



The Library

University of the Witwatersrand
Johannesburg

TRANSITIONAL EXECUTIVE COUNCIL BILL

(FIFTEENTH DRAFT)

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

31 August 1993

govt
4
PER
J
705
G3.
571816

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;

"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



JC217671

- (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 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;

"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 (9);

"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 the elections in terms of the Constitution;

"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;

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

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

"traditional authority" means any authority which -

- (a) is constituted in terms of customary law;
- (b) vests in chiefs, headmen and their councillors, and
- (c) under any law or customary law exercises power in respect of any tribe, group or area;

"traditional leader" means a chief or headman, whether hereditary or otherwise who according to customary law, exercises powers as 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 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 the provisions of this Act, **as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, and the Independent Media Commission Act, 1993,** have been incorporated into the law of the State concerned.
- (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 other 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) consistently breaches the undertaking or renunciation submitted by the participant in terms of subsection 4(1)(b) or (5); 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,
- the Council may, by notice in writing to that participant, direct it to refrain from such breach, or to see to it that such organization or armed force refrains from such breach, or to comply 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 period; 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)(j), suspend that participant from participating in the Council or any subcouncil or any body or committee 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) Subsections (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 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 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
 - (j) 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 under this Act.
- (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), 19(j), 20(1)(k) or 20(1)(l) 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) A subcouncil on Regional and Local Government and Traditional Authorities;
 - (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;
 - (f) a subcouncil on the Status of Women; and
 - (g) a 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 a person or body to investigate any matter relating to its 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.
- (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 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.

NOTE:

In regard to the repeal of existing legislation which may impede fair elections, it was felt that the Transitional Executive Council was not the appropriate body to repeal such legislation, but more fundamentally that the Negotiating Council has tasked various technical committees to attend to it.

It would seem preferable to appoint one such body to perform such tasks rather than have contradictory rulings or provisions. The nature and powers of this body which would have been provided by the technical committees on the Independent Electoral Commission and the Repeal of Discriminatory Legislation has not yet been finalised.

In view of the fact that there would be a wider power of each and every participant to refer such legislation to such a body there seemed little purpose in providing for a narrower power of the Transitional Executive Council as a whole to also refer such legislation.

- (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 entitled to request and obtain information in regard to, any decision and any proposed or intended action of that Government and 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 or 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, subject to the 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.

Powers 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 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;
- (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 tasked with 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 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 for 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 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 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 the 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 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) 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 unit of a military force which is likely to have an adverse effect on the attainment of the objects of the Council;
 - (d) 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 any member or members of the military force concerned pending the outcome of such 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 commanders of all military forces 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;

- (2) For the purpose of subsection (1)(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 Act and qualifies in terms of the requirements referred to in subsection (1)(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); and
 - (c) the armed force concerned has itself by notice in writing to the Negotiating Council or the Subcouncil on Defence -
 - (i) associated itself with the commitment, undertaking and renunciation contemplated in section 4(1)(b) submitted by the participant concerned; and
 - (ii) accepted the supervision of that subcouncil.
- (3) (a) The Council shall, in consultation with the Ministers 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 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, but the Subcouncil may at any time review such deployment.
 - (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.

- (4) Notwithstanding subsection (3)(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, such day to day management shall include any routine defensive functions relating to the protection of the integrity of the borders of the State concerned.
- (5) 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.
- (6) 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 Council's objects, 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 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.
- (7) 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.

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

- (a) the audit and effective supervision of the arms 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 (2)(b).**

(9) (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 the National Peacekeeping Force.

(10) 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.

(11) 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 it 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) should 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 or 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);
 - (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.
- (12) (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.