

# **TRANSITIONAL EXECUTIVE**

## **COUNCIL BILL**

### ***SEVENTEENTH DRAFT***

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## **TRANSITIONAL EXECUTIVE COUNCIL BILL**

***(SEVENTEENTH DRAFT)***

**Prepared by the Technical Committee on the Transitional Executive Council in the Multi-Party Negotiating Process**

**7 September 1993**

### **TRANSITIONAL EXECUTIVE COUNCIL BILL**

#### **BILL**

**To establish a Transitional Executive Council with a view to Remote (facilitate) the preparation for and transition to (the implementation of) a democratic order in South Africa; and to provide for matters connected therewith.**

**BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:**

#### **Definitions**

1. In this Act, unless the context indicates otherwise -

"administration" means any department of state of any Government, or any provincial administration or local government body;

"armed force" means any armed force not established by or under any law and which is under the authority and control of or associated with and promotes the objectives of a participant in the Council;

"Constitution" means the Constitution of the Republic of South Africa, 1993;

"Council" means the Transitional Executive Council established by section 2;

"election" means an election for any legislative body established by any law;

"defence force" means any defence force of any Government, established by or under any law;

"Government" means -

- (a) the Government of the Republic of South Africa;
- (b) the Governments of the self-governing territories; and
- (c) the Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned;

"Independent Broadcasting Authority" means the Independent Broadcasting Authority established by the Independent Broadcasting Authority Act, 1993;

"Independent Electoral Commission" means the Independent Electoral Commission established by the Independent Electoral Commission Act, 1993;

"Independent Media Commission" means the Independent Media Commission established by the Independent Media Commission Act, 1993;

"military force" means any defence force or armed force, but shall not include any policing agency;

"Multi-Party Negotiating Process" means the Negotiating Process that commenced in March 1993 at the World Trade Centre, Kempton Park;

"National Peace Accord" means the National Peace Accord signed on 14 September 1991 at the Carlton Centre, Johannesburg;

"National Peacekeeping Force" means the National Peacekeeping Force referred to in section 16 (10);

"National Peace Secretariat" means the National Peace Secretariat established by section 2 of the Internal Peace Institutions Act, 1992 (Act No. 135 of 1992);

"Negotiating Council" means the Negotiating Council of the Multi-Party Negotiating Process;

"participant", in relation to the Council, means any Government, political party or organization that is a participant in the Council by virtue of section 4;

"policing agency" means any public police force in South Africa established or governed by or under any law;

"Police Board" means the Police Board established in terms of Chapter 3 of the National Peace Accord;

"political party" means any party or organization, whether on its own or as an alliance of parties or organizations, which participates in or intends to participate in an election in terms of the Constitution;

"region" includes a province or a self-governing territory, as the case may be, and "regional" has a corresponding meaning;

"self-governing territory" means a self-governing territory as defined in section 38(1) of the Self-Governing Territories Act, 1971 (Act No. 21 of 1971);

"South Africa" means -

- (a) the Republic of South Africa;
- (b) the self-governing territories; and
- (c) the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned;

"Special Electoral Court" means the Special Electoral Court established by the Independent Electoral Commission Act, 1993;

If subcouncil" means a subcouncil established by or under this Act;

"the Subcouncil", in sections 14, 15, 16, 17, 18, 19 and 20, means the subcouncil referred to in section 8(1)(a), (b), (c), (d), (e), (f) and (g), respectively;

"traditional authority" means any authority which, in terms of indigenous law or any other law, administers the affairs of any tribe, group of indigenous people or any other persons resident within an area under the control of a traditional leader;

"traditional leader" means any person who, in terms of indigenous or any other law, is in charge of, or exercises control over, a traditional authority.

## **TRANSITIONAL EXECUTIVE COUNCIL**

### **Establishment of Transitional Executive Council**

2. There is hereby established a council to be known as the Transitional Executive Council, which -

- (a) shall subject to section 3, for the purpose of achieving the objects referred to in that section, have the executive and other powers conferred upon it by or under this Act;
- (b) may exercise such other powers and shall perform such duties as may be conferred or imposed upon it by or under any other law.

### **Objects of Council**

- 3. The objects of the Council shall be to promote, in conjunction with all legislative and executive structures at all levels of government in South Africa, the preparation for and transition to a democratic order in South Africa by -
  - (a) creating and promoting a climate for free political participation by endeavouring to:
    - (i) eliminate any impediments to legitimate political activities;
    - (ii) eliminate any form of intimidation which has a bearing on the said transition;
    - (iii) ensure that all political parties are free to canvass support from voters, to organize and hold meetings and to have access to all voters for the purposes thereof;
    - (iv) ensure the full participation of women in the transitional and electoral structures and processes; and
    - (v) ensure that no Government or administration exercises any of its powers in such a way as to advantage or prejudice any political party;
  - (b) creating and promoting conditions conducive to the holding of free and fair elections;
  - (c) facilitating the transition to a democratic order by exercising such powers and performing such duties as may be assigned to it by (this Act or) any other law.

### **Constitution of Council**

- 4. (1) Each Government, political party or organization which -
  - (a) is or was at any time represented on the Negotiating Council; and
  - (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control or associated with it and promotes its objectives -

- (i) undertakes to be bound by and to implement the directions of the Council issued in terms of this Act; and
  - (ii) renounces violence as a means of achieving political objectives, shall be a participant in the Council and shall be entitled to be represented by one member on the Council.
- (2) The Government of or any political party registered only in or operating only from or any organization operating only from the Republic of Transkei, Bophuthatswana, Venda or Ciskei shall not be a participant in the Council unless -
  - (a) the provisions of this Act, as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993 and the Independent Broadcasting Authority Act, 1993, have been incorporated into the law of the State concerned; or
  - (b) formal provision has been made by law in such State for the application of any Act referred to in paragraph (a) in that State.
- (3) A participant in the Council that wishes to be represented on the Council shall within seven days after the commencement of this Act by notice in writing to the State President nominate a member and an alternate member to the Council.
- (4) The State President shall within seven days after the receipt of such a notice, by proclamation in the Gazette appoint the persons so nominated as a member and alternate member, respectively, of the Council.
- (5)
  - (a) If the Council determines that any Government, political party or organization which is not a participant in the Council but which by notice in writing to the Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control or associated with it and promotes its objectives -
    - (i) undertakes to be bound by and to implement the directions of the Council issued in terms of this Act; and
    - (ii) renounces violence as a means of achieving political objectives,should be such a participant, the Council shall notify the State President in writing, and the State President shall by proclamation in the Gazette declare that Government, political party or organization to be a participant in the Council.
  - (b) If such a participant wishes to be represented on the Council, it shall within seven days after the date of the proclamation concerned by notice in

writing to the State President nominate a member and an alternate member to the Council.

- (c) The State President shall within seven days after the receipt of such a notice, by proclamation in the Gazette appoint the persons so nominated as a member and alternate member, respectively, of the Council.
- (6) The Council shall determine whether a member thereof shall serve in a full-time or part-time capacity.
- (7) If a member of the Council is for any reason unable to perform the duties of his or her office, the alternate member concerned shall act in the place of that member, and for that purpose that alternate member shall have all the powers and duties of the member concerned.
- (8) (a) If any participant in the Council or any organization under its authority or control, or any armed force which is under its authority and control or associated with it and promotes its objectives -
  - (i) persistently breaches the undertaking or renunciation submitted by the participant in terms of subsection (1)(b) or (5)(a); or
  - (ii) fails or refuses to comply with any provision of this Act or any regulation made thereunder or with any direction of the Council or a subcouncil in terms of this Act, or any other law or any regulations made thereunder,

the Council may, if it has reason to believe that such breach, failure or refusal is of a material nature or occurs persistently, by notice in writing to that participant, direct it to refrain from such breach, or to comply with such provision or direction or to see to it that such organization or armed force refrains from such breach, or complies with such provision or direction, as the case may be.

- (b) If the participant concerned or such an organization or armed force, after the receipt of such a notice -
  - (i) fails or refuses to comply with a direction of the Council under paragraph (a) within a reasonable time; or
  - (ii) wilfully persists with any conduct referred to in subparagraph (i) or (ii) of paragraph (a),

the Council may, without derogating from its powers under section 7(1)(0), suspend that participant from participating in the Council or any subcouncil or any body, committee or subcommittee established by or under this Act,

for such period and on such conditions as may be determined by the Council.

- (9) Any participant in the Council which fails or refuses to nominate a member on the Council, or terminates or suspends its participation in the Council, or whose participation in the Council is suspended under subsection (8), shall nevertheless remain bound by the obligations it incurred by becoming such a participant.

#### **Vacation of office, removal from office, and filling of vacancies in Council**

5. (1) If a member of the Council loses the confidence of the participant which nominated that member, the Council, on being advised thereof in writing by the participant concerned, shall inform the State President in writing, and the State President shall by proclamation in the Gazette remove that person from office.
- (2) If a member of the Council dies, resigns from office (which shall be in writing to the State President) or is removed from office in terms of subsection (1), the participant previously represented by that member shall be entitled to nominate another person as a member of the Council, and in respect of such nomination section 4 shall apply mutatis mutandis.
- (3) Sub-sections (1) and (2) shall apply mutatis mutandis in respect of an alternate member.

#### **Conditions of service, remuneration and allowances of members of Council**

6. (1) The conditions of service, remuneration, allowances and other benefits of members of the Council shall be determined by the State President in consultation with the Negotiating Council.
- (2) Those members of the Council who receive remuneration, allowances or other benefits by virtue of their employment by or position in any Government or public service or administration and who continue to receive such remuneration, allowances or other benefits while serving on the Council shall not receive any remuneration, allowance or other benefits by virtue of subsection (1), except to the extent required to place those members in the position in which they would have been were it not for such employment or position.
- (3) The conditions of service, remuneration, allowances and other benefits contemplated in this section may differ according to whether a member is a full-time or part-time member of the Council.
- (4) An alternate member shall be entitled to such allowances, if any, as may be determined by the Council.



## **General powers of Council**

7. (1) The Council shall, in addition to the other powers conferred upon it by this Act or any other law, for the purpose of achieving its objects, have the power to -
- (a) request and obtain, subject to any other provision of this Act, all such information and documents as may be necessary for that purpose;
  - (b) direct a subcouncil to enquire into and to advise the Council on any matter in connection with the functions of the Council;
  - (c) initiate or participate in negotiations relating to its functions and objects;
  - (d) appoint staff to assist it or a subcouncil in the performance of its functions, and in consultation with the State President, determine their conditions of service, remuneration, allowances and other benefits;
  - (e) request the secondment of skilled personnel from any public service, subject to any law applicable to such personnel in that regard, to assist the Council or a subcouncil in the performance of its functions;
  - (f) make rules providing for the convening of and procedure at meetings of the Council and subcouncils;
  - (g) appoint from among its members office-bearers, either on a fixed or rotational basis;
  - (h) appoint a person, body or subcommittee to investigate or deal with any matter relating to the Council's functions and to report thereon;
  - (i) open and administer its own financial accounts; and
- take such steps, including legal steps, in terms of any law or the common law, as are necessary to give effect to this Act or any decision taken by the Council or a subcouncil under this Act or any other law.
- (2) The Council may delegate to a subcouncil any of its powers, but it shall not be divested of a power so delegated.
- (3) In respect of any power delegated to a subcouncil under subsection (2) or any power referred to in sections 14 to 20, the Council -
- (a) shall identify categories of subjects in respect of which the Council shall itself take decisions or make recommendations;

- (b) shall identify categories of subjects in respect of which decisions or recommendations of subcouncils shall have no force or effect unless ratified by the Council;
  - (c) shall be informed by each subcouncil of all decisions or recommendations of that subcouncil;
  - (d) may review, amend or withdraw any such decision or recommendation of a subcouncil;
  - (e) may exercise that power itself.
- (4) If the Council exercises any power by virtue of subsection (3), the relevant provisions of this Act relating to the subcouncil concerned shall apply *mutatis mutandis* in respect of the Council.
- (5) Notwithstanding any provision of this Act, the Council or a subcouncil, in exercising any power referred to in section 14(e), 14(i), 15(1)(g), 16(1)(f), 16(1)(g), 17(1)(a), 17(1)(h), 17(3), 18(a), 190), 20(1)(k) or 20(1)(I) shall not be limited to act within the scope of the objects of the Council.

## **SUBCOUNCILS**

### **Establishment of subcouncils**

8. (1) There are hereby established the following subcouncils under the control and supervision of the Council:
- (a) Subcouncil on Regional and Local Government and Traditional Authorities;
  - (b) Subcouncil on Law and Order, Stability and Security;
  - (c) Subcouncil on Defence;
  - (d) Subcouncil on Finance;
  - (e) Subcouncil on Foreign Affairs;
  - (f) Subcouncil on the Status of Women; and
  - (g) Subcouncil on Intelligence.
- (2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment to this Act as contemplated in section 28, if the

establishment of such subcouncils is necessary for the Council to perform its functions.

- (b) If any dispute between the Council and the State President were to arise as to the necessity of establishing such subcouncils, the matter shall be referred to the Special Electoral Court for determination.
- (3) A subcouncil shall -
- (a) subject to sections 3 and 7(2) and (3), for the purpose of achieving the objects of the Council, have the powers conferred upon it by or under this Act or any other law;
  - (b) report to the Council in such manner and at such times as may be determined by the Council.

### **Constitution of subcouncils**

- 9.
- (1) The members of the subcouncils shall be appointed in a full-time capacity by the Council, which shall give notice in the Gazette of each such appointment.
  - (2) Unless the Council, for good reasons, determines otherwise, the membership of a subcouncil -
    - (a) shall not exceed six; and
    - (b) shall not be restricted to members of the Council.
  - (3) The Council shall not appoint more than one person representing any participant in the Council on a particular subcouncil.
  - (4) If a member of a subcouncil is for any reason unable to perform the duties of his or her office, the Council may appoint in writing a substitute member to act in the place of the member concerned, and for that purpose that substitute member shall have all the powers and duties of the member concerned.

### **Vacation of office, removal from office and filling of vacancies in subcouncils**

- 10.
- (1) If the Council is satisfied that a member of a subcouncil is unable to perform his or her duties satisfactorily, the Council shall remove that member from office and give notice of such removal in the Gazette.
  - (2) If a member of a subcouncil dies, resigns from office (which shall be in writing to the Council) or is removed from office in terms of subsection (1), the Council shall

appoint another member to that subcouncil and give notice of such appointment in the Gazette.

### **Conditions of service, remuneration and allowances of members of subcouncils**

11. (1) The conditions of service, remuneration, allowances and other benefits of members of the subcouncils shall be determined by the State President in consultation with the Council.
- (2) Section 6(2) shall apply mutatis mutandis in relation to members of subcouncils.
- (3) A substitute member of a subcouncil shall be entitled to such allowances, if any, as may be determined by the Council.

### **General powers of subcouncils**

12. (1) Unless determined otherwise by the Council, a subcouncil shall have the power to
- (a) request and obtain, subject to any other provision of this Act, all such information and documents as may be necessary for performing its functions and achieving the objects of the Council;
  - (b) initiate or participate in negotiations relating to its functions and objects;
  - (c) appoint from among its members office-bearers, either on a fixed or rotational basis; and
  - (d) appoint a person or body to investigate any matter relating to its functions and to report thereon.
- (2) (a) A subcouncil may establish one or more subcommittees to assist it in the performance of its functions.
- (b) A member of a subcommittee may be, but need not be, a member of the Council or of the subcouncil concerned.

## **SPECIFIC POWERS AND DUTIES OF COUNCIL AND SUBCOUNCILS**

### **Powers in regard to certain proposed legislation and other actions**

13. (1) (a) Each Government and administration shall keep the Council informed of and shall provide it with copies of all of its proposed legislation, including regulations, by-laws and other subordinate legislation, which have a bearing on the objects of the Council.

- (b) If the Council or the subcouncil concerned has reason to believe that any proposed legislation of any Government or administration is likely to have an adverse effect on the attainment of the objects of the Council, it may, after affording the Government or administration concerned an opportunity to make representations to the Council or the subcouncil concerned and, subject to the other provisions of this Act, direct that Government or administration in writing not to proceed with the legislation concerned, and that Government or administration shall, subject to section 23, comply with such direction.
- (2)
  - (a) Each Government and administration, each political party or organization which participates in the Council, and every other political party, shall keep the Council informed of, and the Council shall be, subject to the other provisions of this Act, entitled to request and obtain information in regard to, any decision and any proposed or intended action of that Government, administration, political party or organization likely to have a bearing on the objects of the Council.
  - (b) If the Council or the subcouncil concerned has reason to believe that a decision or action of any Government, administration, political party or organization referred to in paragraph (a) is likely to have an adverse effect on the attainment of the objects of the Council, it may, after affording the Government, administration, political party or organization concerned an opportunity to make representations to the Council or the subcouncil concerned, and subject to the other provisions of this Act, direct that Government, administration, political party or organization in writing not to implement that decision or proceed with that action, and that Government, administration, political party or organization shall, subject to section 23, comply with such direction.
- (3) Subject to section 23, each Government and administration, each political party or organization which participates in the Council and every other political party shall comply with and give effect to any direction made to it by the Council or a subcouncil in terms of this Act or any other law.

### **Power and duties in regard to regional and local government and traditional authorities**

- 14. The Council shall, for the purpose of achieving its objects, have the following powers to be exercised through its Subcouncil on Regional and Local Government and Traditional Authorities:
  - (a) To acquaint itself with and monitor developments, policy objectives and targets in relation to regional and local government, relevant organizations active in the field of local government and traditional authorities;

- (b) in regard to regional and local government matters, to propose the amendment, repeal or enactment of legislation, including subordinate legislation;
- (c) to promote the objects of the Council generally, and in particular in regard to regional and local government elections, and to educate the public on the electoral processes;
- (d) to liaise with all organizations and bodies relevant to the functions of the subcouncil, including the Local Government Negotiating Forum, regional governments, the Electrification Forum, the National Peace Secretariat, demarcation boards or commissions, the Independent Electoral Commission and the National Housing Forum;
- (e) to be advised of and to make proposals regarding regional and local government budgets, the powers, duties and functions and the restructuring and rationalisation of regional and local government administrations, transitional measures, interim local government structures and the demarcation of boundaries, and shall consult with the Local Government Negotiating Forum and other interested bodies regarding such proposals;
- (f) to monitor any collapse of services and shortfall of finances in local government and to make recommendations designed to redress problems in this regard;
- (g) to request and obtain information regarding -
  - (i) the disposal and intended disposal of regional and local government assets; and
  - (ii) intended loans by any local government;
- (h) to make recommendations to the appropriate institutions and authorities on -
  - (i) legislative and executive measures, either existing or proposed, which may affect traditional leaders' powers during the transition;
  - (ii) free and fair political participation in areas in respect of which traditional leaders exercise their powers; and
  - (iii) matters of material concern to traditional leaders and their communities; and
- (i) to approve any amendment of the terms or conditions of and any diminution of or increase in the remuneration of traditional leaders.

#### **Powers and duties in regard to law and order, stability and security**

15. (1) The Council shall, for the purpose of achieving its objects, have the following powers and duties to be exercised through its Subcouncil on Law and Order, Stability and Security :
- (a) To establish a national inspectorate comprised of members of policing agencies and such other persons as the Subcouncil may determine, which shall investigate and monitor all policing agencies, and shall liaise with all such agencies or their inspectorates in order to promote the objects of the Council;
  - (b) to investigate, or order the investigation by the national inspectorate of, any matter relating to the functions of the Subcouncil, and for such purpose the Subcouncil and the national inspectorate shall, subject to the other provisions of this Act, have the authority to interview such persons as they may consider necessary, and shall, subject to the other provisions of this Act, have access to all such documents and facilities of any policing agency as may be necessary for purposes of the investigation;
  - (c) to establish, in consultation with the appropriate Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control of a civilian, which shall be responsible for the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct: Provided that if no agreement is reached between the Ministers concerned and the Subcouncil within one month of the establishment of the Subcouncil, the matter shall be referred to the committee referred to in subsection (2)(c) for final determination;
  - (d) to request and obtain, subject to the other provisions of this Act, any information or crime intelligence reports compiled by any policing agency;
  - (e) to establish a committee comprised of local experts or of local and foreign experts, to evaluate or monitor any police action, conduct or reform which relates to the objects of the Council;
  - (f) to call for a report on and evaluate the impact of any steps taken by any policing agency to prevent political violence, including such steps as any policing agency is required to take in terms of the National Peace Accord and relevant legislation;
  - (g) to make proposals, after such consultation as it may deem necessary and in consultation with the policing agencies concerned, to improve the effectiveness of and community co-operation with such policing agencies, which proposals shall be given effect to by the participants in the Council and the policing agencies concerned;

- (h) to receive all recommendations of the Police Board, and to request the Police Board to conduct inquiries and to make recommendations in relation to any policing policy;
  - (i) to require minutes of and attend any relevant meeting of any policing agency;
  - (j) to formulate a statement of values and objects for the promotion of law, order, peace, stability and security for policing agencies, and to introduce or amend a code of conduct which shall be binding on all policing agencies, all participants in the Council and, with the consent of any signatory of the National Peace Accord not participating in the Council, on that signatory as well;
  - (k) to require the investigation of any activity or action by a member of a policing agency which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council and, in consultation with the appropriate Minister, where necessary, require the suspension, with full pay, of such member pending the outcome of the investigation;
  - (l) to liaise with the Independent Electoral Commission and the National Peace Secretariat and other structures of the National Peace Accord concerning matters relevant to the objects of the Council; and
  - (m) to receive all proposed regulations and directives governing the activities of the National Peacekeeping Force and to make recommendations in regard thereto.
- (2)
- (a) The State President, or any Minister or other person (hereinafter in this section referred to as "the functionary") who has the authority to declare the existence of a state of emergency or to declare an area to be an unrest area, as the case may be, and to make regulations with regard thereto, shall, subject to paragraph (b), do so in consultation with the Subcouncil.
  - (b) Where the circumstances are urgent and pressing and the appropriate functionary is unable to consult with the Subcouncil before making such a declaration, such functionary may make such declaration without such consultation: Provided that if the Subcouncil at its first meeting thereafter, having due regard to such reasons as may be advanced by the functionary for such declaration, does not give its approval to the declaration concerned, the functionary on being notified thereof by the Subcouncil, shall, subject to paragraph (c), forthwith withdraw the declaration.
  - (c) If the functionary and the Subcouncil are unable to reach agreement as to the necessity of a declaration referred to in paragraph (a) or (b), either



party may refer the matter to a committee, composed from the civilian membership of the Police Board, for determination, which determination shall be given within three days of such referral and shall be binding on the functionary, the Council and the Subcouncil, and be given effect to.

- (d) The committee referred to in paragraph (c) shall be comprised of the chairperson and vice-chairperson of the Police Board and one other member of that Board elected by the civilian members of the Board.
- (3) To the extent that an agreement of the nature contemplated in section 34G of the Police Act, 1958 (Act No. 7 of 1958), could have an effect on the attainment of the objects of the Council, the decision to enter into such an agreement shall be taken by the responsible Minister or other responsible functionary in consultation with the Subcouncil.
- (4) The State President and the Minister of Law and Order, exercising any power in terms of section 3 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, in relation to an officer of the rank of brigadier or above, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the State President or the Minister or the functionary concerned and the Subcouncil, either party may refer the matter to the committee referred to in subsection (2)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to.
- (5)
  - (a) To the extent that it may affect the objects of the Council, the Minister of Law and Order, exercising any power in terms of section 33 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, to make, amend or repeal regulations or issue directives governing relevant aspects of police conduct, functioning, structures and restructuring, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the Minister or the functionary and the Subcouncil, either party may refer the matter to the committee referred to in subsection (2)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to.
  - (b) If the Minister of Law and Order, or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei or any self-governing territory, issues directives of the nature contemplated in section

4 of the Police Act, 1958, the said Minister or functionary shall inform the Subcouncil thereof.

- (6) (a) The various policing agencies shall designate officers of the rank of brigadier or above to the Subcouncil to assist it in drafting rules to ensure uniformity of conduct of members of the said agencies and the co-ordinated control and command of such agencies in so far as that conduct or the functions of those agencies have a bearing on the objects of the Council.
- (b) The said rules shall be formulated within one month after the establishment of the Subcouncil and shall be promulgated by the Council by notice in the Gazette: Provided that if the rules are not formulated within that period or do not meet with the approval of the Minister or functionary referred to in subsection (5), the matter shall be referred to the committee referred to in subsection (2)(c) for final determination.
- (c) The officers referred to in paragraph (a) may be summoned at any time to assist the Subcouncil in the performance of its functions.

#### **Powers and duties in regard to defence**

- 16. (1) (a) Each military force shall in writing to (inform) the Negotiating Council or the Council (and the Subcouncil that) -
    - (i) (it) accept(s) the supervision of the Council (and the Subcouncil); and
    - (ii) (it) associates) itself with the commitment, undertaking and renunciation contemplated in section 4(1)(b) or 4(5)(a) submitted by the participant concerned.
  - (b) Any military force which does not so accept the supervision of the Council (and the Subcouncil and) or does not so associates) itself with that commitment, undertaking and renunciation, shall not be regarded as an armed force, defence force or a military force for the purpose of this section.
- (2) The Council shall, for the purpose of achieving its objects, have the following powers to be exercised through its Subcouncil on Defence:
    - (a) To be kept informed on a continuous basis by each military force regarding its activities (including, but not restricted to, the planning, preparation and execution of any action by such military force) likely to have an adverse effect on the attainment of the objects of the Council;

- (b) to be kept informed on a continuous basis by each participant in the Council of any proposed legislation (including subordinate legislation) and internal directives or regulations regarding the conduct and deployment of any military force;
- (c) to investigate through an independent body appointed or designated by the Council, or to order the investigation of the conduct of any member or members of (a unit of) a military force which is likely to have an adverse effect on the attainment of the objects of the Council;
- (d) in respect of any activity or action by any member or members of a military force which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council to recommend appropriate disciplinary measures or criminal proceedings and order, in consultation with the commander of the military force concerned, the restriction to barracks or suspension, on full pay, of such member or members (of the military force concerned) pending the outcome of such measures or proceedings, or recommend appropriate measures in regard to any unit or element of such military force;
- (e) to formulate a code of conduct, which shall be made legally binding on all members of all military forces, and to monitor its observance;
- (f) to undertake or to commission research into any relevant matter, including, but not limited to, the parliamentary control, composition, manpower policy (including conscription), organization and executive command of a future South African defence force, the policy towards armed forces other than those covered by the definition of "armed force" in section 1, and the future of the arms and related industries;
- (g) to oversee any planning, preparation and training for a future South African defence force;
- (h) to liaise with the media and with the various military forces so as to keep the military forces and the public informed of developments regarding defence-related matters;
- (i) to monitor media reporting on defence-related matters;
- (j) to establish a co-ordinating council comprised of the commander, or a person designated by the commander, of every military force or such other persons as may be designated by the commanders of each military force, which shall -

- (i) liaise with all military forces in order to promote the objects of the Council; and
    - (ii) report and make recommendations to the Subcouncil as and when required concerning any matter relating to its functions; and
  - (k) to budget for and be allocated additional resources for the daily maintenance, the remuneration and allowances, if any, and the administration in assembly points within South Africa of all armed forces: Provided that the location and security arrangements in regard to such assembly points, the extent of such maintenance, remuneration and allowances, if any, and the requirements entitling a person to be regarded as a member of an armed force for purposes of this paragraph, shall be subject to agreement by a committee of experts appointed by the Planning Committee of the Multi-Party Negotiating Process and comprised of representatives of the military forces of participants in the Negotiating Council designated by the commanders of those forces.
- (3) For the purpose of subsection (2)(k) no person shall be considered a member of an armed force as defined in section 1 unless -
- (a) that person was a registered member of such armed force at the commencement of this section and qualifies in terms of the requirements referred to in subsection (2)(k);
  - (b) that person's name and other particulars are included in a certified personnel register submitted by such armed force to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a).
- (4) (a) The Council shall, in consultation with the Minister of Defence, make regulations -
- (i) governing the deployment of any defence force unit in crime-prevention or peacekeeping operations; and
  - (ii) the relationship and interaction between such unit and any other unit of a defence force, the National Peacekeeping Force or any policing agency involved in such operations,
- and any such deployment and the discontinuance of such deployment shall take place only in accordance with such regulations and with the concurrence of both the said Minister and the Subcouncil.
- (b) Until such regulations have been promulgated, a defence force unit may be deployed or continue to be deployed in crime-prevention and peacekeeping

operations in terms of existing laws governing such deployment:

Provided that -

- (i) in respect of any deployment which took place before the commencement of this section, the Subcouncil may review such deployment and, in consultation with the Minister of Defence, order the discontinuance of such deployment: Provided further that if the Subcouncil and the Minister are unable to reach agreement, either party may refer the matter to the Special Electoral Court for determination;
  - (ii) in respect of any deployment which takes place after the commencement of this section, such deployment and the discontinuance of such deployment shall take place only with the concurrence of both the Minister and the Subcouncil.
- (c) In the event of the Council and the Minister being unable to reach agreement on the regulations contemplated in paragraph (a), within one month of the appointment of the members of the Subcouncil, the matter shall be referred to the Special Electoral Court for determination.
- (5) Notwithstanding subsection (4)(a), but subject to the provisions of section 13(2)(b), the command structure of any military force shall remain responsible for the day to day management of such force, including routine transfers, training, promotion and, in regard to any defence force, any routine defensive functions relating to the protection of the integrity of the borders of the State concerned.
- (6) The Subcouncil may establish -
  - (a) monitoring mechanisms to ensure that its directives are complied with and that the activities of any military force have no adverse effect on the attainment of the objects of the Council; and
  - (b) any mechanism to ensure appropriate interaction between itself, the various military forces, the National Peacekeeping Force, policing agencies and any other relevant agency at national, regional or local level.
- (7) The Minister of Defence, exercising powers in terms of the Defence Act, 1957 (Act No. 44 of 1957), or the appropriate functionary exercising corresponding powers provided for in the corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, to make, amend or repeal regulations regarding matters concerning defence force conduct, functioning, structures and deployment relevant to the objects of the Council, or any commander of an armed force issuing directives in regard to such a matter, shall act in consultation with the Subcouncil, which may itself propose such regulations or directives or any amendments to or the repeal of such regulations or directives: Provided that if no agreement is

reached between the Minister, functionary or commander and the Subcouncil, the matter shall be referred to the Special Electoral Court for determination.

- (8) Without derogating from the rights of any participant in the Council in terms of section 23, the commander of any military force shall ensure that any directive of the Subcouncil regarding the deployment or conduct of any military force is made known to and binding upon all members of such military force including, where appropriate, by incorporation thereof in the relevant standing orders and any disciplinary code.
- (9) The Subcouncil shall have the responsibility to ensure -
  - (a) the audit and effective supervision of the arms and armaments of any military force; and
  - (b) the identification of the personnel of any military force, for which purpose every military force shall submit a certified personnel register to the subcouncil within the relevant period specified in subsection (3)(b).
- (10) (a) The Subcouncil shall budget for and be allocated the necessary resources to establish and maintain a force, to be known as the National Peacekeeping Force, whose functions shall relate to the maintenance of peace and public order in South Africa.
  - (b) The National Peacekeeping Force shall be comprised of members of-
    - (i) all military forces, as far as practicable in equal numbers, except in so far as any such force prefers to contribute fewer members to that Force; and
    - (ii) all policing agencies which fall under the authority and control of the participants in the Council, wishing to be so represented in that Force.
- (11) The Subcouncil shall establish a National Peacekeeping Force Command Council, comprised of representatives of all the military forces and policing agencies which participate in the National Peacekeeping Force and which wish to be represented on that Council.
- (12) The Subcouncil, in consultation with the National Peacekeeping Force Command Council, having due regard also to the interests of women, shall:
  - (a) establish and see to the training of a unit of National Peacekeeping Force instructors who may be drawn from the participating military forces and policing agencies but shall also include foreign experts;

- (b) formulate the philosophy, doctrine, syllabi and training policy for the National Peacekeeping Force;
  - (c) establish criteria for the recruitment, training and selection of members of the National Peacekeeping Force;
  - (d) establish the command structure of the National Peacekeeping Force and appoint, and in its discretion dismiss the Commander and other senior officers, above a rank to be determined by the Subcouncil, of that Force, which command structure shall be accountable to the Subcouncil through the National Peacekeeping Force Command Council;
  - (e) make regulations regarding -
    - (i) the powers and duties of the National Peacekeeping Force;
    - (ii) the circumstances under which the National Peacekeeping Force may be deployed;
    - (iii) the conditions of service and remuneration of members of the National Peacekeeping Force: Provided that the provisions of section 6(2) shall apply mutatis mutandis to such regulations;
    - (iv) the relationship and interaction between the National Peacekeeping Force and any other military force or policing agency deployed in a peacekeeping operation in the same area as the National Peacekeeping Force;
    - (v) a disciplinary code, including a code of conduct, for members of the National Peacekeeping Force; and
    - (vi) the application of any existing law relating to any matter referred to in subparagraph (i), (ii), (iii), (iv) or (v), with such adjustments, if any, to that law as may be considered necessary;
  - (f) establish standard operational procedures for the National Peacekeeping Force; and
  - (g) consult with other military forces and policing agencies regarding the deployment and operation of the National Peacekeeping Force.
- (13) (a) The National Peacekeeping Force shall have its own distinctive uniform and other insignia, and its vehicles shall be marked distinctively.
- (b) The Subcouncil shall -
- (i) in consultation with the National Peacekeeping Force Command Council and after consultation with the South African Defence Force, determine the requirements of the

National Peacekeeping Force in respect of uniforms, transport, accommodation, equipment and other logistical support;

(ii) budget for and be allocated funds for this purpose.

(c) The uniforms, transport, accommodation, equipment and other logistical support referred to in paragraph (b) shall be supplied by the South African Defence Force, either from its own resources or from the resources of any other defence force or policing agency or any other source, for the account of the Subcouncil.

(14) In the event of the Subcouncil and the National Peacekeeping Force Command Council being unable to reach a decision on any matter referred to in subsection (12), the matter shall be referred to the Council which shall endeavour to resolve it, failing which the matter shall be referred to the Special Electoral Court for determination.

#### **Powers and duties in regard to Finance**

17. (1) The Council shall, for the purpose of achieving its objects, have the following powers to be exercised through its Subcouncil on Finance :

- (a) To be informed of recent economic developments, economic policy objectives and targets for the medium-term and, more particularly, for the ensuing fiscal year (1994/1995);
- (b) to be represented on all function and budgeting committees in respect of the 1994/1995 fiscal year of any Government or regional authority with a view to ensuring that funds are not applied in a manner favouring one or other political party;
- (c) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the Subcouncil to perform its functions in terms of this Act;
- (d) to approve any measures designed to rationalise Treasury functions in the process of realignment of governmental structures;
- (e) to advise the relevant departments of State concerning the privatisation or tendering out of functions currently performed by those departments;
- (f) to investigate or require the investigation of specific allegations of corruption or inefficiency that may have an adverse effect on the attainment of the objects of the Council;



- (g) to monitor the contents of existing public service disciplinary codes and to request disciplinary investigations into the conduct of public servants who fail to perform their tasks within guidelines governing financial discipline and authorized or proper expenditure;
  - (h) to make recommendations regarding the prevention of wasteful expenditure; and
  - (i) to monitor any expenditure of State funds by any Government or any department of State or any institution funded wholly or partly from State funds, and to ascertain whether any public monies or State funds have been allocated or given improperly to any political party.
- (2) In the exercise of its powers and the performance of its duties, the Subcouncil shall subject to the other provisions of this Act -
  - (a) have access to all information relating to its functions available from any Government or administration, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;
  - (b) be entitled to conduct such research as it considers necessary.
- (3) In the course of the preparation of the 1994/1995 budgets of any Government, the views of the Subcouncil shall be taken into account, and there shall be consultation on -
  - (a) the overall level of state expenditure;
  - (b) the composition of security, social, economic and general state expenditure, broken down into capital and recurrent expenditure;
  - (c) the level and composition of any taxes to be collected by any Government;
  - (d) the financing of budget deficits;
  - (e) the contingent liabilities of any Government; and
  - (f) any other matter considered by the Subcouncil to be relevant to the objects of the Council.
- (4) (a) The Subcouncil shall be informed of and its approval required for -

- (i) the upgrading of any post or the creation of any new post above a level to be determined by the Subcouncil, in the public service of any Government; and
  - (ii) any amendment to or deviation from the laws governing the retirement of members of any such public service.
- (b) The subcouncil shall be informed of the proposed filling of any vacant post in the public service of any Government above a level to be determined by the Subcouncil.
- (5) The Subcouncil shall be provided, on a continuous basis with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated between a Government and any foreign government or international agency, and no such agreement shall be concluded without the prior approval of the Subcouncil.
- (6) The Subcouncil shall be informed of transfers of public funds as between the various Governments, regardless of the departments from which transfers are made.
- (7) The Subcouncil shall be informed on a monthly basis of domestic borrowing by the various Governments of amounts in excess of a figure, to be determined by the Council.

#### **Powers and duties in regard to foreign affairs**

- 18. The Council shall, for the purpose of achieving its objects, through its Subcouncil on Foreign Affairs, in regard to foreign policy, liaise, monitor, make recommendations and, where it considers it necessary, assist with a view to -
  - (a) achieving progressively the broadest possible consensus on matters affecting South Africa's international interests, particularly its long-term interests;
  - (b) securing appropriate agreements with the international community regarding the contribution that community could make to the peaceful transition to democracy;
  - (c) in consultation with the Subcouncil on Finance, securing such international assistance as the Subcouncil considers necessary in order to address the socio-economic needs of the people as a whole and not to serve the interests of one or other political party;
  - (d) ensuring that any foreign policy initiative benefits the country as a whole and not one or other political party; and

- (e) promoting such international relations, including trade, finance, culture and sport relations, as in the opinion of the Subcouncil will benefit the country as a whole.

### **Powers and duties in regard to the status of women**

19. The Council shall, for the purpose of achieving its objects, with a view to the full and equal participation of women in the preparation for, the implementation of and the transition to a free and democratic order in South Africa, at national, regional and local levels, have the following powers to be exercised through its Subcouncil on the Status of Women:
- (a) To liaise with and advise all participants in the Council, all subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, Governments, relevant departments of State, local governments, traditional authorities and policy making forums;
  - (b) to propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;
  - (c) to request information and make formal and substantive representations regarding any direction or action referred to in section 13(2)(a);
  - (d) to liaise with all employee and employer organizations, all groups of women (in particular rural women and women under customary unions) and any other relevant organizations and structures;
  - (e) to investigate any matter which affects the status of women and which relates to the objects of the Council, for which purpose it shall have the authority to interview any officer or employee of any participant in the Council or of any regional or local government;
  - (f) to commission research;
  - (g) to promote and monitor educational programmes regarding the participation of women in the electoral process;
  - (h) to ensure that positive practical steps be taken to enable all women to exercise fully their right to -
    - (i) vote in all elections and public referenda, be eligible for election to all publicly elected bodies and freely participate in the political, public and electoral processes at all levels in South Africa;
    - (ii) participate in the formulation and implementation of policy at all levels of government and in the Council;

- (iii) equal opportunity in the appointment to, participation in, election of and promotion within all structures at all levels of government; and
  - (iv) be free from intimidation and harassment;
- (i) to make recommendations to all participants in the Council, the other subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forums, all statutory commissions and all electoral educational programmes on steps to promote the free and equal participation of women in the electoral process; and to submit proposals to the Subcouncil on Finance and the relevant departments of State in regard to the 1994/1995 budget on the allocation of resources for the promotion of the equality of women and their participation at all levels of government, including appropriate programmes and mechanisms.

### **Powers and duties in regard to intelligence**

20. (1) The Council shall, for the purpose of achieving its objects, have the following powers and duties to be exercised through its Subcouncil on Intelligence :
- (a) To acquaint itself, subject to the other provisions of this Act, with the nature, objects and functioning of every intelligence service or structure (including any departmental intelligence structure) in South Africa (hereinafter in this section referred to as "service");
  - (b) to establish a Joint Co-ordinating Intelligence Committee (hereinafter in this section referred to as "the Committee"), comprised of the head or a duly authorised senior representative of every service, which Committee -
    - (i) shall monitor and liaise with all services in order to promote the objects of the Council, taking into account matters of common concern in relation to the Subcouncil on Law and Order, Stability and Security and the Subcouncil on Defence;
    - (ii) may, if it considers it necessary to do so, establish a management structure which shall manage the affairs of the Committee;
  - (c) to adopt a set of basic principles on intelligence, which could also serve as a basis for the creation of a national intelligence capability in a new democratic dispensation;
  - (d) to formulate a code of conduct, which shall be binding on all members of all services during the period of transition and which could serve as a basis for an official code of conduct in a new democratic dispensation;
  - (e) to monitor, in consultation with the Committee, the compliance of all services and their members with the said code of conduct;

- (f) to investigate, or order the investigation by the Committee, of any matter (including complaints by the public) which relates to the objects of the Council or the said code of conduct;
  - (g) to require the investigation by, or under the supervision of, the Committee of any activity or action by a member of any service which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council or the said code of conduct and, in consultation with the appropriate Minister or the head of that service, as the case may be, where necessary, require the suspension, with full pay, of such a member pending the outcome of the investigation;
  - (h) to request and obtain, subject to the other provisions of this Act, on a regular basis from all services, via the Committee, evaluated information on the overall security situation in the country, highlighting threats, actions or events that may adversely affect the attainment of the objects of the Council: Provided that nothing in this subsection shall authorise the disclosure of a document or information relating to the above matters which consists of unevaluated information;
  - (i) to request and obtain, subject to the other provisions of this Act, via the Committee, from any service evaluated information on matters of special concern or urgency: Provided that such service shall -
    - (i) be informed beforehand what will be required of it;
    - (ii) be given reasonable time to prepare the required information and its presentation in that regard; and
    - (iii) have the right to be assisted or represented by persons duly authorised to do so;
  - (j) to make recommendations on steps to ensure that a service does not perform or carry out any act or operation likely or intended to undermine the attainment of the objects of the Council;
  - (k) to make proposals regarding suitable legislation relating to the practice of intelligence in a new political dispensation, including suitable mechanisms of accountability and political supervision; and
  - (l) to facilitate the transition to a future intelligence dispensation by commissioning research and formulating proposals in this regard.
- (2) The Subcouncil shall in the exercise of its powers and the performance of its duties

- (a) taking into consideration the sensitive nature of intelligence, deal with intelligence matters in a manner conducive to the national interest and not sectional interests; and
  - (b) recognise that the day to day management of every service remains the responsibility of the relevant Minister or head of such service, and that all services shall during the period of transition, subject to section 3, continue to fulfil their duties to their respective principals.
- (3) (a) If there is any dispute in relation to an investigation referred to in subsection (1)(f) or (g), the matter shall, having regard to the sensitive nature of intelligence, be referred to the appropriate Minister or head of the service concerned in order to attempt to resolve the issue.
- (b) If the issue is not so resolved the matter shall be referred to the Special Electoral Court for determination.
- (4) Any power conferred upon the Subcouncil which overlaps with any power conferred upon the Subcouncil on Law and Order, Stability and Security or the Subcouncil on Defence, shall be exercised in conjunction with such other subcouncil.

## **GENERAL AND SUPPLEMENTARY PROVISIONS**

### **Application of Act**

21. (1) Notwithstanding the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or any other law, this Act and any amendment thereof shall also apply in all self-governing territories.
- (2) (a) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding to incorporate the provisions of this Act into its law, such agreements as may be required to secure the co-ordinated implementation of the relevant legislation may be concluded and such an agreement shall have the force of law.
- (b) Any such proposed agreement shall be placed before the Negotiating Council or the Council, as the case may be.

### **Procurement of information**

22. (1) The Council or a subcouncil shall comply with a request by a member of the Council or a subcouncil to the Council or subcouncil concerned to procure any information or document in terms of this Act, provided that -

- (a) the member concerned shows to the Council or subcouncil, as the case may be, that the procurement of such information or document is reasonably necessary in order to achieve the objects of the Council; and
- (b) that request has the support of at least one-third of the members of the Council or subcouncil, as the case may be,

and the information or document so procured, shall, subject to the other provisions of this Act, be made available to all members of the Council or the subcouncil concerned.

- (2) Notwithstanding this section or any other provision of this Act, no military force, policing agency or intelligence service or structure shall be obliged to disclose any information or document in its possession or under its control if -

- (a) that information or document was provided under an express or implied assurance of confidentiality; and
- (b) in the opinion of the military force, policing agency or intelligence service or structure concerned, such disclosure could reveal the identity of the source of the information or document:

Provided that this subsection shall not prevent the disclosure of the remaining parts of information or a document if the parts which could reveal the identity of the source can be separated from the rest thereof.

- (3) No provision of this Act shall be interpreted as entitling the Council or a subcouncil to any information or document -

- (a) which does not have a bearing on the objects of the Council;
- (b) access to, or disclosure of which is prohibited by any law or the common law and -
  - (i) could reasonably be expected to endanger the life or physical safety of any person when weighted against the interest in disclosure;
  - (ii) would constitute an unwarranted invasion of the privacy of any person when weighted against the interest in disclosure;
  - (iii) would be likely to lead to improper or unfair speculation in currencies, securities, property or commodities at the expense of the public or would be likely to endanger the foreign exchange reserves or the stability of financial markets, the monetary system or any financial institution when weighted against the interest in disclosure; or

- (iv) could reasonably be expected to compromise or prejudice the national security interests of South Africa;
  - (c) compiled by or in the possession or under the control of any policing agency for purposes of law enforcement or criminal proceedings, to the extent that the disclosure of such information or document could reasonably be expected -
    - (i) to prejudice law enforcement investigations; or
    - (ii) to deprive any person of his or her right to a fair trial or an impartial adjudication;
  - (d) compiled by or in the possession or under the control of any intelligence service or structure in South Africa, except in so far as disclosure thereof is necessary for the purposes of section 20;
  - (e) relating to the activities, installations, projects, plans, movements or dispositions, or to the weapons, armaments, procurements, capabilities or technology of a military force, except in so far as disclosure thereof is necessary for the purposes of section 16;
  - (f) contained in any staff file pertaining to any officer or employee of any public service, except in so far as disclosure thereof is necessary for the purposes of section 17(4) or for the purpose of any investigation in terms of this Act into the conduct of such officer or employee;
  - (g) in connection with the provision of protective services to members or officials or employees of any participant in the Council;
  - (h) in the case of information or any document requested from a political party, if that information or document concerns a lawful activity of that party, particulars of which it is, subject to section 13, not obliged to disclose in terms of any law;
    - (i) relating to any special or secret account established or governed by or under any law, except in so far as it concerns any expenditure from such account which has been found by the Auditor-General to have been unauthorized; or relating to any tax matter prohibited from disclosure by any law when weighted against the interest in disclosure.
- (4) (a) The Council shall establish a committee to be known as the Access to Information Committee (hereinafter in this section referred to as "the Committee").



- (b) The Committee shall consist of four members appointed by virtue of a decision of the Council which has the support of at least 80% of the members of the Council, including every member who represents a participant in the Council which has a military force or policing agency.
  - (c) All persons appointed as members of the Committee shall be persons of integrity and trustworthiness in whom the Council has the fullest confidence.
  - (d) A member of the Council or a subcouncil may not be appointed as a member of the Committee.
  - (e) A member of the Committee who is not in the full-time service of any Government or administration shall be entitled to such remuneration, allowances and other benefits as may be determined by the Council.
  - (f) The Council shall designate two members of the Committee as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to any information or document compiled by or in the possession or under the control of any military force, policing agency or intelligence service or structure, excluding requests in respect of information or documents relating to the special or secret accounts referred to in subsection (3)(i), and the said members shall exercise the Committee's powers in respect thereof.
  - (g) The Council shall designate the other two members of the Committee as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to the special or secret accounts referred to subsection (3)(i) and any information or document other than that contemplated in paragraph (f), and the said members shall exercise the Committee's powers in respect thereof.
- (5) The Committee shall, notwithstanding subsection (3) or any other law or the common law, but subject to subsection (2), have access to any information or document in the possession or under the control of any Government or administration, any participant in the Council or any political party: Provided that the Committee shall have such access only if and in so far as -
- (i) it is in terms of subsection (8) and (9) requested by the Council or a subcouncil to scrutinize such information or document; and
  - (ii) access to such information or document is reasonably necessary to achieve the objects of the Council.

- (6) (a) The Committee shall take special precaution to ensure that no information or document referred to in subsection (3) to which it gains access is disclosed to unauthorized persons.
  - (b) No person other than the members of the Committee or a subcommittee shall be present at any meeting of the Committee or subcommittee unless such person's presence is necessary and authorized by the Committee or the subcommittee concerned.
- (7) Notwithstanding any other law which prohibits the disclosure of any information or document, any Government or administration, any participant in the Council or any political party shall be entitled, subject to subsections (2) and (3), to disclose any information or document in its possession or under its control to the Council or a subcouncil.
- (8) If any Government or administration, any participant in the Council or any political party, on being requested by the Council or a subcouncil in terms of any provision of this Act to disclose or furnish any information or document to it, refuses or fails to furnish such information or document or contends that such information or document is exempt from disclosure by virtue of subsection (3), the Council or subcouncil may request the Committee to scrutinize that information or document.
- (9) The Council or a subcouncil may at any time request the Committee to scrutinize any information or document in the possession or under the control of any Government or administration, or any participant in the Council or any political party.
- (10) A request contemplated in subsection (8) or (9) shall specify with sufficient clarity the nature of the information or document concerned as well as the reasons why it is considered to have a bearing on the objects of the Council.
- (11) The Committee shall as soon as possible after receiving a request contemplated in subsection (8) or (9), designate a member of the appropriate subcommittee to establish whether the information or document concerned has a bearing on the objects of the Council, and if so, the appropriate subcommittee shall scrutinize the information or document concerned with a view -
  - (a) to verify whether or not that information or document is exempt from disclosure by virtue of subsection (3);
  - (b) if it is so exempt, to verify whether or not the information or document or anything dealt with therein discloses anything which adversely affects the attainment of the objects of the Council, and if so, in what manner; and

- (c) if it is not so exempt to release the information or document to the Council or to the subcouncil concerned.
- (12) (a) For the purpose of subsection (11), the Committee may interview the duly authorized senior representative, or a person designated by him or her, of the Government or administration, the participant in the Council or the political party concerned and may direct such person in writing to appear before it to produce any information or document in the possession or under the control of that Government or administration, participant in the Council or political party, and may question such person relating to such information and require an explanation of anything contained in such a document: Provided that if the Committee is not satisfied with any such explanation, the Committee may direct any other person in writing to appear before it, and may question such person relating to such information and require an explanation of anything contained in such a document.
- (b) Any person who fails to comply with a direction referred to in subsection (a), shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.
- (13) If the member or subcommittee referred to in subsection (11) finds that any information or document that is exempt in terms of subsection (3) or anything dealt with therein, discloses anything which adversely affects the attainment of the objects of the Council, the Committee may make such information or document or any segregable portion thereof available to the Council or a subcouncil, subject to such limitations relating to access, publication and safekeeping as may be imposed by the Committee.
- (14) The subcommittee shall in writing notify the Council or the subcouncil concerned and the Government, administration, participant in the Council or the political party concerned, as the case may be, of any finding in terms of this section, which finding shall be binding on the parties concerned and shall be given effect to.
- (15) (a) No person, including any member of the Council or a subcouncil or of the Committee, shall disclose any confidential information or document obtained by that person in the performance of his or her functions in terms of this Act, except -
- (i) to the extent to which it may be necessary for the proper administration of any provision of this Act;
  - (ii) to any person who of necessity requires it for the performance of any function in terms of this Act.,
  - (iii) when required to do so by order of a court of law; or
  - (iv) with the written permission of the Council.

- (b) Any person who contravenes a provision of paragraph (a) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.
- (c) Every member of the Council, the subcouncils and the Committee and of any other structure, organ or body established by or under this Act, and every member of the staff of the Council, the subcouncils, the Committee and of any such structure, organ or body shall, before assuming office or duty, make and subscribe to an affirmation of secrecy in the following form:

"

I, ..... solemnly declare that -

- (a) I have taken cognisance of the stipulations of section 22(15) of the Transitional Executive Council Act, 1993.
- (b) I understand that I may not disclose any information or document of whatever nature which came or may come to my knowledge in consequence of my performance of any function in terms of the Transitional Executive Council Act, 1993, whether verbal or in writing, to any unauthorized person without prior written approval of the Transitional Executive Council.
- (c) I am fully aware of the serious consequences which may follow any breach or contravention of the abovementioned stipulations and prescriptions.

.....

(Signature)

#### Resolution of disputes

- 23. (1) When there is any disagreement between the Council or a subcouncil and any Government, administration, political party or any organization as to whether or not -
  - (a) a particular matter falls within the scope of the powers of the Council or subcouncil;
  - (b) any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council;
  - (c) such Government, administration, political party or organization is obliged to comply with a direction of the Council or subcouncil,

the Government, administration, political party or organization concerned may refer the matter to the Special Electoral Court for determination.

- (2) If any Government, administration, political party or organization contends, in relation to a direction issued by the Council in terms of section 13(1)(b) or (2)(b) or referred to in section 13(3) that the necessity or desirability for any proposed legislation, or any action or for the implementation of any decision, as the case may be, outweighs the adverse effect, if any, it may have on the attainment of the objects of the Council, that Government, administration, political party or organization may, within three days after such direction was issued, refer the matter concerned to the Special Electoral Court for determination, and may only proceed with such legislation or action or implement such decision, as the case may be, if or in so far as the Special Electoral Court authorizes it to do so.
- (3) When any matter is referred to the Special Electoral Court in terms of this Act, that Court shall as soon as practicable consider the matter and give its decision, having due regard to -
  - (a) the views expressed on the matter by members of the Council or the subcouncil concerned and by the Government, administration, political party or organization concerned; and
  - (b) any other matter considered by the Special Electoral Court to be relevant for its decision.
- (4) The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.
- (5) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.
- (6) A direction issued by the Council or a subcouncil in terms of this Act and which is not referred to the Special Electoral Court within three days after the Government, political party or organization concerned was notified of that direction, shall be binding on the Government, political party or organization concerned.
- (7) The provisions of this section shall not apply to subsections (1)(c), (2), (4), (5) and (6) of section 15, and subsections (13) and (14) of section 22.

#### **Meetings and office-bearers**

24. (1) The first meeting of the Council shall take place on a date and at a place agreed to by the Negotiating Council and specified in the first proclamation issued under section 4(4), which date shall not be later than 14 days after the publication of that proclamation.

- (2) The Council shall, after its first meeting, meet at such times and places as it may determine.
- (3)
  - (a) The Council shall, at its first meeting, designate from among its members a chairperson or chairpersons.
  - (b) At that meeting a person designated by the Negotiating Council shall preside until a chairperson or chairpersons, as the case may be, have been designated.
- (4)
  - (a) The Council shall, at its first meeting, from among its members designate a management committee.
  - (b) The management committee shall -
    - (i) until the rules contemplated in section 7(1)(f) have been made, determine the manner of convening meetings of the Council and the procedure at such meetings;
    - (ii) convene a special meeting of the Council if requested thereto in writing by not less than one-third of the members of the Council;
    - (iii) determine a time and place for any meeting convened in terms of subparagraph (ii), which meeting shall be convened with at least three days' notice to members of the Council: Provided that an urgent meeting may be convened with less than three days' notice if it is ratified by the Council at that meeting; and
    - (iv) perform any other function assigned to it by the Council.
- (5) A Minister or head of any department of State or a person designated by such Minister or head or any other person in the service of the State shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or the Subcouncil at which a matter relating to the functions of that department and the objects of the Council is to be discussed, and shall at such a meeting, subject to the provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil.
- (6) Any person that has an interest in any matter under discussion at a meeting of the Council or a subcouncil may on the invitation of the Council or subcouncil attend that meeting and, if invited to do so, address it with regard to that matter.

- (7) The Subcouncil on the Status of Women shall from time to time designate three persons from amongst its members, who shall be entitled to attend all meetings of the Council and to address it on any matter relating to the functions of that subcouncil, the interests of women and gender issues in general.

## **Decisions**

25. (1) All decisions of the Council or a subcouncil shall be made by members thereof alone and shall, as far as possible, be made on a basis of consensus.
- (2) In the event of there not being total consensus in respect of any decision, a decision which has the support of at least 80% (eighty percent) of the members of the Council or subcouncil concerned, shall be deemed to be the decision of the Council or the subcouncil, as the case may be.

**NOTE:** *This subsection has been declared to be a dispute and has been referred by the Negotiating Council to the Planning Committee for guidance.*

## **Administrative support staff and accounting**

26. (1) The Council shall at its first meeting, or as soon as possible thereafter appoint a person to the office of Executive Director who -
- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 7(1)(d) and (e), respectively;
- (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975) -
- (i) be charged with the responsibility of accounting for State monies received or paid out for or on account of the Council and the subcouncils; and
- (ii) cause the necessary accounting and other related records to be kept;
- (c) may exercise the powers and shall perform the functions and duties which the Council may from time to time confer upon, assign to or impose upon him or her in order to achieve the objects of this Act and shall for the purposes hereof be accountable to the Council.
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.

- (3) The Executive Director and the persons referred to in section 7(1)(d) and (e) shall exercise their powers and perform their functions and duties in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic of South Africa as may be determined by the Council and to the extent and subject to such adjustments as may be so determined by the Council.
- (4) The financing of matters provided for in this Act shall be subject to -
  - (a) requests being received in the prescribed form in accordance with the budgetary processes of the Republic of South Africa; and
  - (b) the provisions of the Exchequer Act, 1975, the regulations and instructions issued in terms thereof, as well as the Auditor General Act, 1989 (Act No. 52 of 1989).

### **Legal proceedings against Council**

- 27. (1) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply mutatis mutandis in respect of the Council.
- (2) In such application a reference in that Act to a Minister of a department shall be construed as a reference to the Chairperson or Chairpersons of the Council.

### **Amendment of Act**

- 28. (1) The Council, in consultation with the State President, may determine the need for and the content of any amendment or supplement to or repeal of any provision of this Act, and the State President shall, by proclamation in the Gazette, amend, supplement or repeal the provisions of this Act accordingly.
- (2) Any such amendment, supplement or repeal shall have the force and effect of an Act of Parliament.

### **Duration**

- 29. (1) This Act shall lapse upon the assumption of office by the members of the first cabinet in terms of the Constitution.
- (2) The Council and every subcouncil shall be dissolved on the date referred to in subsection (1).
- (3) (a) At such dissolution of the Council and the subcouncils, all assets, monies and liabilities of the Council, the subcouncils, and any other structure,



organ or body established by or under this Act, shall revert to such department of State as the first cabinet appointed in terms of the Constitution may designate.

- (b) The Minister responsible for such department shall -
- (i) have the authority to wind up the affairs of such structures, organs or bodies;
  - (ii) for the purpose of any legal relationships, including legal proceedings involving the Council, be the legal successor of the Council.

#### **State bound**

30. This Act shall bind the State.

#### **Short Title and Commencement**

31. (1) This Act shall be called the Transitional Executive Council Act, 1993, and shall come into operation on a date fixed by the State President, in consultation with the Negotiating Council or Council, by proclamation in the Gazette.
- (2) Different dates may be so fixed in respect of different provisions of this Act.

### **ADDENDUM B. TO MINUTES TUES 07/09/93**

## **TRANSITIONAL EXECUTIVE COUNCIL BILL SUPPLEMENTARY REPORT**

### **SEVENTEENTH DRAFT**

#### **OUTSTANDING CLAUSES FOR DISCUSSION IN THE NEGOTIATING COUNCIL**

Section 1	Definition of "intelligence", "traditional authority" and "traditional leader"	
Section 13	Subsection (1)(a) and (b)	page 16
	Subsection (2)(a) and (b)	
Section 15	Subsection (2)(a), (b), (c), (d)	held over for further discussion page 19
Section 16	Subsection (1)(a) and (b)	addition pages 21, 22, 24 & 25

(2)(f) and @)	deletions	pages 22 and 23
(3)(a) and (b)	additional wording in (b)	
(4)(a), (b) and (c)	held over for further discussion, amendment to (b) and addition of (i) and (ii) in (b) since distribution of fifteenth draft.	
(9)(a) and (b)	amendment	page 25

Section 22	Entire section still to be discussed by the Negotiating Council. Amendments to subsection (2)(a) and (b) the latter is an additional subsection, )(b)(iv), (3)(f) and (g). Pages 35 and 36	
Section 24	(6)	additional subsection
Section 25	Subsection (2)	Still to be decided. Page 43
Section 30	New section.	page 46

## **Section I                      Definitions**

"intelligence service" means any intelligence service of any Government, established by or under any law;

"intelligence structure" means any intelligence structure not established by or under any law and which is under the authority and control of or associated with and promotes the objectives of a participant in the Council;

"traditional authority" means any authority which, in terms of indigenous law or any other law, administers the affairs of any tribe, or group of indigenous people; and

"traditional leader" means any person who, in terms of indigenous or any other law. is in charge of, or exercises control over, a traditional authority.

## **Section 16                      Defence**

### **Powers and duties in regard to defence**

16.     (1)     (a)     Each military force shall, at the same time or as soon as possible after the submission of the commitment, undertaking and renunciation contemplated in section 4(1)(b) or 4(5) (a), as the case may be, by notice in writing to the Negotiating Council or the Council -

- (i) associate itself with that commitment, undertaking and renunciation; and
    - (ii) acknowledge the authority of the Council and the Subcouncil for the purpose of achieving the objects of this Act.
  - (b) Any military force which fails to comply with paragraph (a), shall not be regarded as an armed force, a defence force or a military force, as the case may be, for the purpose of this section.
  - (2) (f) to undertake or to commission research into any relevant matter, including, but not limited to, the parliamentary control, composition, manpower policy (including conscription), organization and executive command of a future South African defence force, the policy in regard to armed forces which are not under the authority and control of a participant in the Council, and the future of the arms and related industries;
- to establish a co-ordinating council comprised of the commander, or a person designated by the commander, of every military force, which shall -
- (i) liaise with all military forces in order to promote the objects of the Council; and
    - (ii) report and make recommendations to the Subcouncil as and when required concerning any matter relating to its functions; and
- (3) For the purpose of subsection (2)(k) no person shall be considered a member of an armed force as defined in section 1 unless -
  - (a) that person was a registered member of such armed force at the commencement of this section and qualifies in terms of the requirements referred to in subsection (2)(k);
  - (b) that person's name and other particulars are included in a certified personnel register, which register will be submitted by such armed force to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a) and shall be updated monthly.
- (4) (a) The Council shall, in consultation with the Minister of Defence, make regulations -
  - (i) governing the deployment of any defence force unit in crime-prevention or peacekeeping operations; and

- (ii) the relationship and interaction between such unit and any other unit of a defence force, the National Peacekeeping Force or any policing agency involved in such operations,

and any such deployment and the discontinuance of such deployment shall take place only in accordance with such regulations and with the concurrence of both the said Minister and the Subcouncil.

- (b) Until such regulations have been promulgated, a defence force unit may be deployed or continue to be deployed in crime-prevention and peacekeeping operations in terms of existing laws governing such deployment: Provided that -

- (i) in respect of any deployment which took place before the commencement of this section, the Subcouncil may review such deployment and, in consultation with the Minister of Defence, order the discontinuance of such deployment;
- (ii) in respect of any deployment which takes place after the commencement of this section, such deployment and the discontinuance of such deployment shall take place only with the concurrence of both the Minister and the Subcouncil.

- (c) In the event of the Council and the Minister being unable to reach agreement on the matters dealt with in this subsection or in the case of the regulations contemplated in paragraph (a), within one month of the appointment of the members of the Subcouncil, the matter shall be referred to the Special Electoral Court for determination.

- (9) The Subcouncil shall have the responsibility to ensure -

- (a) the audit and effective supervision of the arms and armaments of any military force, by that force; and
- (b) the identification of the personnel of any military force, for which purpose every military force shall submit a certified personnel register to the subcouncil within the relevant period specified in subsection (3)(b), and shall update such register on a monthly basis.

## **Section 22**

### **Procurement of information**

- (2) (a) Notwithstanding this section or any other provision of this Act, no military force, policing agency or intelligence service or structure shall be obliged to disclose any information or document in its possession or under its control in a form which could reveal the identity of any source of such information if that information or document was provided under an express

or implied assurance of confidentiality: Provided that this subsection shall not prevent the disclosure of the remaining parts of information or a document if the parts which could reveal the identity of the source can be separated from the rest thereof.

- (b) In the event of a dispute arising from the provisions of this subsection as to whether the disclosure of any information or document in the possession or under the control of a military force, policing agency, intelligence service or structure may reveal the identity of any source of information such dispute shall be determined by a committee composed of the head of the relevant military force, policing agency, intelligence service or structure and a member of the Committee referred to in subsection (4) appointed by the Committee in consultation with the said head.
- (3) No provision of this Act shall be interpreted as entitling the Council or a subcouncil to any information or document -
  - (b) (iv) would be likely to pose a substantial threat to the security of the State;
  - (f) The Committee shall designate two members of its members as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to any information or document compiled by or in the possession or under the control of any military force, policing agency or intelligence service or structure, excluding requests in respect of information or documents relating to the special or secret accounts referred to in subsection (3)(i), and the said members shall exercise the Committee's powers in respect thereof.
  - (g) The other two members of the Committee shall act as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to the special or secret accounts referred to subsection (3)(i) and any information or document other than that contemplated in paragraph (f), and the said members shall exercise the Committee's powers in respect thereof.

## **Section 24                      Meetings and office-bearers**

- (6) The leader of any political party, or of any organization participating in the Council, or a person designated by such leader, shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or the Subcouncil at which a matter relating to any activity or conduct of that party or organization which has a bearing on the objects of the Council is to be discussed, and shall at such a meeting, subject to the provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil.