

- (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, for the account of the Subcouncil.
- (13) 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 (11), 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 the 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) 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 on steps to ensure that all participants in the Council, the other Subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peace Secretariat, policy-making forums, all statutory commissions and all electoral educational programmes in order 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;
- (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 13 or 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
 - (ii) access to such information or document has a bearing on the objects of the Council.
- (5) (a) The Committee shall take special precaution to ensure that no information or document referred to in subsection (2) to which it gains access is disclosed to unauthorized persons.

or a subcouncil, subject to such limitations relating to access, publication and safekeeping as may be imposed by the Committee.

- (11) The Committee shall in writing notify the Council or the subcouncil concerned and the persons referred to in subsection (6) or the Government, administration or political party concerned, as the case may be, of its finding, which finding shall be binding on the parties concerned and shall be given effect to.
- (12) (a) No person, including any member of the Council or a subcouncil or of the Committee, shall disclose any confidential information or document obtained by that person in the performance of his or her functions in terms of this Act, except -
- (i) to the extent to which it may be necessary for the proper administration of a provision of this Act;
 - (ii) to any person who of necessity requires it for the performance of any function in terms of this Act;
 - (iii) when required to do so by order of a court of law; or
 - (iv) with the written permission of the Council.
- (b) Any person who contravenes a provision of paragraph (a) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding 12 months.

Resolution of disputes

23. (1) If any Government, political party or organization contends, in relation to a directive issued by the Council in terms of section 13(1)(b), (2)(b) or (3) that the necessity or desirability for any proposed legislation, or any action or for the implementation of any directive, as the case may be, outweighs the adverse effect it may have on the attainment of the objects of the Council, that Government, political party or organization may, within three days after such directive was issued, refer the matter concerned to the Special Electoral Court for its decision, and may only proceed with such legislation or action or implement such directive, as the case may be, if or in so far as the Special Electoral Court authorizes it to do so.

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

the participant, political party or organization concerned may refer the matter to the Special Electoral Court.

- (3) When any matter is referred to the Special Electoral Court in terms of this Act, that Court shall as soon as practicable consider the matter and give its decision, having due regard to -
- (a) the views expressed on the matter by members of the Council or the subcouncil concerned and by the Government or political party or organization concerned; and
 - (b) any other matter considered by the Special Electoral Court to be relevant for its decision.
- (4) **The Special Electoral Court may make such findings and give such instructions or directions as it may consider appropriate in the circumstances.**
- (5) The findings of the Special Electoral Court shall be final and binding and shall not be subject to further appeal.
- (6) A direction issued by the Council or a subcouncil in terms of this Act and which is not referred to the Special Electoral Court within three days after the Government, political party or organization concerned was notified of that direction, shall be binding on the Government, political party or organization concerned.
- (7) The provisions of this section shall not apply to subsections (1)(c), (2), (4), (5) and (6) of section 15.

Meetings and office-bearers

24. (1) The first meeting of the Council shall take place on a date and at a place agreed to by the Negotiating Council and specified in the first proclamation issued under section 4(4), which date shall not be later than 14 days after the publication of that proclamation.
- (2) The Council shall, after its first meeting, meet at such times and places as it may determine.
- (3) (a) The Council shall, at its first meeting, designate from among its members a chairperson or chairpersons.
- (b) At that meeting a person designated by the Negotiating Council shall preside until a chairperson or chairpersons, as the case may be, have been designated.
- (4) (a) The Council shall, at its first meeting, from among its members designate a management committee.
- (b) The management committee shall -
- (i) until the rules contemplated in section 7(1)(f) have been made, determine the manner of convening meetings of the Council and the procedure at such meetings;
 - (ii) convene a special meeting of the Council if requested thereto in writing by not less than one-third of the members of the Council;
 - (iii) determine a time, and place for any meeting convened in terms of subparagraph (ii), which meeting shall be convened with at least three days' notice to members of the Council: Provided that an urgent meeting may be convened with less than three days' notice if it is ratified by the Council at that meeting; and
 - (iv) perform any other function assigned to it by the Council.
- (5) A Minister or head of any department of State or a person designated by such Minister or head or any other person in the service of the State shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or the Subcouncil at which a matter relating to the functions of that

department and the objects of the Council is to be discussed, and shall at such a meeting, subject to the provisions of this Act, furnish such information or document or explanation in connection with such matter as may be required by the Council or subcouncil.

- (6) Any person that has an interest in any matter under discussion at a meeting of the Council or a subcouncil may on the invitation of the Council or Subcouncil attend that meeting and, if invited to do so, address it with regard to that matter.

Decisions

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

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

Administrative support staff and accounting

26. (1) The Council shall at its first meeting, or as soon as possible thereafter, appoint a person to the office of Executive Director who -
- (a) shall be responsible for the management of and administrative control over the staff appointed or seconded in terms of section 7(1)(d) and (e), respectively;
- (b) shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975) -
- (i) be charged with the responsibility of accounting for State monies received or paid out for on account of the Council and the subcouncils; and

- (ii) cause the necessary accounting and other related records to be kept;
 - (c) may exercise the powers and shall perform the functions and duties which the Council may from time to time confer upon, assign to or impose upon him or her in order to achieve the objects of this Act and shall, for the purposes hereof be accountable to the Council.
- (2) The records referred to in subsection (1)(b) shall be audited by the Auditor-General.
 - (3) The Executive Director and the persons referred to in section 7(1)(d) and (e) shall exercise their powers and perform their functions and duties in an impartial manner and shall, in so doing, be subject to such provisions of the laws governing the public service of the Republic as may be indicated by the Council and to the extent so indicated by the Council.
 - (4) **The financing of matters provided for in this Act shall be subject to -**
 - (a) requests being received in the prescribed form in accordance with the budgetary processes of the Republic of South Africa; and
 - (b) the provisions of the Exchequer Act, 1975, the regulations and instructions issued in terms thereof, as well as the Auditor General Act, 1989 (Act No. 52 of 1989).

Legal proceedings against Council

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

Amendment of Act

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

Duration

29. (1) This Act shall lapse upon the assumption of office by the members of the first cabinet in terms of the Constitution, **except in so far as the Council in consultation with the State President may determine otherwise by notice in the Gazette.**
- (2) Subject to subsection (1) the Council and every subcouncil shall be dissolved on the date referred to in that subsection.
- (3) At such dissolution of the Council and the subcouncils all assets, monies and liabilities of the Council, subcouncils, and any subsidiary structures, organs or bodies shall revert to the Department of Constitutional Development.

Short Title and Commencement

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

**EMBARGOED UNTIL TABLING
IN THE NEGOTIATING COUNCIL**

**TRANSITIONAL EXECUTIVE
COUNCIL BILL**

SIXTEENTH DRAFT

6 September 1993

TRANSITIONAL EXECUTIVE COUNCIL BILL

(SIXTEENTH DRAFT)

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

6 September 1993

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
- (c) the Government of the Republic of Transkei, Bophuthatswana, Venda or Ciskei, as the case may be, if the provisions of this Act have been incorporated into the law of the State concerned;

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

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

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

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

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

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

"National Peacekeeping Force" means the National Peacekeeping Force referred to in section 16 (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 an election 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" means -

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

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

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

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

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

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

TRANSITIONAL EXECUTIVE COUNCIL

Establishment of Transitional Executive Council

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

Objects of Council

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

Constitution of Council

4. (1) Each Government, political party or organization which -
- (a) is or was at any time represented on the Negotiating Council; and
 - (b) by notice in writing to the Negotiating Council commits itself to the objects of the Council, and, in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control or associated with it and promotes its objectives -
 - (i) undertakes to be bound by and to implement the directions of the Council issued in terms of this Act; and
 - (ii) renounces violence as a means of achieving political objectives,

shall be a participant in the Council and be entitled to be represented by one member on the Council.

- (2) The Government of or any political party registered only in or operating only from or any organization operating only from the Republic of Transkei, Bophuthatswana, Venda or Ciskei shall not be a participant in the Council unless -
- (a) the provisions of this Act, as well as the provisions of the Independent Electoral Commission Act, 1993, the Electoral Act, 1993, the Independent Media Commission Act, 1993 and the Independent Broadcasting Authority Act, 1993, have been incorporated into the law of the State concerned; or
 - (b) formal provision has been made by law in such State for the application of any Act referred to in paragraph (a) in that State.
- (3) A participant in the Council that wishes to be represented on the Council shall within seven days after the commencement of this Act by notice in writing to the State President nominate a member and an alternate member to the Council.
- (4) The State President shall within seven days after the receipt of such a notice, by proclamation in the Gazette appoint the persons so nominated as a member and alternate member, respectively, of the Council.
- (5) (a) If the Council determines that any Government, political party or organization which is not a participant in the Council but which by notice in writing to the Council commits itself to the objects of the Council, and in respect of itself and all organizations which are under its authority or control, and any armed force which is under its authority and control or associated with it and promotes its objectives -
- (i) undertakes to be bound by and to implement the directions of the Council issued in terms of this Act; and
 - (ii) renounces violence as a means of achieving political objectives,
- should be such a participant, the Council shall notify the State President in writing, and the State President shall by proclamation in the Gazette declare that Government, political party or 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) persistently breaches the undertaking or renunciation submitted by the participant in terms of subsection 4(1)(b) or (5)(a); or
 - (ii) fails or refuses to comply with any provision of this Act or any regulation made thereunder or with any direction of the Council or a subcouncil in terms of this Act, or any other law or any regulations made thereunder,

the Council may, if it is of the opinion that such breach, failure or refusal is of a material nature, 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 or any other 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.