



ANGLO-RHODESIAN RELATIONS

Rhodesians Worldwide

PROPOSALS FOR A SETTLEMENT

Presented to Parliament
by the Prime Minister
on 25th November, 1971

PREFACE

In November 1970 contacts between the British and Rhodesian Governments, which had been in suspense since 1969, were resumed with a view to finding a settlement of the constitutional dispute between them. These contacts were initiated and conducted through an exchange of correspondence between the Secretary of State for Foreign and Commonwealth Affairs, Sir Alec Douglas-Home, and the Prime Minister of Rhodesia, Mr. I. D. Smith.

As a result of the progress made through this correspondence it was agreed that sufficient understanding had been reached to justify the commencement of preliminary talks between teams of British and Rhodesian emissaries. The first series of talks was held in Salisbury between the 3rd and the 5th April, 1971. Further talks between these emissaries were held at various times throughout the year and, as a result, the way was paved for full-scale negotiations between Sir Alec Douglas-Home and Mr. Smith. These commenced in Salisbury on the 15th November, 1971.

At the conclusion of the negotiations agreement was reached on proposals designed to bring to an end the constitutional dispute between the two countries. The document containing these proposals was signed by Mr. Smith and Sir Alec Douglas-Home on the 24th November, 1971.

The text of this document follows:

APPENDIX IV

TERMS OF REFERENCE OF THE INDEPENDENT COMMISSION TO EXAMINE THE QUESTION OF RACIAL DISCRIMINATION

1. The Commission will carry out an examination of all aspects of the question of racial discrimination in Rhodesia. The Commission will review all existing laws (including subsidiary legislation and the administrative practices thereunder) to determine which such provisions or practices are, in its opinion, discriminatory. The Commission may receive evidence from any relevant source and the Government of Rhodesia will ensure that its officials will co-operate fully with the Commission in this respect.
2. The Commission will make recommendations to the Rhodesian Government on ways of making progress towards the ending of any racial discrimination and its Report will be published.
3. The Commission is required to give special attention to the provisions of the Land Tenure Act. The Commission shall consider *inter alia*—
 - (a) the question of removing any restrictions on the entry into European Areas of Africans wishing to attend multi-racial places of education or to be admitted to multi-racial hospitals, and any other restrictions on occupation;
 - (b) the question of removing any restrictions on the right of an African member of the professions to practise in an European area;
 - (c) in the light of the national interest, the question of the equitable allocation of land in relation to the needs of the respective sections of the population; and
 - (d) the possible creation of an independent and permanent multi-racial land board to preside over the long-term resolution of the problems involved.

"Minister" means a Minister of the Government appointed in terms of section *fifty-five*;

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

"period of public emergency" means—

- (a) any period during which Rhodesia is engaged in any war and the period immediately following thereon until such date as may be declared by the President by proclamation as the end of the period of public emergency caused by that war; or
- (b) any period during which there is in force a declaration under section *sixty-one* declaring that a state of public emergency exists;

"tribal court" means a tribal court or tribal appeal court constituted by or under a written law.

PROPOSALS FOR A SETTLEMENT

I. THE TEST OF ACCEPTABILITY

The proposals set out below are conditional upon the British Government being satisfied that they are acceptable to the people of Rhodesia as a whole. The British Government will therefore appoint a Commission to ascertain directly from all sections of the population of Rhodesia whether or not these proposals are acceptable and to report accordingly to the British Government. It will consist of a Chairman, Deputy Chairmen and a number of Commissioners. The report will be signed by the Chairman and the Deputy Chairmen. The members of the Commission will travel extensively throughout the country visiting in particular all centres of population, local councils and traditional meeting places in the Tribal Trust Lands.

In the period before and during the test of acceptability normal political activities will be permitted to the satisfaction of the Commission, provided they are conducted in a peaceful and democratic manner. Radio and television time will be made available to political parties represented in the House of Assembly.

The Commission will carry out its inquiries in public or in private as it deems appropriate. There will be immunity for witnesses heard by the Commission in respect of their evidence and freedom for persons resident in Rhodesia, whatever their political views or affiliations, to enable them to appear before the Commission. All Rhodesian Government employees will be permitted to express their views to the Commission. Persons in detention or under restriction will be similarly permitted. Arrangements will be made in London and elsewhere as necessary for Rhodesians resident abroad to submit their views to the Commission.

The Rhodesian Government will provide the Commission with such assistance as may reasonably be required to enable them to carry out their functions.

II. THE CONSTITUTION

The Constitution of Rhodesia will be the Constitution adopted in Rhodesia in 1969 modified in the following respects. The Rhodesian Government will introduce legislation to make the necessary modifications in the Constitution and related electoral legislation with effect from the date on which independence is conferred by the British Parliament.

(1) *The House of Assembly*

- (a) The existing provisions governing the increase of African representation in the House will be repealed and replaced by provisions to give effect to the arrangements set out in the following subparagraphs.
- (b) A new roll of African voters (the African higher roll) will be created with the same qualifications as those for the roll of European voters. The relevant means and educational qualifications are set out in Appendix I.
- (c) Additional African seats will be created in accordance with the arrangements set out in the following subparagraphs, with effect from the dissolution of Parliament following the date on which it is established that any such seats are due. The seats will be filled at the general election consequent upon the dissolution of Parliament. However, the first four additional seats will be created and elections held to fill them as soon as it is established that they are due.
- (d) When the number of voters registered on the African higher roll equals 6 per cent. of the number of voters then registered on the European roll, two additional African seats will become due; when the number of voters registered on the African higher roll equals 12 per cent. of the number of voters then registered on the European roll, a further two additional African seats will become due; further additional African seats will become due, two at a time, for each such proportionate increase of 6 per cent. in the number of voters registered on the African higher roll, until 34 additional African seats have been created, thus resulting in parity in the numbers of African and European members in the House of Assembly. This arrangement will ensure that at parity there are approximately equal numbers of voters on the African higher and European rolls.
- (e) The first two additional African seats will be filled by direct election for single-member constituencies by the voters registered on the African higher roll and the next two will be filled by indirect election by electoral colleges on the same basis as the existing eight African seats filled by indirect election. This sequence will be repeated in relation to subsequent additional African seats.
- (f) For the purpose of giving effect to the above arrangement the Registrar-General of Voters will review the number of voters registered on the African higher roll and

“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 Rhodesia, including a tribal court but not including a court established under a disciplinary law;

“disciplinary law” means a law providing for the regulation of the discipline—

- (a) of any disciplined force; or
- (b) of persons in prison awaiting trial or serving prison sentences; or
- (c) of persons whose detention has been authorized in terms of a law;

“disciplined force” means—

- (a) a naval, military or air force; or
- (b) a police force; or
- (c) a prison service; or
- (d) any other body established for public purposes by a written law providing for the regulation of the discipline of that body and declared by that law to be a disciplined force for the purposes of this Schedule;

“fixed date” means the date of commencement of the Constitution Amendment Act, 1972;

“law” means—

- (a) any provision of an Act of the Legislature or of the former Federal Legislature and any statute included in the Revised Edition of the Statutes prepared under the authority of the Revised Edition of the Laws Act, 1962, which is in force in Rhodesia;
- (b) any provision of an instrument having the force of law made in terms of an Act or statute referred to in paragraph (a) of this definition;
- (c) any unwritten law in force in 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;

- (b) is a law (hereinafter in this paragraph referred to as an existing law) that has had effect as part of the law of Rhodesia before the fixed date and has continued to have effect as part of the law of Rhodesia at all times since that date; or
 - (c) repeals and re-enacts an existing law without alteration; or
 - (d) alters an existing law and does not thereby render that law inconsistent with any provision of paragraphs 1 to 11 of this Schedule in a manner in which or to an extent to which it was not previously so inconsistent.
- (2) For the purposes of this paragraph the reference—
- (a) in subparagraph (d) of subparagraph (1) to altering an existing law includes references to repealing it and re-enacting it with modifications or making different provisions in lieu thereof, and to modifying it;
 - (b) in subparagraph (1) to a written law includes any instrument having the force of law;

and the reference to re-enacting an existing law shall be construed accordingly.

(3) In relation to any person who is a member of a disciplined force of Rhodesia, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Schedule other than paragraphs 3 and 4 thereof.

(4) In relation to any person who is a member of a disciplined force that is not a disciplined force of Rhodesia and who is present in Rhodesia in pursuance of arrangements made between the Government of Rhodesia and another Government or an international organization, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Schedule.

(5) No measures taken in relation to a person who is a member of a disciplined force of a country with which Rhodesia is at war and no law, to the extent that it authorizes the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Schedule.

14. In this Schedule, unless the context otherwise requires—
 “African customary law” means the tribal law and custom of Africans, whether or not indigenous to Rhodesia;

the European roll at not more than six-monthly intervals, and whenever additional African seats have become due he will issue a certificate to that effect to the President and the President will then be required to make an order providing for the creation of those seats as described above.

- (g) The qualifications for the existing roll of African voters (the African lower roll) will be replaced by qualifications equivalent to those for the “B” roll under the 1961 Constitution, subject to the financial qualifications being increased twice by 10 per cent. The relevant means and educational qualifications are set out in Appendix II.
- (h) The Rhodesian Government have agreed to a simplified application form for enrolment on the African lower roll, and to an amendment to the Electoral Act to provide that an applicant for the African lower roll shall, if he so requests, receive assistance from the registering officer in completing the form.
- (i) A candidate for election to an African higher roll seat will have to be registered as a voter on that roll, and a candidate for election to an African lower roll seat will have to be registered as a voter on one of the two African rolls.
- (j) Within one year after the holding of the general election at which parity is attained a referendum will be held among all enrolled African voters to determine whether or not the seats filled by indirect election should be abolished and replaced by an equal number of seats filled by direct election.

The new seats will all be African higher roll seats unless the Legislature has before the referendum provided for up to one quarter of the new seats to be African lower roll seats. The Legislature may also provide that a specific number of the extra seats should be rural constituencies.

Laws providing for any of the matters mentioned in this subparagraph, including the procedural arrangements for the holding of the referendum, would not have to be passed in accordance with the requirements for amending the Constitution; the only special requirement would be that in the House of Assembly they must be approved by a majority of all the African members.

If the majority of voters at the referendum is in favour of the abolition of the indirectly elected seats, an election to give effect to the change will be held within one year thereafter. It will be possible for an election to be held for this purpose without the dissolution of Parliament. If this course is adopted, the indirectly elected African members and the African higher roll members and also, if the number of African lower roll seats is to be increased, the African lower roll members, will vacate their seats on the date appointed for the nomination of candidates in the election and Parliament will be prorogued from that date until the completion of the election.

- (k) Not later than six months after the holding of that election or, if the result of the referendum is that the seats filled by indirect election are retained, after the completion of the referendum, an independent commission will be appointed to ascertain whether the creation of common roll seats in accordance with the constitutional provisions described in subparagraph (l) below is acceptable to the people of Rhodesia and, if this is not so acceptable, whether any alternative arrangements would command general support. The commission will consist of a Chairman who holds or has held high judicial office, and equal numbers of European and African members appointed by the Government after consultation with all parties represented in the House of Assembly. The commission will be required to report to the Legislature within one year of its appointment. A law to give effect to any recommendation of the commission would have to be passed in accordance with the requirements for the amendment of the Constitution.

- (l) The Constitution will provide that, with effect from the dissolution of Parliament following the date by which the commission is required to report, ten common roll seats will be created. The common roll seats will be filled by direct election by the voters on a roll consisting of all the voters for the time being registered on the European roll and the African higher roll. Elections to these seats will be conducted on the basis that the whole of Rhodesia will form a single constituency returning all the common roll members, and that each voter will have ten votes which he may cast as he chooses amongst the candidates.

is authorized by subparagraph (2) of paragraph 6, subparagraph (4) of paragraph 8, subparagraph (2) of paragraph 9 or subparagraph (2) of paragraph 10, as the case may be, of this Schedule.

12. (1) Nothing contained in any law shall be held to be inconsistent with or in contravention of any of the following provisions of this Schedule, that is to say, paragraph 2, 5, 6, 7, other than subparagraph (4) thereof, 8, 9, 10 or 11 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.

Savings for periods of public emergency.

(2) Where any person is lawfully detained by virtue of such a provision as is referred to in subparagraph (1) of this paragraph, his case shall be reviewed by a tribunal established in accordance with the provisions of subparagraph (7) of paragraph 2 not later than three months after the commencement of the detention and thereafter at intervals of not more than nine months from the date on which his case was last reviewed by that tribunal.

(3) On any review by a tribunal in pursuance of the provisions of subparagraph (2) of this paragraph of the case of any person, the tribunal may make recommendations concerning the necessity or expedience of continuing the detention to the authority by whom it was ordered and that authority shall be obliged to act in accordance with any recommendation of that tribunal unless the President otherwise directs.

(4) Where the President has directed that the authority referred to in subparagraph (3) of this paragraph shall not act in accordance with any recommendation of the tribunal referred to in that subparagraph, that authority shall cause to be published in the *Gazette* a notice that the President has so directed.

13. (1) Nothing contained in or done under the authority of any written law shall be held to be inconsistent with or in contravention of any of the provisions of paragraphs 1 to 11 of this Schedule to the extent that the law in question—

Other special savings.

- (a) is a law with respect to which the requirements of subsection (1) of section *seventy-eight* were applicable and were complied with; or

following matters as are relevant to 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;
- (d) the state for the time being of the economy of Rhodesia;

is reasonably justifiable either in the interests of 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 subparagraph 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) The provisions of subparagraph (b) of subparagraph (1) of this paragraph shall not apply to—

- (a) anything that is expressly or by necessary implication authorized to be done by any provision of a law that is referred to in subparagraph (3) or (4) of this paragraph; or
- (b) anything that 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 authorized by that law the provisions of subparagraph (4) of this paragraph would have applied thereto; or
- (c) the exercise of 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.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this paragraph to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subparagraph (2) of this paragraph may be subjected to any restrictions on the rights and freedoms guaranteed by paragraphs 6, 8, 9 and 10 of this Schedule, being such a restriction as

(2) The Senate

The Senate will continue to be constituted as at present. As a consequence of the establishment (see paragraph (3) below) of a new Declaration of Rights enforceable by the courts, the Senate Legal Committee will be abolished.

(3) The Declaration of Rights

The existing Declaration of Rights will be replaced by a new Declaration affording protection to the fundamental rights and freedoms of the individual and conferring a right of access to the High Court for the purpose of obtaining redress on any person who alleges that its provisions have been contravened in relation to him. The text of the Declaration and the provisions for its enforcement are set out in Appendix III.

(4) Renewal of Declarations of Emergency

Section 61 of the Constitution will be amended so as to reduce the period within which a declaration of emergency requires renewal by resolution of the House of Assembly from twelve months to nine months.

(5) Amendment of the Constitution

- (a) The Rhodesian Government have given an assurance to the British Government that they will not introduce or support in the Rhodesian Parliament any amendment of the specially entrenched provisions of the Constitution relating to the composition of the House of Assembly or of the specially entrenched provisions of the Electoral Act until the first two African higher roll seats have been created and filled or until three years have elapsed since the constitutional changes provided for by these proposals have come into force, whichever is the sooner.
- (b) Until the date by which the commission referred to in subparagraph (1) (k) above is required to report, or the date on which it reports if that is earlier, a Bill to amend any of the specially entrenched provisions of the Constitution will require, in addition to the existing requirements of the affirmative votes in each House of the Legislature of not less than two-thirds of the total membership of the House, the affirmative votes in the House of Assembly of a majority of the total European membership and of a majority of the total African membership.

APPENDIX I

EUROPEAN ROLL AND AFRICAN HIGHER ROLL
QUALIFICATIONS

- (a) Income at the rate of not less than \$1 800 per annum during the two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than \$3 600.

OR

- (b) (i) Income at the rate of not less than \$1 200 per annum during the two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than \$2 400; *and*
(ii) four years secondary education of prescribed standard.

(12) In the case of any person who is held in lawful detention, the provisions of subparagraph (1) of this paragraph shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention, save that the case of such person shall be afforded a fair hearing within a reasonable time, and the person or authority conducting the trial shall be regarded as a court for the purposes of this paragraph.

(13) For the purposes of this paragraph, a tribal court shall not be regarded as not being an independent and impartial court by reason of—

- (a) the fact that a member of the court has an interest in the proceedings because of his position in the tribal society; or
(b) the traditional or customary tribal practices and procedures.

(14) In this paragraph, the expression "legal representative" means a person entitled to practise in 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.

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.

Protection
of freedom
of
conscience

(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 making provision for the giving, by persons lawfully in Rhodesia, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) Nothing contained in, and nothing done under the authority of, any law shall be held to be inconsistent with or in contravention of subparagraph (1) of this paragraph to the extent that the law in question makes provision which is reasonably justifiable in a democratic society—

tion of the private lives of persons concerned in the proceedings; or

- (ii) may by law be empowered or required so to do in the interests of defence, public safety, public order or the economic interests of the State;

or

- (b) the court from excluding from proceedings preliminary to trial in respect of a criminal offence persons other than the accused person and his legal representative when so required by law, unless the accused person otherwise requests.

(10) Notwithstanding anything contained in subparagraph (3), (8) or (9) of this paragraph, if in any proceedings before a court or other adjudicating authority such as is referred to in subparagraph (1) or (7) of this paragraph, including any proceedings by virtue of section *eighty-four A*, a certificate in writing is produced to the court or other authority signed by a Minister 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) subparagraph (a) of subparagraph (2) of this paragraph to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; or
- (b) subparagraph (e) of the said subparagraph (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; or
- (c) subparagraph (5) of this paragraph to the extent that the law in question authorizes 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.

APPENDIX II

AFRICAN LOWER ROLL QUALIFICATIONS

- (a) Income at the rate of not less than \$600 per annum during the two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than \$1 100.

OR

- (b) (i) Income at the rate of not less than \$300 per annum during the two years preceding date of claim for enrolment, *or* ownership of immovable property of value of not less than \$600; *and*
- (ii) two years' secondary education of prescribed standard.

OR

- (c) Persons over 30 years of age with—
 - (i) Income at the rate of not less than \$300 per annum during the two years preceding the date of claim for enrolment, *or* ownership of immovable property of value of not less than \$600; *and*
 - (ii) completion of a course of primary education of a prescribed standard.

OR

- (d) Persons over 30 years of age with—
 - Income at the rate of not less than \$430 per annum during the two years preceding the date of claim for enrolment, *or* ownership of immovable property of value of not less than \$800.

OR

- (e) All kraal heads with a following of 20 or more heads of families.

APPENDIX III

DECLARATION OF RIGHTS AND ENFORCEMENT PROVISIONS

(Sections to replace present section 84)

84. WHEREAS it is desirable to ensure that every person in Rhodesia enjoys the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, political opinions, colour or creed, to life, liberty, security of the person, the protection of the privacy of his home, protection from deprivation of his property without payment of compensation, the protection of the law, and to freedom of conscience, of expression and of assembly and association;

AND WHEREAS the exercise of these rights and freedoms should be subject to certain limitations that are prescribed by law and are necessary in a democratic society, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest;

AND WHEREAS it is the duty of every person to respect and abide by the Constitution and the laws of Rhodesia;

AND WHEREAS loyalty to Rhodesia is a fundamental duty of every citizen;

The provisions of the Second Schedule, as read with section *eight-four A*, shall have effect for the purpose of affording protection of the aforesaid rights and freedoms, subject to the limitations of that protection contained in those provisions.

84A. (1) Subject to the provisions of subsection (8), if any person alleges that any of the provisions of the Declaration of Rights 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, that person may, subject to the provisions of subsection (3), apply to the Appellate Division for redress.

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

summons or charge upon which a valid judgment could be entered, and either convicted or acquitted, 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 the General Division of the High Court or 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 the High Court in the course 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) 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.

(8) Except in the case of a trial such as is referred to in subparagraph (12) of this paragraph or 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.

(9) Nothing in subparagraph (8) of this paragraph shall prevent—

- (a) the court or other adjudicating authority from excluding from the proceedings, except the announcement of the decision of the court or other authority, persons other than the parties thereto and their legal representatives to such extent as the court or other authority—
 - (i) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of twenty-one years or the protec-

- (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, save in proceedings before a tribal court or at a trial such as is referred to in subparagraph (12) of this paragraph, at his own expense by a legal representative of his own choice;
- (e) shall be afforded facilities to examine in person or, save in proceedings before a tribal court or at a trial such as is referred to in subparagraph (12) of this paragraph, 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;
- (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) Save in the case of a trial such as is referred to in subparagraph (12) of this paragraph, when a person is tried for any criminal offence the accused person or any person authorized 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,

(3) Where in any proceedings such as are mentioned in subsection (2), any such question as is therein mentioned is not referred to the Appellate Division, 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 Appellate Division under subsection (1).

(4) The Appellate Division shall have original jurisdiction—

- (a) to hear and determine any application made by any person in pursuance of the provisions of subsection (1) or to determine without hearing any such application which, in its opinion, is merely frivolous or vexatious;
- (b) to determine any question arising in the case of any person which is referred to it in pursuance of the provisions of subsection (2);

and 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 Declaration of Rights:

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

(5) If in any proceedings in any court it falls to be determined whether any law is inconsistent with any of the provisions of the Declaration of Rights, 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.

(6) Where any provision of any law is held by a competent court to be inconsistent with any of the provisions of the Declaration of Rights, any person detained in custody under that provision shall be entitled as of right to make an application to the Appellate Division 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.

(7) A law of the Legislature may confer upon the Appellate Division such powers, in addition to those conferred by this section, as may appear to be necessary or desirable for the purpose of enabling the Appellate Division more effectively to exercise the jurisdiction conferred upon it by this section.

(8) A law of the Legislature may make provision with respect to the practice and procedure—

- (a) of the Appellate Division in relation to the jurisdiction and powers conferred upon it by or under this section;
- (b) of subordinate courts in relation to references to the Appellate Division under subsection (2);

including provision with respect to the time within which any application or reference shall or may be made or brought and, subject to any provisions so made, provision may be made with respect to the matters referred to above by rules of court made in terms of any Act governing the practice and procedure in the Appellate Division.

(9) Notwithstanding anything to the contrary contained in this section, the court shall not declare any provision of an Act enacted or statutory instrument made after the fixed date as defined in paragraph 14 of the Declaration of Rights to be inconsistent with any provision of the Declaration of Rights if the provision concerned has been in force for a period of at least ten years, whether as part of the Act or statutory instrument concerned or of any previous Act or statutory instrument repealed or amended and substituted by the Act or statutory instrument concerned.

(10) For the purposes of this section—

“Appellate Division” means the Appellate Division of the High Court of Rhodesia.

84B. No court shall declare any provision of an Act enacted or statutory instrument made before the fixed date as defined in paragraph 14 of the Declaration of Rights to be *ultra vires* on the grounds that that provision is inconsistent with the provisions of the Declaration of Rights set out in Chapter VI of the Constitution of Rhodesia, 1961 or Chapter VII of the Constitution of Rhodesia, 1965, as the case may be.

this paragraph to the extent that the law in question makes provision which is reasonably justifiable in a democratic society—

- (a) in the interests of defence, public safety, public order, public morality, public health or town and country planning; or
- (b) without derogation from the generality of the provisions of subparagraph (a) of this subparagraph, for the enforcement of the law in circumstances where there are reasonable grounds for believing that the entry or search is necessary for the prevention, investigation or detection of a criminal offence or for the lawful arrest of a person; or
- (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; or
- (d) for the purpose of the valuation of the dwelling-house in question in connexion with any tax, rate or due; or
- (e) for the purpose of protecting the rights and freedoms of other persons; or
- (f) to authorize, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person by order of a court or the entry into any dwelling-house by such order.

(3) If in any proceedings it is alleged that anything contained in or done under the authority of any law is inconsistent with or in contravention of subparagraph (1) of this paragraph and the court decides as a result of hearing the parties that the complainant has shown that the court should not accept that the provision of the law concerned is reasonably justifiable in a democratic society on such of the grounds mentioned in subparagraph (2) of this paragraph as are relied upon by the other party without proof to its satisfaction, it shall issue a rule *nisi* calling upon the responsible Minister to show cause why that provision should not be declared to be inconsistent with the Constitution.

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.

Provisions to secure protection of 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;

SECOND SCHEDULE (Section 84)

DECLARATION OF RIGHTS

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. Protection of right to life.

(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 paragraph 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;
- (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 subparagraph (2) of this paragraph in any case to which that subparagraph 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 fixed date.

2. (1) No person shall be deprived of his personal liberty, save as may be authorized by law in any of the following cases, that is to say— Protection of right to personal liberty.

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Rhodesia or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the Senate or the House of Assembly punishing him for contempt of itself or of its members or for breach of privilege;
- (c) 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;

(q) in the case of land, for so long only as may be necessary for the purpose of 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 or lawful excuse refused or failed, to carry out;

(r) in consequence of any law requiring copies of any book or other publication published in Rhodesia to be lodged with the National Archives or a public library;

(s) for the purpose of, or in connexion with, the prospecting for or exploitation of minerals, mineral oils, natural gases, precious metals or precious stones which are vested in the President on terms which provide for the respective interests of the persons affected;

(t) for the purpose of, or in connexion with, the exploitation of underground water or public water which is vested in the President on terms which provide for the respective interests of the persons affected.

(4) Nothing in this paragraph shall be construed as affecting the making or operation of any law—

(a) in so far as it provides for the orderly marketing, production, growth or extraction of any agricultural product or mineral or any article or thing prepared for market or manufactured therefor or for the reasonable restriction of the use of any property in the interests of safeguarding the interests of others or the protection of lessees or other persons having rights in or over such property; or

(b) in so far as it provides 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 established directly by law for public purposes in which no moneys are invested other than moneys provided from public funds.

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 or done under the authority of any law shall be held to be inconsistent with or in contravention of

- (d) for the purpose of bringing him before a court in execution of the order of a court or an officer of a court or before the Senate or the House of Assembly in execution of the order of the Senate or that House;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (f) 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;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) 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;
- (i) for the purpose of preventing the unlawful entry of that person into Rhodesia, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Rhodesia, or the taking of proceedings relating thereto;
- (j) to such extent as may be necessary for the execution of a lawful order requiring that person to remain within a specified area within 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 Rhodesia in which, in consequence of such an order, his presence would otherwise be unlawful;
- (k) subject to the provisions of subparagraphs (4), (5), (6) and (7), for the purposes of his preventive detention in the interests of defence, public safety or public order.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable in a language that he understands of the reasons for his arrest or detention and shall be permitted at his own expense to obtain and instruct without delay a legal adviser of his own choice, being a person entitled to practise

- (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 or administration of any property belonging to or used by or on behalf of an enemy or an organization which is proscribed or declared by or in terms of a written law to be an unlawful organization;
- (g) by way of the administration of moneys payable or owing to a person outside Rhodesia or to the Government of a country other than Rhodesia where restrictions have been placed by law on the transfer of such moneys outside Rhodesia;
- (h) 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 centum* of the total value of proved claims; or
 - (ii) a deed of assignment entered into by a debtor with his creditors;
- (i) in the execution of judgments or orders of courts;
- (j) by reason of the property in question being in a dangerous state or prejudicial to the health or safety of human, animal or vegetable life;
- (k) in consequence of any law with respect to the limitation of actions, acquisitive prescription or derelict land;
- (l) as a condition in connexion with the granting of permission for the utilization of that or other property in any particular manner;
- (m) by way of the taking of a sample for the purposes of a law;
- (n) by way of the acquisition of the shares, or a class of 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;
- (o) where the property consists of an animal, upon its being found trespassing or straying;
- (p) for so long only as may be necessary for the purpose of any examination, investigation, trial or inquiry;

(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 paragraph to the extent that the law in question authorizes the doing of anything by way of punishment or other treatment which might lawfully have been so done in Rhodesia immediately before the fixed date.

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 by or under the authority of a written law and where provision applying to that acquisition or taking of possession is made by a written law—

- (a) requiring that reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property is given to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition; and
- (b) providing for the payment of proper compensation within a reasonable time.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court or another adjudicating authority provided for in the law referred to in subparagraph (1) of this paragraph for the determination of his interest or right, if any, the legality of the taking of possession or the acquisition of the 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) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this paragraph to the extent that the law in question makes provision for the taking of possession or the acquisition of any interest in or right over property—

- (a) by way of imposition or enforcement of any tax, duty, 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 or forfeiture in consequence of a breach of the law;
- (c) upon the attempted removal of the property in question out of or into Rhodesia in contravention of any law;

in Rhodesia as an advocate or attorney, and to hold communication with him.

(3) 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 subparagraph (b) of this subparagraph 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.

(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than—

- (a) fourteen days unless the Minister designated for the purpose has issued an order providing for the preventive detention of that person; or
- (b) forty-two days unless the case of that person has, before the expiration of the said period of forty-two days, been submitted to a tribunal established for the purposes of this paragraph, and if such tribunal reports that, in its opinion, there is not sufficient cause for such detention, that person shall forthwith be released.

(5) Where a person has been detained by virtue of the provisions of a law providing for preventive detention for a period of more than forty-two days, his case shall be submitted for review at intervals of not more than nine months by a tribunal established for the purposes of this paragraph, and if such tribunal—

- (a) orders, either because that person satisfies the tribunal that new circumstances have arisen or because the tribunal considers it to be desirable, that the case of that person should be submitted to the tribunal for review before the expiration of nine months from the previous review of his case, the case of that person shall be submitted for review when so ordered by the tribunal;

- (b) reports that, in its opinion, there is not sufficient cause for the continued detention of that person, he shall forthwith be released.

(6) A person who has been detained by virtue of the provisions of any law providing for preventive detention and who has been released from detention in consequence of a report of a tribunal established for the purposes of this paragraph that there is, in its opinion, insufficient cause for his detention shall not be again detained by virtue of such provisions within the period of six months from his release on the same grounds as those on which he was originally detained.

(7) A tribunal established for the purposes of this paragraph shall be established by law and shall consist of—

- (a) a chairman who shall be a person who is or has been a judge of the High Court of Rhodesia or is qualified in terms of section *sixty-five* to be appointed as such; and
- (b) two other persons, one of whom—
- (i) is or has been a judge of the High Court of Rhodesia or is qualified in terms of section *sixty-five* to be appointed as such; or
 - (ii) has been a magistrate in Rhodesia for not less than ten years; or
 - (iii) is, and has been for not less than ten years, qualified to practise as an attorney in Rhodesia.

(8) The references in subparagraph (4) of this paragraph to a period of forty-two days include references to any lesser periods that amount in the aggregate to forty-two days:

Provided that no two such lesser periods shall be aggregated for this purpose if the period between the expiration of the first and the commencement of the second is more than one month.

(9) For the purposes of subparagraph (6) of this paragraph, a person shall be deemed to have been detained on the same grounds as those on which he was originally detained unless a tribunal established for the purposes of this paragraph has reported that, in its opinion, there appear *prima facie* to be new and reasonable grounds for the detention, but the giving of any such report shall be without prejudice to the provisions of subparagraph (4) of this paragraph.

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

Provided that any judicial officer acting in his judicial capacity reasonably and in good faith and any other person acting reasonably and in good faith and without culpable ignorance or negligence may be protected by law from liability for such compensation.

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

Protection from slavery and forced labour.

(2) For the purposes of this paragraph, 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 or management 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 way of parental discipline;
- (e) 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;
- (f) any labour which forms part of normal communal or other civic obligations.

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

Protection from inhuman 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 paragraph on the ground that it is degrading.