed by the President in terms of subsection (1), to serve as Acting President, the Cabinet shall appoint another person from its own ranks for the purpose by means of a majority vote.

**22. Oath of office by President and Acting President** — (1) The President shall, upon assuming office, make and subscribe before the Chief Justice of South-West Africa an oath of office in the following form:

In the presence of Almighty God and in full realization of the high calling I have to assume as President/Acting President of South-West Africa, I, A.B. do swear (solemnly declare) to be faithful to the Republic of South-West Africa and do solemnly and sincerely promise at all times to promote that which will advance and to oppose all that may harm it; to obey, observe, maintain and uphold the Constitution and all other laws; to discharge my duties and activities with all my strength and talents to the best of my ability and knowledge and true to the dictates of my conscience, and to devote myself to the Republic of South-West Africa and all its people.

May the Almighty God by His Grace guide and sustain me in keeping this oath with honour and dignity. So help me God.

(2) An Acting President shall make and subscribe the same oath with adapted wording before the Chief Justice.

(3) In the case of the President the oath shall be made and subscribed by him at a formal function where the Seal of the Republic of South-West Africa is handed over to him by the outgoing President or Acting President, unless he already has the Seal in his custody.

## CHAPTER 4

### THE LEGISLATURE

**23. The Legislature** — (1) The legislature of South-West Africa shall be vested in the Parliament of the country, which shall consist of the President and the National Assembly and which, as sovereign legislative authority in and over South-West Africa, shall, subject to the provisions of this Act, have full power to make laws for the peace, order and good government of South-West Africa.

(2) The members of the Parliament represent the people of South-West Africa and shall be subject to this Constitution as the supreme law of the state.

(3) The Parliament shall not have the authority to make a law which tampers with the essential nature of any fundamental right referred to in Chapter 2, or to make a law which otherwise conflicts with the provisions of this Act.

**24. Seat of Parliament** — Windhoek shall be the seat of Parliament.

**25. Sessions of Parliament** — (1) The President may appoint the times for holding sessions of Parliament and may also from time to time prorogue Parliament.

(2) There shall be a session of Parliament at least once in every year, so that a period of no more than 12 months shall not intervene between the last sitting-day of one session and the first sitting-day of the next session.

(3) One-third of the members of the National Assembly may, by means of a petition addressed to the Speaker, demand a session of the National Assembly to discuss a matter of national importance.

### The National Assembly

**26. Constitution of the National Assembly** — The National Assembly shall consist of 72 members, elected by the registered voters and constituted in the manner stated in Schedule 1.

**27. Elections** — In any general election of members of the National Assembly, the voting takes place over the whole of South-West Africa over a period of three days as fixed by the President.

**28. Allocation of seats** — (1) The 72 members of the National Assembly shall be elected in such manner that 36 of its members are elected by means of proportional representation, and that 36 of its members are designated by the various Group Councils.

(2) Thirty-six members of the National Assembly shall be elected by means of proportional representation as stated in Schedule 1 and, for purposes of the election of these members, the whole territory of South-West Africa shall be deemed to form one single electoral division.

(3) The remaining 36 members of the National Assembly shall be designated by the various Group Councils on the basis referred to in Schedule 1.

(4) Any particular member of the National Assembly may only be elected in one of the two systems mentioned above.

**29. Designation of members by Group Council** — (1) Designation of a member or members of the National Assembly by a Group Council shall take place by means of a simple majority of members of the relevant Group Council during a sitting of the relevant Group Council convened especially for this purpose.

(2) Any person thus designated as a member of the National Assembly by a Group Council shall, in accordance with section 66, be a member of the group for which that Group was established.

**30. Status of members** — All the members of the National Assembly, irrespective of the system whereby they were elected, shall in all respects have equal status as members of the National Assembly.

**31. 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 citizen of South-West Africa or, at the commencement of this Act, was a South African citizen who, for at least two years immediately before the commencement of this Act, ordinarily resided in South-West Africa;
- (b) is a registered voter as defined by legislation;
- (c) is 21 years of age or older; and

(d) is not subject to a disqualification as set out in section 32.

**32. Disqualifications for members of the National Assembly** — No person shall be capable of being elected as a member of or taking a seat in 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 was pardoned or unless the imprisonment expired at least ten years before the date of his election;
- (b) is an unrehabilitated insolvent; or
- (c) is of unsound mind or is so declared by a competent court; or
- (d) is a remunerated member of the Government Service of South-West Africa.

**33. Penalty for sitting or voting when disqualified** — Any person who is by law incapable of sitting as a member of the National 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 National Assembly, shall be liable to a penalty of R200 (two hundred rand) for each day on which he so sits or votes.

**34. Sessions of the National Assembly** — (1) The first session of the National Assembly shall take place on the date of independence.

(2) The first and subsequent sessions of the National Assembly shall otherwise take place as soon as possible, but not later than one month after the results have been announced of the election of members for the National Assembly as referred to in sections 23 and 29.

(3) The provisions of this section shall not detract from the fact that the National Assembly may already have been constituted in accordance with the provisions of this Act before the date of independence or may have commenced with session or may have exercised its powers or functions in accordance with the provisions of this Act.

(4) Notwithstanding the fact that the National Assembly has, as referred to in subsection (3), been constituted or has commenced with sessions or has exercised its powers and functions, it shall be considered for the purpose of section 41 that the first session takes place on the date of independence.

**35. Speaker of the National Assembly** — (1) On the first day of session of a newly elected National Assembly and before commencing with the dispatch of other business, the National Assembly shall elect a member to be Speaker.

(2) Whenever the office of Speaker becomes vacant, the National Assembly shall elect a successor.

(3) A candidate for the office of Speaker shall poll the votes of at least 48 members of the National Assembly in accordance with the procedure applicable to the election of the President.

(4) The speaker shall vacate his office whenever —

- (a) he ceases to be a member of the National Assembly; or
- (b) he is removed from office by resolution of a majority of 48 members of the National Assembly; or
- (c) he resigns his office or seat by lodging his resignation in writing with the President.

(5) The National Assembly may, prior to or during the absence of the Speaker, elect by means of a simple majority another member to preside as Speaker in his stead.

(6) Whenever a new Speaker is to be elected, the Secretary of the National Assembly shall preside as Chairman.

**36. Quorum** — The National Assembly may only exercise its powers if at least 36 members other than the Speaker or other presiding member, are present.

**37. Voting in the National Assembly** — Subject to the other provisions of this Act, all questions in the National Assembly shall be settled by a majority of votes of members present other than the Speaker or the other presiding member, who shall exercise a casting vote in the case of an equality of votes: Provided that, where the interests of a particular Group Council are affected either directly or indirectly by such resolution, the prior consent of the Executive Board of that Group Council shall be obtained.

**38. Standing committees of the National Assembly** — (1) There shall be one standing committee of the National Assembly for each portfolio of the Cabinet which shall consider bills and other matters determined by the National Assembly or referred to it by the Speaker.

(2) Subject to the provisions of section 68(5), there shall be one standing committee which shall consider every law which was in force in the territory on the date of independence and which repealed, diminished or detracted from a fundamental right and, if such law should, in the opinion of the committee, be repealed or amended insofar as it repeals, diminishes or detracts from a fundamental right as referred to in Chapter 2, it shall report thereon to the National Assembly and, for this purpose, may introduce a bill to the National Assembly on any subject in respect of which the National Assembly possesses legislative powers.

(3) Unless the National Assembly determines otherwise within seven days of a bill having been introduced in the National Assembly, each bill thus introduced shall, before it is considered by the National Assembly, be considered by at least one of the standing committees, which shall then report thereon to the National Assembly.

(4) The members of the standing committee shall be appointed by the Speaker in accordance with existing conventions.

(5) Unless the National Assembly determines otherwise, the majority of the members of a standing committee shall constitute a quorum for a meeting of the standing committee.

(6) A standing committee shall at all times aim and endeavour to obtain agreement in respect of each bill or other matter which it has to consider in terms of this section but may, should agreement not be reached, pass a resolution with a majority of votes by two-thirds of all its members.

(7) A standing committee may also exercise or perform certain or all of its functions and powers whilst the National Assembly is not in session.

**39. Secretary and other officers of the National Assembly** — (1) Subject to the provisions of other laws and the directions of the National Assembly, the Speaker shall appoint a person or designate a person in the service of the Government who has been made available for this purpose, as the Secretary of the National Assembly who shall perform the functions and duties entrusted to him in this Act by either the National Assembly or the Speaker.

(2) Subject to the laws regarding control of state monies, the Secretary shall perform his functions and duties under the control of the Speaker.

(3) The Speaker shall be assisted by officers of the National Assembly who shall be persons in the Government Service made available for the purpose.

**40. Oath or solemn declaration** — Every member of the National Assembly shall, before taking his seat for the first time, make before the Chief Justice of South-West Africa an oath or solemn declaration:

I solemnly do swear/declare that I shall be faithful to the Republic of South-West Africa and solemnly promise to uphold the objectives 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.

**41. Duration of National Assembly** — Every National Assembly shall continue for five years from the first session thereof, and no longer, but may, before the expiry of its term, be dissolved by the President if the Prime Minister, on the advice of the Cabinet, has so advised him.

**42. Vacation of seats by members of the National Assembly** — Whenever a member for any reason vacates his seat in the National Assembly, the vacancy shall be filled in accordance with the applicable election system and procedure as set out in Schedule 1.

**43. Dissolution of the National Assembly** — Notwithstanding the dissolution of the National Assembly under this Act, whether by effluxion of time or otherwise —

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

during the period following such dissolution up to the day immediately before the first polling day for the election held in pursuance of such dissolution, in all respects as if no dissolution had occurred: Provided that such election shall be held within three months.

**44. Expenditure with regard to the National Assembly** — Expenditure with regard to the National Assembly and the exercising of its functions and powers shall be paid from monies voted by law for this purpose.

**45. Rules of procedure** — The National Assembly may make rules of procedure regarding its various official functions: Provided that the existing rules of procedure of the body known as the National Assembly, as applicable prior to the commencement of this Act, shall be regarded to be applicable in the interim period.

**46. Assent in respect of bills** — (1) Whenever a bill is presented to the President for his assent, he shall declare that he grants or withholds assent, but he shall not declare that he withholds assent unless he is satisfied that the bill has not been dealt with in accordance with the provisions of this Act.

(2) Whenever the President withholds his assent on grounds other than those referred to in subsection (5), he shall return the bill to the Speaker together with amendments he may recommend or with a message that he has withheld his assent for reasons furnished by him.

(3) The Speaker shall —

(a) whenever amendments have been recommended by the President, allow them to be debated upon in the National Assembly and, should they be adapted or adopted in main, the bill shall be transmitted to the President in the usual manner;

(b) where the President withholds his assent cause the Bill to be debated again in the National Assembly and, if it is adopted by a majority of all the members, transmitted it to the President in the usual manner.

(4) If a majority of all of the members of the National Assembly approve the bill in accordance with section 37, it shall be presented to the President and the President shall then assent thereto within six months but still subject to the provisions of this Act.

(5) Whenever the President withholds his assent on grounds that, in his opinion, the relevant bill conflicts with a fundamental right as set out in Chapter 2, he shall inform the Speaker thus and provide the reasons for his views, upon which the Speaker shall take the appropriate steps to obtain the ruling of the Supreme Court of South-West Africa on the matter.

**47. Signature and enrolment of Act** — (1) As soon as possible after the President has assented to a bill by means of his signature thereto, it shall become an Act of Parliament and the Secretary of the National Assembly shall cause two fair copies thereof, one being in English and the other in Afrikaans (one of which shall be signed by the President), to be enrolled in the record of the Registrar of the Supreme Court of South-West Africa, and such copies shall be conclusive evidence as to the provisions of the laws.

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

**48. Tribal customary law** — (1) Tribal customary law shall remain in force insofar as it does not conflict with the provisions of this Act.

(2) Tribal customary law may, at the request of a Group Council and subject to section 68 (1)(b), be amended by the National Assembly by means of legislation, but such legislation shall have due regard for established principles of tribal customary law and shall endeavour to respect the prevailing cultural, linguistic and religious diversity of the Republic of South-West Africa.

## CHAPTER 5

### EXECUTIVE AUTHORITY

**49. Executive authority vested in Cabinet** — (1) The executive authority of the Republic of South-West Africa shall be vested in the Cabinet which shall consist of the Prime Minister and the acting Ministers elected under section 51.

(2) The Prime Minister shall determine and be responsible for general policy guideline and shall act on the advice of the Cabinet.

(3) Within the limits of the general policy of the Cabinet, each Minister shall guide the activities of his department autonomously and on his own responsibility subject to any existing conventions.

**50. Election of Prime Minister** — (1) A Prime Minister shall be elected with an absolute majority, by secret ballot, by the members of the Cabinet at the Cabinet meeting which follows the appointment of Cabinet members in accordance with section 51 after the conclusion of a general election.

(2) After the first six-month period or when the Prime Minister referred to in subsection (1) vacates office, the office of Prime Minister shall be held by the Cabinet Minister whose surname alphabetically follows that of the preceding Prime Minister, and then for a period not exceeding six months, so that the succession for the office of Prime Minister rotates automatically for periods not exceeding six months every time, and then until a next Cabinet is elected by the National Assembly.

(3) No debate on the merits or demerits of Ministers with a view to holding the office of Prime Minister shall be allowed in the Cabinet.

**51. Appointment of Ministers** — (1) The President shall appoint ten persons as Ministers to administer such state department as the Prime Minister may wish to establish, which Ministers shall have been elected in the following manner:

(a) five Ministers who are members of the National Assembly shall be elected by the National Assembly by way of a simple majority; and

- (b) five Ministers appointed by the five groupings numerically strongest respectively, as referred to in section 3 read with section 66, by way of a resolution in accordance with section 71: Provided that such Minister may be elected from the ranks of the National Assembly or from the Group Council concerned: Provided further that a Minister elected from the ranks of a Group Council shall not become a member of the National Assembly.

(2) Whenever a Minister is, for any reason whatsoever, unable to perform the functions or fulfil the obligations of his office, the President shall appoint any other member of the Cabinet nominated by the Prime Minister for the time being, 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, make and subscribe an oath or 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 South-West Africa, 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 country, 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.

**52. Appointment of Deputy Ministers** — (1) The President shall appoint as Deputy Ministers six persons who have been appointed by the six groupings numerically the strongest respectively, as referred to in section 3 read with section 66, by way of a resolution in accordance with section 71, and which groupings have not also appointed a Minister: Provided that such Deputy Minister may be elected from the ranks of the National Assembly or from the Group Council concerned: Provided further that a Deputy Minister elected from the ranks of a Group Council shall not become a member of the National Assembly.

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

**53. Termination of appointment of Ministers and Deputy Ministers** — (1) The appointment of a Minister or Deputy Minister shall be terminated by the President when —

- (a) the Prime Minister requests him to do so;
- (b) a Minister or Deputy Minister vacates office;
- (c) the mandate of a Minister or Deputy Minister elected by a Group Council, is terminated by that Group Council.

(2) The vacancy of a Minister or Deputy Minister elected by a Group Council and

whose appointment has been terminated in terms of paragraph (a), (b) or (c) of subsection (1), may be filled by the Group Council concerned in the manner contemplated in section 51 or section 52 of this Act respectively.

(3) Should a Group Council fail to elect and designate a Minister or Deputy Minister within a reasonable period of time, as determined by the President, the President may of his own accord take such an appointment.

**54. Tenure of office of Prime Minister —** (1) The tenure of office of the Prime Minister shall terminate —

- (a) when his term of six months in terms of section 50 has expired;
- (b) when he resigns;
- (c) in any event on the first day of session of a new National Assembly.

(2) In the case of paragraphs (b) and (c) of subsection (1), the tenures of office of all the Ministers and Deputy Minister shall also end simultaneously.

(3) Should the Cabinet, as referred to in subsection (2), be thus dissolved, the Speaker shall as soon as possible arrange for the election of a new Prime Minister and the other new Ministers as prescribed in section 50, 51 and 52.

(4) At the request of the President, an outgoing Prime Minister (except when his tenure of office of six months has expired as referred to in section 50), a Minister or Deputy Minister shall be bound to perform the functions and duties of his office for a reasonable period of time until such time as a successor has been appointed.

**55. Quorum and voting procedure in the Cabinet —** (1) Half of the acting Ministers plus one Minister shall constitute a quorum for a meeting of the Cabinet.

(2) Only if unanimity cannot be reached in the Cabinet, a resolution shall be passed by way of a simple majority of the Cabinet members present: Provided that a resolution of the Cabinet with regard to a specific group as referred to in section 3, may only be passed with the consent of that Minister elected and designated as Minister by the Group Council concerned, or with the consent of the Executive Council of such a Group Council in respect of which there is no acting Minister: Provided further that if, for any reason no such Group Council has been constituted, the said consent may be dispensed with.

## CHAPTER 6

### THE ADMINISTRATION OF JUSTICE

**56. Supreme Court of South-West Africa —** (1) The judicial authority of the Republic of South-West Africa shall be vested in the Supreme Court of South-West Africa, consisting of the Chief Justice and as many Judges as shall be determined in an act of the National Assembly, and which shall comprise an Appeal Court and a General Division.

(2) Subject to the provisions of this Act, the composition, jurisdiction, seats and functions of the Supreme Court shall be determined by an act of the National Assembly.

(3) The Supreme Court shall be vested with the jurisdiction to investigate the validity of an act of the National Assembly and of a decree of a Group Council and to adjudicate the matter in order to find an answer to the question —

- (a) whether the formal directions of this Act or any other act in respect of any act which purports to have been adopted by the National Assembly, or any decree which purports to have been adopted by a Group Council, have been complied with;
- (b) whether the provisions of such act or decree detract from a fundamental right as referred to in Chapter 2, or abolish or diminish such a right or adversely affect the essential nature thereof; and
- (c) whether the act of the National Assembly deals with a matter within the authority of a Group Council or a decree of a Group Council which does not fall within its authority.

(4) Should the Supreme Court rule that an act of the National Assembly or a decree of a Group Council has shortcomings in terms of subsection (3), it may declare such act or part thereof null and void or, in its discretion, grant a fixed period of time to the National Assembly or a Group Council to rectify a particular shortcoming in the act.

(5) Until such time as a rectification as referred to in subsection (4) has been carried out, or the period of time determined by the court has expired, whichever is the shorter, such an act shall be regarded as valid.

(6) Should the Cabinet have any doubt whether an act or a provision thereof which was valid in the territory on the date of commencement of this Act, or a draft bill or clause thereof, repeals, diminishes or detracts from a fundamental right, the Cabinet may have this question submitted to the Supreme Court for argument and a ruling on the basis of the criteria as referred to in subsection (3).

(7) The Supreme Court shall have jurisdiction over all matters in which the validity of an act of the National Assembly or of a decree of a Group Council is at issue.

(8) No Magistrate's Court or another Lower Court shall be competent to pronounce upon the validity of an act of the National Assembly or a decree of a Group Council.

## CHAPTER 7

### FINANCE

57. Existing debts and liabilities of the State —(1) The provisions of this Act shall not affect any debts, liabilities or claims of any state institution which existed immediately prior to the commencement of this Act, and such debts, liabilities or claims shall become debts, liabilities or claims of the Republic of South-West Africa.

(2) All assets or rights which belonged to the Central Government established under Proclamation R.101 of 17 June 1985, shall pass to the Republic of South-West Africa upon the commencement of this Act.

**58. State Revenue fund** —(1) There shall be a State Revenue Fund into which all income accruing to the Central Government shall be deposited.

(2) The Central Revenue Fund as it existed by law before the commencement of this Act, shall continue as the State Revenue Fund after commencement of this Act.

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

(4) The accounts of the State Revenue Fund shall be investigated, checked and audited in terms of legislation regarding state finances.

**59. Appropriation Bill does not deal with other matters** —A bill appropriating income or money for normal annual needs or services of the Government, shall only deal with such appropriation.

**60. Appropriation of funds** —No proposal, either by way of a bill, vote in the budget or motion, which has the effect or will have the effect —

(a) that part of the State Revenue Fund is appropriated; or

(b) that a tax, right, levy or liability is imposed on any person

shall be considered or adopted by the National Assembly unless the proposal is submitted or proposed by the Minister entrusted with finances or another Minister appointed by the Cabinet for this purpose.

## CHAPTER 8

### ARMED FORCES, WAR AND MARTIAL LAW

**61. Command over Armed Forces** —(1) Command over the Armed Forces shall be vested in the Minister of Defence.

(2) Upon the promulgation of a state of war, the command over the Armed Forces shall pass to the President as advised by the Prime Minister.

**62. Powers in a state of war or under martial law** —In a state of war or under martial law the President may, on advice of the Cabinet, by proclamation make laws which are necessary for the maintenance of public order and the safety of the state, including the temporary suspension of fundamental rights as set out in Chapter 2, but excluding the other provision of this Act.

CHAPTER 9  
GROUP COUNCILS

**63. Establishment of Group Councils** —There shall be a Group Council for each group as referred to in section 3, which shall be an elected council and established at the time of, or on a date not later than one week after the commencement of this Act.

**64. Constitution** —Each Group Council shall consist of 15 members elected on the basis set out in Schedule B: Provided that the President may by proclamation determine that a larger number of members be elected should he deem it necessary and desirable.

**65. Election** —(1) In any election of members of a Group Council, the voting shall take place throughout South-West Africa on not more than three days, determined by the President on advice of the Executive Council concerned: Provided that the President himself shall determine the date or dates of the first election of a Group Council, subject to the provisions of section 63.

(2) For the purposes of the election of members of a Group Council —

(a) the whole of South-West Africa shall be regarded to be one voting area for the purposes of election on the basis of the system of proportional representation in accordance with the provisions as set out in Part A of Schedule 1: Provided that another voting system may be applied by decree by a Group Council;

(b) a person may vote in an election of a Group Council if —

(i) he is a member of that group as referred to in section 3 read with section 66 of this Act; and

(ii) he otherwise complies with the requirements as laid down in section 31 and section 32 which shall apply *mutatis mutandis*.

**66. Group membership** —(1) In the enforcement of this Act and any decree of a Group Council, a person shall be deemed to be a member of —

(a) a group as referred to in section 3 which is indicated in any manner whatever on the identity document issued to him under an act of South-West Africa or on the authority of another state;

(b) in the case of a person who is not a member of a group in terms of the provisions of paragraph (a), and who is married, or participant in a matrimonial alliance according to the tribal customary law of a particular group, to a person who is a member of a group in terms of the said provisions, of the group of which the latter person thus is a member;

(c) in the case of a person under the age of 16 years who is not a member of a group in terms of the provisions of paragraph (a) or (b), of the group, if any, of which his mother is a member in terms of said provisions;

- (d) in the case of a person who is not a member of a group in terms of paragraph (a), (b) or (c), of the group which is indicated on the document issued by the Executive Council of the group concerned upon the application of such a person.

(2) Should an Executive Council be of the opinion that a person who appears to be a member of the group concerned in terms of the provisions of subsection (1), is in fact not a member of that group, that Executive Council may take the necessary steps to have a new identity document issued to that person on which another group is indicated: Provided that such new identity document may only be issued with the consent of the Executive Council of that group which is indicated on the new identity document.

**67. Seat of a Group Council** —The seat of a Group Council shall be determined by proclamation by the President on advice of the Executive Council concerned.

**68. Legislative powers** —(1) A Group Council may make laws known as bylaws, concerning —

- (a) any matter referred to in Schedule 2;
- (b) the contents and enforcement of tribal customary law; and
- (c) any other matter in respect of which such a particular Group Council at its request has been authorized by an act of the National Assembly.

(2) A Group Council may by way of a resolution to which at least three-quarters of its members agreed, abandon any or all of its legislative powers in favour of the National Assembly: Provided that —

- (a) the National Assembly may exercise the power or powers in favour of the members of the group concerned; and
- (b) the National Assembly obtain the power or powers concerned only for the remainder of the term of the Group Council concerned; and
- (c) the Group Council concerned may again adopt such power or powers by way of a resolution to which three-quarters of the members of the Group Council agreed.

(3) A Group Council may amend or repeal any legal provisions relating to a subject referred to in Schedule 2.

(4) A Group Council may not make a bylaw whereby or in terms of which a member of that group is prohibited from or may be prohibited from making use of a service which is available to him in terms of a law of another Group Council or the National Assembly or some other competent authority instead of the corresponding service provided by the Group Council of that group for the members thereof.

(5) Any legislative power which a Group Council disposes of or exercises in accordance with subsection (1), shall be disposed of and shall be exercised irrespective of the powers of any other legislative institution: Provided that should such other legislative institution attempt to make a law contrary to this Chapter, then that law shall be null and void as if it were never made.

**69. Sessions of Group Council** —(1) The first session of a Group Council shall take place as soon as possible, but not later than one month, after the announcement of the result of the election of the Group Council concerned, and then on a date as determined by the President.

(2) Each Group Council shall exist for five years from its first session, and not longer, but may be dissolved by the President before its term expires, should the Chairman of the Executive Council have so advised him.

(3) A Group Council may resolve that, in addition to English and Afrikaans, another language may be used in and during sessions of the Group Council.

(4) During sessions of a Group Council its members shall take their seats in the shape of a three-quarter circle in respect of the Chair and in alphabetical order of surnames, as seen from the Chairman's left-hand side.

**70. Qualifications and powers for membership of a Group Council** —(1) Qualifications and disqualifications with regard to membership of the National Assembly as referred to in section 31 and section 32 as well as the provisions in respect of penalties as referred to in section 33, shall apply *mutatis mutandis* to membership of a Group Council.

(2) In addition to subsection (1), a member of a Group Council shall himself also be a member of the group concerned as referred to in section 3.

(3) A person who —

(a) is a member of a Group Council shall not be a member of another Group Council as well;

(b) is a member of the National Assembly shall not be member of a Group Council as well.

**71. Quorum** —A quorum of a Group Council shall consist of half the members plus the Chairman.

**72. Resolutions** —Should general agreement not be obtained with regard to a matter, any resolution of a Group Council, subject to the other provisions of this Chapter, shall be made with a simple majority of votes of the members present.

**73. Internal rules and procedure** —A Group Council may, by resolution, adapt its own internal rules and procedures with regard to aspects not dealt with in this Chapter and also with regard to, amongst others, the taking of an oath or a solemn declaration by a member, and determine in which manner it shall be promulgated or announced.

**74. Consent to, signing and registration of bylaws** —The provisions of section 46 and section 47 with regard to consent to, signing and registration of laws by the President shall apply *mutatis mutandis* to bylaws of a Group Council and for the purposes of this Chapter a reference to the Cabinet shall be deemed to be a reference to the Executive Council concerned.

**75. Executive authority of a Group Council** —(1) The executive authority with regard to those matters in respect of which a Group Council has authority, shall be handled by the Executive Council of that group.

(2) An Executive Council may delegate its authority or function which is vested in it in terms of this Act or any other act, to any member of the Group Council.

(3) An Executive Council may establish various departments, known as Group Departments, for the administration of the matters over which it has authority, and the Chairman of the Executive Council shall put the various members of the Executive Council in charge of these Departments.

(4) An Executive Council may enter into an agreement with one or more of the other Executive Councils or the Cabinet which provides for the execution and performance, under the terms and conditions to which they agree —

- (a) by such other Executive Council, or by the Cabinet, as agent of the first mentioned Executive Council; or
- (b) by the first-mentioned Executive Council as agent of such other Executive Council or of the Cabinet; or
- (c) by the first-mentioned Executive Council in conjunction with such other Executive Council or Executive Councils or with the Cabinet,

of any function, duty or activity granted or entrusted to the first-mentioned Executive Council or to such other Executive Council or to the Cabinet, as the case may be, in terms of some law or other.

(5) Subject to the provisions of a bylaw of a Group Council in respect of the executive of such an agreement as contemplated in subsection (4), a function, duty or activity which has, in terms of such an agreement, been executed or performed by the Cabinet or an Executive Council or person or body under the control of the Cabinet or Executive Council or a Group Council, and which, in terms of a law pertaining to the agreement, is granted or entrusted to an authority, body or person other than the Cabinet or the Executive Council, person or body concerned, shall be deemed to be executed or performed by that other authority, body or person.

(6) Unless and until it is otherwise provided in an agreement entered into under subsection (4) or in a bylaw of the Group Council concerned, a Group Council may also provide a service which it provides in terms of the provisions of this Act or another act to the group for which it was established, to any person who is not a member of that group, as if that person were such a member.

(7) The Executive Council shall consist of —

- (a) a Chairman elected by the members of the Group Council;
- (b) as many additional members, but at least two, as may be appointed by the Chairman.

(8) The Chairman and two members of the Executive Council shall constitute a quorum for the Executive Council.

(9) The term of office of the Executive Council shall correspond to the term of the Group Council concerned.

**76. Cabinet may make official available** —The Cabinet may make officials and employees under its authority available to a Group Council.

**77. Revenue Fund of Group Council** —(1) Each Group Council shall have a Revenue Fund into which all revenue levied by the Group Council concerned or which accrues to it, shall be deposited, as well as all other monies which have to be deposited into it in terms of some act or other: Provided that the accounts of the Revenue Fund shall be checked, examined and audited: Provided further that no money shall be withdrawn from the Revenue Fund, except in accordance with a bylaw of the Group Council.

(2) Revenue as referred to in subsection (1), shall mean all taxes, levies, monies and rights and all incidental and other income which accrue to the Group Council or Executive Council, originating from whatever source, as well as the returns on all loans granted to the Group Council.

**78. Appropriation of Revenue Fund by Group Council** —A Group Council's Revenue Fund is made available by the Group Council —

- (a) for the administration of matters over which the Group Council concerned has authority, in general; or
- (b) in the case of monies paid by the Cabinet for a particular purpose, for that purpose.

**79. Annual budget of income and expenditure** —The annual budget of income and expenditure of a Group Council shall be prepared by the Executive Council and submitted to the Group Council for appropriation.

**80. Remuneration of members** —A member of an Executive Council, and a member of a Group Council who is not a member of that Executive Council, shall be paid from the Revenue Fund of the Group Council, the remuneration or allowances which the Executive Council concerned determines from time to time in consultation with the Cabinet: Provided that such remuneration or allowances may differ in respect of different members of the Group Council concerned according to the different positions they hold in that Group Council or the different activities they perform from time to time.

**81. Dissolution of Group Council** —(1) A Group Council shall be dissolved if at least three-quarters of the members of the group give such an indication to the Executive Council by way of a secret ballot in a referendum, only on the matter of dissolution.

(2) In the case of such a dissolution all rights, powers, liabilities and activities of such a Group Council and Executive Council pass to the National Assembly and the Cabinet respectively for one year or for the remainder of the term of the Group Council concerned, whichever period is the shorter: Provided that after the said

period has expired, the President shall call an election for the election of a new Group Council or the President shall again hold a referendum: Provided further that, should at least three-quarters of the members of the group again give such an indication, the President does not have to call an election for that term.

## CHAPTER 10

### REGIONAL AND LOCAL COUNCILS

**82. Regional Councils on the basis of districts** —(1) Within three months of the commencement of the first session of the first National Assembly of the Republic of South-West Africa the National Assembly shall establish at least two councils, but not a larger number of such councils than the number of magisterial districts, to handle matters which concern such a district or group of districts as a region.

(2) Such council shall consist of the number of members which the National Assembly may determine by law as may be necessary and suitable in the light of the population and the size of the area of the council concerned: Provided that the appointment of the members of a Regional Council take place on the basis of ability and representation.

(3) Such council shall be vested with the powers and functions granted to it by law from time to time by the National Assembly: Provided that no legislative powers shall be vested in such a council, and such a council shall primarily perform advisory and executive functions on the orders of and in respect of the National Assembly.

(4) An act of the National Assembly referred to in this section shall also provide for office-bearers and their functions.

**83. Local government** —(1) Municipal councils shall be composed as elected in terms of an act of the National Assembly: Provided that such an act shall make provision for —

- (a) the limitation of wards and local authorities on the basis of homogeneous socio-economic communities; and
- (b) equivalent taxation of all fixed property in the area of a local government.

(2) Municipal councils shall be vested with the power to make regulations on such matters which the National Assembly may grant by law to municipal councils.

(3) Until such time as municipal councils are established in accordance with this Act, the relevant provisions of the Municipal Ordinance 13 of 1963 shall apply *mutatis mutandis*: Provided that "Executive Committee" shall be read as "Cabinet" and "Minister of Local Government".

(4) The Minister of Local Government shall first approve of regulations made by a municipal council before coming into operation.

## CHAPTER 11

## GENERAL AND TRANSITIONAL PROVISIONS

**84. Tabling of documents in National Assembly** —(1) Any reference in an act which, up to the commencement of this Act, had been administered by or on the authority of the Administrator-General, to the tabling in the Parliament of the Republic of South Africa, or to the submission to the Administrator-General of an act, regulation, rule or other bylaw or a report or some other document, shall, notwithstanding anything contrary contained in one act or another (including an act in respect of which the provision of the act in which the reference is contained, is deemed to be deleted or not to form part of the act concerned), unless the context otherwise indicates, and subject to the other provisions of this Act, be construed, from that date, as a reference to the tabling of such act, regulation, rule, bylaw, report or document in the National Assembly.

(2) Unless the rules and orders of the National Assembly provide otherwise, anything that has to be tabled or may be tabled in the National Assembly in terms of a provision of this Act or any other act, shall be so tabled by the Speaker or a member of the National Assembly appointed by him for the purpose.

**85. Continuance of existing acts** —(1) Subject to the provisions of this Act or any other act, all legislation which applies up to the date of becoming independent, or the date on which this Act comes into operation (whichever is the later date), shall remain in force provided it is not in conflict with the provisions of this Act and until it is repealed or amended by a legislator with competent authority.

(2) The Cabinet may submit any act still in force on the commencement of this Act, to the Supreme Court of South-West Africa for a ruling concerning the question of whether it can be reconciled with the Bill of Fundamental Rights as set out in Chapter 2 of this Act, and with the other provisions of this Act, and when such act has been submitted for judgment, no court procedure based upon such disputed section of such act, shall be instituted or continued before the Court has given its ruling.

**86. Transitional provision** —(1) For the purposes of the election of the first President in terms of sections 18 and 19 and for the purposes of the first taking of an official oath in terms of sections 22 and 40, "Chief Justice" shall mean the "Judge President".

(2) Any financial debt, liability or obligation which a government organ or government institution had been encumbered with on the commencement of this Act and which has not been met, shall become a financial debt, liability or obligation of the Government Revenue Fund: Provided that this provision shall not apply in respect of a government organ or government institution which continues as such after the commencement of this Act.

(3) Any property or financial asset or charge vested in an institution before the commencement of this Act and which was instituted for a grouping as referred to in section 3, shall pass to the corresponding Group Council as referred to in Chapter 9 on the date of commencement of this Act.

**87. Repeal of acts** —The acts appearing in Schedule 3, are hereby repealed to the extent indicated therein.

**88. Amendment of Act** —(1) This Act may only be amended by an act of the National Assembly approved by at least 48 members of the National Assembly in a final vote: Provided that an amendment of the provisions of Chapter 1, 2, 6, 9 or 11 of this Act as well as of this section, may only be effected at a final voting approved by at least 54 members of the National Assembly and thereafter also approved within two months by at least two-thirds of the Group Councils.

(2) This Act may only be amended expressly and not by implication.

**89. Short title and commencement** —This Act shall be called the Republic of South-West Africa Constitution Act, 1987, and shall come into operation immediately after gaining independent sovereignty.

## SCHEDULE 1

### PART A

ELECTION IN ACCORDANCE WITH THE SYSTEM OF PROPORTIONAL REPRESENTATION IN RESPECT OF —

- (i) 36 MEMBERS OF THE NATIONAL ASSEMBLY AS REFERRED TO IN CHAPTER 4 OF THIS ACT, AND
- (ii) MEMBERS OF THE RESPECTIVE GROUP COUNCILS AS REFERRED TO IN CHAPTER 9 OF THIS ACT.

**1. Demarcation of constituencies** —(1) For purposes of the election of the members, the entire territory of the Republic of South-West Africa is deemed to be one voting area with a single constituency.

(2) The vote-total in the constituency is divided by the number of seats vacant in order to determine a quota.

(3) For each quota attained by a party or a person, it or he is entitled to one representative.

(4) The remaining seats are then allocated in accordance with the vote surpluses remaining on each party list after the quota vote-totals have been taken off.

(5) Thereafter the order of allocation of seats takes place in accordance with the size of the respective surpluses and in the order of the size of the surpluses until the number of seats has been taken up: Provided that one party or more may combine their respective surplus votes in order to jointly gain an additional seat or additional seats.

(6) A fictitious illustration could appear as follows:

(a) Total number of votes cast in state territory 527 000

(b) divided by number of seats, e.g. 36: quota is: 14 639

(c) Election results show votes cast:

Party A	Party B	Party C	Party D
200 000	150 000	100 000	77 000

(d) Seats in accordance with quota:

Party A	Party B	Party C	Party D
13	10	6	5

(e) Surplus votes

Party A	Party B	Party C	Party D
9 693	3 610	12 166	3 805

(f) Seats allocated: 34; seats outstanding: 2

(g) Biggest surplus is with party C: obtains 1 seat.

(h) Second biggest surplus is with party A: obtains next (remaining) seat.

(i) Result of election — number of representatives:

Party A	Party B	Party C	Party D
14	10	7	5

## PART B

### ELECTION AND DESIGNATION IN RESPECT OF 36 MEMBERS OF THE NATIONAL ASSEMBLY AS REFERRED TO IN CHAPTER 4 OF THIS ACT

**2. Election and designation by Group Council** —Each Group Council established in terms of Chapter 9 of this Act elects and designates by resolution as referred to in section 71, a member or members for the National Assembly: Provided that —

- (a) the number of members so elected and designated by a Group Council is in direct proportion to the section of the population of the Republic that belongs to a grouping as referred to in sections 3 and 6 of the Act;
- (b) the quota is calculated in such a manner that a particular Group Council elects and designates at least one member and not more than ten members for the National Assembly;
- (c) the member of the National Assembly so elected and designated is a member of the grouping, referred to in section 3 of the Act, for which the Group council concerned was established under Chapter 9 of the Act; and
- (d) the total number of members of the National Assembly elected and designated in this manner, always comprises 36.

## GENERAL

**3. Order of election and designation of members of the National Assembly —**  
 (1) Immediately after the general election referred to in Part A of this Schedule, but not later than a week thereafter, the respective Group Councils elect and designate the 36 members of the National Assembly in accordance with Part B of this Schedule.

(2) Should a candidate be elected in the manner contemplated in Part A, he is not also eligible in the manner contemplated in Part B.

**4. Vacation of seat —**(1) Any person who, in terms of Part A has become a member of an institution and thereafter —

- (a) resigns as a member;
- (b) remains absent as a member;
- (c) changes from one political party to another; or
- (d) otherwise vacates his seat,

is *ipso iure* replaced by the next person on the party list in terms of which that member had been elected, if the said person is available, which party list is that list used during the last general election.

(2) Any person who, in terms of Part B, has become a member of the National Assembly and vacates his seat under the same circumstances as referred to in subsection (1), is replaced by another person in accordance with section 2 of this Schedule.

**5. Group Council may enact its own election system —**A Group Council is competent to establish an own election system by enactment: Provided that as soon as such election system has, in accordance with section 73 of the Act, come into operation, Part A of this Schedule is no longer applicable to the election of members of that Group Council: Provided further that section 4 (2) of this Schedule is then applicable *mutatis mutandis*.

**6. Simultaneous election —**Election of members for the respective institutions contemplated in Part A may take place simultaneously on the same election day or days for all the said institutions.

## SCHEDULE 2

## MATTERS IN RESPECT OF WHICH GROUP COUNCILS HAVE AUTHORITY IN ACCORDANCE WITH CHAPTER 9 OF THE ACT:

1. (a) The provision of education to members of the particular group of any level up to and including the level normally required for an examination for the tenth standard, but excluding —
  - (i) the provision of such education according to teaching courses and syllabi;

- (ii) the conduction of examinations; or
- (iii) the form and issuing, in respect of examinations, of certificates,

which do not comply with the minimum standards and minimum requirements generally prescribed by or under an act of the National Assembly or some other competent authority in respect of such education in schools and other institutions in the territory.

- (b) The training of persons as teachers for the provision to members of the particular group, of education of a level not higher than that which is normally required for an examination for the tenth standard.
  - (c) The establishment, erection, maintenance, management and control of schools, training colleges, tertiary institutions, hostels and other institutions for or in connection with the provision of education or training referred to in paragraph (a) or (b).
2. The acquisition, alienation, allocation, transfer, mortgaging, occupation and ownership of land, or a right in respect of land —
- (i) which is communal ground of the particular group; or
  - (ii) which is acquired by the Group council concerned under a title deed.
3. (a) Farming settlements on land which is communal land of the particular group or which has been acquired as such, or of which the Group council or a member of the particular group is the owner.
- (b) Forestry on land referred to in (a).
  - (c) Assistance to members of the particular group who carry on farming or who undertake to carry on farming, the exercising of control in respect of such assistance which is rendered, and the protection of the interests of the institution which renders such assistance, including such protection by means of endorsements of title deeds.
  - (d) Applied research and test in connection with farming in which members of the particular group are involved or to extend the farming operations of such members.
  - (e) The provision, to members of the particular group who carry on farming or intend to carry on farming, of information, guidance, advice and training in connection with farming methods and practices, farming management techniques and the utilization and protection of the land and other resources.
4. The provision to members of the particular group of health services, excluding matters with regard to —
- (i) the registration of medical practitioners, dentists, nurses, midwives, chemists and other medical professions;

(ii) control over and registration of medicines and addictive matter; and

(iii) minimum standards of health services.

5. The provision to members of the group of social and welfare services, excluding —

(i) the registration of welfare organizations;

(ii) the registration of social workers and control over their profession;

(iii) fund-raising by members of the public.

6. Matters that aim at the promotion of the arts and culture with regard to the particular group, including the establishment, erection, maintenance, management and control of art galleries, theatres, libraries, museums, archives, herbariums, botanical gardens, zoos, aquariums and similar institutions, and services related thereto.

7. The administration of justice in respect of customary tribal laws applicable to members of the group concerned.

8. (a) The imposition of direct taxes on the income of, and personal taxation, on members of the particular group, regardless of whether such taxes are levied in terms of an act of the National Assembly or another competent authority.

(b) Fees payable for services rendered by or on behalf of the Executive Council.

(c) The collection and control of all revenue and monies accruing to the Group Council, as well as estimates of revenue and expenditure.

9. Election and an election system to elect members of the Group Council.

10. The appointment, conditions of service, promotion, remuneration and dismissal of personnel and officials in the employ of the Group Council.

11. The designation of Ministers and Deputy Ministers for the purposes of sections 51 and 52 of the Act, in terms of a resolution in accordance with section 71 of the Act.

12. The provision of subeconomic housing to members of the group.

13. The negotiation of loans, taking on of and compliance with all obligations related thereto.

14. Any other power or functions necessarily or profitably related to or arising from or giving support to the said powers.

15. Any other matter legally vested by the National assembly as a power upon request of a Group Council: Provided that the National Assembly may revoke the vesting of such power at any time.

## SCHEDULE 3

## ACTS REPEALED IN ACCORDANCE WITH SECTION 86:

ACT	EXTENT TO WHICH REPEALED	CONDITIONS
1. Act 39 of 1968 (RSA), as amended	In its entirety	On the date of commencement of this Act.
2. Act 25 of 1969 (RSA)	In its entirety	On the date of commencement of this Act.
3. Act 56 of 1976 (RSA)	In its entirety	On the date of commencement of this Act, as in item 4 below.
4. AG Proc 8 of 1980 (SWA)	In its entirety	In respect of a particular group, with effect from the date on which the provisions of Chapter 9 of this Act come into operation in respect of such group.
5. Proc R101 of 1985 (RSA), as amended	In its entirety	On the date of commencement of this Act.
6. Act 8 of 1985 (SWA), as amended	In its entirety	On the date of commencement of this Act.