

(2) Section 6(2) shall apply *mutatis mutandis* in relation to members of subcouncils.

(3) A substitute contemplated in section 9(4) shall be entitled to such allowances, if any, as may be determined by the Council.

General powers of subcouncils

12. (1) Except in so far as the Council determines otherwise under section 7(3), 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 attaining the objects of the Council;
- (b) initiate or participate in negotiations relating to its functions and objects;
- (c) appoint from among its members office-bearers, on either a fixed or a rotational basis; and
- (d) appoint a person or body to investigate any matter relating to the functions of the subcouncil and to report thereon.

(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 of any Government or administration 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 participating in the Council, and every other political party, shall keep the Council informed of, and the Council shall, subject to the other provisions of this Act, be entitled to request and obtain information in regard to, any decision and any proposed or intended action of that Government, 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, 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, and subject to the other 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 participating 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 attaining 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: 5
- (b) in regard to regional and local government matters, to propose the amendment, repeal or enactment of legislation, including subordinate legislation: 10
- (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: 15
- (e) to be informed of and to make proposals regarding regional and local government budgets, the powers, duties and functions and the restructuring and rationalization 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: 20
- (f) to monitor any collapse of services and shortfall of finances in any regional or local government and to make recommendations designed to redress problems in this regard: 25
- (g) to request and obtain information regarding— 30
 - (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— 35
 - (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; and 40
- (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 attaining its objects, have the following powers to be exercised through its Subcouncil on Law and Order, Stability and Security: 45

- (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: 50
- (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— 55

- (i) have the authority to interview such persons as they may consider necessary; and
 - (ii) have access to all such documents and facilities of any policing agency as may be necessary for the purpose of the investigation;
 - (c) to establish, in consultation with the Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control of a civilian, which shall be responsible for the receipt and investigation of complaints lodged by members of the public concerning alleged misconduct by members of policing agencies: 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 (3)(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 relating 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 attend, and require the minutes of, 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) Notwithstanding any other law, the power of the State President to declare the existence of a state of emergency shall be exercised only after consultation with the Subcouncil.
- (b) The Council may by a decision which has the support of at least eighty percent of the members of the Council, review such a declaration and direct the State President to withdraw it, and the State President shall forthwith comply with such a direction.

(3) (a) Subject to subsection (2) and paragraph (b), any Minister or other person (hereinafter in this subsection 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, as the case may be, and to make regulations with regard thereto, shall do so in consultation with the Subcouncil.

(b) Where the circumstances are urgent and pressing and the functionary concerned is unable to consult with the Subcouncil before making such a declaration, the functionary may make such a declaration without such consultation: Provided that if the Subcouncil at its first meeting thereafter, having due regard to 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 for determination to a committee, composed from the civilian membership of the Police Board, 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 the vice-chairperson of the Police Board and one other member of that board elected by the civilian members of the board.

(4) 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.

(5) The State President and the Minister of Law and Order, exercising any power under section 3 of the Police Act, 1958, and 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 or the functionary concerned and the Subcouncil, any of them may refer the matter to the committee referred to in subsection (3)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to.

(6) (a) To the extent that it may affect the objects of the Council—

(i) the Minister of Law and Order, exercising any power in terms of section 33 of the Police Act, 1958, to make, amend or repeal regulations, or issue directives, governing relevant aspects of police conduct, functioning, structures and restructuring; and

(ii) 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,

shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached between the Minister or the functionary and the Subcouncil, either party may refer the matter to the committee referred to in subsection (3)(c) for determination, which determination shall be given within seven days after such referral and shall be binding and be given effect to.

(b) When 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.

(7) (a) The various policing agencies shall designate officers of the rank of brigadier or above to assist the Subcouncil in drafting rules to ensure uniformity of conduct of members of the said agencies and the co-ordinated control and command of such agencies in so far as such 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 by notice 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 (6)(a), the matter shall be referred to the committee referred to in subsection (3)(c) for final determination. 5

(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, at the same time as the submission of the relevant commitment, undertaking and renunciation contemplated in section 4(1)(b) or 4(5)(a), or as soon as possible thereafter, by notice in writing to the Negotiating Council or the Council— 10

(i) associate itself with that commitment, undertaking and renunciation; and 15

(ii) acknowledge the authority of the Council and the Subcouncil on Defence for the purpose of attaining the objects of this Act.

(b) Any military force which fails to comply with paragraph (a), shall not be regarded as an armed force, a defence force or a military force, as the case may be, for the purposes of this section. 20

(2) The Council shall, for the purpose of attaining 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; 25

(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 rules regarding the conduct and deployment of any military force; 30

(c) to investigate through an independent body appointed or designated by the Subcouncil, or order the investigation of, the conduct of any member or members of a military force which is likely to have an adverse effect on the attainment of the objects of the Council; 35

(d) in respect of any activity or action by any member or members of a military force which is alleged to have or to have had an adverse effect on the attainment of the objects of the Council, 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 such member or members pending the outcome of such measures or proceedings, or recommend appropriate measures in regard to any unit or element of such military force; 40

(e) to formulate a code of conduct which shall be binding on all members of all military forces, and to monitor its observance; 45

(f) to undertake or to commission research into any relevant matter, including, but not limited to, the parliamentary control, composition, manpower policy (including conscription), organization and executive command of a future South African defence force, the policy in regard to armed forces which are not under the authority and control of participants in the Council, and the future of the arms and related industries; 50

(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; 55

(i) to monitor media reporting on defence-related matters;

(j) to establish a co-ordinating council, comprised of the commander, or a

person designated by the commander, of every military force, which shall—

(i) liaise with all military forces in order to promote the objects of the Council; and

(ii) report and make recommendations to the Subcouncil, as and when required, concerning any matter relating to the functions of the Subcouncil; 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 of and the 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 the purpose 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) a person shall not 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); and

(b) that person's name and other particulars are included in a certified personnel register, which shall be submitted by such armed force to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a), and which register shall be updated monthly.

(4) (a) The Council shall, in consultation with the Minister of Defence, make regulations governing—

(i) the deployment of any defence force unit in crime prevention or peacekeeping operations; and

(ii) the relationship and interaction between such a 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 in respect of any such deployment—

(i) which took place before the commencement of this section, the Subcouncil may review such deployment and, in consultation with the Minister of Defence, order the discontinuance of such deployment;

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

(c) If the Council or the Subcouncil and the Minister are unable to reach agreement on any matter dealt with in this subsection or, in the case of the regulations contemplated in paragraph (a), are unable to reach such agreement 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 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 the case of 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;
 - (b) any mechanism to ensure appropriate interaction between the Subcouncil, 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 the powers in terms of the Defence Act, 1957 (Act No. 44 of 1957), and 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 objects of the Council, and 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 the amendment or 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 and monitor—
- (a) the audit and effective supervision of the arms and armaments of any military force, by that force; and
 - (b) the identification of the personnel of any military force, for which purpose every military force shall submit a certified personnel register to the Subcouncil within 21 days after the commencement of this section or, in the case of a participant referred to in section 4(5), within 21 days after the publication of the relevant proclamation referred to in section 4(5)(a), and shall update such register on a monthly basis.
- (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, the functions of which 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) every policing agency which falls under the authority and control of a participant in the Council, wishing to be represented in that Force.
- (11) The Subcouncil shall establish a National Peacekeeping Force Command Council, comprised of representatives of all the military forces and policing agencies participating in the National Peacekeeping Force and wishing to be represented on that Command 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 of 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; 5
- (e) determine standard operational procedures for the National Peacekeeping Force;
- (f) consult with other military forces and policing agencies regarding the deployment and operation of the National Peacekeeping Force; and
- (g) make regulations regarding— 10
 - (i) the powers and duties of the National Peacekeeping Force;
 - (ii) the circumstances under which the National Peacekeeping Force 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) shall apply *mutatis mutandis* to such members; 15
 - (iv) the relationship and interaction between the National Peacekeeping Force and any other military force or policing agency deployed in a peacekeeping operation in the same area as the National Peacekeeping Force; 20
 - (v) a disciplinary code, including a code of conduct, for members of the National Peacekeeping Force;
 - (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. 25
- (13) (a) The National Peacekeeping Force shall have its own distinctive uniform and 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; and 30
 - (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. 35
- (14) In the event of the Subcouncil and the National Peacekeeping Force Command Council being unable to reach agreement 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. 40

Powers and duties in regard to finance 45

17. (1) The Council shall, for the purpose of attaining 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 (1994/95); 50
- (b) to be represented on all function and budgeting committees in respect of the 1994/95 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; 55

- (d) to approve any measures designed to rationalize 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; 5
 - (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 duties within guidelines governing financial discipline and authorized or proper expenditure; 10
 - (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. 15
- (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; and 20
 - (b) be entitled to conduct such research as it considers necessary.
- (3) In the course of the preparation of the 1994/95 budgets of any Government, the views of the Subcouncil shall be taken into account, and there shall be consultation on— 25
- (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; 30
 - (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. 35
- (4) (a) The Subcouncil shall be informed of and its approval obtained for—
- (i) the upgrading of any post or the creation of any new post in the public service of any Government above a level to be determined by the Subcouncil; and 40
 - (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. 45
- (5) The Subcouncil shall be provided on a continuous basis with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated between a Government and any foreign government or international agency, and no such agreement shall be concluded without the prior approval of the Subcouncil. 50
- (6) The Subcouncil shall be informed of transfers of public funds as between the various Governments, regardless of the departments from which the transfers are made.

(7) The Subcouncil shall be informed on a monthly basis of domestic borrowing by the various Governments of amounts in excess of a figure determined by the Council.

Powers and duties in regard to foreign affairs

18. The Council shall, for the purpose of attaining its objects, through its Subcouncil on Foreign Affairs, in regard to foreign policy liaise, monitor, make recommendations and, where it is considered 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 in South Africa;
 - (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 attaining 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 decision 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 affecting the status of women and relating 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 are taken to enable all women to exercise fully their right to—
 - (i) vote in all elections and public referendums, be eligible for election to all publicly elected bodies and freely participate in the political, public and electoral processes at all levels in South Africa;
 - (ii) participate in the formulation and implementation of policy at all levels of government and in the Council;
 - (iii) equal opportunity in the appointment to, participation in, election to 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 1994/95 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 attaining its objects, have the following powers 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 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 authorized 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; and
 - (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 democratic 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 members of the public) relating 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 an adverse effect on the attainment of 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 appropriate, require the suspension, with full pay, of such 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 authorize the disclosure of a document or information relating to the above matters but 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 authorized 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 making 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) recognize 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 by this Act and 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 or addition thereto under section 28, 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 any information or document in terms of this Act, provided that—
- (a) the member concerned shows to the Council or subcouncil, as the case may be, that the procurement of such information or document is reasonably necessary in order to attain the objects of the Council; and
 - (b) 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 other provisions of this Act, be made available to all members of the Council or of the subcouncil concerned.

(2) (a) Notwithstanding this section or any other provision of this Act, no military force, policing agency or intelligence service or structure shall be obliged to disclose any information or document in its possession or under its control in a form which could reveal the identity of any source of such information, if that information or document was provided under an express or implied assurance of confidentiality: Provided that this paragraph shall not prevent the disclosure of the remaining parts of information or a document if the parts which could reveal the identity of the source can be separated from the rest thereof.

(b) In the event of a dispute arising from the provisions of paragraph (a) as to whether or not the disclosure of any information or document in the possession or under the control of a military force, policing agency or intelligence service or structure may reveal the identity of the source of information or document, such dispute shall be referred for determination to a committee composed of the head of the relevant military force, policing agency or intelligence service or structure and a member of the Committee referred to in subsection (4) designated by the Committee in consultation with the said head.

(3) No provision of this Act shall be interpreted as entitling the Council or a subcouncil to have access to any information or document —

- (a) which does not have a bearing on the objects of the Council;
- (b) access to or disclosure of which is prohibited in terms of any law or the common law, and—
 - (i) could reasonably be expected to endanger the life or physical safety of any person when weighed against the need or necessity for disclosure;
 - (ii) would constitute an unwarranted invasion of the privacy of any person when weighed against the need or necessity for disclosure;
 - (iii) would be likely to lead to improper or unfair speculation in currencies, securities, property or commodities at the expense of the public, or would be likely to endanger the foreign exchange reserves or the stability of financial markets, the monetary system or any financial institution when weighed against the need or necessity for disclosure; or
 - (iv) would be likely to pose a substantial threat to the security of the State;
- (c) compiled by or in the possession or under the control of any policing agency for purposes of law enforcement or criminal proceedings, to the extent that the disclosure of such information or document could reasonably be expected—
 - (i) to prejudice law enforcement investigations; or
 - (ii) to deprive any person of his or her right to a fair trial or an impartial adjudication;
- (d) compiled by or in the possession or under the control of any intelligence service or structure in South Africa, except in so far as disclosure thereof is necessary for the purposes of section 20;
- (e) relating to the activities, installations, projects, plans, movements, dispositions, weapons, armaments, procurements, capabilities or technology of a military force, except in so far as disclosure thereof is necessary for the purposes of section 16;
- (f) 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) or for the purpose of any investigation in terms of this Act into the conduct of such officer or employee;
- (g) in connection with the provision of protective services to members or officials or employees of any participant in the Council;
- (h) 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:

- (i) relating to any special or secret account established or governed by or under any law, except in so far as it concerns any expenditure from such account which has been found by the Auditor-General to have been unauthorized; or
- (j) relating to any tax matter prohibited from disclosure by any law when weighed against the need or necessity for disclosure.

(4) (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 four members appointed by virtue of a decision of the Council which has the support of at least eighty percent of the members of the Council, including every member who represents a participant in the Council which has a military force or a policing agency.

(c) All persons appointed as members of the Committee shall be persons of integrity and trustworthiness in whom the Council has the fullest confidence.

(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.

(f) The Committee shall designate two of its members as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to any information or document compiled by or in the possession or under the control of any military force, policing agency or intelligence service or structure, excluding requests in respect of information or documents relating to a special or secret account referred to in subsection (3)(i), and the said members shall exercise the Committee's powers in respect thereof.

(g) The other two members of the Committee shall act as a subcommittee to deal with all requests in terms of subsections (8) and (9) relating to the special or secret accounts referred to in subsection (3)(i) and any information or document other than that contemplated in paragraph (f), and the said members shall exercise the Committee's powers in respect thereof.

(5) The Committee shall, notwithstanding subsection (3) or any other law or the common law, but subject to subsection (2), have access to any information or document in the possession or under the control of any Government or administration, any participant in the Council or any political party: Provided that the Committee shall have such access only if and in so far as—

- (a) it is in terms of subsection (8) or (9) requested by the Council or a subcouncil to scrutinize such information or document; and
- (b) access to such information or document is reasonably necessary to attain the objects of the Council.

(6) (a) The Committee shall take special precautions to ensure that no information or document referred to in subsection (3) to which it gains access is disclosed to unauthorized persons.

(b) No person other than the members of the Committee or a subcommittee referred to in subsection (4)(f) or (g) shall be present at any meeting of the Committee or subcommittee unless such person's presence is necessary and is authorized by the Committee or the subcommittee concerned.

(7) Notwithstanding any other law prohibiting the disclosure of any information or document, any Government or administration, any participant in the Council and any political party shall be entitled, subject to subsections (2) and (3), to disclose or furnish any information or document in its possession or under its control to the Council or a subcouncil.

(8) If any Government or administration, any participant in the Council or any political party, on being requested by the Council or a subcouncil in terms of any provision of this Act to disclose or furnish any information or document to it, refuses or fails to disclose or furnish such information or document or contends that such information or document is exempt from disclosure by virtue of subsection (3), the Council or subcouncil may request the Committee to scrutinize that information or document.

(9) The Council or a subcouncil may at any time request the Committee to scrutinize any information or document in the possession or under the control of any Government or administration, any participant in the Council or any political party.

(10) A request contemplated in subsection (8) or (9) shall specify with sufficient clarity the nature of the information or document concerned as well as the reasons why it is considered to have a bearing on the objects of the Council. 5

(11) The Committee shall as soon as possible after receiving a request contemplated in subsection (8) or (9), designate a member of the appropriate subcommittee to establish whether the information or document concerned has a bearing on the objects of the Council, and if so, the appropriate subcommittee shall scrutinize the information or document concerned with a view— 10

(a) to verifying whether or not that information or document is exempt from disclosure by virtue of subsection (3);

(b) if it is so exempt, to verifying whether or not the information or document or anything dealt with therein discloses anything which adversely affects the attainment of the objects of the Council, and if so, in what manner; and 15

(c) if it is not so exempt, to releasing the information or document to the Council or to the subcouncil concerned. 20

(12) (a) For the purpose of subsection (11), the Committee may interview the duly authorized senior representative, or a person designated by him or her, of the Government or administration, the participant in the Council or the political party concerned and may direct such representative or person in writing to appear before it to produce any information or document in the possession or under the control of that Government or administration, participant in the Council or political party, and may question such representative or person relating to such information and require an explanation of anything contained in such a document: Provided that if the Committee is not satisfied with any such explanation, the Committee may direct any other person in writing to appear before it, and may question such person relating to such information and require an explanation of anything contained in such a document. 25 30

(b) Any person who fails to comply with a direction referred to in 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. 35

(13) If the member or subcommittee referred to in subsection (11) finds that any information or document that is exempt in terms of subsection (3) or anything dealt with therein, discloses anything which adversely affects the attainment of the objects of the Council, the Committee may make such information or document or any segregable portion thereof available to the Council or a subcouncil, subject to such limitations relating to access, publication and safekeeping as may be imposed by the Committee. 40

(14) The subcommittee shall in writing notify the Council or the subcouncil concerned and the Government, administration, participant in the Council or political party concerned, as the case may be, of any finding in terms of this section, which finding shall be binding on the parties concerned and shall be given effect to. 45

(15) (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— 50

(i) to the extent to which it may be necessary for the proper administration of any provision of this Act;

(ii) to any person who of necessity requires it for the performance of any function in terms of this Act; 55

(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. 60

(c) Every member of the Council, the subcouncils and the Committee, and of any other structure, organ or body established by or under this Act, and every member of the staff of the Council, the subcouncils, the Committee and any such structure, organ or body, shall, before assuming office or duty, make and subscribe to an affirmation of secrecy in the following form:

- "I, solemnly declare:
- (a) I have taken cognizance of the provisions of section 22(15) of the Transitional Executive Council Act, 1993.
- (b) I understand that I may not disclose any information or document, or the contents thereof, of whatever nature that comes to my knowledge or into my possession in consequence of my performance of any function in terms of the Transitional Executive Council Act, 1993, whether verbal or in writing, to any unauthorized person without prior written approval of the Transitional Executive Council.
- (c) I am fully aware of the serious consequences which may follow any breach or contravention of the above-mentioned provisions.

.....
(Signature)"

Resolution of disputes

23. (1) When there is any dispute between the Council or a subcouncil and any Government, administration, 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; or
- (c) such Government, administration, political party or organization is obliged to comply with a direction of the Council or subcouncil.

the Government, administration, political party or organization concerned may refer the matter to the Special Electoral Court for determination.

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

(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 in written submissions by members of the Council or the subcouncil concerned and by the Government, administration, 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, administration, political party or organization concerned was notified of that direction, shall be binding on the Government, administration, political party or organization concerned.

(7) The provisions of this section shall not apply to any matter referred to in subsection (1)(c), (2), (3), (5), (6) or (7) of section 15, or subsection (13) or (14) of section 22.

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 under section 4(4), which date shall not be later than 14 days after the date of that proclamation. 5

(2) The Council shall, after its first meeting, meet at such times and places as it may determine. 10

(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. 15

(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; 20

(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 referred to in 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 25

(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 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 other 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. 30 35

(6) The leader of any political party, or of any organization participating in the Council, or a person designated by such leader, shall, when requested to do so by the Council or a subcouncil, attend any meeting of the Council or subcouncil at which a matter relating to any activity or conduct of that party or organization and which has a bearing on the objects of the Council is to be discussed, and shall at such a meeting, subject to the other 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. 40 45

(7) Any person who 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.

(8) The Subcouncil on the Status of Women shall from time to time designate three persons from among its members, who shall be entitled to attend all meetings of the Council and to address it on any matter relating to the functions of that subcouncil, the interests of women and gender issues in general. 50

Decisions

25. (1) All decisions of the Council or a subcouncil shall be taken by the members thereof alone and shall, as far as possible, be taken on a basis of consensus. 55

(2) When there is not total consensus in respect of any decision—

- (a) in the case of the Council, subject to sections 15(2)(b) and 22(4)(b), a decision which has the support of at least seventy-five percent of the members of the Council;
- (b) in the case of the subcouncils referred to in section 8(1)(b), (c) and (g), a decision which has the support of at least seventy-five percent of the members of the subcouncil concerned; and
- (c) in the case of the subcouncils referred to in section 8(1)(a), (d), (e) and (f), a decision which has the support of at least two-thirds of the members of the subcouncil concerned.

shall be a decision of the Council or the subcouncil concerned, as the case may be.

Administrative staff, finance and accountability

26. (1) The Council shall at its first meeting, or as soon as possible thereafter, appoint a person to the office of the 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 or on account of the Council, the subcouncils and any committee or body established by or under this Act;
 - (ii) cause the necessary accounting and other related records to be kept;
- (c) may exercise the powers and shall perform the duties which the Council may from time to time confer or impose upon him or her in order to attain the objects of this Act, and shall for those purposes 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 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 of South Africa as may be determined by the Council and to the extent and subject to such adjustments as may be determined 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, and 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 or supplement to or repeal of any provision of this Act, excluding section 3, and the State President shall, by proclamation in the *Gazette*, amend, supplement or repeal the provisions of this Act accordingly.

(2) Any such amendment, supplement or repeal shall be limited to facilitating the pursuance of the objects of this Act.

(3) Any such amendment, supplement or repeal 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. 5

(2) The Council and every subcouncil shall be dissolved on the date referred to in subsection (1).

(3) (a) At such dissolution of the Council and the subcouncils, all assets, monies and liabilities of the Council, the subcouncils, and any other structure, organ or body established by or under this Act, shall revert to such department of State as the first cabinet appointed in terms of the Constitution may designate. 10

(b) The Minister responsible for such department shall—

(i) have the authority to wind up the affairs of such structures, organs or bodies;

(ii) for the purpose of any legal relationships, including legal proceedings involving the Council, be the legal successor of the Council. 15

State bound

30. This Act shall bind the State.

Short title and commencement

31. (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 or, after the commencement of section 2, if applicable, in consultation with the Council, by proclamation in the *Gazette*. 20

(2) Different dates may be so fixed in respect of different provisions of this Act.

BREAKDOWN OF THE TRANSITIONAL
EXECUTIVE COUNCIL BILL AS ADOPTED BY
THE NEGOTIATING COUNCIL

TRANSITIONAL EXECUTIVE COUNCIL BILL

The Negotiating Council adopted the Draft Transitional Executive Council Bill by *sufficient consensus* on Tuesday 7 September 1993.

- * The AVU reserved its position on the acceptance of the Draft Bill.
- * The Governments of Bophutatswana and Ciskei opposed the acceptance of the Draft Bill.
- * The PAC abstained from being party to the decision of the acceptance of the Draft Bill until further consultation with its principals.

CLAUSE	DESCRIPTION	STATUS
Long title		Agreed general consensus
Clause 1	Definitions	Agreed general consensus reservation by the PAC on the definition of "armed force"
Clause 2	Establishment of the TEC	Agreed general consensus
Clause 3	Objects of the Council	Agreed general consensus
Clause 4	Constitution of Council	Agreed general consensus The PAC objected to Clause 4(9).
Clause 5	Vacation of office, Removal from office, and filling of vacancies in Council	Agreed general consensus
Clause 6	Conditions of service, remuneration and allowances of members of Council	Agreed general consensus

TEC/PLENARY
17 NOVEMBER 1993

Clause 7	General powers of Council	Agreed with clause 7(5) agreed to by sufficient consensus . (The AVU, the Bophutatswana Government and the Ciskei Government objected to clause 7(5).
Clause 8	Establishment of Subcouncils	Agreed general consensus
Clause 9	Constitution of subcouncils	Agreed general consensus
Clause 10	Vacation of office, removal from office and filling of vacancies in subcouncils	Agreed general consensus
Clause 11	Conditions of service, remuneration and allowances of members of subcouncils	Agreed general consensus
Clause 12	General powers of subcouncils	Agreed general consensus
Clause 13	Powers in regard to certain proposed legislation and other actions	Agreed general consensus The AVU's reservations with regard to clause 13(2) were noted.
Clause 14	Powers and duties in regard to regional and local government and traditional authorities	Agreed general consensus

TEC/PLENARY
17 NOVEMBER 1993

Clause 15	Powers and duties in regard to law and order, stability and security	Agreed general consensus The PAC rejected the whole notion of a state of emergency with regard to clause 15(2)
Clause 16	Powers and duties in regard to defence	Agreed general consensus The Bophutatswana Government noted concern with regard to the wording of clauses 16(c) and (d). The PAC opposed and rejected clause 16(10) and objected to clause 16(4)(a). The DP objected to clause 16(11)
Clause 17	Powers and duties in regard to finance	Agreed general consensus
Clause 18	Powers and duties in regard to foreign affairs	Agreed general consensus The clause was rejected by the PAC.
Clause 19	Powers and duties in regard to the status of women	Agreed general consensus

Clause 27	Legal proceedings against Council	Agreed general consensus
Clause 28	Amendment of Act	Agreed general consensus
Clause 29	Duration	Agreed general consensus
Clause 30	State bound	Agreed general consensus
Clause 31	Short title and commencement	Agreed general consensus

The Transitional Executive Council Bill was adopted by Parliament in September 1993.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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KAAPSTAD, 27 OKTOBER 1993

No. 15183

STATE PRESIDENT'S OFFICE

No. 1875.

27 October 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 150 of 1993: Independent Electoral Commission Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1875.

27 Oktober 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 150 van 1993: Wet op die Onafhanklike Verkiegingskommissie, 1993.

ACT

To make provision for the conduct of free and fair elections for the National Assembly and any other legislature to be elected contemplated in the Constitution of the Republic of South Africa Act, 1993; to make provision for the conduct of certain referendums by the Independent Electoral Commission; and to provide for matters in connection therewith.

*(Afrikaans text signed by the State President.)
(Assented to 18 October 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Section

CHAPTER I

Interpretation and Application of Act

1. Definitions
2. Application of Act
3. Act binding on State and State President

CHAPTER II

Independent Electoral Commission

4. Establishment and objects of Commission
5. Constitution of Commission
6. Conduct required of members
7. Disclosure of conflicting interests
8. Independence of Commission
9. Dissolution of Commission
10. Conditions of service, remuneration and allowances of members of Commission and International Advisory Committee
11. Vacation of office, removal from office and filling of vacancies in Commission
12. Meetings of Commission
13. Powers, duties and functions of Commission
14. International Advisory Committee
15. Administration and staff of Commission
16. Expenditure of Commission and budget
17. Accountability and finance
18. Determination and certification of election results, or declaration

CHAPTER III

Election Administration Directorate

19. Establishment of Election Administration Directorate
20. Constitution of Election Administration Directorate
21. Powers, duties and functions of Chief Director: Administration

CHAPTER IV

Election Monitoring Directorate

22. Establishment of Election Monitoring Directorate

23. Constitution of Election Monitoring Directorate
 24. Powers, duties and functions of Chief Director: Monitoring

CHAPTER V

Election Adjudication Secretariat

25. Establishment of Election Adjudication Secretariat 5
 26. Constitution of Election Adjudication Secretariat
 27. Powers, duties and functions of Secretary

CHAPTER VI

Electoral Tribunals

28. Establishment and constitution of Electoral Tribunals 10
 29. Powers, duties and functions of Electoral Tribunals

CHAPTER VII

Electoral Appeal Tribunals

30. Establishment and constitution of Electoral Appeal Tribunals
 31. Powers, duties and functions of Electoral Appeal Tribunals 15

CHAPTER VIII

Special Electoral Court

32. Establishment and constitution of Special Electoral Court
 33. Powers, duties and functions of Special Electoral Court

CHAPTER IX

20

General Provisions

34. Application of Act in event of conflict with other laws
 35. Dissolution of directorates, Secretariat and tribunals
 36. Appeal and review
 37. Remuneration and allowances of members of tribunals and Special Electoral Court 25
 38. Secrecy
 39. Offences and penalties
 40. Legal proceedings against Commission
 41. Regulations 30
 42. Short title and commencement

CHAPTER I

Interpretation and Application of Act

Definitions

1. In this Act, unless the context otherwise indicates— 35
 (i) "Administration Directorate" means the Election Administration Directorate established by section 19; (iv)
 (ii) "Appeal Tribunal" means any Electoral Appeal Tribunal established in terms of section 30; (ii)
 (iii) "candidate" means any person whose name appears on a list of nominations by any registered party to become a member of the National Assembly or any other legislature in terms of the Constitution and the Electoral Act; (xvi) 40
 (iv) "Chief Director: Administration" means the person appointed to that office by the Commission in terms of section 20(1); (ix) 45
 (v) "Chief Director: Monitoring" means the person appointed to that office by the Commission in terms of section 23(1); (x)

- (vi) "Chief Executive Officer" means the person appointed to that office by the Commission in terms of section 17(1); (xi)
- (vii) "Commission" means the Independent Electoral Commission established by section 4(1); (xx)
- (viii) "committee" means any committee of the Commission established under section 13(3)(c); (xix) 5
- (ix) "Constitution" means the Constitution of the Republic of South Africa Act, 1993; (vii)
- (x) "directorate" means the Administration Directorate or the Monitoring Directorate; (iii) 10
- (xi) "election" means any election conducted in terms of the Electoral Act for the National Assembly or any other legislature; (xxxvii)
- (xii) "Electoral Act" means the Electoral Act, 1993; (xviii)
- (xiii) "Electoral Code of Conduct" means the Electoral Code of Conduct for Political Parties contained in Schedule 1 to the Electoral Act; (xxxviii) 15
- (xiv) "Electoral Tribunal" means any Electoral Tribunal established in terms of section 28; (xxxix)
- (xv) "International Advisory Committee" means the International Advisory Committee established in terms of section 14; (xiii) 20
- (xvi) "international member" means any person appointed as a member of the Commission in terms of section 5(2)(a); (xiv)
- (xvii) "international observer" means any person appointed as a representative of the United Nations, the Organization of African Unity, the European Community, the Commonwealth or any other inter-governmental organization or foreign government accredited for that purpose by the Subcouncil on Foreign Affairs of the Transitional Council in consultation with the Department of Foreign Affairs, in order to observe and report on the electoral process; (xv) 25
- (xviii) "judicial office" means any appointment as a judge of the Supreme Court, whether permanent or on an acting basis; (xxix) 30
- (xix) "member" means any member of the Commission appointed in terms of section 5(1); (xxi)
- (xx) "monitor" means any person appointed as such in terms of section 24(1)(a); (xxii) 35
- (xxi) "Monitoring Directorate" means the Election Monitoring Directorate established by section 22; (v)
- (xxii) "National Assembly" means the National Assembly which together with the Senate shall constitute the Constitutional Assembly as contemplated in the Constitution; (xxiii) 40
- (xxiii) "observer" means any observer registered with the Monitoring Directorate in terms of section 24(1)(b); (xli)
- (xxiv) "other legislature" means any legislature contemplated in the Constitution, excluding the National Assembly and Senate; (i) 45
- (xxv) "Parliament" means Parliament as contemplated in the Constitution; (xxvi)
- (xxvi) "party" means any registered party, and any party, organization or movement of a political nature which publicly supports or opposes the policies, candidates or cause of any registered party, or which propagates non-participation in any election or the non-acceptance of the results certified by the Commission; (xxvii) 50
- (xxvii) "political office" means any executive appointment or elected office, including any elected or nominated public representative of a party, whether involving remuneration or not, or any other paid office, in the service of a party; (xxviii) 55
- (xxviii) "prescribe" means prescribe by regulation; (xl)
- (xxix) "public office" means any appointment or position in the service of the State, or any corporate or other body, institution or concern owned or controlled, whether directly or indirectly, by the State, and includes any such appointment or position in the legislative, executive or judicial organs of the State at any level of government, but excludes any appointment to judicial office and any academic 60

- appointment at any university or tertiary educational institution: (xxv)
- (xxx) "registered party" means any registered party as defined in section 1 of the Electoral Act: (vi)
- (xxxi) "regulations" means the regulations made under section 41: (xxx) 5
- (xxxii) "Republic" means the Republic of South Africa, including any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei which formally incorporated the provisions of this Act and the Electoral Act as part of its law: (xxxi)
- (xxxiii) "Secretariat" means the Election Adjudication Secretariat established by section 25: (xxxii) 10
- (xxxiv) "Secretary" means the person appointed to that office by the Commission in terms of section 26(1): (xxxiii)
- (xxxv) "Senate" means the Senate as contemplated in the Constitution: (xxxiv) 15
- (xxxvi) "Special Electoral Court" means the Special Electoral Court established by section 32: (xxxv)
- (xxxvii) "State" means the Republic: (xxxvi)
- (xxxviii) "Supreme Court" means the Supreme Court of South Africa, and the Supreme Court of the Republic of Transkei, Bophuthatswana, Venda or Ciskei if such Republic has formally incorporated the provisions of this Act and the Electoral Act as part of its law: (xii) 20
- (xxxix) "this Act" includes the regulations: (viii)
- (xl) "Transitional Council" means the Transitional Executive Council established by section 2 of the Transitional Executive Council Act, 1993: (xxiv) and 25
- (xli) "voter" means any eligible voter as contemplated in the Constitution and the Electoral Act. (xvii)

Application of Act

2. (1) The provisions of this Act shall apply in respect of— 30
- (a) the first elections to be conducted for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act; and
- (b) any referendum conducted under the supervision of the Commission in terms of subsection (2),
- until the First National Assembly and all other legislatures have been validly 35 constituted.
- (2) Upon the advice of the Transitional Council the State President shall by proclamation in the *Gazette* declare—
- (a) the holding of a referendum; and
- (b) that the provisions of this Act shall, subject to subsection (3), apply in 40 respect of the holding of that referendum.
- (3) The State President shall in consultation with the Transitional Council by proclamation in the *Gazette* make regulations for the holding of such a referendum, in which case the provisions of this Act shall, subject to such regulations, apply *mutatis mutandis* in respect of the holding of such referendum, 45 whether nationally or within any particular geographic region, or in respect of any specified issue, as the case may be.
- (4) In the event of any of the Republics of Transkei, Bophuthatswana, Venda or Ciskei deciding formally to incorporate the provisions of this Act and the Electoral Act as part of its law, such agreements as may be required to secure the 50 co-ordinated implementation of the relevant legislation may be concluded and any such agreements shall have the force of law.

Act binding on State and State President

3. (1) This Act shall bind the State.
- (2) This Act shall bind the State President in so far as he or she shall be obliged 55 to act in accordance with the advice of the Transitional Council wherever so provided for in this Act.

CHAPTER II

*Independent Electoral Commission***Establishment and objects of Commission**

4. (1) There is hereby established a commission to be known as the Independent Electoral Commission.

(2) The objects of the Commission shall be—

- (a) to administer, organize, supervise and conduct, whether directly or indirectly, free and fair elections for the National Assembly and all other legislatures in terms of the Constitution and the Electoral Act;
- (b) to promote conditions conducive to free and fair elections;
- (c) to determine and certify the results of elections, and to certify to what extent such elections have been free and fair;
- (d) to conduct voter education; and
- (e) to make and enforce regulations for the achievement of such objects.

Constitution of Commission

5. (1) The Commission shall, subject to subsection (2), consist of not fewer than 7 and not more than 11 members, who shall be appointed by the State President upon the advice of the Transitional Council, and who shall be impartial, respected and suitably qualified men and women, do not have a high party political profile, are themselves voters, and represent a broad cross-section of the population.

(2) (a) The State President shall, upon the advice of the Transitional Council, appoint not more than five persons (not being citizens of the Republic) from the international community as members of the Commission in a non-representative capacity.

(b) Such international members shall have the same rights and powers as other members, excluding the power to vote, and shall not constitute part of any quorum in terms of this Act.

(3) (a) The State President shall, upon the advice of the Transitional Council, designate two members as Chairperson and Vice-Chairperson of the Commission, respectively: Provided that if the Transitional Council so decides, it may advise the State President to designate two members as Co-Chairpersons in lieu of a Chairperson and Vice-Chairperson, and designate which one of them shall preside at the first meeting of the Commission.

(b) In the absence of both such Chairperson and Vice-Chairperson, or both such Co-Chairpersons, as the case may be, the remaining members shall by simple majority nominate another member as acting Chairperson of the Commission.

(c) The international members shall not be eligible to serve as Chairperson, Co-Chairperson, Vice-Chairperson or acting Chairperson.

(4) The State President shall from time to time, upon the advice of the Transitional Council and subject to subsection (1), appoint additional members to the Commission, subject to the maximum number contemplated in that subsection.

Conduct required of members

6. (1) Every member and international member of the Commission shall—

- (a) be appointed in his or her individual capacity, and shall, notwithstanding any personal opinion, preference or party affiliation, serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
- (b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office.

(2) No member or international member of the Commission shall—

- (a) during his or her term of office be eligible for appointment or nomination to any political or public office, whether involving remuneration or not.