

REPUBLIC OF SOUTH AFRICA

**UNIVERSITY OF CAPE TOWN
(PRIVATE) BILL**

(As introduced in the National Assembly as a section 75 Bill)

(DR B E NZIMANDE)

[B 22—99]

REPUBLIEK VAN SUID-AFRIKA

**(PRIVATE) WETSONTWERP OP
DIE UNIVERSITEIT VAN
KAAPSTAD**

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(DR B E NZIMANDE)

[W 22—99]

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BILL

To provide anew for the governance of the University of Cape Town and to bring it into line with the Higher Education Act, 1997; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is desirable for the University of Cape Town to—

BE a world-class African university;

EDUCATE its students;

ADDRESS the challenges facing the society; and

EQUIP people with life-long skills;

AND WHEREAS it is necessary to provide for the regulation of the University in the manner that the Higher Education Act, 1997 (Act No. 101 of 1997), requires;

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “academic staff” means the professors, associate professors, senior lecturers, lecturers, assistant lecturers and the research officers, including the principal, chief and senior research officers, employed by the University; (i) 5
 - (ii) “administrative and support staff” means the staff appointed to administrative and support positions designated as such by the council, including professional staff in library and information technology services and technical officers; (i) 10
 - (iii) “certificate” means a certificate of the University awarded to a student on completion of the work prescribed for the certificate by the senate; (xx)
 - (iv) “convocation” means the convocation of the University contemplated in section 13; (xiv) 15
 - (v) “council” means the council of the University contemplated in section 8; (xvii)
 - (vi) “degree” means a degree of the University conferred upon a student on completion of the work prescribed for the degree by the senate; (xi)
 - (vii) “department” means an academic department established under section 15; (iv) 20
 - (viii) “diploma” means a diploma of the University awarded to a student on completion of the work prescribed for the diploma by the senate; (vi)
 - (ix) “donor” means a person who, before the commencement of this Act, was a donor entitled to elect members of the council, and any person who, after the commencement of this Act, makes donations and becomes a donor in accordance with the statute; (vii) 25

- (x) “examination” means any test or assessment, including any written, oral, practical or clinical test or assessment, where the result obtained contributes to the result for a course; (viii)
- (xi) “executive officer” means the vice-chancellor or a deputy vice-chancellor of the University, and “executive officers” means the vice-chancellor and the deputy vice-chancellors of the University; (xxiii) 5
- (xii) “faculty” means a faculty established under section 14; (x)
- (xiii) “institutional forum” means the institutional forum contemplated in section 10; (xiii)
- (xiv) “Minister” means the Minister of Education; (xv) 10
- (xv) “officer of the University” means a member of the staff of the University designated to be an officer of the University by the council; (iii)
- (xvi) “recognised staff body” means a body organised by and among the staff to represent the interests of a section of the staff and recognised for this purpose by the council; (ix) 15
- (xvii) “rules” means the institutional rules of the University made in terms of section 32 of the Higher Education Act; (xviii)
- (xviii) “senate” means the senate of the University contemplated in section 9; (xix)
- (xix) “staff” means persons employed at the University; (xvi)
- (xx) “statute” means the institutional statute of the University approved in terms of section 33 of the Higher Education Act; (xxi) 20
- (xxi) “student” means a person registered as a student at the University; (xxii)
- (xxii) “the Higher Education Act” means the Higher Education Act, 1997 (Act No. 101 of 1997); (v)
- (xxiii) “this Act” includes the statute and the rules; (xii) 25
- (xxiv) “University” means the South African College, Cape Town, which was established in 1829, regulated by Ordinance No. 11 of 1837 and incorporated as the University of Cape Town by section 1 of the University of Cape Town Act, 1916 (Act No. 14 of 1916). (xxiv)

Application of this Act 30

2. This Act strives to bring the governance of the University into line with the Higher Education Act and is subject to that Act.

Seat of University

3. (1) The seat of the University is upon the portions of the Grootte Schuur Estates that were transferred to and vested in the State under the Rhodes’ Will (Grootte Schuur Devolution) Act, 1910 (Act No. 9 of 1910), and granted to the University. 35

(2) The President of the Republic may grant to the University any further portions of these estates that the University needs.

(3) Subject to the concurrence of the Minister of Finance, no transfer duty, stamp duty or other money or costs is payable on any portion of these estates granted to the University in the manner contemplated in subsection (2). 40

(4) Notwithstanding any provision in the Rhodes’ Will (Grootte Schuur Devolution) Act, 1910, or in any other law, the University may lease a portion of the Grootte Schuur Estates granted to the University to a health authority of a national, provincial or local sphere of government for a hospital to be used as a teaching hospital of the University, and may renew such lease. 45

(5) A condition for a lease contemplated in subsection (4) is that the staff and students of the University must have access to the hospital for teaching and research in the health professions and health sciences and for incidental purposes on conditions agreed by the University and the health authority. 50

(6) Notwithstanding any provision of any law and subject to the concurrence of the Minister of Finance, no transfer duty, stamp duty or other money or costs will be payable in respect of any lease granted under subsection (4).

Constitution and powers of University

4. (1) The University consists of— 55

- (a) the chancellor;
 - (b) the vice-chancellor;
 - (c) the deputy vice-chancellors;
 - (d) the council;
 - (e) the senate; 5
 - (f) the institutional forum;
 - (g) the convocation;
 - (h) the students of the University; and
 - (i) the staff of the University.
- (2) The University is a juristic person under the name of the University of Cape Town. 10
- (3) The University may—
- (a) invest or borrow money;
 - (b) lend money to any person or company;
 - (c) make donations;
 - (d) conclude contracts, including contracts of employment, contracts of guarantee and suretyship and contracts outside the Republic; and 15
 - (e) buy, hold, let, hire, sell, exchange, alienate in any other manner, hypothecate, burden with a servitude or deal with immovable or movable property in any other manner.
- (4) Notwithstanding subsection (3)(e), the University may not without the concurrence of the Minister dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon. 20
- (5) Nothing contained in subsection (3) may be regarded as limiting the general powers of the University as a juristic person. 25

Chancellor

- 5.** (1) The chancellor is the titular head of the University.
- (2) The chancellor, or in his or her absence the person appointed to act on behalf of the chancellor in terms of the statute, must preside at all congregations of the University and, in the name of the University, confer all degrees and award all diplomas and certificates. 30
- (3) The chancellor is elected by an electoral college, constituted as determined by statute.
- (4) The criteria for a candidate for the office of chancellor are as determined by statute. 35
- (5) The chancellor holds office for ten years, or until he or she resigns, or dies, or ceases to qualify to hold office in terms of the statute.

Vice-chancellor

- 6.** (1) The vice-chancellor is the chief executive officer of the University.
- (2) The council appoints the vice-chancellor after consulting the senate and the institutional forum. 40

Deputy vice-chancellors

- 7.** (1) The council may appoint up to four deputy vice-chancellors, after consulting the senate and the institutional forum.
- (2) The deputy vice-chancellors' functions are determined by the council and the vice-chancellor. 45

Council

- 8.** (1) Subject to this Act and the Higher Education Act, the University is governed by the council.
- (2) The council must— 50
- (a) administer all property of the University; and
 - (b) subject to this Act, make all appointments and have general control of the University, its affairs and its functions.

- (3) The council may by resolution establish committees of the council, and may in addition to the members of a committee appoint persons who are not members of the council as members of such committee.
- (4) The council may disestablish any committee it has established, and may terminate the membership of any person it has appointed to any committee. 5
- (5) The council may delegate or assign any of its functions to—
- (a) a committee of the council;
 - (b) a member of the council; or
 - (c) any officer of the University.
- (6) The council remains responsible for the performance of any function delegated or assigned under subsection (5). 10
- (7) The council consists of—
- (a) the vice-chancellor;
 - (b) the deputy vice-chancellors;
 - (c) four members of the senate elected by the senate; 15
 - (d) one member of the academic staff elected by the academic staff;
 - (e) two members of the administrative and support staff elected by the administrative and support staff;
 - (f) three students elected by the students' representative council, one of whom must be a postgraduate student of the University; 20
 - (g) five persons appointed by the Minister;
 - (h) one person appointed by the Premier of the Western Cape;
 - (i) two persons appointed by local government;
 - (j) six persons elected by the convocation;
 - (k) four persons elected by donors; 25
 - (l) one person elected by organised labour;
 - (m) one person elected by organised commerce and industry; and
 - (n) up to three persons co-opted by the council.
- (8) At least 60 per cent of the members of the council must be persons who are neither staff nor students of the University. 30
- (9) No staff member and no student of the University may hold an appointment under subsection (7)(g) to (n).
- (10) The terms of office and the manner in which members of the council are elected or appointed are determined by statute.
- (11) Any vacancy in the council must be filled in the manner determined by statute. 35
- (12) The council must elect a chairperson and a deputy chairperson from its members in the manner and for the term of office as determined by statute.
- (13) The meetings of the council are held as determined by the council.
- (14) The procedure and the quorum at meetings of the council are as determined by statute. 40

Senate

- 9.** (1) The senate organises and controls the teaching, curricula, syllabuses, examinations and research of the University.
- (2) Notwithstanding subsection (1), the senate carries out such other functions as the council delegates or assigns to it and is accountable to the council for its work. 45
- (3) The senate determines the rules for examinations and all examinations are conducted in accordance with these rules.
- (4) The senate may by resolution establish committees of the senate and may in addition to the members of a committee appoint persons who are not members of the senate as members of such committee. 50
- (5) The senate may disestablish any committee it has established and may terminate the membership of any person it has appointed to any committee.
- (6) The senate may delegate or assign any of its functions to—
- (a) a committee of the senate;
 - (b) a member of the senate; or 55
 - (c) any officer of the University.
- (7) The senate remains responsible for the performance of any function delegated or assigned under subsection (6).
- (8) The senate consists of—

- (a) the vice-chancellor;
 - (b) the deputy vice-chancellors;
 - (c) the deans and acting deans, and the deputy deans and acting deputy deans of faculties;
 - (d) the heads and acting heads of departments; 5
 - (e) the professors;
 - (f) members of the academic staff elected by the academic staff;
 - (g) members of the administrative and support staff elected by the administrative and support staff;
 - (h) members of the council elected by the council; 10
 - (i) students and members of the students' representative council elected by the students' representative council; and
 - (j) up to ten persons co-opted by the senate.
- (9) The number of persons elected in terms of subsection (8)(f) to (i), their term of office and the manner in which they are elected, are determined by statute. 15
- (10) The majority of the members of the senate must be members of the academic staff of the University.

Institutional forum

- 10.** (1) The institutional forum advises the council on issues affecting the University as required by the Higher Education Act and performs such other functions as determined by the council. 20
- (2) The institutional forum consists of—
- (a) an equal number of persons drawn from each of the following three sectors:
 - (i) Members of the council, senate and executive officers; 25
 - (ii) recognised staff bodies; and
 - (iii) students elected by the students' representative council; and
 - (b) members drawn from such other structures as determined by statute.
- (3) The number of members appointed by each sector is as determined by statute.
- (4) The terms of office and the manner in which members of the institutional forum are elected are as determined by statute. 30
- (5) The procedure and quorum at meetings of the institutional forum are as determined by statute.

Joint committees

- 11.** (1) The council, the senate and the institutional forum may, by resolution of each body concerned, establish joint committees. 35
- (2) In addition to the members of the council, the senate or the institutional forum, any other person may be appointed to a joint committee.
- (3) Any joint committee may be disestablished and the membership of any person appointed to a joint committee may be terminated.
- (4) The council may delegate or assign to a joint committee any of its functions, but remains responsible for the performance of those functions. 40
- (5) The senate may delegate or assign to a joint committee any of its functions, but remains responsible for the performance of those functions.
- (6) The institutional forum may delegate or assign to a joint committee any of its functions, but remains responsible for the performance of those functions. 45

Composition of council, senate, institutional forum, committees and joint committees

- 12.** Any person or body appointing a person, or nominating a candidate for election to the council, the senate, the institutional forum or a committee or a joint committee must have regard to the historic underrepresentation of women and black people on such bodies and the need to redress that. 50

Convocation

- 13.** (1) The convocation consists of—
- (a) the graduates and all holders of diplomas and certificates of the University;
 - (b) the vice-chancellor, the deputy vice-chancellor and the academic staff; and
 - (c) those former professors and associate professors of the University elected by the senate to be emeritus professors or emeritus associate professors. 5
- (2) The convocation meets in the manner and at the times determined by statute.
- (3) The convocation may discuss and state its opinion upon any matter relating to the University, including any matter referred to it by the council, the senate or the institutional forum. 10

Faculties

- 14.** The council, with the concurrence of the senate, may establish or disestablish faculties.

Departments

- 15.** The council, with the concurrence of the senate, may establish or disestablish departments. 15

Appointment of academic staff

- 16.** The council must consult the senate or a committee appointed by the senate for this purpose before appointing any member of the academic staff.

Degrees, diplomas and certificates 20

- 17.** (1) The University may, subject to this Act, award diplomas and certificates and confer degrees of bachelor, honours bachelor, master and doctor in any faculty.
- (2) Except as is provided by section 18, no degree may be conferred upon, and no diploma or certificate may be awarded to any person who has not—
- (a) been registered as a student of the University for the period and under the conditions which the senate prescribes; and 25
 - (b) completed the courses and passed in the examinations prescribed by the senate.

Honorary degrees

- 18.** (1) The University may confer honorary degrees of master or doctor without examination and in the manner determined by the statute. 30
- (2) The award of an honorary degree to a person does not entitle that person to practise any profession.

Tests of religion, belief or opinion

- 19.** No test of religion, belief or opinion may be imposed on any person as a condition of that person becoming or continuing to be a student or staff member of the University, or of holding any degree, diploma or certificate of the University, or of holding any office, receiving any emolument or exercising any privilege in the University, nor may any preference be given to, or advantage be withheld from, any person on the grounds of that person’s religion, belief or opinion. 35 40

Discipline

- 20.** (1) Every student must comply with all rules set by the senate and the council.
- (2) Every student is subject to such disciplinary measures and disciplinary procedures as determined by the rules.

Vacancies not to affect powers 45

- 21.** (1) A vacancy in any office or in the council, the senate or the institutional forum

does not impair or affect the corporate existence of the University or any powers, rights or privileges conferred by this Act upon the University, the council, the senate or the institutional forum or the exercise of any power, right or privilege.

(2) Notwithstanding subsection (1), a resolution of the council, the senate or the institutional forum is not valid unless passed at a meeting at which a quorum is present and unless all the other provisions of this Act have been complied with. 5

Transitional provision

22. (1) Subject to subsection (2), the council as it existed immediately before the commencement of this Act continues to exist until a new council is constituted in terms of section 8(7). 10

(2) (a) A new council must be constituted in terms of this Act within six months after the commencement of this Act.

(b) Any vacancy that arises in the council before the new council is constituted as contemplated in paragraph (a) may not be filled.

Repeal of laws 15

23. (1) The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of the Schedule.

(2) Anything done under any provision of the University of Cape Town Act, 1959, before this Act came into operation, is deemed to have been done under the corresponding provision of this Act. 20

Short title and commencement

24. This Act is called the University of Cape Town (Private) Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

Number and year of law	Short title	Extent of repeal
Act No. 38 of 1959	University of Cape Town Act, 1959	The whole
Act No. 12 of 1962	University of Cape Town Amendment Act, 1962	The whole
Act No. 2 of 1965	University of Cape Town Amendment Act, 1965	The whole
Act No. 51 of 1967	University of Cape Town Amendment Act, 1967	The whole
Act No. 9 of 1977	University of Cape Town (Private) Amendment Act, 1977	The whole
Act No. 84 of 1979	University of Cape Town (Private) Amendment Act, 1979	The whole
Act No. 70 of 1983	University of Cape Town (Private) Amendment Act, 1983	The whole
Act No. 83 of 1983	Universities Amendment Act, 1983	The Schedule insofar as it relates to the University of Cape Town Act, 1959 (Act No. 38 of 1959)
Act No. 75 of 1984	Universities, National Education Policy and Technikons Amendment Act, 1984	The Schedule insofar as it relates to the University of Cape Town Act, 1959 (Act No. 38 of 1959)
Act No. 64 of 1989	Universities Amendment Act (House of Assembly), 1989	Sections 14, 15 and 16
Act No. 138 of 1993	University of Cape Town (Private) Amendment Act (House of Assembly), 1993	The whole
Act No. 49 of 1996	General Law Amendment Act, 1996	The Schedule insofar as it relates to the University of Cape Town Act, 1959 (Act No. 38 of 1959)

MEMORANDUM ON THE OBJECTS OF THE UNIVERSITY OF CAPE TOWN (PRIVATE) BILL, 1999

1. INTRODUCTION

The objects of the University of Cape Town (Private) Bill, 1999 (“the Bill”) are—

- * to bring the system of internal governance of the University of Cape Town into line with the provisions of the Higher Education Act, 1997 (Act No. 101 of 1997);
- * to give effect to decisions reached in the University’s Transformation Forum, and subsequently ratified by the Council, the Senate, the organised staff bodies and trade unions, and the student sector including the Student Parliament and the Students’ Representative Council as to the composition of the Council, the Senate and the Institutional Forum, and the manner of election of a Chancellor; and
- * to re-enact certain provisions of the University of Cape Town Act, 1959 (Act No. 38 of 1959).

2. THE TRANSFORMATION OF THE UNIVERSITY OF CAPE TOWN

The Bill is a significant milestone in the continuous process of transformation of the University of Cape Town. The processes that have led to consensus within the University go back many years, but there have been some key events in this process, such as—

- * the decisions in 1972 and 1973 by the Council and the Senate to allow students to participate in the business of the Council and of the Senate respectively, though students were not to become members of either body until the legislation was changed in 1993;
- * the call in September 1995 by the Campus United Front for a dissolution of the Council and the calling of a Transformation Conference;
- * the holding of this Transformation Conference and the agreement in 1994 to set up a standing and representative University Transformation Forum, with a standing representative Executive Committee (“the UTF Exco”);
- * the decisions in 1995 by the UTF Exco on the process for selecting a vice chancellor to succeed Dr S J Saunders, a process involving all sectors of the University;
- * the adoption in 1995 by the UTF Exco of a Mission Statement of the University of Cape Town; and
- * the debates during 1996 and 1997 leading to agreement on the key governance structures, mainly the Council, the Senate, the Institutional Forum, the Student Parliament and the Students’ Representative Council.

This has been followed by the adoption of this Bill and of the draft Institutional Statute that would give effect to many of its provisions. The decisions of the UTF Exco, and of the various sectors of the University, are consistent with the provisions of the Higher Education Act which prescribes minimum requirements for the composition of the Council, the Senate and the Institutional Forum, and their powers and duties.

3. CONSTITUTING THE ORGANS OF INTERNAL GOVERNANCE

Clause 12 is proposed as a mechanism for ensuring that when the Council, the Senate, the Institutional Forum or committees are constituted, regard is had to the historic underrepresentation of women and black people on these bodies, and the need to redress this.

4. THE CHANCELLOR

The Chancellors of the University have been elected for life by the Convocation. The Bill seeks to change this, and proposes an electoral college, constituted in a manner to be prescribed by institutional statute, and a term of office of ten years.

It is contemplated that the institutional statute would provide for an electoral college consisting of the President of the Convocation, the Vice-Chancellor, twenty-one persons chosen by all graduates and holders of diplomas, six students by the Students' Representative Council, six members of the academic staff chosen by the academic staff, and six members of the administrative and support staff chosen by the administrative and support staff.

5. THE COUNCIL

The composition proposed for the Council complies with the provisions of the Higher Education Act and introduces representatives of staff (academic and administrative and support staff), a representative of provincial government, and representatives of organised labour and of organised commerce and industry.

6. THE SENATE

As for the Council, so too does the composition of the Senate comply with the provisions of the Higher Education Act, introducing representatives of staff of both categories, other sectors having been previously represented.

7. THE INSTITUTIONAL FORUM

Clause 10 of the Bill proposes to transform the UTF Exco (the University Transformation Executive Committee described more fully in the introduction to this memorandum) into a permanent Institutional Forum, which will then have the role contemplated for it in the Higher Education Act; in fact, the role set out in the Higher Education Act is very close to the role that the UTF Exco has played up to the present.

Its composition complies with the provisions of the Higher Education Act.

8. GENERAL

Provision is proposed (in clause 11) for joint committees of the Institutional Forum and other bodies.

9. CONVOCATION

The Convocation has consisted of graduates, the academic staff and specified former members of the academic staff. Clause 13 proposes the inclusion of holders of diplomas and certificates, in view of the stake such people have in the University and the substantial nature of these qualifications.

10. PLAIN LANGUAGE

The Bill has been drafted in plain language in the hope that it will be understood by all who read it.

11. BODIES CONSULTED

The Senate
The Council
The University Transformation Forum
The Student Parliament
The Students' Representative Council
The UCT Staff Association
The UCT Branch of the National Education, Health and Allied Workers' Union
The Academics Association
The Convocation
The Premier of the Western Cape

12. PARLIAMENTARY PROCEDURE

The Department of Education and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.