

TRANSITIONAL EXECUTIVE COUNCIL BILL

BILL

To establish a Transitional Executive Council with a view to 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;

"Central Economic Advisory Service" means.....

"Constitution" means the Constitution Act, 1993;

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

"election" means an election for any legislative body established by 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 Trunks, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into its law;

"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;

Local Government Negotiating Forum" means the Local Government Negotiating Forum established in March 1993;

"Multi-Party Negotiating Process" means.....

"National Economic Forum" means the National Economic Forum established on 29 October 1992;

"National Housing Forum" means the National Housing Forum established on 31 August 1992;

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

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

"participant" in relation to the Council, means any government, 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 the elections in terms of the Constitution;

NOTE: *This definition will have to be reviewed with reference to the final definition of "political party" in the Electoral Act, 1993.*

"region" means a region, 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"-

- (a) means 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 its law;

"South African Reserve Bank" means the Bank referred to in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

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

"Tax Advisory Committee" means..... ; and

"transition period" means the period between the commencement of this Act and the elections to be held in terms of the Constitution.

NOTE: *The definition section will be finalised once the substantive content of the Bill has been finalised.*

TRANSITIONAL EXECUTIVE COUNCIL

Establishment of the Transitional Executive Council

2. There is hereby established a council to be known as the Transitional Executive Council, which shall have the executive and other powers set out in this Act or in any other law.

Objects of Council

3. The objects of the Council shall be to promote, in conjunction with all existing 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; and
 - (iv) ensure that no Government or administration exercises any of its powers in such a way so as to advantage or prejudice any political party;
 - (b) creating and promoting conditions conducive to the holding of free and fair elections;
 - (c) performing such functions as may be assigned to it by or under this Act or any other law.

Constitution of Council

4. (1) Each Government, party or organization which -
 - (a) is or was represented on the Negotiating Council of the Multi-Party Negotiating Process at any time during that Process; and
 - (b) by notice in writing to the Negotiating Council:
 - (i) commits itself to the objects of the Council;
 - (ii) undertakes to be bound by and to implement the decisions of the Council; and
 - (iii) renounces violence as a means of achieving political objects,

shall be a participant in the Council and be entitled to be represented by one member on the Council.
- (2) 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.
- (3) The State President shall within seven days after the receipt of such a notice by notice in the Gazette appoint the persons so nominated as a member and alternate member, respectively, of the Council, and either in a full-time or part-time capacity, as may be determined by the Negotiating Council of the Multi-Party Negotiating Process
- (4) (a) If the Council determines that any Government, political party or organization which is not a participant in the Council but which has committed itself to the objects of the Council and which has undertaken in writing to be bound by and to implement the decisions of the Council, should be such a participant, the Council shall notify the State President in writing, and the State President shall by proclamation in die Gazette declare that Government, political party or organization to be a participant in the Council.
 - (b) Subsections (2) and (3) shall apply *mutatis mutandis* in respect of a participant referred to in paragraph (a).
- (5) 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 rights of the member concerned.

- (6) 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 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) Subsections (1) and (2) shall apply *mutatis mutandis* in respect of an alternate member.

Conditions of service, remuneration and allowances of members of Council and Subcouncils

6. (1) The conditions of service, remuneration, allowances and other benefits of members of the Council and the Subcouncils shall be determined by the State Presidents in consultation with the Multi-Party Negotiating Process.
- (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 and who continue to receive such remuneration, allowances or other benefits while serving on the Council or a subcouncil 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 remuneration, allowances and conditions of service 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 this Act, all such information, including records, 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 to determine their conditions of service, remuneration, allowances and other benefits;
- (e) request the secondment of skilled personnel from any public service 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 or body to investigate any matter relating to the Council's functions and to report thereon;
- (i) open and administer its own financial accounts; and
- (j) take such legal steps as are necessary to give effect to this Act or any decision taken under this Act.

NOTE: *The question of any further general or specific powers will be re-examined once the powers of the Subcouncils have been completed and the Technical Committee can review the structure as a whole.*

- (2) The Council may delegate to a subcouncil any of its powers, but it shall not be divested of a power so delegated.
- (3) The Council shall, in respect of a power delegated under subsection (2) or a power referred to in sections 12 to 17, have the power to -
 - (a) be informed of any relevant decision or recommendation of a subcouncil;
 - (b) review, amend or withdraw that decision or recommendation; and
 - (c) exercise that power itself.

SUBCOUNCILS

Establishment of Subcouncils

8. (1) There are hereby established the following Subcouncils, which shall report to the Council in such manner and at such times as may be determined by the Council -
 - (a) a subcouncil on Regional and Local Government;
 - (b) a subcouncil on Law and Order, Stability and Security;
 - (c) a subcouncil on Defence;
 - (d) a subcouncil on Finance;
 - (e) a subcouncil on Foreign Affairs; and
 - (f) a subcouncil on the Status of Women.
- (2) (a) Additional subcouncils may be established at the request of the Council by means of an amendment of this Act as contemplated in section 24, if the establishment of such subcouncils is necessary for the Council to perform its functions; and
 - (b) If any dispute between the Council and the State President were to arise as to the necessity of the establishing such subcouncils, section 21 shall apply *mutatis mutandis*.

Constitution of Subcouncils

9. (1) The members of the Subcouncils shall be appointed 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 as far as possible see to it that no Government, political party or organization shall have more than one representative 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 nominate 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 rights of the member concerned.

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

10. (1) If a member of a subcouncil loses the confidence of the Council, the Council shall remove that member from office.
- (2) If a member of a subcouncil dies, resigns from office 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.

General powers of Subcouncils

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

Powers and duties in regard to regional and local government

12. The Council shall, for the purposes of achieving its objects, have the following powers to be exercised through its Subcouncil on Regional and Local Government:
 - (a) To acquaint itself with and monitor developments, policy objectives and targets in relation to regional and local government for the period of the transition;
 - (b) in regard to regional and local government matters administered by any government or regional or local government, 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 structures relevant to its functions, 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 regarding such proposals;
- (f) to monitor, make recommendations and render assistance, where practical, regarding the collapse of services and shortfall of finances in local government;
- (g) to request and obtain information regarding -
 - (i) the disposal and intended disposal of provincial, 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 effect traditional leaders' powers during the transition;
 - (ii) free and fair political participation in the areas of traditional leaders; and
 - (iii) matters of material concern to the communities of traditional leaders.

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

13. (1) The Council shall, for the purposes 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 policemen and policewomen and such other persons as the Subcouncil may appoint, which inspectorate shall be tasked with investigating and monitoring all policing agencies and liaising with inspectorates of all relevant policing agencies to ensure the promotion of the objects of the Council;
 - (b) to investigate, or order the investigation by the national inspectorate of, any matter which relates to the Council's objects, and for the purposes hereof the Subcouncil and the national inspectorate shall have the authority to interview such persons as they may consider necessary, have access to all such

documents and to police facilities 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 tasked with the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct;
- (d) to request and obtain any information or crime intelligence reports compiled by any policing agency;
- (e) to establish a committee comprised of local experts or of local and international 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 recommend steps to improve the effectiveness of and community co-operation with policing agencies, and to recommend to the Council the adoption of measures to be taken by the participants in the Council in this regard;
- (h) to receive all recommendations of the Police Board, and to request the Police Board to conduct inquiries and to make recommendations with respect to any policing policy;
- (i) to make recommendations regarding effective and co-ordinated control of policing agencies;
- (j) to require minutes of and attend any relevant meetings of any policing agency;
- (k) to formulate a statement of values and objects for the promotion of law, order, peace, stability and security for policing agencies and paramilitary organisations, and to introduce or amend a code of conduct which may be made binding on any policing agency, 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;
- (l) 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 the effect of

undermining 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;

- (m) to liaise with the Independent Electoral Commission and the National Peace Secretariat concerning matters relevant to the objects of the Council; and
 - (n) to receive all proposed regulations and directives governing the activities of the National Peace-keeping Force and to make recommendations in regard thereto.
- (2)
- (a) A Minister who has the authority to declare a state of emergency or an unrest area and to promulgate emergency regulations, shall, subject to paragraph (b), do so in consultation with the Subcouncil on Law and Order, Stability and Security;
 - (b) Where the circumstances are urgent and pressing and the Minister is unable to such declaration which shall remain in force unless the Subcouncil declines to give its approval thereto;
 - (c) If the Minister and the Subcouncil or, as the case may be, the Council are unable to reach agreement as to the desirability or otherwise of a declaration referred to in paragraph (a) or (b), either party may require a committee, composed from the civilian membership of the Police Board, to determine the matter, which determination shall be given within three days of the referral and which shall be final and binding and be given effect to; and
 - (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 elected by the members of the Board.
- (3) To the extent that it may impact upon the objects of the Council, a decision to enter into an agreement of the nature contemplated in section 34G of the Police Act, 1958 (Act No 7 of 1958) shall be taken by the responsible Minister in consultation with the Subcouncil.
- (4) A Minister, exercising the powers 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 this Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the Minister and the Subcouncil or the Council, as the case may be, either party may refer the matter to the committee referred to in subsection (2)(c) for determination,

which determination shall be given within 7 days of the referral and shall be final and binding and be given effect to.

- (5) To the extent that it may impact upon the objects of the Council, a Minister exercising the powers 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 issue, amend or repeal regulations governing relevant aspects of police conduct functioning, structures and restructuring in the course of public order policing, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the Minister and the Subcouncil or the Council, as the case may be, either party may refer the matter to the committee referred to in subsection (2)(c) for determination, which determination shall be given within 7 days of the referral and which shall be final and binding and be given effect to.
- (6) (a) The various policing agencies shall second officers of the rank of Brigadier or above to the Subcouncil to assist it in drafting rules governing the conduct of members of the said agencies and the co-ordinated control 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 in the Gazette;
- (c) The rules may provide that a contravention thereof or a failure to comply shall be an offence; and
- (d) The officers referred to in paragraph (a) may be summonsed at any time to assist the Subcouncil in the performance of its functions.

Powers and duties in regard to defence

14. The Council shall, for the purposes of achieving its objects, have the following powers to be exercised through its Subcouncil on Defence:
- (1) (a) To be kept informed by each defence force and armed force of any participant (excluding policing agencies), hereinafter referred to as "military forces", regarding the activities of such military forces, including, but not restricted to, the planning, preparation and execution of any action by such military forces likely to have an adverse impact on the Council's objects;
- (b) to be kept informed by any Government or administration 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, or to require the investigation into the conduct of any member or unit of a military force which may be in breach of any applicable code of conduct or disciplinary code or is intended to or likely to adversely affect the objects of the Council;
 - (d) to recommend appropriate disciplinary or criminal proceedings and order, in consultation with the commander of the military force concerned, the confinement or suspension, on full pay, of any member or members of the military force concerned pending such proceedings, or recommend appropriate measures in regard to any unit or department of such military force;
 - (e) to formulate and monitor the application and implementation of a code of conduct which shall be made binding on all members of all military forces;
 - (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 unofficial military and paramilitary organizations; and, the future of the arms and related industries;
 - (g) to oversee any planning, preparation and training of a future defence force;
 - (h) to liaise with the media and with the various military forces so as to keep both 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 commanders or such other persons appointed by the commanders of each military force which will be tasked with liaising with the structures of all military forces to ensure the promotion of the objects of the Council and to make recommendations to the Subcouncil concerning any military matters relating to its powers and duties; and
 - (k) to budget for and receive resources for the daily maintenance and administration of all non-governmental military forces which are governed by and accept the supervision of the Council in terms of this Act and which are recognised non-governmental military forces in terms of this Act.
- (2) A defence force may be deployed, with the approval of the appropriate Minister or Commander, in crime prevention and peacekeeping operations, but any such

deployment shall, subject to subsection (3), be required to be in accordance with the regulations and procedures established by the Subcouncil in terms of subsection (3).

- (3) The Subcouncil shall, in consultation with the Minister of Defence, prescribe regulations governing the deployment and command of any military force in crime-prevention or peacekeeping operation, save that until such requirements and procedures have been duly promulgated in terms of this Act, a defence force may be deployed or continued to be deployed in terms of the existing requirements and procedures governing such intervention or deployment.
- (4) The Subcouncil shall review the deployment of any unit of a defence force in terms of such existing requirements and procedures within one month of the establishment of the Subcouncil.
- (5) The Subcouncil shall review, in consultation with the Minister of Defence, existing requirements and procedures for the deployment of defence forces in crime-prevention or peacekeeping operations within one month of the establishment of the Subcouncil.
- (6) In the event of the Subcouncil and the Minister of Defence being unable to agree on the regulations governing the deployment of military forces in crime prevention and peacekeeping operations, the appropriate provisions of section 21 shall apply *mutatis mutandis*.
- (7) The regulations referred to in subsection (6) shall recognise that the day to day management of any military force remains the responsibility of the command structure of such military force, including routine transfers, training, promotion, and, in regard to the South African Defence Force, such day to day management shall include any routine defensive functions relating to the protection of the integrity of the borders of South Africa, save that the Subcouncil may impose limitations on such routine functions which are likely to interfere with the caution of a climate for free and fair elections.

NOTE: *This subsection assumes re-incorporation of the TBVC states and will have to be re-drafted in light of future developments in this regard.*

- (8) The Subcouncil shall establish monitoring mechanisms to ensure that its directives are complied with and that the activities of any military force have no negative impact on the creation of the conditions for free and fair elections, and may further establish any mechanism to ensure appropriate interaction between itself, the various military forces, the National Peacekeeping Force ("NPF"), policing agencies and any other relevant agency at national, regional or local level.

- (9) A Minister 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 Republics of Transkei, Bophuthatswana, Venda or Ciskei to issue, amend or repeal regulations governing aspects of defence force conduct, functioning, structures and deployment, relevant to the Council's objects or any Commander of an armed force issuing directives in regard to the above matters, shall act in consultation with the Subcouncil, which may propose such regulations or amendments or repeal of regulations itself: Provided that if no agreement is reached between such Minister or functionary and the Subcouncil, the appropriate provisions of section 21 will apply *mutatis mutandis*.
- (10) Without derogating from the rights of any participant in the Council or any administration under section 19, the Commander of any military force shall ensure that any decision of the Subcouncil regarding the deployment or conduct of any military force is made known and binding upon the members of such military force including, where appropriate, promulgation thereof in terms of the relevant standing orders and disciplinary code.
- (11) The Subcouncil shall have the necessary responsibility to ensure the safekeeping, the audit and effective supervision of the arms and, the identification of the personnel of any military forces.

NOTE: *The question relating to the State President's power to issue a declaration of martial law will be considered in the context of the whole question of the Council's possible powers in respect of the State President's prerogative and statutory powers.*

- (12) (a) In this section a "non-governmental military force" shall mean Umkhonto we Sizwe, Azanian Peoples Liberation Army and any other force that the Subcouncil may from time to time determine.
- (b) In the application of this section no person shall be considered a member of a force referred to in paragraph (a) unless that person was a trained member of the force falling under its discipline and command at the commencement of this Act.
- (12) The Subcouncil (on Defence) shall budget for and be allocated the necessary resources to establish and maintain the NPF which force shall be comprised of elements of all military forces and policing agencies which fall under the authority and control of the participants in the Council which wish to contribute to such force.

NOTE: *The Technical Committee is not in a position to make a firm recommendation regarding which Subcouncil should be responsible for the NPF, but proposes that the terms of reference should be as set out hereinafter.*

- (13) The Subcouncil shall for these purposes establish a NPF Command Centre comprised of representatives of all the military forces and policing agencies which participate in the NPF.
- (14) The Subcouncil, in consultation with the NPF Command Centre, shall:
- (a) establish and see to the training of a unit of NPF instructors which may be drawn from the participating military forces and policing agencies but shall also include international experts;
 - (b) formulate the philosophy, doctrine, syllabi and training policy for the TIPF;
 - (c) establish criteria for the recruitment, training and selection of NPF members provided that the NPF shall comprise representatives of all the military forces and policing agencies wishing to participate;
 - (d) establish the command structure of the NPF and shall appoint, and if it so decides, dismiss, the Commander and other senior officers of the NPF, who shall account to the Subcouncil through the NPF Command Centre;
 - (e) prescribe the jurisdiction of, and the circumstances for the deployment, of the NPF;
 - (f) make regulations governing the authority, control over, conditions of service, levels of remuneration of the NPF as well as interaction between it and any other armed force deployed in a peacekeeping operation or in the same area as the NPF;
 - (g) formulate and promulgate a disciplinary code including a code of conduct, which shall be made binding on the NPF;
 - (h) establish standard operational procedures for the NPF; and
 - (i) consult with other military and policing agencies regarding the establishment and operation of the NPF.
- (15) The South African Defence Force shall be responsible for supplying the NPF with the necessary and agreed upon uniforms, transport, accommodation, equipment, and other logistical support in accordance with the procedures and directions as decided upon by the Subcouncil in consultation with the NPF Command Centre, save that the NPF shall have its own distinctive uniform, vehicles and other insignia. The Subcouncil shall budget for and acquire funds for this purpose.
- (16) In the event of the Subcouncil and the NPF Command Centre being unable to reach a decision on the matters requiring to be regulated in terms of paragraphs (c), (d), (e), (f), (g) and (h) of subsection 14 of this section the appropriate provisions of section 21 shall apply *mutatis mutandis*.

Powers and duties in regard to Finance

15. (1) The Council shall, for the purposes 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 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 during the transition;
 - (e) to advise the relevant departments concerning the privatisation or tendering out of functions currently performed by relevant departments of State;
 - (f) to investigate or require the investigation of allegations of general or specific corruption and inefficiency;
 - (g) to review 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 authorised or proper expenditure;
 - (i) to make recommendations regarding the prevention of wasteful expenditure; and
 - (j) to monitor any expenditure of public funds.
- (2) In the exercise of its powers and the performance of its duties, the Subcouncil shall-
- (a) have access to all relevant information available from the Government, any department of state or provincial administration, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum; and
 - (b) be entitled to conduct such research as it deems necessary.

- (3) The views of the Subcouncil shall, in the course of the preparation of the 1994-1995 government budgets, 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 government expenditure, broken down into capital and recurrent expenditure;
 - (c) the level and composition of any taxes to be collected;
 - (d) the financing of budget deficits;
 - (e) the contingent liabilities of government; and
 - (f) any other matter considered to be relevant to the objects of the Council.
- (4) The Subcouncil shall be informed of the creation of any new post in the public service of any government, of the filling of vacant posts above the level of director or equivalent rank and of any amendment to or deviation from the rules and regulations applicable to retirement.
- (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.

STILL TO BE DISCUSSED BY THE TECHNICAL COMMITTEE

- (6) **NOTE:** *Whether the issue of fiscal transfer to TBVC and self-governing states shall be*
- (7) **NOTE:** *Whether the Transitional Executive Council should be provided with full details of domestic borrowing including borrowing by parastatals.*

Powers and duties in regard to foreign affairs

16. The Council shall, for the purposes of achieving its objects, through its Subcouncil on Foreign Affairs, formulate foreign policy, liaise, monitor, make recommendations and, where it considers it necessary, assist with
- (a) achieving progressively the broadest possible consensus on matters affecting South African interests, particularly its long-term interests;
 - (b) securing appropriate agreements with the international community regarding the contributions that could be made to the peaceful transition to democracy;

- (c) after consultation with the Subcouncil on Finance, securing such international assistance considers necessary in order to address the socio-economic needs of the people as a whole and political party;
- (d) ensuring that foreign policy initiatives benefit the country as a whole and not one or other political party;
- (e) promoting such international relations including trade, finance, culture and sport relations, which of the Subcouncil will benefit the country as a whole.

Powers and duties in regard to the status of women

17. 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 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) request information and make formal and substantive representations regarding all actions referred to in section 19(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 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 in all structures at all levels of government; and
 - (iv) be free from intimidation and harassment;
- (h) to ensure that 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 promote the free and equal participation of women in the electoral process; and
- (i) 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.

GENERAL AND SUPPLEMENTARY PROVISIONS

Application of Act

18. (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 international 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 Multi-Party Negotiating Process or the Council, as the case may be.

Duties of Governments, political parties and organizations

19. (1) (a) Each Government which participates in the Council shall keep the Council informed of and shall provide it with copies of all its proposed legislation, including bills, proclamations, ordinances and regulations which have a bearing on the objects of the Council; and
- (b) If the Council or the Subcouncil concerned has reason to believe that any such proposed legislation is likely to have an adverse impact on the attainment of the objects of the Council, it may, after consultation with the Government concerned as to the necessity for such legislation and, subject to other provisions of this Act, that Government in writing not to proceed with

the legislation concerned, and that Government shall, subject to the provisions of section 21, comply with such direction.

- (2) (a) Each Government, 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 entitled to request and receive information in regard to, any proposed action which is likely to have a bearing on the objects of the Council; and
 - (b) If the Council or the Subcouncil concerned has reason to believe that such action is likely to have an adverse impact on the attainment of the objects of the Council, it may, after consultation with the Government, political party or organization concerned as to the necessity for such action subject to the provisions of this Act, request that Government, political party or organization in writing not to proceed with the action concerned, and that Government, political party or organization shall, subject to the provisions of section 21, comply with such direction.
- (3) Each Government, political party or organization which participates in the Council and every other political party or organization shall comply with requests made to it by and decisions of the Council or a subcouncil, which requests and decisions shall, subject to section 21, shall be given effect to.

Procurement of information at request of member of Council or Subcouncil

20. 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 information in terms of this Act if 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 so procured, shall, subject to the provisions of this Act, be made available to all members of the Council and the Subcouncil concerned.

NOTE: *The question of restricted access to certain categories of information has still to be discussed. Such a discussion will inter alia deal with confidentiality, special accounts and the method of compelling delivery of information if required.*

Resolution of disputes

21. (1) If any Government, political party or organization contends, in relation to a directive issued by the Council in terms of section 19(1)(b) or (2)(b), that the necessity for any proposed legislation, executive or other action, as the case may be, outweighs the adverse impact it may have on the attainment of the objects of the Council, it may refer such issue to the Election Adjudication Directorate for its decision and it may only proceed with such legislation, executive or other action, as the case may

be, if the Election Adjudication Directorate upholds its contention, subject to a final right of appeal to the Independent Electoral Commission.

- (2) If there is any disagreement as to whether a matter falls within the scope of the powers of the Council or one of its Subcouncils, or as to whether any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council, such disagreement may be referred by any Government, political party or organization to the Election Adjudication Directorate for its decision.
- (3) If any issue is referred by any Government, political party or organization in terms of this Act to the Election Adjudication Directorate for decision, the said Directorate shall within seven days of such referral, and after consideration of -
 - (a) the issue in dispute;
 - (b) the views expressed thereon by the members of the Council and by the complainant government or political party; and
 - (c) any other matter considered by the Election Adjudication Directorate to be relevant for its decision;give its decision on the issue so referred to it.
- (4) Any government or political party which wishes to appeal against the Election Adjudication Directorate must do so within 7 days of being furnished with the Directorates' decision, and the Independent Electoral Commission shall give its decision on the appeal so referred within 7 days of the lodging of the appeal.
- (5) Any decision made by the said Directorate against which an appeal is not lodged within the prescribed period of time in respect of any matter referred to it in terms of this Act and any decision of the said Commission in respect of an appeal shall be final and binding.
- (6) If any government or political party wishes to refer a request by or a decision of the Council in terms of this Act to the Election Adjudication Directorate for its decision, it shall refer such matter in writing to the said Directorate not later than three days after such request or decision has been made.
- (7) A request by or a decision of the Council which is not referred to the Election Adjudication Directorate within the prescribed period as contemplated in subsection (6), shall become final and binding.
- (8) The provisions of this section shall not apply to subsections (2), (4) and (5) of section 13.

NOTE: *A final recommendation on the adjudicatory function of the Independent Electoral Commission will only be possible after consideration of the report and recommendations of the Technical Committee on the Independent Electoral Commission.*

The Technical Committee will also have to look at harmonising the various adjudicatory mechanisms that have been proposed.

Meetings and office-bearers

22. (1) The first meeting of the Council shall take place on a date and at a place agreed to by the Multi-Party Negotiating Process and specified in the in the proclamation issued under section 13), which date shall not be later than fourteen days after the publication of the 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 and a secretary or secretaries; and
(b) At that meeting a person designated by the Multi-Party Negotiating Process 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; and
(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; and
 - (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.
- (5) A Minister or head of any department of State or a person designated by such Minister or head 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 furnish such information or explanation in connection with those functions 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, on such invitation, address it with regard to that matter.

Decisions

23. (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: *No final agreement was reached by the Technical Committee in respect of the percentage; accordingly guidance is sought from the Negotiating Council on this matter.*

Accounting records and auditing

24. (1) The Council shall at its first meeting appoint an accounting officer who shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975) -
 - (a) be charged with the responsibility of accounting for State moneys received or paid out for or on account of the Council and the subcouncils; and
 - (b) cause the necessary accounting and other related records to be kept.
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.

Legal proceedings against Council

25. (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

26. (1) The State President may, with the concurrence of the Council, repeal or amend the provisions of this Act by proclamation in the Gazette.

- (2) Any such repeal or amendment shall have the force and effect of an Act of Parliament.

Duration

27. This Act shall lapse upon the assumption of office by the members of the first cabinet in terms of the Constitution.

Short title

28. This Act shall be called the Transitional Executive Council Act, 1993.

SUGGESTED AMENDMENT & ADDITION TO THE EIGHT WORKING DRAFT OF THE TRANSITIONAL EXECUTIVE COUNCIL BILL

AMENDMENT TO SECTION 19 AND ADDITION TO SECTION 14

Constitution of Council

4. (2) No Government of Transkei, Bophuthatswana, Venda or Ciskei shall be a participant in the Council unless the provisions of this Act have been incorporated into its law.

Duties of Governments, political parties and organizations

19. (1) (a) Each Government which participates in the Council shall keep the Council informed of and shall provide it with copies of all of its proposed legislation, including bills, proclamations, ordinances and regulations which have a bearing on the objects of the Council; and
- (b) If the Council or the Subcouncil concerned has reason to believe that any such proposed legislation is likely to have an adverse impact on the attainment of the objects of the Council, it may, after affording the government concerned an opportunity to make representations to the Council or Subcouncil concerned as to the necessity for such legislation and, subject to other provisions of this Act, direct that Government in writing not to proceed with the legislation concerned, and that Government shall, subject to the provisions of section 21, comply with such direction.

- (2) (a) Each Government, 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 entitled to request and receive information in regard to, any proposed action which is likely to have a bearing on the objects of the Council; and
 - (b) If the Council or the Subcouncil concerned has reason to believe that such action is likely to have an adverse impact on the attainment of the objects of the Council, it may, after affording the Government, political party or organization concerned an opportunity to make representations to the Council or Subcouncil concerned as to the necessity for such action subject to the provisions of this Act, direct that Government, political party or organization in writing not to proceed with the action concerned, and that Government, political party or organization shall, subject to the provisions of section 21, comply with such direction.
- (3) Subject to section 21, each Government, political party or organization which participates in the Council and every other political party or organization shall comply with any directive made to it by and any decision of the Council or a subcouncil, which directives and decisions shall be given effect to.

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