SOUTHERN RHODESIA CONSTITUTION

Part II—Detailed Provisions

Presented to Parliament by the Secretary of State for Commonwealth Relations
by Command of Her Majesty
June 1961

LONDON
HER MAJESTY'S STATIONERY OFFICE
PRICE 2s. 6d. NET

Cmnd. 1400

CONTENTS

		Page
INTRODUCTION		3
PROVISIONS OF THE NEW CONSTITUTION		
Chapter I.	The Legislature	
	Composition and Elections	4
	Speaker and Deputy Speaker	8
	Miscellaneous	9
	Procedure in Regard to Bills	10
Chapter II.	Declaration of Rights	12
Chapter III.	The Constitutional Council	
	Establishment and Procedure	12
	Functions	16
Chapter IV.	The Executive	18
Chapter V.	The Judicature	20
Chapter VI.	Land	21
Chapter VII.	Amendment of the Constitution	24
Chapter VIII.	Miscellaneous Provisions	25
Appendix 1.	MATTERS FOR WHICH PROVISION IS TO BE MADE IN THE ELECTORAL ACT, 1951	27
Appendix 2.	THE DECLARATION OF RIGHTS	30

INTRODUCTION

Since the present Constitution for Southern Rhodesia was granted in 1923, it has been extensively amended and though it is intended to retain many of its provisions, it would not be satisfactory to introduce the changes now contemplated by way of further amendments to the existing Constitutional documents. The Southern Rhodesia Government have, therefore, requested, and the Government of the United Kingdom have agreed, that a new document should be issued. This will require the authority of an Act of Parliament. It is, therefore, proposed that Her Majesty's Government should introduce a Bill which would empower the Queen to grant a new Constitution to Southern Rhodesia by Order in Council.

It is the intention of the Government of Southern Rhodesia to submit the proposed new Constitution to a referendum of the electorate in Southern Rhodesia. If the new Constitution is approved at the referendum, it will be brought into force by stages. The contemplated sequence of events would be as follows:

(1) A Bill would be introduced into the Parliament of the United Kingdom authorising Her Majesty to grant a new Constitution to Southern Rhodesia by Order in Council.

(2) If the Bill is passed, an Order in Council with the new Constitution annexed would be promulgated, but only that section of the Order which deals with the increased representation in the Legislative Assembly would be brought into force immediately.

(3) A Bill would be introduced into the present Legislative Assembly of Southern Rhodesia to amend the Electoral Act, 1951, to accord with the new Constitution.

(4) After adequate time has elapsed for the registration of voters under the Act referred to in (3) above, the Part of the Constitution dealing with the delimitation of constituencies and electoral districts would be brought into operation.

(5) The Delimitation Commission would then be set up and would report in due course.

(6) As soon as convenient after the Delimitation Commission has completed its task, the Governor, by proclamation, would dissolve the Legislative Assembly.

(7) The whole of the remainder of the new Constitution would then be brought into force.

The following paragraphs of this Paper set out, in detail, the substance of the proposed new Constitution. This will reproduce many of the existing provisions in improved phraseology and will include certain new features, the principal of which are the elimination of all the reserved powers at present vested in the Government of the United Kingdom, save for certain matters set out in paragraphs 36 and 78.

Provisions of the New Constitution

CHAPTER I. THE LEGISLATURE

COMPOSITION AND ELECTIONS

The Legislature

1. The legislative powers of Southern Rhodesia will be vested in a Legislature consisting of Her Majesty and a Legislative Assembly.

Power to make laws

2. (1) Subject to the provisions of the Constitution, and of the Federal Constitution as for the time being in force, the Legislature will have power to make laws (to be entitled " Acts ") for the peace, order and good government of Southern Rhodesia.

(2) The powers of the Legislature will include the power to make laws having extra-territorial operation.

The Legislative Assembly

3. (1) The Legislative Assembly for Southern Rhodesia will comprise sixty-five members duly elected thereto in accordance with any law for the time being in force relating to elections for the Legislative Assembly.

(2) One member of the Legislative Assembly will be elected by each of the fifty constituencies and fifteen electoral districts to be established by a Delimitation Commission in the manner specified in paragraphs 7 to 13 below.

The Electoral Law

4. (1) Subject to the other provisions of the Constitution, the Legislature will be empowered to make laws with respect to the election of members of the Legislative Assembly and in particular as to:

(*a*) the qualifications and disqualifications for election as members;

(*b*) the qualifications and disqualifications for registration as a voter or for voting at elections;

(*c*) the registration of voters;

(*d*) the holding and conduct of elections;

(*e*) the definition and trial of, and the punishment for, election offences; and

(*f*) the hearing and disposal of election petitions.

(2) Any such electoral law will be required to provide that claims for registration as voters may be made at least once in every year and that the rolls of voters shall be prepared at least once in every year and be open to inspection by the public.

Immediate changes in the franchise

5. (1) The Electoral Act, 1951, as amended from time to time, will be declared to be the Electoral Law of the Colony for the purposes of the first general election to be held after the coming into force of the new Constitution

subject, however, to the incorporation in that law of the new provisions regarding constituencies, electoral districts, the franchise qualifications, separate rolls of voters and the method of voting, which will be specified in a Schedule to the Constitution. The contents of this Schedule are given in Appendix 1.

(2) It will be provided that until the necessary legislation to give effect to Appendix 1 has been passed by the Legislative Assembly as at present constituted, the Constitution may not be brought into operation.

Future amendment of the franchise

6. (1) The Constitution will provide that after the first general election has been held on the basis of the new franchise, no Bill to vary the qualifications and disqualifications of voters, or such other qualifications or disqualifications, as hereafter may be substituted therefor, may be passed by the Legislative Assembly, unless, at the final vote thereon, it receives the affirmative vote of not less than two-thirds of the total membership of the Legislative Assembly.

(2) Notwithstanding what is stated in sub-paragraph (1), there will be a further provision that if the provisions of any Bill to amend the qualifications or disqualifications of voters would so vary the law as to have the effect of rendering ineligible for inclusion in the " A " Roll or the " B " Roll, as the case may be, any person who would have been entitled to be included in that roll on the basis of the qualifications set out in Appendix 1, such Bill, in addition to requiring a two-thirds majority, would also have to be dealt with as if it were a Bill to amend the specially entrenched clauses of the Constitution. (See paragraphs 75 and 76 below.)

(3) Notwithstanding the provisions of sub-paragraphs (1) and (2) above, the Governor will be empowered by proclamation in the Gazette to vary the means qualifications according to the increase or decrease in the purchasing power of money in pursuance of the powers conferred upon him by section 11B of the Electoral Act, 1951, as enacted by the Electoral Amendment Act, 1957.

Delimitation of Constituencies

7. When the necessary action has been taken to include the provisions of Appendix 1 in the Electoral Law, the Governor will be empowered to bring into operation, by proclamation, that Part of the Constitution which will deal with the setting up and functions of the Delimitation Commission.

Appointment of Delimitation Commission

8. (1) The Governor will be required to appoint a body known as the Delimitation Commission which will comprise the Chief Justice as Chairman and two other persons nominated by the Chief Justice as members. No member of the Legislative Assembly will be eligible to be a member of the Delimitation Commission.

(2) If, after the appointment of the Commission and before they have reported to the Governor, the Chief Justice, or any member, is for any reason unable to continue to act, the Governor will be empowered, in the case of the Chief Justice, to appoint some other judge of the High Court to be Chairman, or in the case of a member, to appoint some other person nominated by the Chairman.

(3) Where in any matter the members of the Commission are not unanimous, the view of the majority will prevail.

Constituencies and Electoral Districts

9. (1) It will be the duty of the Commission to divide the whole of Southern Rhodesia into fifty areas to be known as constituencies and also into fifteen areas to be known as electoral districts.

(2) Of the fifty constituencies, not less than eighteen must be rural constituencies.

Delimitation of Constituencies and Electoral Districts

10. (1) The boundaries of the constituencies will be fixed in such a way that, at the time of delimitation, there are in each constituency, as nearly as may be, an equal number of voters who are registered on the " A " Roll.

(2) The boundaries of the electoral districts will be fixed in such a way that at the time of the delimitation there are in each electoral district, as nearly as may be, an equal number of voters who are registered on the " B " Roll.

(3) In dividing the Colony into constituencies and electoral districts, the Delimitation Commission will be required in respect of each area to give due consideration to:

(*a*) physical features of the area;
(*b*) the means of communication;
(*c*) the distribution of registered voters;
(*d*) any community of interest between voters; and
(*e*) the existing electoral boundaries.

(4) Whenever it appears necessary to do so, for the purposes of complying with the provisions of sub-paragraph (3) of this paragraph or sub-paragraph (2) of paragraph 9, the Commission may depart from the requirement of sub-paragraphs (1) and (2) above, that there shall be an equal number of voters in each area delimited, but in no case to a greater extent than fifteen per centum more or less than an equal number of registered voters.

Delimitation report to the Governor

11. (1) The Delimitation Commission will submit a report to the Governor, showing the list of constituencies and electoral districts delimited by the Commission with the names assigned to each and the description of their boundaries.

(2) The Governor will be authorised to refer back to the Commission for their further consideration and final decision any matter arising out of the Commission's report.

Proclamation of the Constituencies and Electoral Districts

12. The Governor will be required to publish, by proclamation in the Gazette, the names and boundaries of the constituencies and electoral districts as finally settled by the Commission, and those constituencies and electoral districts will remain unaltered until the next period of delimitation.

Convening of the Delimitation Commission

13. After an adequate time has elapsed for the registration of voters, the Delimitation Commission will be convened for the first time and thereafter it will be set up at five yearly intervals, save that it may be convened before the

expiration of any five yearly period, if it appears to the Governor necessary to do so, having regard to any substantial change in the distribution of registered voters within the Colony.

Tenure of office of members of the Legislative Assembly

14. (1) The seat of a member of the Legislative Assembly will become vacant:

(*a*) upon the next dissolution of the Assembly after he has been elected;
(*b*) if he resigns by writing addressed to the Speaker;
(*c*) if he is absent from twenty-one consecutive sittings without leave of the Assembly;
(*d*) if he ceases to be a British subject or makes any declaration of adherence to a foreign power;
(*e*) if he is adjudged insolvent;
(*f*) if he is certified insane or is detained as a criminal lunatic;
(*g*) if he ceases to be qualified for election under the Electoral Law;
(*h*) if he is elected to the Federal Assembly; or
(*i*) if he accepts any public office.

(2) For the purposes of sub-paragraph (1) above, the expression "public office" will not include appointments as Minister, Parliamentary Secretary, Speaker, Deputy Speaker or any other office declared by the law of the Legislature not to be a public office.

Conviction of members of Assembly

15. (1) Where a member of the Legislative Assembly is convicted of a criminal offence in any part of Her Majesty's dominions or in South Africa and is sentenced to death or imprisonment for a term exceeding six months, the Constitution will provide that he shall forthwith cease to exercise his functions as a member and his seat will become vacant at the expiration of thirty days from the date on which the sentence was imposed. If, during that period, the member files an appeal, his seat will not become vacant unless the conviction is upheld and the sentence is not reduced below six months' imprisonment. If the appeal succeeds, he will resume his seat. When, under this paragraph, a member is prohibited from exercising his function for any period, he will not receive any remuneration as a member for that period unless his appeal succeeds.

(2) For the purposes of the above provision, two or more terms of imprisonment that are required to be served consecutively will be regarded as a single term of imprisonment for the aggregate period of those terms.

Notification of vacancies in Assembly

16. (1) Whenever a vacancy occurs in the Legislative Assembly from any cause other than as a result of an election petition, the Speaker will inform the Governor thereof upon a resolution being passed by the Assembly declaring a vacancy.

(2) If such a vacancy occurs when the Assembly is not meeting, the Speaker or, in his absence, the Clerk of the Assembly, will inform the Governor thereof upon a certificate being signed by two members of the Assembly.

(3) Whenever the Governor is informed of such a vacancy he will be required to cause the necessary steps to be taken to fill the vacancy in accordance with the Electoral Law of the Colony for the time being in force.

Sessions of the Legislative Assembly

17. (1) The sessions of the Legislative Assembly will begin and be held at such places as the Governor may direct by proclamation in the Gazette.

(2) The Constitution will require that there shall be a session of the Assembly at least once in every year, so that a period of twelve months will not intervene between the last sitting in one session and the first sitting in the next session.

Prorogation and Dissolution

18. (1) The Governor may, at any time, by proclamation, prorogue the Legislative Assembly.

(2) The Governor, acting in his discretion may, at any time, by proclamation, dissolve the Assembly.

(3) It will be incumbent upon the Governor to dissolve the Legislative Assembly at the expiration of five years from the date when the Assembly first meets after any general election unless the Assembly is sooner dissolved.

General elections

19. A general election will be held within such period not exceeding four months after any dissolution of the Legislative Assembly as the Governor may, by proclamation, appoint.

SPEAKER AND DEPUTY SPEAKER

Election of Speaker and Deputy Speaker

20. (1) When the Legislative Assembly first meets after any general election, it will elect as soon as may be a Speaker and a Deputy Speaker and so often as those offices become vacant, the Assembly will be required to elect another Speaker or Deputy Speaker, as the case may be.

(2) The Speaker may be elected either from among the members of the Assembly who are neither Ministers nor Parliamentary Secretaries or from outside the Assembly but, in the latter event, the person appointed must possess the qualifications and none of the disqualifications of a candidate for election to the Assembly.

(3) The Deputy Speaker will be elected from among the members of the Assembly.

(4) The Speaker will be paid such salary as the Legislative Assembly may decide.

Tenure of office of Speaker

21. (1) The Speaker may at any time resign his office by writing addressed to the Clerk of the Assembly and will vacate his office:

(*a*) at the dissolution of the Assembly next following his election; or
(*b*) if he becomes a Minister or Parliamentary Secretary; or
(*c*) in the case of a Speaker elected from among the members of the Assembly, if he ceases to be a member; or
(*d*) in the case of a Speaker elected from outside the Assembly, if any circumstances arise which would cause him to vacate his seat if he were a member of the Assembly.

(2) Though there will be no Speaker between the dissolution of the Legislative Assembly and the first meeting of the new Assembly, the Speaker at the time of dissolution will continue to draw his salary until the new Assembly meets and will perform any function imposed on the Speaker by law during that period. If, however, for any reason the person concerned does not wish, or is unable, to perform these functions, they will be carried out by the Clerk of the Assembly.

Tenure of office of Deputy Speaker

22. The Deputy Speaker may at any time resign his office by writing addressed to the Clerk of the Assembly and will vacate his office:

(*a*) if he ceases to be a member; or
(*b*) if he is appointed to be a Minister or a Parliamentary Secretary; or
(*c*) if he is elected Speaker.

MISCELLANEOUS

Penalty for sitting or voting in Assembly when unqualified

23. A person who sits or votes in the Legislative Assembly knowing, or having reasonable grounds for knowing, that he is not entitled so to do will be liable to a penalty of £20 for each day on which he so sits or votes. The penalty will be recoverable by civil action by the Crown for the benefit of the Treasury.

Validity of proceedings

24. Subject to the provisions regarding the quorum, the validity of the proceedings of the Legislative Assembly will not be vitiated by reason of any vacancy among the members or by reason of the participation in the proceedings of the Assembly of any person not entitled to participate therein.

Procedure of the Legislative Assembly

25. Subject to the other provisions of the Constitution, the Legislative Assembly will be empowered to make Standing Orders for the conduct of its proceedings.

Oath of Allegiance

26. Every member of the Legislative Assembly, before taking his seat, will be required to take an oath or affirmation of allegiance in the customary form.

Presiding in the Assembly

27. The Speaker, or in his absence, the Deputy Speaker, or in their absence, a member of the Assembly (not being a Minister or a Parliamentary Secretary) elected by the Assembly, will preside at each sitting.

Quorum

28. If objection is taken by any member present that there are present fewer than ten members and if after such interval as may be prescribed by the Standing Orders there are less than ten members present besides the Speaker or other member presiding, the Assembly will be adjourned.

Voting

29. (1) Save as otherwise provided in the Constitution, decisions in the Legislative Assembly will be taken by a majority of votes of the members present and voting. If the votes are equally divided the motion will be deemed to be lost.

(2) The Speaker, and the Deputy Speaker or other member when presiding, will not have an original or a casting vote.

Privileges of the Assembly and members

30. The privileges, immunities and powers of the Legislative Assembly and its members will be determined by a law of the Legislature.

Staff of the Legislative Assembly

31. (1) There will be a Clerk of the Legislative Assembly (not being a public officer or a member of the Assembly) who will not be removable except in pursuance of a vote of the Assembly.

(2) The staff of the Assembly will comprise the Clerk and such other officers as may from time to time be appointed by the Speaker.

(3) The terms of service of the staff of the Assembly will be determined by the Assembly.

PROCEDURE IN REGARD TO BILLS

Introduction of Bills, etc.

32. Subject to the provisions of the Constitution and of the Standing Orders of the Assembly, any member may introduce a Bill, propose a motion or present a petition, and the same will be debated and disposed of in accordance with the Standing Orders.

Recommendation of money votes

33. No vote, resolution, address or bill for the appropriation of any parts of the revenue or other funds of the Colony will be passed by the Legislative Assembly unless the purpose of the appropriation has been recommended to the Assembly by a message of the Governor conveyed by a Minister.

Presentation of bills for Royal Assent

34. (1) No Bill will become law until it has been assented to by the Governor on Her Majesty's behalf, or, in the case mentioned in paragraph 75(3) below, by Her Majesty.

(2) Bills, after being passed by the Legislative Assembly, may not be presented to the Governor for Assent unless the appropriate requirements of the Constitution have been complied with, that is to say:

(*a*) Where a Bill has been referred to the Constitutional Council, it must be accompanied by a Certificate from the Speaker that—

(i) the Constitutional Council has reported that the Bill is not contrary to the Declaration of Rights; or

(ii) the Constitutional Council has reported adversely on the Bill but the Bill has been subsequently passed by a two-thirds majority of the Assembly; or

(iii) the Constitutional Council reported adversely on the Bill but the Bill was passed by a simple majority of the Assembly after a period exceeding six months from the date on which it was first submitted to the Council.

(*b*) When a Bill has not been referred to the Constitutional Council on the grounds of urgency, it must be accompanied by the Prime Minister's certificate of urgency.

(*c*) In the case of a Bill amending the Constitution, a further certificate will be necessary from the Speaker that it has been passed by a two-thirds majority of the total membership of the Assembly.

(*d*) In the case of a Bill amending the specially entrenched provisions of the Constitution (see paragraph 77 below), a further certificate from the Speaker will be required that either—

(i) the Bill has been referred to a referendum and has been approved by a majority of votes cast by those voting in each of the four main racial groups of the Colony (see paragraph 76 below); or

(ii) the Assembly has passed by a two-thirds majority of the total membership of the Assembly an Address to the Governor requesting him to reserve the Bill for the Assent of Her Majesty.

Assent to Bills

35. (1) When a Bill is presented to the Governor for Assent he will be empowered to assent or withhold Assent, except in the case mentioned in 75(3) where a Bill is accompanied by an Address from the Assembly praying him to reserve the Bill for the Queen's Assent, in which event the Governor will be bound to act accordingly.

(2) When Her Majesty assents to a Bill so reserved by the Governor, a proclamation signifying her Assent will be published in the Gazette.

(3) The words of enactment will be:

"Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Assembly of Southern Rhodesia."

Special powers of the United Kingdom in relation to two classes of laws

36. (1) There will be no power of disallowance except where the Act passed:

(*a*) is inconsistent with any international obligations imposed on the Queen in relation to Southern Rhodesia; or

(*b*) alters to the injury of the stockholders or departs from the original contract in respect of any stock issued under the Colonial Stock Acts by the Southern Rhodesia Government on the London market.

(2) Such laws may be disallowed by Her Majesty within six months of their being passed. Every law so disallowed will cease to have effect as soon as notice of disallowance is published in the Gazette.

Enrolment of Acts

37. As soon as a Bill has been assented to, the Clerk of the Legislative Assembly will cause the Act to be enrolled in the High Court.

CHAPTER II. DECLARATION OF RIGHTS

Declaration of Rights

38. The Declaration of Rights will form part of the Constitution and will state first of all the fundamental rights and freedoms to be enjoyed by the people of Southern Rhodesia. Such rights will apply without distinction of race, colour or creed and the Declaration of Rights will contain a number of clauses which will afford protection against the infringement of the fundamental rights and freedoms either by the Legislature, the Executive, corporate bodies or by private persons. Special provisions for the enforcement of these rights and freedoms in the courts with an ultimate appeal to the Judicial Committee of the Privy Council will be included. (The provisions of the proposed Declaration of Rights for Southern Rhodesia are set out in Appendix 2.)

CHAPTER III. THE CONSTITUTIONAL COUNCIL

ESTABLISHMENT AND PROCEDURE

Establishment of Constitutional Council

39. A Constitutional Council will be established for Southern Rhodesia comprising a Chairman and eleven members, who will include at least

(*a*) Two Europeans;
(*b*) Two Africans;
(*c*) One Asian;
(*d*) One person belonging to the Coloured community;
(*e*) Two persons who must be either advocates or attorneys of the High Court of not less than ten years standing.

Appointment and qualifications of the Chairman of the Constitutional Council

40. (1) The Chairman of the Constitutional Council will be appointed by the Governor, acting on the advice of the Chief Justice. The Chairman must be a Federal citizen and a person who:

(*a*) has been a judge of the High Court of Southern Rhodesia, or of the Supreme Court of the Federation, or of a superior court of a country in which the common law is Roman-Dutch, and English is an official language; or
(*b*) having retired from practice, is an advocate or attorney of the High Court of not less than fifteen years standing.

Before entering upon the duties of his office, the Chairman will be required to take an oath or affirmation of allegiance and of secrecy.

(2) The Chairman will hold office for a period of seven years and will not be eligible for reappointment.

(3) The Chairman of the Council may only be removed from office in the same way as a judge of the High Court (see paragraph 62 below).

Election of members of the Constitutional Council

41. (1) The eleven members of the Constitutional Council will be elected by an Electoral College in the manner prescribed in paragraphs 44 and 45 below.

(2) Subject to the exception mentioned in paragraph 45(10) below, the members of the Constitutional Council will hold office for six years and will not be eligible for re-election.

(3) Any casual vacancy occurring in the membership of the Constitutional Council will be filled by the election of a duly qualified person by the Electoral College. A person elected to fill such a vacancy will hold office in the Council for the unexpired period of membership of the person whom he replaces and will not be eligible for re-election.

Provided that, if a vacancy occurs in the membership of the Constitutional Council within a period of six months prior to a periodical election of members, the vacancy will be left unfilled.

Qualifications of members of the Constitutional Council

42. (1) No person will be eligible to be a member of the Constitutional Council unless:

(*a*) he is of the age of thirty-five years or over;
(*b*) he is a Federal citizen;
(*c*) he has resided in Southern Rhodesia for a period of not less than ten years out of the fifteen years immediately prior to his election.

(2) Every member of the Constitutional Council, before entering upon his duties, will be required to take before a judge of the High Court, oaths or affirmations of allegiance and of secrecy.

Disqualifications of members of the Council

43. (1) A person will be disqualified for membership of the Constitutional Council if he:

(*a*) is, or has been within five years of his election, a candidate for election to, or a member of, the Legislative or Federal Assembly;
(*b*) has been adjudged insolvent;
(*c*) has been certified insane or is detained as a criminal lunatic;
(*d*) is serving a term of imprisonment;
(*e*) holds any public office or is a member, or in the employment, of any public or local authority.

Provided that a Chief shall not be deemed to be disqualified from membership of the Constitutional Council by reason only of being in receipt of remuneration from the Crown.

(2) The seat of a member of the Constitutional Council will become vacant if:

(*a*) he resigns his seat;
(*b*) he is absent from five consecutive meetings without the leave of the Chairman;
(*c*) he ceases to be a British subject or makes any declaration of adherence to a foreign power;
(*d*) he is adjudged insolvent;
(*e*) he is certified insane or detained as a criminal lunatic;
(*f*) he is sentenced to a term of imprisonment;

(*g*) he is elected to the Legislative or Federal Assembly;
(*h*) he accepts any public office;
(*i*) after due enquiry, the Chairman is satisfied that he has disclosed, without the Chairman's authority, the proceedings of the Council, or in some other manner has acted improperly in his capacity as a member of the Council.

In the case of a member who is an advocate or attorney, improper conduct will include any conduct which gives, or could give, rise to any conflict between the duties or interests of a person as a member of the Council and the duties or interests of such person in his professional capacity as an advocate, or as an attorney personally or as a member of a firm of attorneys.

The composition of the Electoral College

44. (1) For the periodical election of members of the Council in pursuance of paragraph 41, or for the filling of any casual vacancies as they occur, there will be assembled as often as occasion may require, a body which will be known as "The Electoral College".

(2) The Electoral College will comprise:

(*a*) the Chairman and members for the time being of the Constitutional Council;
(*b*) all the puisne judges of the High Court of Southern Rhodesia;
(*c*) any retired judges of the High Court who are resident in Southern Rhodesia and willing to act;
(*d*) the President of the Council of Chiefs; and
(*e*) any persons resident in Southern Rhodesia who have previously served as Chairman or members of the Constitutional Council, and are willing to act, but excluding any person who was removed from office as Chairman, and any person whose seat as a member became vacant for any of the reasons described in paragraph 43 above.

(3) Notwithstanding the other provisions of this paragraph, the first Electoral College will comprise:

(*a*) the Chief Justice (who will preside as chairman) and puisne judges of the High Court of Southern Rhodesia;
(*b*) any retired judges of the High Court who are resident in Southern Rhodesia and are willing to act; and
(*c*) the President of the Council of Chiefs.

(4) The Electoral College will assemble at a time and place appointed by the Governor by notice in the Gazette for the purpose of conducting such elections for membership of the Constitutional Council as may be specified in the notice.

Procedure of the Electoral College

45. (1) The Chairman of the Constitutional Council, or in his absence the Deputy Chairman of the Council, will preside over the proceedings of the Electoral College but will not be entitled to vote.

(2) The proceedings of the Electoral College will, subject to such requirements as are included in the Constitution, be conducted in such manner as may be prescribed by rules made by the Governor.

(3) It will be the duty of the Constitutional Council to submit to the Electoral College at least two names of any duly qualified persons nominated by the

Council as candidates for each vacancy occurring in the membership of the Council.

(4) In addition to the nominations made by the Constitutional Council, the Chief Justice may, if he thinks fit after consultation with the puisne judges, nominate additional duly qualified persons as candidates for election.

(5) The Electoral College will proceed to elect by secret ballot members of the Constitutional Council in the prescribed manner, provided always that no person shall be declared elected unless he has been nominated in accordance with the provisions of this paragraph and unless he receives not less than two-thirds of the votes of the members of the Electoral College present and voting.

(6) The Chairman of the College will report to the Governor the names of the candidates duly elected as members of the Constitutional Council.

(7) The Governor will from time to time cause to be published in the Gazette the name of every person who becomes a member of the Constitutional Council and the date upon which he shall commence his tenure of office.

(8) For the purposes of the election of the first Constitutional Council, the provisions of the following three sub-paragraphs will apply instead of sub-paragraphs (1), (2), (3) and (4).

(9) The Electoral College mentioned in paragraph 44(3) above will elect the members of the first Constitutional Council in accordance with the requirements of paragraph 39. For this purpose the Governor, with the prior approval of the Secretary of State, will submit to the College the names of thirty-three qualified persons of such descriptions as to ensure that there will be not less than three candidates available for each of the categories of members mentioned in paragraph 39.

(10) It will be the duty of the College to elect six members of the Council to hold office for six years and five to hold office for three years; the five will include:

(*a*) one European member;
(*b*) one African member;
(*c*) either one Asian member or one member of the Coloured community.

(11) Subject to the other provisions of this paragraph, the first Electoral College will regulate its own procedure.

Remuneration of members of the Council

46. (1) The remuneration of the Chairman and members of the Constitutional Council will be fixed by a law of the Legislature, and this remuneration, and such other sums as are necessary to enable the Council to discharge its functions, will be charged on the Consolidated Revenue Fund.

(2) It will not be permissible to reduce the remuneration of the Chairman and members of the Council during their continuance in office.

Procedure of the Council

47. (1) The Chairman of the Constitutional Council will appoint, from among the members, a Deputy Chairman who will act for him on any occasion or for any purpose when the Chairman for any reason is unable himself to act. The Constitutional Council will meet as occasion may require on the summons of

the Chairman or Deputy Chairman as the case may be. The Chairman, or the Deputy Chairman, will preside at any meetings of the Council, and in the absence of the Chairman and the Deputy Chairman, the members will elect one of their number as chairman. The quorum of the Council will be seven, including the Chairman or member presiding.

(2) Any decision of the Council will be made by a majority of the members voting. The Chairman or member presiding will have an original vote, and in the case of an equality of votes, will be required to exercise, in addition, a casting vote.

(3) The Council will conduct its proceedings in private and will not be empowered to hear objectors or to examine witnesses.

(4) In reporting the Council's opinion to the Legislative Assembly, the Council will be required to state:

(*a*) either that the report is unanimous or the number of votes for and against it;

(*b*) in the case of an adverse report, the grounds on which the Council have reached their conclusion; but it will not be competent to the Council to propose or recommend in what manner the legislation in question might be amended.

(5) Once in every year the Council will be required to make a report to the Governor of the Council's work in the preceding twelve months, and this report, which will include a statement of any moneys expended on litigation, will be laid before the Legislative Assembly.

FUNCTIONS OF THE CONSTITUTIONAL COUNCIL

Functions of the Council in regard to Bills

48. (1) Immediately after any Bill has been passed by the Legislative Assembly, the Speaker will be required to cause a copy of the Bill to be submitted to the Constitutional Council before it is presented to the Governor for Royal Assent.

(2) Within thirty days, the Council will be required to submit a report to the Governor and to the Speaker, stating whether or not, in the Council's opinion, the Bill, or any provision of it, is inconsistent with the Declaration of Rights. Such report will be laid before the Assembly. It will, however, be competent to the Speaker to extend the period of thirty days in the case of any particular Bill on the application of the Chairman of the Council.

(3) Where an adverse report is received, and in consequence the Bill is amended by the Legislative Assembly, it will be necessary to refer the Bill again to the Constitutional Council for report.

(4) When the Council reports that a Bill is not, in the opinion of the Council, inconsistent with the Declaration of Rights, the Bill may be submitted forthwith to the Governor for Assent. If no report is received from the Council within thirty days or such longer period as may be allowed by the Speaker under sub-paragraph (2) above, it will be conclusively presumed that the Council is of the opinion that the Bill is not inconsistent with the Declaration of Rights.

(5) Where an adverse report is received from the Constitutional Council in regard to a Bill, or any provision of a Bill, such Bill may not be submitted

forthwith to the Governor for Assent except upon an affirmative vote of not less than two-thirds of the total membership of the Assembly. Such Bill, however, may be presented to the Governor for Assent after a delay of six months on a resolution passed by a simple majority in the Assembly. A provision will be included in the Constitution to ensure that in the latter case the Bill does not lapse as a result of a prorogation.

(6) Money Bills will be exempted from submission to the Constitutional Council and will be defined as follows:

> " Money Bill " means a public Bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, namely:
>
> (*a*) the imposition, repeal, remission, alteration or regulation of taxation;
>
> (*b*) the imposition for the payment of debt or other financial purposes, of charges on the Consolidated Revenue Fund or any other public funds or on moneys provided by the Legislature, or the variation or repeal of any such charges;
>
> (*c*) the grant of money to the Crown or to any authority or person, or the variation or revocation of any such grant;
>
> (*d*) the appropriation, receipt, custody, investment, issue or audit of accounts of public money;
>
> (*e*) the raising or guarantee of any loan or the repayment thereof, or the establishment, alteration, administration or abolition of any sinking fund provided in connection with any such loan; and
>
> (*f*) provisions which are incidental or ancillary to any of the above matters.

Bills under a certificate of urgency

49. Where, after a Bill has been given a final reading by the Legislative Assembly, the Prime Minister certifies that the enactment of the Bill is so urgent that it is not in the public interest to delay its enactment, the provisions of the preceding paragraph will not apply to that Bill. After such a Bill has been assented to by the Governor, however, it will be the duty of the Speaker to refer it to the Constitutional Council which will thereafter make a report as to whether or not, in the opinion of the Council, the Act so passed is, or is not, contrary to the provisions of the Declaration of Rights. Any such report will be placed before the Legislative Assembly.

Functions of the Council in regard to statutory instruments

50. (1) Whenever a statutory instrument is published in the Gazette, a copy will be transmitted to the Speaker and to the Constitutional Council.

(2) The Constitutional Council will consider the statutory instrument and will be required to make a report to the Legislative Assembly and to the Governor, stating whether or not, in the opinion of the Council, the statutory instrument or any provision of it is inconsistent with the Declaration of Rights.

(3) Where an adverse report is received from the Constitutional Council in respect of any statutory instrument, then on the twenty-first sitting day after the presentation of that report, the Governor will cause a notice to be published

in the Gazette that the instrument or provision in question is annulled from that day unless prior to that day either:

(*a*) the instrument or provision has been revoked or amended by the authority which made it; or

(*b*) the Assembly has passed a resolution confirming the instrument or provision.

(4) Notwithstanding the other provisions of this paragraph, a statutory instrument may be submitted in draft to the Constitutional Council for their opinion before it is made, though when the instrument is made it will still be necessary for it to be submitted formally to the Constitutional Council.

Existing legislation

51. It will be open to the Constitutional Council to examine any Acts and statutory instruments which are in force on the date the Constitution comes into operation, and to make a report in regard to any provision of such Act or instrument which, in the opinion of the Council, would be inconsistent with the Declaration of Rights, if the Declaration applied to it. The Speaker will be required to cause any such report to be laid before the Legislative Assembly.

CHAPTER IV. THE EXECUTIVE

The Governor

52. (1) There will be a Governor appointed by Her Majesty but the Southern Rhodesia Government will have a constitutional right to be consulted before any name is submitted to the Queen.

(2) The Governor's salary and allowances will be fixed by the Legislature and charged on the Consolidated Revenue Fund but may not be reduced during a Governor's tenure of office.

(3) During any period when the office of Governor is vacant, or the Governor is absent from Southern Rhodesia or he is for any other reason unable to perform the functions of his office, such person as is appointed by the Queen's Commission will be sworn in as an Acting Governor. For the purposes of this sub-paragraph, the Governor is not to be regarded as absent from Southern Rhodesia, or as unable to perform the functions of his office at any time when there is a subsisting appointment of Deputy to the Governor under the following sub-paragraph.

(4) Whenever the Governor:

(*a*) has occasion to be absent from the seat of Government but not from Southern Rhodesia; or

(*b*) has occasion to be absent from Southern Rhodesia for a period which he has reason to believe will not exceed one month; or

(*c*) is suffering from an illness that he has reason to believe will be of short duration,

he may by instrument under the Public Seal appoint any person in Southern Rhodesia to be Deputy to the Governor during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of

Governor as the Governor may specify in the instrument. The power and authority of the Governor will not be abridged or in any way affected by the appointment of a Deputy and the Deputy will be required to conform with and observe all instructions that the Governor may see fit to give him.

Executive power

53. The executive powers of Southern Rhodesia will be vested in the Queen and will be exercised on her behalf by the Governor or such other persons as may be authorised by the Governor or by any law of the Legislature.

Ministers

54. (1) The Governor will appoint, in his discretion, a Prime Minister and, on the advice of the Prime Minister, will appoint other Ministers not exceeding eleven in number.

(2) A Minister will hold office during Her Majesty's pleasure.

(3) No Minister will hold office for a longer period than four months unless he is, or becomes, a member of the Legislative Assembly.

(4) No person may hold office at the same time both as a Minister of the Federation and as a Minister of Southern Rhodesia.

Parliamentary Secretaries

55. On the advice of the Prime Minister the Governor may appoint Parliamentary Secretaries from among the members of the Legislative Assembly to assist Ministers in the discharge of their functions.

Governor's Council

56. There will be a Governor's Council consisting of the Prime Minister and such other Ministers for the time being as the Governor may appoint on the recommendation of the Prime Minister. A person will cease to be a member of the Governor's Council when he ceases to be a Minister.

Governor's powers

57. (1) The Governor will have such powers and duties as are conferred or imposed on him by or under the Constitution.

(2) In the exercise of his functions under the Constitution or under any law in force, the Governor will be bound generally to act in accordance with the advice of his Ministers given either by the appropriate Minister, as the case may require, or by Ministers collectively in the Governor's Council. The only exceptions to this rule are specified under the Constitution as follows. In the case of the appointment of Chairman of the Constitutional Council, the Governor will be required to act on the advice of the Chief Justice. In regard to the choice of Prime Minister and the dissolution of the Legislative Assembly, the Governor will act according to his own discretion but he will be required to exercise that discretion in the same manner as does the Sovereign in the United Kingdom in similar circumstances.

Prerogative of mercy

58. Prerogative of mercy in respect of offences against any law in force other than a law of the Federal Legislature will be exercised by the Governor on the advice of the Governor's Council.

CHAPTER V. THE JUDICATURE

Constitution of the High Court

59. (1) The High Court constituted in 1898 will continue to be the High Court for Southern Rhodesia with full jurisdiction, civil and criminal, over all persons and all matters within the Colony.

(2) The High Court will comprise a Chief Justice and a number of puisne judges.

(3) No person will be qualified for appointment as a judge of the High Court unless:

(*a*) he is or has been a judge of a superior court in a country in which the common law is Roman-Dutch and English is an official language; or

(*b*) he is or has been for not less than ten years qualified to practise as an advocate in Southern Rhodesia or a country in which the common law is Roman-Dutch and English is an official language.

Appointment of judges

60. (1) The Chief Justice will be appointed by the Governor on the advice of the Prime Minister. When, however, it is proposed to appoint someone as Chief Justice who is not already a puisne judge, the Prime Minister will be required to consult the retiring Chief Justice and the puisne judges before tendering his advice to the Governor. If, for some reason, it is not practicable to consult the retiring Chief Justice, the Prime Minister will nevertheless be bound to consult the puisne judges.

(2). Puisne judges will be appointed by the Governor on the advice of the Prime Minister, with the agreement of the Chief Justice.

(3) Appropriate provisions will be made for appointing an acting Chief Justice and acting judges.

Tenure of office of judges

61. (1) Each judge of the High Court will have the right to retire when he attains the age of sixty-five years unless he elects to retire on attaining the age of seventy years. Such election will be subject to the submission to, and acceptance by, the Governor of a medical report as to the judge's fitness so to continue in office.

(2) The office of a judge may not, without the judge's consent, be abolished during his continuance in office.

(3) A judge may retire at any time by notice in writing addressed to the Governor.

Removal of judges

62. No judge of the High Court may be removed from office except for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other reason) or for misbehaviour and then only if the removal of the judge has been recommended by an independent tribunal appointed by the Governor. Such a tribunal will consist of a chairman and not less than two other members selected by the Governor from persons who have held office as a judge of the High Court of Southern Rhodesia, or who hold or have held office as a judge in a superior court of the United Kingdom or of a

country in which the common law is Roman-Dutch and English is an official language. The provisions of the Commissions of Inquiry Act, 1941, will apply to such a tribunal. In the case of the proposed removal of a puisne judge the tribunal will be set up by the Governor on the request of the Chief Justice or, in the case of the Chief Justice, on the request of the Prime Minister.

Salaries of judges

63. Judges will receive such remuneration as may be prescribed by a law of the Legislature and this will be charged on the Consolidated Revenue Fund. No judge may have his remuneration reduced during his tenure of office.

Law to be administered

64. The law to be administered by the High Court and the Magistrates courts will be the law in force in the Cape of Good Hope on the tenth day of June, 1891, as modified by subsequent legislation in force in Southern Rhodesia.

CHAPTER VI. LAND

Interpretation

65. The Constitution will provide a definition of " Tribal Trust Land " and of " tribesman " as follows:

> " Tribal Trust Land " means all land in Southern Rhodesia which on the appointed day comprises the Native Reserves described in " The Southern Rhodesia Letters Patent, 1923 " and the Special Native Areas established under the Land Apportionment Act, 1941, and all other land which may hereafter be added thereto by law for the use and occupation of tribesmen.
>
> " Tribesman " means a person who, under tribal law and custom, is recognised as a member of a community under the control or leadership of a chief appointed and holding office under the law for the time being governing such community.

Establishment of the Board of Trustees

66. (1) There will be a Board of Trustees consisting of a Chairman, who will be the Chief Justice, and five other members as follows:

(*a*) the Chairman of the Natural Resources Board or, if that Board ceases to exist, by someone similarly experienced;
(*b*) a person experienced in financial matters, appointed by the Governor;
(*c*) one Chief elected by the Council of Chiefs;
(*d*) a person experienced in African agriculture, appointed by the Governor;
(*e*) a person experienced in tribal administration, appointed by the Governor.

(2) The Board will be a corporate body with perpetual succession and power to sue and be sued in its corporate name.

Vesting of the Tribal Trust Land in the Board of Trustees

67. (1) All Tribal Trust Land will be vested in the Board of Trustees for the exclusive use and occupation of the tribesmen in communal tenure according to

tribal law and custom; the Board of Trustees will not be entitled to dispose of any such land except in accordance with the provisions of the Constitution.

(2) The property in all minerals, mineral oils and natural gases will continue to vest in the Crown.

(3) A description of the land vested in the Board of Trustees will be published as soon as possible after the appointed day and from time to time as may be required.

Responsibilities in regard to Tribal Trust Land

68. (1) The Board of Trustees will be responsible in their capacity as trustees for ensuring that the land is used and occupied in accordance with the trust.

(2) The Government of Southern Rhodesia will be responsible for providing and controlling the services required for the administration of the Tribal Trust Land and for securing the proper development thereof in the interests of the tribesmen living thereon.

Occupation of Tribal Trust Land

69. No person other than a tribesman will be permitted to occupy any Tribal Trust Land except for the following purposes:

(*a*) in the exercise of a right acquired before the appointed day;
(*b*) for administrative, religious, medical, educational or like purposes in the interests of tribesmen;
(*c*) any other purpose which the Board of Trustees consider to be in the interests of tribesmen or in the public interest.

Exchange of land

70. Where, in the opinion of the Board of Trustees, it is in the public interest to do so, the Board may agree with the Government to exchange, subject to conditions, an area of Tribal Trust Land for Crown land situated elsewhere. Such conditions must include the assignment of alternative land to any tribesmen who are deprived of the use and occupation of land, and payment to them of any money necessary to compensate them for their removal and in respect of any permanent improvements made by them on the land.

Tribal Trust Land required for public purposes

71. (1) Where the Governor certifies that any Tribal Trust Land is required for the purpose of mineral development, defence, the improvement of communications or any other public purpose, he will be empowered, with the approval of the Board of Trustees, to make an order declaring that such land shall cease to be part of the Tribal Trust Land.

(2) Where any tribesmen are so deprived of the right to occupy such land, they will as far as practicable be assigned suitable alternative land. If alternative land is not available, then the Government will be required to pay compensation to the tribesmen in respect of their removal and, in addition, to pay compensation to the Board of Trustees for the loss of Tribal Trust Land, to be used for the benefit of the tribesmen in the area concerned. In any case tribesmen will be paid compensation for any improvements made by them on the land from which they are removed.

Irrigation schemes

72. With the consent of the Board of Trustees an investigation may be made into irrigation schemes for portions of the Tribal Trust Land. If the Board of Trustees are satisfied that such a scheme would benefit the tribesmen and that it is necessary to provide security by way of mortgage for moneys required to carry out the scheme, the Trustees will be authorised to issue a certificate to that effect. It will then be possible for the Governor to order that the portion of the Tribal Trust Land affected will cease to vest in the Board of Trustees and become Crown land so that a freehold title can be granted to the person undertaking the irrigation scheme. It will, however, be a condition of any such grant that the occupation of the land is reserved exclusively for tribesmen and the terms and conditions of their occupation will be subject to the approval of the Governor, and may provide for communal tenure, lease or individual freehold tenure of the land concerned.

Conversion of Tribal Trust Land into freehold tenure

73. (1) Where, after instituting such enquiries as it may deem necessary and after consulting the chief concerned, the Board are satisfied that it is the general wish of the tribesmen living in a particular area of Tribal Trust Land that the collective rights of the tribesmen in such area be converted to individual freehold ownership and, in the opinion of the Board, it would be in the interests of the tribesmen so to do, the Board, after giving due consideration to the interests of other tribesmen who might be affected, may take the necessary steps to give effect to such wish.

(2) In such case the Governor, on a certificate from the Board of Trustees, will be empowered by order to declare that the land shall cease to vest in the Board of Trustees and will thereafter become Crown land for the purpose of the granting of individual freehold tenure to the persons concerned.

Powers of legislation in regard to land

74. (1) The Legislature will have power to:

(*a*) provide that Tribal Trust Land which is set aside with the agreement of the Board of Trustees, for the establishment of townships, villages or business centres will cease to be Tribal Trust Land and will be made available for purchase or lease as if it were part of the Native Purchase Area;

(*b*) provide for the carrying out of land surveys and the implementation of matters dealt with in paragraphs 72 and 73;

(*c*) add further land to the Tribal Trust Land.

(2) The Land Apportionment Act, 1941, will on the appointed day cease to apply to the Special Native Area.

(3) The Legislature will be further empowered to:

(*a*) withdraw from the operation of the Land Apportionment Act, land which is set aside under any law for national parks, afforestation purposes and the like;

(*b*) withdraw from the operation of the Act, land which is not reserved for any particular class of persons;

(*c*) prescribe conditions for the removal of restrictions as to the ownership and occupation of land by any particular class of persons under the Act;

(*d*) add further land to the Native Purchase Area and to the European Area, subject to limitations as to the aggregate amount of land in each Area;
(*e*) provide for the withdrawal from the operation of the Act of any land, other than Crown land, at the request or with the consent of the owner;
(*f*) amend or repeal the Act.

(4) Any Bill which:

(*a*) abolishes the Board of Trustees;
(*b*) diminishes the powers or functions of the Board;
(*c*) varies the terms of the trust in regard to Tribal Trust Land; or
(*d*) imposes any racial limitation on the ownership or occupation of land which is more restrictive than is the case under the Land Apportionment Act immediately before the appointed day

will require a two-thirds majority of the total membership of the Legislative Assembly and, in addition, must be dealt with as if it were a Bill to amend the specially entrenched clauses of the Constitution, in accordance with paragraph 76 below.

(5) Subject to the provisions of this Chapter, the Legislature will be able to legislate for the peace, order and good government of Southern Rhodesia in relation to land, including Tribal Trust Land. Nothing contained in or done under the authority of this Chapter, will be deemed to be inconsistent with the provisions against discrimination in the Declaration of Rights.

CHAPTER VII. AMENDMENT OF THE CONSTITUTION

Powers of amendment of the Constitution

75. (1) Subject to the other provisions of the Constitution, the Legislature will be empowered by Act to amend or repeal any of the provisions of the Constitution other than those mentioned in paragraphs 36 and 78.

(2) Any Bill for the repeal or amendment of the Constitution (hereinafter referred to as a Constitutional Bill) will require, at its final stage, the affirmative vote of not less than two-thirds of the total membership of the Assembly.

(3) Any Constitutional Bill which repeals or amends the specially entrenched sections of the Constitution (described in paragraph 77 below) will require not only the two-thirds vote referred to above, but will either have to be approved in a referendum by a majority of those voting in each of the four principal racial groups in the Colony, or the Bill will have to be reserved by the Governor for the Queen's Assent. The latter procedure will only be applicable where the Assembly, by a vote passed by a two-thirds majority of its total membership, presents an Address to the Governor requesting him to reserve the Bill for the Queen's Assent. Such an Address may be moved only by a Minister after signification to the Assembly that Her Majesty has consented to the moving thereof.

Approval of a Constitutional Bill by referendum

76. (1) When a Constitutional Bill has been passed by the necessary majority vote and is to be put to a referendum for approval, the procedure to be adopted

will be prescribed by a law of the Legislature. The Constitution will provide that such a law must make provision, among other things, for:

(*a*) the manner in which the Bill is to be submitted to those entitled to vote;

(*b*) the method by which the votes of those entitled to vote are to be cast and counted in order to ascertain how many such persons approve and how many such persons do not approve of the Bill in each of the four principal racial communities in Southern Rhodesia, that is to say, the European, African, Asian and Coloured communities; and

(*c*) the appointment of a public officer to conduct the referendum who will be required to certify the result to the Governor and the Speaker.

(2) Where a Bill, or a provision of a Bill, is submitted to a referendum, that Bill or provision will not be deemed to be approved for the purposes of the Constitution unless a majority of persons voting in each of the four principal racial communities mentioned above vote in favour of such Bill or provision.

(3) The Constitution will also provide that until such time as there are fifty thousand or more registered African voters, every African who:

(*a*) is a citizen of the Federation; and

(*b*) is ordinarily resident in Southern Rhodesia; and

(*c*) is of the age of twenty-one years or more; and

(*d*) has completed a course of primary education of the prescribed standard,

will be entitled to vote in a referendum.

Specially entrenched provisions

77. For the purposes of the Constitution, the specially entrenched clauses will be those relating to the Declaration of Rights, Appeals to the Privy Council, the Constitutional Council, the Judiciary, and the provisions for amending the Constitution, securing Civil Service pensions and giving effect to paragraphs 6(2) and 74(4) above.

Matters reserved to Her Majesty

78. The provisions which refer to the formal functions within the Constitution of the Sovereign and of the Governor in his capacity as the Sovereign's representative, will not be amendable by the Legislature.

CHAPTER VIII. MISCELLANEOUS PROVISIONS

English language

79. Provision will be made that the English language will be the only official language of Southern Rhodesia.

The Consolidated Revenue Fund

80. (1) All revenues and other moneys raised which are not required by law to be paid into a separate fund, will form one Consolidated Revenue Fund.

(2) Costs, charges and expenses incidental to the collection and management of the Fund will form a first charge thereon.

(3) No money may be withdrawn from the Consolidated Revenue Fund except to meet expenditure which is charged on the Fund by the Constitution or by any law of the Legislature or where the issue of money has been authorised under an Appropriation Law, and the Governor has issued a warrant in respect thereof direct to the Minister of Finance.

Pensions and gratuities of public officers

81. All pensions or gratuities which have been, or may hereafter be, granted to persons who have retired or will retire from the Public Service, will be charged on the Consolidated Revenue Fund.

Statutory force of the Constitution

82. The Constitution will have the force of law throughout the Colony and any law of the Legislature which is inconsistent with any provision of the Constitution will, to the extent of the inconsistency, be invalid. But this will not apply to laws passed in accordance with the Constitution which repeal or amend provisions of the Constitution or to laws in force on the appointed day in their relationship to the provisions of the Declaration of Rights.

APPENDIX 1

Matters for which provision is to be made in the Electoral Act, 1951, before the whole of the Constitution is brought into force

1. All such matters as are necessary to give effect to the delimitation of Southern Rhodesia into fifty constituencies and fifteen electoral districts.

2. The preparation and keeping of two rolls for each constituency and electoral district to be known as an "A" Roll and a "B" Roll. The "A" Roll will comprise voters who have the requisite educational and means qualifications under section 10 of the existing law, together with such additional voters as are referred to in paragraph 5 of this Appendix. The "B" Roll will comprise voters who have the requisite educational and means qualifications under section 11 of the existing law, together with voters who will become entitled to be registered as voters under the revised qualifications mentioned in paragraph 6 of this Appendix.

3. Voters on the existing rolls will be placed on the "A" Rolls or "B" Rolls, as the case may be, for each constituency and electoral district according to their qualifications.

4. The existing voluntary preferential vote will be restricted to a single voluntary preferential vote.

5. The educational and means qualifications for voters on an "A" Roll are those prescribed in section 10 of the existing law but duly appointed chiefs and headmen will, by virtue of their office, be deemed to have the qualifications necessary for the "A" Roll.

6. The educational and means qualifications for voters on a "B" Roll are those prescribed in section 11 of the existing law, with the following amendments, additions and modifications:

(*a*) for the requirement that a person must have been in the *bona fide* receipt of income, salary or wages of not less than two hundred and forty pounds during each of the two years immediately preceding the date of his claim for registration, there shall be substituted the requirement that a claimant must have been in the *bona fide* receipt of income, salary or wages at the rate of not less than two hundred and forty pounds per annum during the six months immediately preceding the date of his claim for registration or must be at such date the owner of immovable property in the Colony valued at not less than four hundred and fifty pounds;

(*b*) for the requirement that a claimant must have been in the *bona fide* receipt of income, salary or wages of not less than one hundred and twenty pounds during each of the two years immediately preceding the date of his claim for registration, there shall be substituted the requirement that a claimant must have been in the *bona fide* receipt of income, salary or wages at the rate of not less than one hundred and twenty pounds per annum during the six months immediately preceding the date of his claim for registration, or must be at such date the owner of immovable property in the Colony valued at not less than two hundred and fifty pounds;

(*c*) a claimant who is over thirty years of age, who has an adequate knowledge of the English language and is able, in his own handwriting, to complete and sign the claim form in accordance with the provisions of the law, and who has been in the *bona fide* receipt of income, salary or wages at the rate of not less than one hundred and eighty pounds per annum during the six months immediately preceding the date of his claim for registration or who is at such date the owner of immovable property in the Colony valued at not less than three hundred and fifty pounds, and is otherwise qualified under the Act, will be entitled to be enrolled as a voter;

(*d*) a claimant who is over thirty years of age, who has an adequate knowledge of the English language and is able, in his own handwriting, to complete and sign the claim form in accordance with the provisions of the law, and in addition has completed a course of primary education of a prescribed standard and has been in the *bona fide* receipt of income, salary or wages at the rate of not less than one hundred and twenty pounds per annum during the six months immediately preceding the date of his claim for registration or who is at such date the owner of immovable property in the Colony valued at not less than two hundred and fifty pounds, shall, if he is otherwise qualified in terms of the Act, be entitled to be enrolled as a voter;

(*e*) the term "owner" in relation to immovable property, shall, in the case of voters on a "B" Roll, include the person who has entered into an agreement of purchase in respect of the property which entitles him on fulfilment of the conditions of such agreement to have such property registered in his name in the Deeds Office if, at the date of his claim for registration as a voter, such person has been in continuous occupation of such property for a period of not less than three years and is not in arrears with any instalments of the purchase price or has paid not less than ten per centum of the purchase price;

(*f*) every person who is recognised under customary law as the head of a kraal and who has a following of twenty or more heads of families shall, so long as he is so recognised, be deemed to have the requisite means qualification, and if he has an adequate knowledge of the English language and is able, in his own handwriting, to complete and sign the claim form in accordance with the provisions of the law, be entitled to be enrolled as a voter on a "B" Roll;

(*g*) a minister of religion shall be deemed to have the requisite means qualification and shall be entitled to be enrolled as a voter on a "B" Roll. For the purposes of this paragraph, a minister of religion means a person who:

(i) has obtained a university degree in divinity; or

(ii) has undergone a period of not less than five years' full-time training in divinity in a theological college or seminary; or

(iii) has undergone a period of not less than two years' full-time training in divinity in a theological college or seminary followed by a period of service as a minister of religion, if the aggregate of such training and service was not less than five years;

and is ordained or appointed as a minister of religion and follows no profession, trade or calling other than that of a minister of religion and receives no earned income other than that received by him directly as a minister of religion.

7. The following new provisions will apply to the counting of votes:

(*a*) where in any count for the election of a member for a constituency the total number of votes cast by voters on the "B" Roll exceeds one-fourth of the total number of votes cast by voters on the "A" Roll (any fraction of a vote in that one-fourth being disregarded) then, except for the purpose of determining whether or not any of the candidates should forfeit his deposit, each candidate shall be treated as having received such number of votes cast by the "B" Roll voters (any fraction of a vote being disregarded) as bears the same proportion to the number of such votes actually received by that

candidate as the said one-fourth of the total number of votes cast by the "A" Roll voters bears to the total number of votes cast by the "B" Roll voters;

(*b*) where in any count for the election of a member for an electoral district the total number of votes cast by voters on the "A" Roll exceeds one-fourth of the total number of votes cast by voters on the "B" Roll (any fraction of a vote in that one-fourth being disregarded) then, except for the purpose of determining whether or not any of the candidates should forfeit his deposit, each candidate shall be treated as having received such number of votes cast by the "A" Roll voters (any fraction of a vote being disregarded) as bears the same proportion to the number of such votes actually received by that candidate as the said one-fourth of the total number of votes cast by the "B" Roll voters bears to the total number of votes cast by the "A" Roll voters.

8. Any necessary consequential amendments of the Electoral Act, 1951.

APPENDIX 2

The Declaration of Rights

Whereas it is desirable to ensure that every person in Southern Rhodesia enjoys the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour or creed, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) life, liberty, security of the person, the enjoyment of property and the protection of the law;

(*b*) freedom of conscience, of expression, and of assembly and association; and

(*c*) respect for his private and family life:

Now, therefore, the following provisions of this Declaration of Rights (hereinafter referred to as " this Declaration ") shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to the limitations of that protection contained in those provisions.

Protection of right to life

1. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) for the defence of any person from violence or for the defence of property;

(*b*) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) for the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or

(*d*) in order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

(3) It shall be sufficient justification for the purposes of subsection (2) of this section in any case to which that subsection applies if it is shown that the force used did not exceed that which might lawfully have been used in the circumstances of that case under the law in force immediately before the appointed day.

Protection of right to personal liberty

2. (1) No person shall be deprived of his personal liberty save as may be authorised by law.

(2) No law shall authorise any person to be deprived of his liberty save in the following cases, that is to say—

(*a*) in consequence of his unfitness to plead to a criminal charge;

(*b*) in execution of the sentence or order of a court, whether in Southern Rhodesia or elsewhere, in respect of a criminal offence of which he has been convicted;

(*c*) in execution of the order of a court of record in Southern Rhodesia punishing him for contempt of that court or of a court inferior to it;

(*d*) in execution of the order of a court made in order to secure the fulfilment of an obligation imposed on him by law (including any African customary law);

(*e*) for the purpose of bringing him before a court in execution of the order of a court or an officer of a court;

(*f*) upon reasonable suspicion of his having committed or being about to commit a criminal offence;

(*g*) under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare during a period beginning before he attains the age of twenty-one years and ending not later than the date when he attains the age of twenty-three years;

(*h*) for the purpose of preventing the spread of an infectious or contagious disease;

(*i*) if he is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care, treatment or rehabilitation or the protection of the community;

(*j*) for the purpose of preventing the unlawful entry of that person into Southern Rhodesia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Southern Rhodesia or the taking of proceedings relating thereto;

(*k*) to such extent as may be necessary for the execution of a lawful order requiring that person to remain within a specified area within Southern Rhodesia or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable—

(i) for the taking of proceedings against that person relating to the making of such an order; or

(ii) for restraining that person during any visit which he is permitted to make to any part of Southern Rhodesia in which, in consequence of such an order, his presence would otherwise be unlawful.

(3) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention.

(4) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court or an officer of a court; or

(*b*) upon reasonable suspicion of his having committed or being about to commit a criminal offence,

and who is not released shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Protection from slavery and forced labour

3. (1) No person shall be held in slavery or servitude or required to perform forced labour.

(2) For the purposes of this section, the expression " forced labour " does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained which though not required in consequence of the sentence or order of a court:

(i) is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained; or

(ii) if he is detained for the purpose of his care, treatment, rehabilitation, education or welfare, is reasonably required for that purpose;

(*c*) any labour required of a person who is a member of any naval, military or air force, or who is otherwise subject to any disciplinary law in pursuance of his duties as a member of that force or under that law, or any labour required of any person by virtue of a written law in lieu of service as a member of such a force;

(*d*) any labour required by virtue of a written law during a period of public emergency or in the event of any other emergency or calamity which threatens the life or well-being of any section of the community; or

(*e*) any labour which forms part of normal communal or other civic obligations.

Protection from inhuman treatment

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

(2) No treatment reasonably justifiable in the circumstances of the case to prevent the escape from custody of a person who has been lawfully detained shall be held to be in contravention of this section on the ground that it is degrading.

(3) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the doing of anything by way of punishment or other treatment which might lawfully have been so done in Southern Rhodesia immediately before the appointed day.

Protection from deprivation of property

5. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the conditions hereinafter mentioned are satisfied.

(2) The conditions referred to in the foregoing subsection are that—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of that or other property in such a manner as to promote the benefit of the public generally or of the inhabitants generally of a particular area; and

(*b*) provision is made by a written law applicable to that taking of possession or acquisition—

(i) for the payment of proper compensation within a reasonable time; and

(ii) securing to any person claiming to have an interest in or right over the property a right of access to a court or other adjudicating authority for the determination of his interest or right, if any, the legality of the taking of possession or acquisition of property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation within a reasonable time.

(3) If in any proceedings by virtue of section 15 of this Declaration it is alleged that the condition specified in paragraph (*a*) of subsection (2) of this section is not satisfied and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia (or, if the certificate states that the taking of possession or acquisition is on behalf of the Federal Government, by a Minister of that Government) that in the opinion of that Minister the taking of possession or acquisition is necessary on such of the grounds mentioned in the said paragraph (*a*) as is specified in the certificate, it shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in the circumstances of the case, it would not be reasonable to accept without proof to the satisfaction of the court the necessity of the taking of possession or acquisition on the grounds stated in the certificate.

(4) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession of, or the acquisition of any interest in or right over, property—

(*a*) in satisfaction of any tax, rate or due;

(*b*) by way of penalty for breach of any law (including any African customary law) whether under civil process or after conviction of an offence;

(*c*) upon the attempted removal of the property in question out of or into Southern Rhodesia in contravention of the law in question;

(*d*) as an incident of a contract (including a lease or mortgage) or of a title deed to land;

(*e*) for the purpose of its administration, care or custody on behalf and for the benefit of the person entitled to the beneficial interest therein;

(*f*) by way of the vesting of enemy property, or for the purpose of the administration of such property;

(*g*) as an incident of—

(i) a composition in insolvency accepted or agreed to by a majority in number of creditors who have proved claims and by a number of creditors whose proved claims represent in value more than fifty per cent of the total value of proved claims; or

(ii) a deed of assignment entered into by a debtor with his creditors;

(*h*) in the execution of judgments or orders of courts;

(*i*) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human beings, animals or plants;

(*j*) in consequence of any law with respect to the limitation of actions, acquisitive prescription or derelict land;

(*k*) as a condition in connection with the granting of permission for the utilisation of that or other property in any particular manner;

(*l*) for the purpose of, or in connection with, the prospecting for or exploitation of minerals belonging to the Crown on terms which provide for the respective interests of the persons affected;

(*m*) in pursuance of provision for the marketing of property of that description in the common interests of the various persons otherwise entitled to dispose of that property;

(*n*) by way of the taking of a sample for the purposes of the law in question;

(*o*) by way of the acquisition of the shares, or a class of the shares, in a body corporate on terms agreed to by the holders of not less than nine-tenths in value of those shares or that class thereof;

(*p*) where the property consists of an animal, upon its being found trespassing or straying;

(*q*) for so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(i) of work for the purpose of the conservation of natural resources of any description; or

(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed, to carry out.

(5) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate in which no moneys have been invested other than moneys provided by the Legislature of Southern Rhodesia.

Protection for privacy of home and other property

6. (1) Except with his own consent or by way of parental discipline, no person shall be subjected to the search of his person or to entry into or the search of his dwelling-house.

(2) Nothing contained in, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is necessary—

(*a*) for the enforcement of the law in a case where there are reasonable grounds to suspect that a criminal offence has been, is being, or is about to be committed by the person or in the dwelling-house in question, or that a person who has committed a criminal offence, or evidence relating to such an offence, is to be found in that dwelling-house;

(*b*) otherwise in the interests of defence, public safety, public order, public morality, public health or town and country planning;

(*c*) to enable any public authority or any body corporate established directly by law to enter the dwelling-house in question in order to carry out work connected with any property of that authority or body which is lawfully in that dwelling-house;

(*d*) for the purpose of the valuation of the dwelling-house in question in connection with any tax, rate or due; or

(*e*) for the purpose of protecting the rights and freedoms of other persons.

(3) If in any proceedings by virtue of section 15 of this Declaration it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in subsection (2) of this section as is specified in the certificate, that law shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate cannot reasonably be accepted without proof to the satisfaction of the court.

Provisions to secure protection of law

7. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language which he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission which did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence which is severer in degree or description than the maximum penalty which might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence upon a good indictment, summons or charge upon which a

valid judgment could be entered, and either convicted or acquitted on the merits in fact or in law and not on a technicality, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save—

(*a*) where a conviction and sentence of a court subordinate to the High Court are set aside on appeal or review on the ground that evidence was admitted which should not have been admitted or that evidence was rejected which should have been admitted or on the ground of any other irregularity or defect in the procedure; or

(*b*) otherwise upon the order of a superior court in the case of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory civil proceedings; or

(*b*) may be empowered by law so to do in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of twenty-one years or the protection of the private lives of persons concerned in the proceedings;

and notwithstanding anything in the said subsection (9) or in subsection (3) of this section, if in any proceedings before such a court or other adjudicating authority as is referred to in subsection (1) or (8) of this section (including any proceedings by virtue of section 15 of this Declaration) a certificate in writing is produced to the court or other authority signed by a Minister of the Government of Southern Rhodesia (or, if the proceedings relate to anything done on behalf of the Federal Government, by a Minister of that Government) that it would not be in the public interest for any matter to be publicly disclosed, the court or other authority shall make arrangements for evidence relating to that matter to be heard in camera and shall take such other action as may be necessary or expedient to prevent the disclosure of that matter.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) paragraph (*a*) of subsection (2) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) paragraph (*e*) of the said subsection (2) to the extent that the law in question imposes conditions which must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the appropriate disciplinary law, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law;

(*d*) subsection (7) of this section to the extent that the law in question authorises the cross-examination or recall of any person being tried for a criminal offence after he has been called as a witness with his own consent.

(12) In this section, the expression "legal representative" means a person entitled to practise in Southern Rhodesia as an advocate or, except in relation to proceedings before a court in which an attorney has no right of audience, as an attorney.

Protection of freedom of conscience

8. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, that is to say, freedom of thought and of religion, freedom to change his religion or belief, and freedom, whether alone or in community with others, and whether in public or in private, to manifest and propagate his religion or belief through worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in the course of any education provided by that community or denomination.

(4) Nothing contained in, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision which is necessary—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of other persons.

(5) If in any proceedings by virtue of section 15 of this Declaration it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in subsection (4) of this section as is specified in the certificate, that law shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate cannot reasonably be accepted without proof to the satisfaction of the court.

Protection of freedom of expression

9. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision—

(*a*) which is necessary—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(iii) in the case of correspondence, for the purpose of preventing the unlawful despatch therewith of other matter; or

(*b*) which imposes restrictions upon public officers which are necessary in the public interest.

(3) If in any proceedings by virtue of section 15 of this Declaration it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of that Minister the law in question is necessary on such of the grounds mentioned in paragraph (*a*) of subsection (2) of this section as is specified in the certificate or, as the case may be, any restrictions imposed by the law in question upon public officers are necessary in the public interest, that law or, as the case may be, those restrictions shall be deemed to be so necessary unless the court decides as the result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate or, as the case may be, the necessity of those restrictions cannot be reasonably accepted without proof to the satisfaction of the court.

Protection of freedom of assembly and association

10. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in, and nothing reasonably done under the authority of, any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision—

(*a*) which is necessary—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(*b*) which imposes restrictions upon public officers which are necessary in the public interest.

(3) If in any proceedings by virtue of section 15 of this Declaration it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subsection (1) of this section and a certificate in writing is produced to the court signed by a Minister of the Government of Southern Rhodesia that in the opinion of the Minister the law in question is necessary on such of the grounds mentioned in paragraph (*a*) of subsection (2) of this section as is specified in the certificate or, as the case may be, that any restrictions imposed by that law upon public officers are necessary in the public interest, that law or, as the case may be, those restrictions shall be deemed to be so necessary unless the court decides as a result of hearing the complainant that, in a society which has a proper respect for the rights and freedoms of the individual, the necessity of that law on the grounds specified in the certificate or, as the case may be, the necessity of those restrictions cannot reasonably be accepted without proof to the satisfaction of the court.

Protection from discrimination by written laws

11. (1) No written law shall contain any discriminatory provision.

(2) For the purposes of this section a provision shall be regarded as discriminatory if by or as an inevitable consequence of that provision persons of a particular description by race, tribe, colour or creed are prejudiced—

(*a*) by being subjected to a condition, restriction or disability to which persons of another such description are not made subject; or

(*b*) by the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description,

and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, colour or creed of the persons concerned.

(3) Subsection (1) of this section shall not apply to any law to the extent that it relates to any of the following matters, that is to say:

(*a*) any matter such as is mentioned in any of paragraphs (*a*) to (*e*) of the definition of a Money Bill contained in paragraph 48(6) of this Paper;

(*b*) adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;

(*c*) the application in the case of Africans of a particular race or tribe indigenous to Southern Rhodesia of their customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons;

(*d*) restrictions on entry into or employment in Southern Rhodesia or on the acquisition of, or of interests in or rights over, immovable property in Southern Rhodesia, or on the enjoyment of services provided out of Southern Rhodesian public funds, in the case of persons who are neither citizens of the Federation by virtue of their connection with, nor regarded by virtue of a written law as permanently resident in, Southern Rhodesia;

(*e*) qualifications (not being qualifications by way of race, tribe, colour or creed) for service as a public officer or as a member of a disciplined force or for the service of any public authority or of any body corporate established directly by a law,

or to the extent that it makes provision with respect to persons of a particular description relating to a matter in the case of which the Federal Legislature has legislated with respect to persons of other descriptions but not that description or has, or is entitled to assume, exclusive power so to legislate.

(4) Subsection (1) of this section shall not apply to any law to the extent that it makes provision whereby persons of a particular description are subjected to any condition, restriction or disability or are accorded any privilege or advantage which, having regard to such of the following matters as are relevant in the circumstances of the case, that is to say—

(*a*) the nature of the condition, restriction, disability, privilege or advantage, as the case may be;

(*b*) any special circumstances appertaining to persons of that or any other description;

(*c*) the stage of social or economic development for the time being reached by the various descriptions of persons affected; and

(*d*) the state for the time being of the economy of Southern Rhodesia,

is reasonably justifiable either in the interests of Southern Rhodesia as a whole or in order to secure the protection, in an equitable manner as between the various descriptions of persons affected, of their respective interests:

Provided that this subsection shall not apply to the extent that the law in question results in the laws with respect to the matter in question affording greater difference of treatment of different descriptions of persons than immediately before the date of the making of the law in question.

(5) No provision which is held by virtue of paragraph (*b*) or (*e*) of subsection (2) of section 6, subsection (4) of section 8, subsection (2) of section 9 or subsection (2) of section 10 of this Declaration not to be inconsistent with the said section 6, 8, 9 or 10, as the case may be, shall be held to contravene subsection (1) of this section.

Protection from discriminatory action

12. (1) No person acting by virtue of any written law in the capacity of a public officer or officer of any public authority shall perform any executive or

administrative act in such a manner that any person of a particular description by race, tribe, colour or creed is prejudiced—

(*a*) by being subjected to a condition, restriction or disability to which a person of another such description is not made subject; or

(*b*) by the according to a person of another such description of a privilege or advantage which is not accorded to that person,

where the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, colour or creed of the persons concerned.

(2) Subsection (1) of this section shall not apply to anything which—

(*a*) is expressly or by necessary implication authorised to be done by any law to which subsection (3), (4) or (5) of section 11 of this Declaration applies; or

(*b*) is done under the authority of any other law in such circumstances that, if the doing of that thing in those circumstances had been expressly or by necessary implication authorised by that law, subsection (4) of the said section 11 would have applied thereto.

(3) Nothing in this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court vested in any person by or under this Constitution or any other law.

Saving for periods of public emergency

13. (1) Nothing contained in any law shall be held to be inconsistent with or in contravention of any of the following provisions of this Declaration, that is to say, sections 2, 5, 6, 7 (other than subsection (4) thereof), 8, 9, 10, 11 or 12 to the extent that the law in question makes provision with respect to the taking during any period of public emergency of action for the purpose of dealing with any situation arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the action taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question.

(2) If any person who is lawfully detained only by virtue of such a law as is mentioned in subsection (1) of this section so requests at any time during the period of that detention not earlier than twelve months after he last made such a request during that period, his case shall be submitted to a tribunal for their recommendations concerning the necessity or expediency of continuing his detention but, unless it is otherwise provided by law, the authority by whom the detention was ordered shall not be obliged to act in accordance with any such recommendations.

(3) Any such tribunal as aforesaid shall be established by law and include among its members at least one person who holds or has held high judicial office in Southern Rhodesia or elsewhere or who is an advocate or attorney of the High Court of not less than seven years' standing.

Other special savings

14. (1) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of any of the provisions of sections 1 to 12 of this Declaration—

(*a*) if the law in question was in force immediately before the appointed day and has continued in force at all times since that day; or

(*b*) in the case of a written law, to the extent that it repeals and re-enacts any provision which has been contained in a written law at all times since immediately before that day.

(2) In relation to any person who is a member of a disciplined force (including any visiting force which is lawfully present in Southern Rhodesia) or who is otherwise subject to a disciplinary law, nothing contained in or done under the authority of the appropriate disciplinary law shall be held to be inconsistent with or in contravention of any of the provisions of the said sections 1 to 12 other than section 3 or 4.

(3) For the avoidance of doubt it is hereby declared that nothing contained in or done under the authority of any Federal law shall be held to be inconsistent with or in contravention of any of the provisions of the said sections 1 to 12.

Enforcement of Declaration of Rights

15. (1) If any person alleges that any of the provisions of sections 1 to 12 of this Declaration has been or is being contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, but subject to subsection (3) of this section, that person may apply to the High Court for redress.

(2) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of the said sections 1 to 12, the person presiding in that court may, and if so requested by any party to the proceedings shall, refer the question to the High Court, so, however, that he shall not be required to comply with any such request which in his opinion is merely frivolous or vexatious.

(3) Where in any proceedings such as are mentioned in subsection (2) of this section any such question as is therein mentioned is not referred to the High Court, then, without prejudice to the right to raise that question on any appeal from the determination of the court in those proceedings, no application for the determination of that question shall lie to the High Court under subsection (1) of this section.

(4) Subject to the provisions of article 53 of the Federal Constitution, the High Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (2) thereof,

and for the purposes of that jurisdiction or of the determination on such an appeal as is mentioned in subsection (3) of this section of any question such as therein mentioned, the High Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said sections 1 to 12 to the protection of which the person concerned is entitled:

Provided that the court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(5) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to Her Majesty in Council:

Provided that—

(a) this subsection shall not have effect during any period during which the Federal Constitution provides for an appeal from any determination of the High Court under this section to the Federal Supreme Court;

(b) no appeal shall lie by virtue of this subsection from any determination that any application, or the raising of any question, is merely frivolous or vexatious.

(6) Where any person—

(a) makes an application to the High Court under subsection (1) of this section with respect to, or to a provision contained in, a written law and that law or provision is one in the case of which the Constitutional Council has made an adverse report; or

(b) raises any question with respect to such a law or provision which is referred to the High Court in pursuance of subsection (2) of this section; or

(c) appeals from the determination of the High Court on any such application or reference with respect to such a law or provision,

then, if he obtains from that Council a certificate in writing that in the opinion of the Council the application, question or appeal, as the case may be, constitutes a proper and suitable test case for determining the validity of that law or provision, any costs certified by the court determining the application, question or appeal, as the case may be, as having been reasonably incurred by that person in connection therewith shall be refunded to that person by the Constitutional Council; and any sums required by that Council for the purposes of this subsection shall be charged on and paid out of the Consolidated Revenue Fund.

(7) If in any proceedings by virtue of this section, it falls to be determined whether any law is inconsistent with any of the provisions of the said sections 1 to 12, the Attorney-General shall be entitled to be heard by the court on that question and if in any such proceedings any law is determined by the court to be so inconsistent, then, whether or not he has exercised his right to be heard in those proceedings, the Attorney-General shall have the like right with respect to an appeal from that determination as if he had been a party to the proceedings.

(8) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of the said sections 1 to 12, any person detained in custody under that provision shall be entitled as of right to make an application to a competent superior court for the purpose of questioning the validity of his further detention, notwithstanding that he may have previously appealed against his conviction or sentence or that any time prescribed for the filing of such an appeal may have expired.

(9) The Legislature of Southern Rhodesia may make provision with respect to the practice and procedure of the High Court for the purposes of this section and may confer upon that court such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(10) Rules of court making provision with respect to the practice and procedure of the High Court for the purposes of this section may be made by the person or authority for the time being having power to make rules of court with respect to the practice and procedure of that court generally.

Interpretation of Declaration of Rights

16. (1) In this Declaration, save where the context otherwise requires, the following expressions have the following meanings respectively, that is to say—

"African customary law" means the customary law of Africans of a particular race or tribe indigenous to Southern Rhodesia;

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law in Southern Rhodesia other than a court established under a disciplinary law;

"disciplinary law" means a written law providing for the regulation of the discipline—

(*a*) of any disciplined force; or
(*b*) of persons serving prison sentences;

"disciplined force" means—
(*a*) a naval, military or air force; or
(*b*) a police force; or
(*c*) a prison service;

"law" means—
(*a*) any provision of any law passed by the Legislature of Southern Rhodesia;
(*b*) any provision of any instrument having the force of law made in the exercise of a power conferred by that Legislature;
(*c*) any unwritten law in force in Southern Rhodesia other than African customary law,

and "lawful" and "lawfully" shall be construed accordingly;

"member" in relation to a disciplined force, includes any person who, under a written law relating to the discipline of that force, is subject to that discipline;

"parental discipline" includes school or other quasi-parental discipline.

(2) In this Declaration, the expression "period of public emergency" means:

(*a*) any period during which Her Majesty is at war and the period immediately following thereon until such date as may be declared by the Governor by proclamation as the end of the period of public emergency caused by that war; or
(*b*) any period not exceeding three months during which a state of emergency is declared to exist in Southern Rhodesia or in any part thereof by virtue of a proclamation issued in terms of any law for the time being in force relating to emergency powers, the reasons for the issue thereof having been communicated to the Assembly, as soon as possible after such issue, or by virtue of a further proclamation issued on a resolution of the Assembly, in terms of such law; or

(*c*) any period with respect to which the Assembly have passed a resolution declaring such a period to have existed from such date as may be specified in the resolution, which may be a date before that of the passing of the resolution;

and a period of emergency declared by a resolution under paragraph (*c*) of this subsection shall end on the expiration of the period of three months beginning with the date of the passing of the resolution or on such earlier date as may be specified in the resolution, but may be extended from time to time for a further period not exceeding three months, or may be terminated at any time, by a further resolution of the Assembly.

(3) Any proclamation or resolution under subsection (2) of this section declaring a period of public emergency to be terminated and any resolution under that subsection extending such a period may provide for the termination or extension of the period either for all purposes or for such purposes only as may be specified in the proclamation or resolution.