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13 July 1949

GENERAL ASSEMBLY

ORIGINAL: ENGLISH

QUESTION OF SOUTH WEST AFRICA

Letter dated 11 July 1949, from Mr. J. R. Jordaan,
Deputy Permanent Representative of the Union of South Africa,
to the Secretary-General

New York, 11 July 1949.

I have the honour to inform you, by direction, that the Government of the Union of South Africa have taken due note of the resolution on the question of South West Africa (227 (III)) adopted by the United Nations General Assembly on 26 November 1948, in which the General Assembly inter alia maintains its previous recommendations regarding the placing of South West Africa under the Trusteeship System and recommends that the Union of South Africa, until agreement is reached with the United Nations regarding the future of South West Africa, should continue to supply annual information on its administration of the Territory.

At three regular sessions of the General Assembly the Union Government, acting both on their own behalf (as the authority responsible for the administration of the Territory), and on behalf of the peoples of South West Africa, have elaborated their views on the placing of South West Africa under the Trusteeship System, and have fully explained the reasons for their inability to comply with the recommendations of the General Assembly. There is therefore no need in the present communication to add anything to what has been said on this subject at successive Assembly sessions, but the Union Government desire again to express their regret that it has not been possible to achieve an understanding in the United Nations of the unique nature of the circumstances necessarily governing South West Africa's relationship with the Union.

The General Assembly, in its resolution under reference, took note of the statements by the South African delegate that it is the intention of the Union Government to continue to administer South West Africa in the spirit of the mandate and that the new arrangement for closer association of South West Africa with the Union of South Africa does not mean incorporation or absorption of the Territory by the Administering Authority. The Union Government hereby reaffirm these assurances in the terms in which they were stated by their representative.

/The recommendation

The recommendation of the General Assembly that the Union should continue to supply information on its administration of South West Africa has been given most careful consideration.

It will be recalled, however, that the Union Government have at no time recognized any legal obligations on their part to supply information on South West Africa to the United Nations, but in a spirit of good-will, co-operation and helpfulness offered to provide the United Nations with reports on the administration of South West Africa, with the clear stipulation that this would be done on a voluntary basis, for purposes of information only and on the distinct understanding that the United Nations has no supervisory jurisdiction in South West Africa. In this spirit a report was submitted in 1947, and in 1948 detailed replies were furnished to a subsequent questionnaire formulated by the Trusteeship Council. It was emphasized at the time that the forwarding of information on policy should not be regarded as creating a precedent, or construed as a commitment for the future or as implying any measure of accountability to the United Nations on the part of the Union Government. The Union Government also expressed their confidence that the Trusteeship Council would approach its task in an entirely objective manner and examine the report in the same spirit of goodwill, co-operation and helpfulness as had motivated the Union in making the information available.

These hopes have not been realized. Instead, the submission of information has provided an opportunity to utilize the Trusteeship Council and the Trusteeship Committee as a forum for unjustified criticism and censure of the Union Government's administration, not only in South West Africa but in the Union as well. Inferences and deductions have been drawn from the information submitted which are quite inconsistent with facts and realities. The misunderstandings and accusations to which the United Nations discussions of this subject have given rise have had repercussions both in the Union and in South West Africa, with deleterious effects on the maintenance of the harmonious relations which have hitherto existed and are so essential to successful administration. Furthermore, the very act of submitting a report has created in the minds of a number of members of the United Nations an impression that the Trusteeship Council is competent to make recommendations on matters of internal administration of South West Africa and has fostered other misconceptions regarding the status of this Territory.

In these circumstances the Union Government can no longer see that any real benefit is to be derived from the submission of special reports on South West Africa to the United Nations, and have regretfully come to the

/conclusion

conclusion that in the interests of efficient administration, no further reports should be forwarded. In coming to this decision the Union Government are in no way motivated by a desire to withhold from the world factual and other information regarding South West Africa published in accordance with the customary practice of democratic nations, and information of this nature previously embodied in annual reports to the League of Nations or the United Nations will continue to be made available to the general public in the form of statistics, departmental reports, reports by the Administrator to the South West African Legislature, blue books, and other governmental publications.

In accordance with an assurance given by the Prime Minister in the Union Parliament, I am directed to transmit herewith to the United Nations, for information only, a copy of the South West Africa Affairs Amendment Act No. 23 of 1949, together with a summary of its provisions. This Act introduces certain changes in the form of association between South West Africa and the Union of South Africa. In particular, it will be noted from the summary that under the new form of association, which is entirely consonant with the spirit of the mandate, no greater powers are devolved upon the Union Government in respect of South West Africa than were accorded under the terms of the original mandate, but on the other hand certain powers previously exercised by the Union Government are now to be exercised by the Legislature of South West Africa, which thus exercises a considerably greater measure of self-government than is enjoyed by a Province of the Union.

(Signed) J. R. JORDAAN
Deputy Permanent Representative

ANNEX 1

Text of the South West Africa Affairs Amendment Act, 1949

ACT

To provide for the amendment of the South West Africa Constitution Act, 1925, for the representation of the Territory of South West Africa in the Parliament of the Union and for matters incidental thereto.

(English Text signed by the Governor-General.) (Assented to 19 April 1949)

ARRANGEMENT OF SECTIONS

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

PRELIMINARY

1. In this Act:

"the Territory" means the Territory of South West Africa, and includes the port and settlement of Walvis Bay;

"principal Act" means the South West Africa Constitution Act, 1925 (Act No. 42 of 1925).

CHAPTER I

Amendment of the South West Africa Constitution Act, 1925

2. Section one of the principal Act is hereby amended:

(a) by the deletion in sub-section (1) of the words "an Advisory Council";

(b) by the deletion in sub-section (2) of the words "the said Advisory Council (hereinafter referred to as the Council)".

3. The following section is hereby inserted in the principal Act after section one:

"Appoint- 1bis. (1) An Administrator shall be appointed for the Territory
ment of by the Governor-General, who shall be the chief executive officer;
Adminis- and all executive acts relating to the affairs of the Territory
trator shall be carried out therein in his name.

(2) In the appointment of the Administrator of the Territory, the Governor-General shall, as far as practicable, give preference to persons who reside or have resided in the Territory, and have

/special

special knowledge of the circumstances prevailing therein.

(3) Such administrator shall hold office for a term of five years and shall not be removed before the expiration thereof except by the Governor-General for cause assigned, which shall be communicated by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or, if Parliament be not sitting, then within one week after the commencement of the next ensuing session.

(4) The Governor-General may appoint a deputy administrator to execute the office and functions of the administrator during his absence, illness, or other inability, or to act as administrator while the office is temporarily vacant.

(5) The person holding the office of Administrator at the date of commencement of the South West Africa Affairs Amendment Act, 1949, shall be deemed to have been appointed in terms of the provisions of this section."

4. Section two of the principal Act is hereby amended:

- (a) by the deletion in sub-section (1) of the words "appointed by the Governor-General" and the words "elective members of";
- (b) by the deletion of the word "or" after paragraph (d) of sub-section (4);
- (c) by the deletion of paragraph (e) of sub-section (4); and
- (d) by the deletion in the proviso to sub-section (4) of the expression "(d) or (e)" and the substitution therefor of the expression "or (d)".

5. Section seven of the principal Act is hereby repealed and the following new section substituted therefor:

"Powers
of Admin-
istrator

7. (1) Subject to the direction and control of the Governor-General, the Administrator shall carry on the administration of the affairs of the Territory in regard to all matters in respect of which the Assembly is not competent to make ordinances.

(2) It shall be competent for the elected members of the Executive Committee to advise the Administrator in respect of his administrative duties under sub-section (1), including:

- (a) matters of general policy;
- (b) his assent to an Ordinance passed by the Assembly or its reservation for the signification of the pleasure of the Governor-General; and
- (c) any other matter upon which their advice may be requested by the Administrator."

/6. Sections eight,

6. Sections eight, nine, ten and eleven of the principal Act are hereby repealed.

7. Section twelve of the principal Act is hereby repealed and the following new section substituted therefor:

- "Delimitation of Electoral Divisions
12. (1) As soon as possible after the date of commencement of the South West Africa Affairs Amendment Act, 1949, the Governor-General shall appoint three persons, being two judges of the Supreme Court of South Africa and a judge of the High Court of South West Africa, to be commissioners for the purpose of dividing the Territory into electoral divisions for the election of members of the Assembly, and members of the House of Assembly of Parliament.
- (2) The Commissioners shall divide the Territory into eighteen electoral divisions each electing one member to the Assembly, and six electoral divisions (consisting in each case of three of the aforesaid electoral divisions) each electing one member to the House of Assembly of Parliament, and shall divide it in such a manner that there will be, as far as possible, an equal number of voters in each such division (hereinafter referred to as the quota), due consideration being given by the Commissioners to community or diversity of interests, means of communication, physical features, and sparsity or density of population in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.
- (3) The Commissioners shall, when they have completed the duties so entrusted to them, submit to the Governor-General:
- (a) a list of the electoral divisions into which they have divided the Territory together with the name given by them to, and a description of the boundaries of, each such division;
 - (b) a map of the territory showing those boundaries; and
 - (c) such further particulars in relation thereto as they consider necessary.
- (4) The Governor-General may refer to the Commissioners for their consideration any matter relating to such list of electoral divisions or arising out of the duties aforesaid of the Commissioners.
- (5) The Commissioners shall have the powers and jurisdiction of the High Court of the Territory in relation to the summoning of

/witnesses

witnesses, the production of documents and the administration of oaths to witnesses, and the punishment of persons who disregard any summons to appear before them.

(6) The Governor-General shall publish in the Gazette and in the Official Gazette of the Territory the names and the boundaries of the electoral divisions as finally settled.

(7) Whenever a delimitation of electoral divisions is required to be made in the Union, in terms of sub-section (2) of section forty-one of the South Africa Act, 1909 (save and except the delimitation that is required to take place in the year 1951), the Governor-General shall proceed again to appoint commissioners as in terms of sub-section (1), and such commissioners shall then act in terms of the preceding provisions of this section."

8. Section thirteen of the principal Act is hereby repealed and the following new section substituted therefor:

"Composi- 13. The Assembly shall consist of eighteen members chosen by
tion of
Legislat- duly registered voters of the Territory voting at elections held
ive in accordance with the provisions of the Electoral Consolidation
Assembly Act, 1946 (Act No. 46 of 1946), as applied by section thirty-four
of the South West Africa Affairs Amendment Act, 1949, in electoral
divisions delimited in accordance with section twelve hereof."

9. Section fourteen of the principal Act is hereby repealed and the following new section substituted therefor:

"Duration 14. The Assembly shall continue for a period of five years from
of Assem- the date of its first meeting after each general election, and
bly shall not be subject to dissolution save by effluxion of time."

10. Sections fifteen and sixteen of the principal Act are hereby repealed.

11. Section seventeen of the principal Act is hereby amended:

(a) by the substitution for sub-section (1) of the following new sub-section:

"(1) Any person who is qualified to be registered as a voter in the Territory as by law prescribed shall be qualified to be chosen as a member of the Assembly provided he is not subject to any of the disqualifications specified in sub-section (2).";

(b) by the deletion in sub-section (2) of the words "appointed as a nominated member or chosen as an elective member, or if so appointed or elected", and the substitutions therefor of the words "chosen as a member or if chosen" and by the deletion in paragraph (d) of the said sub-section of the words "or of the Council";

(c) by the deletion of sub-section (3).

/12. Section eighteen

12. Section eighteen of the principal Act is hereby amended:

- (a) by the deletion in sub-section (1) of the words "An elective" and the substitution therefor of the word "A";
- (b) by the deletion of sub-section (2).

13. Section twenty of the principal Act is hereby repealed and the following new section substituted therefor:

"Oath to 20. No member of the Assembly shall sit or vote therein until
be taken he has taken and subscribed before the Administrator or such other
by mem- person as the Administrator may appoint for the purpose the
bers of Assembly following oath or affirmation:

'I, A.B. _____ do swear

solemnly and sincerely affirm and declare
that I will be faithful and bear true allegiance to His
(or Her) Majesty King (or Queen) (here insert the name
of the King or Queen for the time being) His (or Her)
heirs and successors according to law.

(In the case of an oath)

So help me God.'."

14. Section twenty-one of the principal Act is hereby amended by the deletion in sub-section (1) of the words "or dissolution".

15. Section twenty-two of the principal Act is hereby amended by the deletion in sub-section (4) of the word "Dutch" and the substitution therefor of the word "Afrikaans".

16. Section twenty-six of the principal Act is hereby amended:

- (a) by the deletion of paragraph (b) and the substitution therefor of the following new paragraph:

"(b) civil aviation";

- (b) by the insertion after the word "organization" in paragraph (g) of the words "or police force".

17. Section twenty-seven of the principal Act is hereby repealed.

18. Section twenty-eight of the principal Act is hereby amended by the addition of the following sub-sections as sub-sections (2) and (3), the present section becoming sub-section (1):

"(2) No Act of Parliament which imposes a tax, duty, charge or burden upon the people of the Union shall be of force in the Territory, but this provision shall be without prejudice to the provisions of section eight of the Excise Act, 1942 (Act No. 45 of 1942), and section one hundred and fifty-four of the Customs Act, 1944 (Act No. 35 of 1944), and to the right to continue to apply to the Territory the laws of the Union relating to customs and excise.

/ (3) Notwithstanding

(3) Notwithstanding the provisions of section forty-four, the provisions of this sub-section or of the preceding sub-section shall not be amended, modified or repealed except with the consent of the Assembly embodied in a resolution communicated to Parliament by message from the Governor-General."

19. Section twenty-nine of the principal Act is hereby repealed and the following new section substituted therefor:

"Assembly 29. (1) The Assembly may, by resolution, recommend to Parliament the enactment of a law, or the amending or repealing of any law, relating to any matter in respect of which it is not competent to make ordinances.
(2) The Assembly may further advise the Administrator in relation to such matters as the Administrator may refer to it for the expression of its views."
may advise
Adminis-
trator

20. Section thirty-seven of the principal Act is hereby amended by the deletion of the word "Council" and the substitution therefor of the words "elected members of the Executive Committee."

21. Section thirty-eight of the principal Act is hereby repealed.

22. Section forty-four of the principal Act is hereby repealed and the following new section substituted therefor:

"Saving 44. (1) Nothing in this Act contained shall be construed as as to in any manner abolishing, diminishing or derogating from those right of Union to full powers of administration and legislation over the Territory as an integral portion of the Union which have administer and legislate hitherto been vested in the Union.

(2) The said full powers of administration are hereby expressly reserved to the Governor-General and may be exercised by himself or delegated by him to be exercised by the Administrator of the Territory.

(3) As from the date proclaimed for the purpose under the South West Africa Affairs Amendment Act, 1949, the provisions of the Treaty of Peace and South West Africa Mandate Act, 1919, shall be modified to this extent that the powers of legislation granted to the Governor-General thereunder shall be abrogated, so that, save as provided in section twenty-six, thereafter only Parliament shall have the power to legislate for the Territory in regard to those matters on which the Assembly is not competent to legislate.

/((4) Notwithstanding

(4) Notwithstanding the provisions of any other law Parliament may by Act override any Ordinance made by the Assembly.

(5) Notwithstanding anything to the contrary contained in the Interpretation Act, 1910 (Act No. 5 of 1910), an Act of Parliament which is expressed to apply to the Territory shall not have the force of law in the Territory until it has been published in the Official Gazette of the Territory.

(6) An ordinance made by the Assembly shall, though promulgated, have effect in and for the Territory so long and as far only as it is not repugnant to or inconsistent with an Act of Parliament applicable to the Territory."

23. Section forty-five of the principal Act is hereby repealed.

24. The Schedule to the principal Act is hereby repealed.

25. The Preamble to the principal Act is hereby repealed.

26. The long title of the principal Act is hereby amended by the deletion of the words "an Advisory Council", "mandated", and "Council".

CHAPTER II

Representation of the Territory of South West Africa in the Parliament of the Union

27. (1) The Territory shall be represented in the House of Assembly by six members to be elected in accordance with the provisions of this Act.

(2) The members of the House of Assembly to be elected under this Act:

(a) shall be elected in addition to the members of the House of Assembly for the election of whom provision is made by the South Africa Act, 1909, and the Representation of Natives Act, 1936 (Act No. 12 of 1936);

(b) shall have all the rights, powers, privileges and immunities which members of the House of Assembly elected under the South Africa Act, 1909, have and shall be subject to all the duties and obligations to which such members are subject.

28. The members of the House of Assembly to be elected under this Act shall be chosen by the duly registered voters of the Territory for the electoral divisions delimited for the purpose under section twelve of the principal Act.

29. The qualifications of a member of the House of Assembly to be elected under this Act shall be as follows:

(a) He must be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces, or in the Territory;

(b) he must have resided for five years in the Union or the Territory;

(c) he must be a Union National of European descent.

30. (1) The Territory shall be represented in the Senate by four senators, two of whom shall be nominated by the Governor-General, and the other two elected as hereinafter provided.

(2) One of the senators to be nominated shall be selected mainly on the ground of his thorough acquaintance, by reason of his official experience or otherwise, with the reasonable wants and wishes of the coloured races of the Territory.

(3) Save as provided in sub-section (6) a nominated senator shall hold his seat for ten years and if his seat shall become vacant, the Governor-General shall nominate another person to be a senator, who shall also hold his seat for ten years.

(4) (a) The elective senators shall be chosen by the members of the Legislative Assembly of the Territory together with the members of the House of Assembly elected for the Territory.

(b) Whenever such an election is contested it shall be conducted according to the principles of proportional representation, each voter having one transferable vote.

(c) The Governor-General may make regulations prescribing the method of voting and of transferring and counting votes, and the duties of the returning officer in connection with any such election, and such regulations shall have the same force and effect as if they were in this Act set forth.

(5) A senator elected in terms of sub-section (4) shall hold his seat for ten years unless the Senate be sooner dissolved, and if the seat of an elected senator shall become vacant, a person shall be chosen, in accordance with the provisions of the said sub-section, to hold the seat until the completion of the period for which the person in whose stead he is elected would have held his seat.

(6) The senators nominated or elected under this Act:

(a) shall be in addition to the senators for the nomination or election of whom provision is made by the South Africa Act, 1909, and the Representation of Natives Act, 1936;

(b) shall have all the rights, powers, privileges and immunities which senators nominated or elected under the South Africa Act, 1909, have, and shall be subject to all the duties and obligations to which such senators are subject;

(c) shall be subject to the provisions of the Senate Act, 1926 (Act No. 54 of 1926).

31. The qualifications of a senator to be nominated or elected under this Act shall be as follows:

/(a) He must be

- (a) He must be not less than thirty years of age;
- (b) he must be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces or in the territory;
- (c) he must have resided for five years in the Union or the Territory;
- (d) he must be a Union national of European descent;
- (e) in the case of an elected senator, he must be the registered owner of immovable property within the Union or the Territory of the value of not less than five hundred pounds over and above any special mortgage thereon.

32. The provisions of sections fifty-one to fifty-six inclusive of the South Africa Act, 1909, shall apply to every senator and every member of the House of Assembly who is nominated or elected, as the case may be, under the provisions of the Act: Provided that for the purpose of such application:

- (a) any person holding an office of profit under the Administration of the Territory, shall be deemed to be holding an office of profit under the Crown within the Union;
- (b) the High Court of South West Africa shall be deemed to be a Superior Court of the Union.

33. A member of the Legislative Assembly of the Territory who shall become a member of either House of Parliament under this Act shall thereupon cease to be a member of ~~that~~ Assembly.

CHAPTER III

Miscellaneous

34. The Electoral Consolidation Act, 1946 (Act No. 46 of 1946), as amended, and as it may be amended from time to time, together with any regulations promulgated thereunder, shall mutatis mutandis be in force in the Territory: Provided that for the purposes of the application of the said Act:

- (a) any reference to a province of the Union shall be construed as a reference to the Territory and a reference to the Union shall be construed as including thereby a reference to the Territory;
- (b) any reference to a provincial council of the Union shall be construed as a reference to the Legislative Assembly of the Territory;
- (c) any reference to a provincial division of the Supreme Court shall be construed as a reference to the High Court of South West Africa;
- (d) any reference to a provincial revenue fund shall be construed as a reference to the Territory revenue fund;
- (e) the date mentioned in sections eight and nine shall be, instead of the first day of May 1946, a day to be fixed by the Governor-General by proclamation in the Gazette;

/(f) the provisions

(f) the provisions of section twenty-seven shall apply in regard to a new delimitation in terms of section twelve of the principal Act.

35. (1) As soon as practicable after the promulgation of this Act the Governor-General shall issue a proclamation declaring that the Advisory Council of the Territory shall be abolished and that the Legislative Assembly of the Territory shall be dissolved, and until such proclamation is issued the said Advisory Council and Legislative Assembly shall continue to carry out their functions as if this Act had not been passed.

(2) After the said proclamation has been issued:

(a) the Governor-General shall proceed to act under section thirty-five of the Electoral Consolidation Act, 1946, for the purpose of carrying out the election of members of the House of Assembly authorized to be elected to represent the Territory in terms of this Act as if a general election for the House of Assembly were taking place;

(b) the Administrator of the Territory shall proceed to act under the said section for the purpose of carrying out the first election of the Legislative Assembly as constituted under the provisions of this Act.

(3) As soon as practicable after the senators and the members of the House of Assembly authorized to be nominated and elected to represent the Territory under this Act have been so nominated or elected, as the case may be, the Governor-General shall issue a proclamation declaring that the provisions of sub-section (3) of section forty-four of the principal Act, as introduced by section twenty-two of this Act, shall be of force and effect.

36. Sections six and seven of the South West Africa Constitution Act, 1925, Further Amendment Act, 1931 (Act No. 38 of 1931), are hereby repealed.

37. This Act shall be called the South West Africa Affairs Amendment Act, 1949, and, save as provided in section thirty-five shall come into force on the date of promulgation.

ANNEX 2

Explanation of the provisions of the South West Africa
Affairs Amendment Act, 1949

The South West Africa Affairs Amendment Act, introduced in the House of Assembly by the Prime Minister, was read a first time on 7 February and was promulgated on 22 April 1949. The following are the main provisions of the Act:

The Act gives South West Africa six representatives in the Union House of Assembly all of whom will be elected and four in the Senate, two of whom will be elected and the other two nominated by the Governor-General. One of the nominated senators will be selected mainly on the ground of his thorough acquaintance, by reason of his official experience or otherwise, with the reasonable wants and wishes of the Coloured races of the Territory.

The South West Africa Legislative Assembly in terms of the Act, will consist of eighteen members elected by the registered voters of the Territory. At present the Assembly has twelve elected members and six nominated members.

The Legislative Assembly is to be dissolved as soon as practicable after the Act becomes law and a new Assembly elected in terms of the Act. It will continue for five years from the date of its first meeting after each general election and will not be subject to dissolution save by effluxion of time.

The existing Advisory Council is to be abolished as from the date the Legislative Assembly is dissolved.

As far as is practicable, the Governor-General in appointing an Administrator for South West Africa, will give preference to persons who live or have lived there and have special knowledge of the Territory.

South West Africa will not come under the Union's taxation system. The Act specifically provides that no act of the Union Parliament, other than the laws relating to customs and excise, which imposes a tax, duty, charge or burden on the people of the Union shall be of force in the Territory. South West African representatives in the Union Parliament, will, however, have all the rights, powers, privileges and immunities of other members of Parliament. The position will thus be created that while the representatives of South West Africa in the Union Parliament have both a voice and vote on measures imposing taxation on the people of the Union, the Union members of Parliament have no say in regard to the taxation of the people of South West Africa.

/The provision

The provision that taxes imposed by the Union Parliament will not apply to South West Africa may not be amended, modified or repealed except with the consent of the South West Africa Legislative Assembly embodied in a resolution communicated to the Union Parliament by a message from the Governor-General.

The following matters are reserved from legislation by the South West Africa Legislative Assembly but provision exists in terms whereof the Assembly may make Ordinances on these matters subject to the consent of the Governor-General previously having been obtained:

- (a) Native affairs or any matters specially affecting Natives, including the imposition of taxation upon the person's land, habitations or earnings of Natives. Whenever any Ordinance of the Assembly imposes taxation upon persons, lands, habitations, or incomes or earnings generally, natives and their lands, habitations and earnings shall be exempt from its provisions;
- (b) Civil aviation;
- (c) The acquisition, construction, management, regulation, control and working of railways and harbours in the Territory; and the organization, discipline and conditions of employment of and the payment of pensions, retiring allowances and financial benefits to persons in the employment of the railways and harbours administration;
- (d) The organization of and discipline and conditions of employment of persons in the public service, who are serving in the Territory and the payment of pensions, retiring allowances and financial benefits to such persons;
- (e) The constitution and jurisdiction of courts of justice, whether superior or inferior, and the practice or procedure to be observed therein;
- (f) The administration, management and working of the postal, telegraph and telephone services;
- (g) The establishment or control of any military organization or police force in the Territory;
- (h) The movements or operations of any unit of the South African Defence Forces within the Territory;
- (i) The entry of immigrants into the Territory or of other persons;
- (j) Tariff of customs and excise duties and the control and management of customs and excise;
- (k) Currency and banking and the control of banking institutions;

The South West Africa Legislative Assembly is empowered to recommend to the Union Parliament the enactment of a law, or the amending or repealing of any law, relating to any matter in respect of which it is not competent to make Ordinances.

The Assembly may also advise the Administrator in relation to such matters as the Administrator may refer to it for the expression of its views.

The Act declares that nothing contained in it shall be construed as in any manner abolishing, diminishing or derogating from the full powers of administration and legislation over the Territory as an integral part of the Union which have hitherto been vested in the Union.

As from the date when the Act becomes law the provisions of the Treaty of Peace and South West Africa Mandate Act of 1919 will be modified to the extent that the powers of legislation granted to the Governor-General will be abrogated. (He will retain his administrative powers.) Thereafter, except when the Assembly with the prior consent of the Governor-General is empowered to make an Ordinance on a reserved matter, only the Union Parliament will have the power to legislate for the Territory on matters on which the Legislative Assembly is not competent to legislate, or for the purpose of over-riding the provisions of any Ordinance made by the Assembly.

An Ordinance made by the Legislative Assembly shall, though promulgated, have effect in and for the Territory so long as and as far only as it is not repugnant to or inconsistent with an Act of Parliament applicable to the Territory.

The members of the Union House of Assembly to be elected under the Act will be chosen by the duly registered voters of the Territory for the electoral divisions delimited for the purpose under the South West Africa Constitution Act.

A member of the House of Assembly to be elected under the Act must:

- (a) Be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces, or in the Territory;
- (b) Have resided for five years in the Union or the Territory;
- (c) Be a Union national of European descent.

A nominated senator will hold his seat for ten years. If his seat becomes vacant, the Governor-General will nominate another person to be senator, who will also hold his seat for ten years.

/The elected

The elected senators will be chosen by the members of the Legislative Assembly of the Territory together with the members of the House of Assembly, according to the principles of proportional representation as is the case with elected senators in the Union. An elected senator will hold his seat for ten years unless the Senate is sooner dissolved. If the seat of an elected senator becomes vacant, another may be elected for the unexpired part of the ten years.

A senator to be nominated or elected must:

- (a) Be not less than thirty years of age;
- (b) Be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces or in the Territory;
- (c) Have resided for five years in the Union or the Territory;
- (d) Be a Union national of European descent;
- (e) In the case of an elected senator, he must be the registered owner of immovable property within the Union or the Territory to the value of not less than five hundred pounds over and above any special mortgage thereon.

The Electoral Consolidation Act of 1946 as amended will apply to South West Africa. For this purpose a reference to a province of the Union, a provincial council, a provincial division of the Supreme Court or a provincial revenue fund shall be construed as a reference to the Territory, the Legislative Assembly of the Territory, the High Court of South West Africa and the Territory revenue fund, respectively.

The constituencies will be divided in such a manner that there will be, as far as possible, an equal number of voters in each division, due consideration being given by the commissioners to community or diversity of interests, means of communication, physical features, and sparsity or density of population in such manner that, while taking the quota of voters as the basis of division, the Commissioners may, whenever they deem it necessary, depart therefrom, but in no case to any greater extent than fifteen per centum more or fifteen per centum less than the quota.

The Act, requires members of the South West Legislative Assembly, before taking their seats, to take or subscribe to the oath of allegiance before the Administrator or his deputy.

In effect the Act gives the Territory of South West Africa representation in the Union Parliament without in any way curtailing its existing powers of self-government or interfering with its fiscal autonomy. In fact the following matters which were formerly temporarily reserved from legislation by the Legislative Assembly of the Territory have now been added to the subjects in respect of which it is competent

/to make

to make ordinances:

- (1) Primary or secondary education in schools supported or aided from the revenues of the Territory;
- (2) The establishment, management or control of any land or agricultural bank in the Territory; and
- (3) The allotment, sale, lease or disposal of Government lands in the territory.

Furthermore, the Legislative Assembly is now competent to make ordinances on the subjects of mines, minerals, mineral oils and precious stones which were previously permanently reserved from its jurisdiction.

Thus so far from conferring additional powers on the Union Government, the Act provides that certain powers, previously exercised by the Union Government, should now be exercised by the South West Africa Legislature. The position regarding Native interests will, however, remain unaltered. The arrangement will continue under which it is not competent for the South West Africa Legislature to make any ordinance on Native Affairs or any matters specially affecting Natives, including the imposition of taxation upon the persons, land, habitations, or earnings of Natives. The obligations of the Union Government vis-a-vis the Natives, which derive from the mandate and are embodied in the original Act, thus remain in full force.
