

# 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 and 25**

(2)(f) and (j) deletions pages 22 and 23

(3)(a) and (b)	additional wording in (b)
<p>1. The Commission shall, in accordance with the procedure in Article 173, lay down the conditions and procedures for the application of the provisions of this Regulation.</p> <p>2. The Commission shall, in accordance with the procedure in Article 173, lay down the conditions and procedures for the application of the provisions of this Regulation.</p>	<p>1. The Commission shall, in accordance with the procedure in Article 173, lay down the conditions and procedures for the application of the provisions of this Regulation.</p> <p>2. The Commission shall, in accordance with the procedure in Article 173, lay down the conditions and procedures for the application of the provisions of this Regulation.</p>

(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, (3)(b)(iv), (3)(f) and (g). Pages 35 and 36**

**Section 24** (6) **additional subsection**

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**Section 1 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.

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**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 co, 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;

(j) 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.

Clause 25 (2) refers:

\* It was agreed that in the event of there not being total consensus in respect of any decision, a decision which has the support of at least 75 % (seventy five percent) of the members of the TEC, shall be deemed to be the decision of the Council, as the case may be.

\* It was agreed that in the event of there not being total consensus in respect of any decision, a decision which has the support of at least 75% (seventy five percent) of the members of the Subcouncils on law and order, stability and security, defence and intelligence, shall be deemed to be the decision of the Subcouncils, as the case may be. The number of members of these Subcouncils should be eight.

\* It was agreed that in the event of there not being total consensus in respect of any decision, a decision which has the support of at least 66.6% (sixty six point six percent) of the members of the Subcouncils on status of women, finance, regional and local government and traditional authorities and foreign affairs, shall be deemed to be the decision of the Subcouncils, as the case may be. The number of members of these Subcouncils should be six.

Clause 25 (2) refers:

\* It was agreed that the TEC, if it cannot reach general consensus, will take decisions which enjoy the support of 75% of the members of the Council.

\* It was agreed that the Subcouncils of law and order, defence and intelligence, if they cannot reach general consensus, will take decisions which enjoy the support of 75 % of the members provided that the number of members of these Subcouncils are eight.

\* It was agreed that the Subcouncils on women, finance, local, regional government and traditional authority and foreign affairs, if they cannot reach general consensus, will take decisions which enjoy the support of 66% of the members provided that the number of members of these Subcouncils will be six.