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# **TRANSITION TO DEMOCRACY ACT**

**1992**



## **TRANSITION TO DEMOCRACY ACT, 1992**

### Explanatory Note

#### **INTRODUCTION**

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

#### **ABOLITION OF PRESENT GOVERNMENT SYSTEM**

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

#### **TBVC STATES**

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



## PARLIAMENT

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

Parliament will perform two functions:

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

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



## **DECISION-MAKING, DEADLOCK-BREAKING AND TIME-FRAMES**

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

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

During the period that it takes to draw up and adopt the Constitution, Parliament will also act as interim legislature. In this capacity decision-making will be by two-thirds majority. This will also apply to the Executive in the form of the cabinet.



## **ADDITIONAL MEASURES**

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

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

## **REGIONS**

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



## CONCLUSION

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



# TRANSITION TO DEMOCRACY ACT

## ACT

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

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

### 1. Preamble

Delete the Preamble and substitute with the following:

"Whereas it is necessary to establish mechanisms whereby a new non-racial, non-sexist constitution can be brought into being through the participation of all South Africans; and

Whereas there is a need to create a climate favourable to free and fair elections, and free political participation and for that purpose to guarantee certain rights and freedoms"

We hereby adopt this Transition to Democracy Act.

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

### 2. Article 1

Article 1 is hereby deleted and substituted by the following:

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

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

### 3. Insert the following new Article 1 (a):

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

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