



REPUBLIC
OF
SOUTH AFRICA



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GENERAL NOTICE

NOTICE 797 OF 1997

MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 1997

1. I, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 74(5) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Constitution of the Republic of South Africa Amendment Bill, 1997, for public comment.
2. Comments must please be submitted in writing to:
The Director-General
Attention: Dr P. J. Bouwer
Department of Constitutional Development
Private Bag X804
PRETORIA
0001
3. Comments may also be faxed to facsimile number (012) 44-2200 at the above address.
4. Comments must be received by not later than **17 June 1997**.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to make further provision in relation to the oath sworn or affirmation made by an Acting President; to extend the cut-off date in respect of the granting of amnesty; and to provide for matters connected therewith.

BE IT ENACTED BY the Parliament of the Republic of South Africa, as follows:—

Amendment of section 90 of Act 108 of 1996

1. Section 90 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Before assuming the responsibilities, powers and functions of the President, the Acting President must, subject to paragraph (b), swear or affirm faithfulness to the Republic and obedience to the Constitution, in accordance with Schedule 2.

(b) An oath or affirmation made by an Acting President in terms of paragraph (a) remains valid for any subsequent period during which that person serves in that capacity during the term of office of the President in whose place that person served when the oath or affirmation was made.”

Amendment of Schedule 2 to Act 108 of 1996

2. Schedule 2 to the principal Act is hereby amended by the substitution in item 1, for the introductory words preceding the oath or solemn affirmation, of the following words:

“The President or Acting President, before the President of the Constitutional Court, or, if duly designated by the President of the Constitutional Court, the Deputy President of that Court, or a Judge President of the High Court, must swear/affirm as follows:”.

Amendment of Schedule 6 to Act 108 of 1996

3. Schedule 6 to the principal Act is hereby amended by the addition to item 22 of the following subitem, the existing item becoming subitem (1):

“(2) In the fifth paragraph of the provisions relating to amnesty referred to in subitem (1) the date ‘6 December 1993’ is deemed to be ‘11 May 1994’.”.

Short title and commencement

4. This Act is called the Constitution of the Republic of South Africa Amendment Act, 1997, and is deemed to have come into operation on 4 February 1997.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL

On 13 December 1996, the President announced that the cut-off date for amnesty is to be extended to 10 May 1994, and that he will approach Parliament to effect the necessary legislative amendments. The Bill seeks to provide for the extension of the cut-off date in respect of amnesty.

Section 90(3) of the Constitution, read with item 1 of Schedule 2 thereto, requires the President of the Constitutional Court to administer the oath or solemn affirmation of an Acting President to any person designated as an Acting President each and every time such person is so designated. The Chief State Law Adviser and the President of the Constitutional Court hold the view that because of these provisions—

- (a) the President of the Constitutional Court cannot designate another judicial officer to administer the oath or solemn affirmation;
- (b) the Acting President must appear personally before, or be in the presence of the President of the Constitutional Court when the oath or solemn affirmation is administered; and
- (c) an oath or solemn affirmation previously taken or made by an Acting President is not valid for a subsequent designation.

The practical difficulties in the implementation of these provisions are substantial, and in some cases insurmountable. In the case where the President of the Constitutional Court leaves the country and the President is required to attend urgently to matters outside the country, it is not possible to appoint an Acting President unless the President of the Constitutional Court returns to South Africa simply to administer the oath or solemn affirmation. Such a case has recently arisen. In addition, where it is frequently necessary to appoint an Acting President because of the President's international schedule, it is required that the President of the Constitutional Court personally attend to the administration of the oath or solemn affirmation at the place where the person designated as Acting President is — very often at short notice. These problems are compounded when the Deputy President is also obliged to pursue a busy international schedule.

Unless an appropriate amendment is made there is a risk that it might be impossible to swear the Acting President in. This might affect the validity of the exercise of formal powers by the Acting President during the absence, however temporary, of the President.

Clause 1 of the Bill seeks to provide for the continued validity of an oath sworn or affirmation made by an Acting President during subsequent terms as such.

Clause 2 of the Bill seeks to make it possible for the President of the Constitutional Court to designate the Deputy President of that Court, or a Judge President of the High Court, to administer the oath or solemn affirmation if the President of the Constitutional Court is unable to do so.

Clause 3 of the Bill seeks to extend the cut-off date for amnesty to a date before 11 May 1994 in order to accommodate the extension of the date to 10 May 1994.

The amendments to the Constitution effecting an extension of the cut-off date for amnesty and making further provision in relation to the oath sworn or affirmation made by an Acting President, do not relate to a matter that affects the National Council of Provinces, alters provincial boundaries, powers, functions or institutions; nor do they amend a provision that deals specifically with a provincial matter. Consequently, the Department of Constitutional Development and the State Law Advisers hold the view that the legislative procedure established by section 74(3)(a) of the Constitution has to be followed, and that the Bill is only to be passed by the National Assembly.

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