

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



- (iii) matters of material concern to traditional leaders and their communities;
- (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) (a) Each military force shall in writing inform the Negotiating Council or the Council and the Subcouncil that -
- (i) it accepts the supervision of the Council and the Subcouncil; and
  - (ii) it associates itself with the commitment, undertaking and renunciation contemplated in section 4(1)(b) or 4(5)(a) submitted by the participant concerned.



- (b) **Any military force which does not so accept the supervision of the Council and the Subcouncil and associates itself with that commitment, undertaking and renunciation, shall not be regarded as armed force, defence force or a military force for the purpose of this section.**
- (2) The Council shall, for the purpose of achieving its objects, have the following powers to be exercised through its Subcouncil on Defence:
- (a) To be kept informed on a continuous basis by each military force regarding its activities, (including, but not restricted to, the planning, preparation and execution of any action by such military force) likely to have an adverse effect on the attainment of the objects of the Council;
  - (b) to be kept informed on a continuous basis by each participant in the Council of any proposed legislation (including subordinate legislation) and internal directives or regulations regarding the conduct and deployment of any military force;
  - (c) to investigate through an independent body appointed or designated by the Council, or to order the investigation of the conduct of any member or 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;
- (3) For the purpose of subsection (2)(k) no person shall be considered a member of an armed force as defined in section 1 unless -
- (a) that person was a registered member of such armed force at the commencement of this section and qualifies in terms of the requirements referred to in subsection (2)(k);
  - (b) that person's name and other particulars are included in a certified personnel register submitted by such armed force to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a).
- (4) (a) The Council shall, in consultation with the Minister of Defence, make regulations -
- (i) governing the deployment of any defence force unit in crime-prevention or peacekeeping operations; and
  - (ii) the relationship and interaction between such unit and any other unit of a defence force, the National Peacekeeping Force or any policing agency involved in such operations,



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

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

(i) in respect of any deployment which took place before the commencement of this section, the Subcouncil may review such deployment and, in consultation with the Minister of Defence, order the discontinuance of such deployment and if the Subcouncil and the Minister are unable to reach agreement, either party may refer the matter to the Special Electoral Court for determination;

(ii) in respect of any deployment which takes place after the commencement of this section, such deployment and discontinuance of such deployment shall take place only with the concurrence of both the Minister and the Subcouncil.

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

- (5) Notwithstanding subsection (4)(a), but subject to the provisions of section 13(2)(b), the command structure of any military force shall remain responsible for the day to day management of such force, including routine transfers, training, promotion, and, in regard to any defence force, any routine defensive functions relating to the protection of the integrity of the borders of the State concerned.

- (6) The Subcouncil may establish -

- (a) monitoring mechanisms to ensure that its directives are complied with and that the activities of any military force have no adverse effect on the attainment of the objects of the Council; and
- (b) any mechanism to ensure appropriate interaction between itself, the various military forces, the National Peacekeeping Force, policing agencies and any other relevant agency at national, regional or local level.



- (7) The Minister of Defence, exercising powers in terms of the Defence Act, 1957 (Act No. 44 of 1957), or the appropriate functionary exercising corresponding powers provided for in the corresponding legislation of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, to make, amend or repeal regulations regarding matters concerning defence force conduct, functioning, structures and deployment, relevant to the 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.
- (8) Without derogating from the rights of any participant in the Council in terms of section 23, the Commander of any military force shall ensure that any directive of the Subcouncil regarding the deployment or conduct of any military force is made known to and binding upon all members of such military force including, where appropriate, by incorporation thereof in the relevant standing orders and any disciplinary code.
- (9) The Subcouncil shall have the responsibility to ensure -
- (a) the audit and effective supervision of the arms of any military force; and
  - (b) the identification of the personnel of any military force, for which purpose every military force shall submit a certified personnel register to the subcouncil within the relevant period specified in subsection (3)(b).
- (10) (a) The Subcouncil shall budget for and be allocated the necessary resources to establish and maintain a force, to be known as the National Peacekeeping Force, whose functions shall relate to the maintenance of peace and public order in South Africa.
- (b) The National Peacekeeping Force shall be comprised of members of-
- (i) all military forces, as far as practicable in equal numbers, except in so far as any such force prefers to contribute fewer members to that Force; and
  - (ii) all policing agencies, which fall under the authority and control of the participants in the Council,
- wishing to be so represented in the National Peacekeeping Force.



- (11) The Subcouncil shall establish a National Peacekeeping Force Command Council, comprised of representatives of all the military forces and policing agencies which participate in the National Peacekeeping Force and which wish to be represented on that Council.
- (12) The Subcouncil, in consultation with the National Peacekeeping Force Command Council, having due regard also to the interests of women, shall:
- (a) establish and see to the training of a unit of National Peacekeeping Force instructors who may be drawn from the participating military forces and policing agencies but shall also include foreign experts;
  - (b) formulate the philosophy, doctrine, syllabi and training policy for the National Peacekeeping Force;
  - (c) establish criteria for the recruitment, training and selection of members of the National Peacekeeping Force;
  - (d) establish the command structure of the National Peacekeeping Force and appoint, and in its discretion, dismiss, the Commander and other senior officers, above a rank to be determined by the Subcouncil, of that Force, which command structure shall be accountable to the Subcouncil through the National Peacekeeping Force Command Council;
  - (e) make regulations regarding -
    - (i) the powers and duties of the National Peacekeeping Force;
    - (ii) the circumstances under which 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), with such adjustments, if any, to that law as may be considered necessary;



- (f) establish standard operational procedures for the National Peacekeeping Force; and
  - (g) consult with other military forces and policing agencies regarding the deployment and operation of the National Peacekeeping Force.
- (13) (a) The National Peacekeeping Force shall have its own distinctive uniform and other insignia, and its vehicles shall be marked distinctively.
- (b) The Subcouncil shall -
- (i) in consultation with the National Peacekeeping Force Command Council and after consultation with the South African Defence Force, determine the requirements of the National Peacekeeping Force in respect of uniforms, transport, accommodation, equipment and other logistical support;
  - (ii) budget for and be allocated funds for this purpose.
- (c) The uniforms, transport, accommodation, equipment and other logistical support referred to in paragraph (b) shall be supplied by the South African Defence Force, either from its own resources or from the resources of any other defence force or policing agency or any other source, for the account of the Subcouncil.
- (14) In the event of the Subcouncil and the National Peacekeeping Force Command Council being unable to reach a decision on any matter referred to in subsection (12), the matter shall be referred to the Council which shall endeavour to resolve it, failing which the matter shall be referred to the Special Electoral Court for determination.

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

17. (1) The Council shall, for the purpose of achieving its objects, have the following powers to be exercised through its Subcouncil on Finance -
- (a) To be informed of recent economic developments, economic policy objectives and targets for the medium-term and more, particularly, for the ensuing fiscal year (1994/1995);



- (b) to be represented on all function and budgeting committees in respect of the 1994/1995 fiscal year of any Government or regional authority with a view to ensuring that funds are not applied in a manner favouring one or other political party;
  - (c) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the Subcouncil to perform its functions in terms of this Act;
  - (d) to approve any measures designed to rationalise Treasury functions in the process of realignment of governmental structures;
  - (e) to advise the relevant departments of State concerning the privatisation or tendering out of functions currently performed by those departments;
  - (f) to investigate or require the investigation of specific allegations of corruption or inefficiency that may have an adverse effect on the attainment of the objects of the Council;
  - (g) to monitor the contents of existing public service disciplinary codes and to request disciplinary investigations into the conduct of public servants who fail to perform their tasks within guidelines governing financial discipline and authorised or proper expenditure;
  - (h) to make recommendations regarding the prevention of wasteful expenditure; and
  - (i) to monitor any expenditure of State funds by any Government or any department of State or any institution funded wholly or partly from State funds and to ascertain whether any public monies or State funds have been allocated or given improperly to any political party.
- (2) In the exercise of its powers and the performance of its duties, the Subcouncil shall subject to the other provisions of this Act -
- (a) have access to all information relating to its functions available from any Government or administration, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;
  - (b) be entitled to conduct such research as it considers necessary.
- (3) In the course of the preparation of the 1994/1995 budgets of any Government, the views of the Subcouncil shall be taken into account, and there shall be consultation on -
- (a) the overall level of state expenditure;



- (b) the composition of security, social, economic and general state expenditure, broken down into capital and recurrent expenditure;
  - (c) the level and composition of any taxes to be collected by any Government;
  - (d) the financing of budget deficits;
  - (e) the contingent liabilities of any Government; and
  - (f) any other matter considered by the Subcouncil to be relevant to the objects of the Council.
- (4) (a) The Subcouncil shall be informed of and its approval required for -
- (i) the upgrading or the creation of any new post above a level to be determined by the Subcouncil, in the public service of any Government; and
  - (ii) any amendment to or deviation from the laws governing the retirement of members of any such public service.
- (b) The subcouncil shall be informed of the proposed filling of any vacant post in the public service of any Government above a level to be determined by the Subcouncil.
- (5) The Subcouncil shall be provided, on a continuous basis and its approval sought, 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.
- (6) The Subcouncil shall be informed of transfers of public funds as between the various Governments, regardless of the departments from which transfers are made.
- (7) The Subcouncil shall be informed of domestic borrowing by the various Governments of amounts in excess of a figure, to be determined by the Council, on a monthly basis.



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

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

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

19. The Council shall, for the purpose of achieving its objects, with a view to the full and equal participation of women in the preparation for, the implementation of and the transition to a free and democratic order in South Africa, at national, regional and local levels, have the following powers to be exercised through its Subcouncil on the Status of Women:
- (a) To liaise with and advise all participants in the Council, all Subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, Governments, relevant departments of State, local governments, traditional authorities and policy making forums;
  - (b) to propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;
  - (c) to request information and make formal and substantive representations regarding any direction or action referred to in section 13(2)(a);



- (d) to liaise with all employee and employer organizations, all groups of women (in particular rural women and women under customary unions) and any other relevant organizations and structures;
- (e) to investigate any matter which affects the status of women and which relates to the objects of the Council, for which purpose it shall have the authority to interview any officer or employee of any participant in the Council or of any regional or local government;
- (f) to commission research;
- (g) to promote and monitor educational programmes regarding the participation of women in the electoral process;
- (h) to ensure that positive practical steps be taken to enable all women to exercise fully their right to -
  - (i) vote in all elections and public referenda, be eligible for election to all publically elected bodies and freely participate in the political, public and electoral processes at all levels in South Africa;
  - (ii) participate in the formulation and implementation of policy at all levels of government and in the Council;
  - (iii) equal opportunity in the appointment to, participation in, election of and promotion within all structures at all levels of government; and
  - (iv) be free from intimidation and harassment;
- (i) to make recommendations to all participants in the Council, the other subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forums, all statutory commissions and all electoral educational programmes on steps to promote the free and equal participation of women in the electoral process; and
- (j) to submit proposals to the Subcouncil on Finance and the relevant departments of State in regard to the 1994/1995 budget on the allocation of resources for the promotion of the equality of women and their participation at all levels of government, including appropriate programmes and mechanisms.



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

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



- (h) to request and obtain, subject to the other provisions of this Act, on a regular basis from all services, via the Committee, evaluated information on the overall security situation in the country, highlighting threats, actions or events that may adversely affect the attainment of the objects of the Council: **Provided that nothing in this subsection shall authorise the disclosure of a document or information relating to the above matters which consists of unevaluated information;**
  - (i) to request and obtain, subject to the other provisions of this Act, via the Committee, from any service evaluated information on matters of special concern or urgency: **Provided that such service shall -**
    - (i) be informed beforehand what will be required of it;
    - (ii) be given reasonable time to prepare the required information and its presentation in that regard; and
    - (iii) have the right to be assisted or represented by persons duly authorised to do so;
  - (j) to make recommendations on steps to ensure that a service does not perform or carry out any act or operation likely or intended to undermine the attainment of the objects of the Council;
  - (k) to make proposals regarding suitable legislation relating to the practice of intelligence in a new political dispensation, including suitable mechanisms of accountability and political supervision; and
  - (l) to facilitate the transition to a future intelligence dispensation by commissioning research and formulating proposals in this regard;
- (2) The Subcouncil shall in the exercise of its powers and the performance of its duties -
- (a) taking into consideration the sensitive nature of intelligence, deal with intelligence matters in a manner conducive to the national interest and not sectional interests; and
  - (b) recognise that the day to day management of every service remains the responsibility of the relevant Minister or head of such service, and that all services shall during the period of transition, subject to section 3, continue to fulfil their duties to their respective principals.
- (3) (a) If there is any dispute in relation to an investigation referred to in subsection (1)(f) or (g), the matter shall, having regard to the sensitive nature of intelligence, be referred to the appropriate Minister or head of the service concerned in order to attempt to resolve the issue.



- (b) If the issue is not so resolved the matter shall be referred to the Special Electoral Court for determination.
- (4) Any power conferred upon the Subcouncil which overlaps with any power conferred upon the Subcouncil on Law and Order, Stability and Security or the Subcouncil on Defence, shall be exercised in conjunction with such other subcouncil.

## **GENERAL AND SUPPLEMENTARY PROVISIONS**

### **Application of Act**

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

### **Procurement of information**

- 22. (1) The Council or a subcouncil shall comply with a request by a member of the Council or a subcouncil to the Council or subcouncil concerned to procure information or document 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 or document so procured, shall, subject to the provisions of this Act, be made available to all members of the Council and the subcouncil concerned.



- (2) No provision of this Act shall be interpreted as authorizing the Council or a subcouncil to request or procure any information or document -

- (a) which does not have a bearing on the objects of the Council;
- (b) which is privileged in regard to a statement made or document prepared in contemplation of legal proceedings;
- (c) statutory limitations -

**This is presently the subject of debate in the Committee and the Technical Committee will still formulate this clause.**

- (d) if the disclosure of such information or document -
  - (i) could reasonably be expected to endanger the life or physical safety of any person; or
  - (ii) would clearly constitute an unwarranted invasion of the privacy of any person when weighted against the public interest;
- (e) administrative instructions -

**This is presently the subject of debate in the Committee and the Committee will still formulate this clause.**

- (f) compiled by any policing agency for purposes of law enforcement criminal proceedings, to the extent that the disclosure of such information or document could be reasonably expected -
  - (i) to prejudice law enforcement procedures;
  - (ii) to deprive any person of his or her right to a fair trial or an impartial adjudication; or
  - (iii) to reveal the identity of the source of any information or document that was furnished under express or implied assurance of confidentiality;
- (g) contained in any staff file pertaining to any officer or employee of any public service, except in so far as disclosure thereof is necessary for the purposes of section 17(4);
- (h) compiled by any intelligence service or structure in South Africa, except in so far as disclosure thereof is necessary for the purposes of section 20;



- (i) relating to the installation, projects, plans, movements or dispositions, or to weapons or armaments capabilities or technology of a military force, except in so far as disclosure thereof is necessary for the purposes of section 16;
  - (j) in connection with the provision of protective services to members or officials or employees of any participant in the Council;
  - (k) in the case of information or any document requested from a political party, if that information or document concerns a lawful activity of that party, particulars of which it is, subject to section 13, not obliged to disclose in terms of any law;
  - (l) which would be likely to lead to significant and improper or unfair speculation in currencies, securities, property or commodities at the expense of the public or would be likely to significantly endanger the stability of any financial institution weighted against the public interest in disclosure.
- (3) (a) The Council shall establish a committee to be known as the Access to Information Committee (hereinafter in this section referred to as "the Committee").
- (b) The Committee shall consist of five persons appointed by the Council and who shall be persons of integrity and trustworthiness in whom the Council has the fullest confidence.
- (c) At least one shall be a person who in the opinion of the Council is fit for an appointment on account of his or her tenure of any judicial office, or on account of his or her experience as an advocate or attorney, or as a professor or lecturer in law at a tertiary educational institutional in South Africa.
- (d) A member of the Council or a subcouncil may not be appointed as a member of the Committee.
- (e) A member of the Committee who is not in the full-time service of any Government or administration shall be entitled to such remuneration, allowances and other benefits as may be determined by the Council.
- (4) The Committee shall, notwithstanding subsection (2) or any other law or the common law, have access to any information or document in the possession or under the control of any Government or administration, any participant in the Council and any political party: Provided that the Committee shall have such access only if and in so far as -
- (i) it is in terms of subsection (6) and (7) requested by the Council or a subcouncil to scrutinize such information or document; and