

19 MAY, 1993

ANC PROPOSALS

D21

ANC

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE PAGE 1

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE

MANDATE

Working Group 3 of Codesa proposed the following broad mandate for the sub-council on defence:

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy.

SPECIFIC POWERS

The TEC shall delegate to the sub-council the following powers to enable it to fulfil its mandate. Decisions of the sub-council shall be subject to confirmation or amendment by the TEC.

1. Executive authority

The sub-council shall require government and other participants in the TEC to submit all decisions related to military developments for its consideration and approval.

The sub-council shall have the further power to require government or other participants in the TEC not to proceed with any military development which, in its opinion, will undermine or prejudice the objectives outlined in its mandate.

Such developments shall be construed as including proposed legislation on defence; the restructuring of military formations; the formulation of budgets; the appointment of officers to the General Staff; the manufacture and procurement of weaponry; strategic planning; training; and any other matter related to the mandate of the sub-council.

The State Security Council SSC and all structures flowing from the National Security Management System NSMS, including the Joint Monitoring Committees JMC should be disbanded. It would be the task of the Joint Intelligence Structures to verify this. In so far as there are any authorised intelligence structures connected to the SADF, the above provisions shall also apply.

2. Review of legislation

The sub-council shall have the power to review and suspend existing legislation related to defence and military formations.

3. Deployment of military formations

The role of the SADF shall be to protect the borders of South Africa against foreign aggression. The SADF shall not have an internal brief. The sub-council shall be responsible for advising the TEC on the circumstances under which a military formation of government or any participant in the TEC may be deployed in an operational capacity.

The government and other participants in the TEC shall be required to submit to the sub-council for its consideration any proposal to deploy a military formation in an operational capacity, and shall not undertake such deployment without the approval of the TEC.

4. Control of military formations

The sub-council shall have the power to order any military formation of government or any participant in the TEC to take stability, the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political activity.

5. Code of Conduct

The sub-council shall have the power to formulate a Code of Conduct which shall be binding on all members of military formations of government and other participants in the TEC. It shall take into account the code of conduct being developed for the SADF through the structures of the National Peace Accord.

6. Access to information

The sub-council shall have unrestricted access to all information which concerns defence and military formations of government and other participants in the TEC.

7. Complaints

The sub-council shall have the power to hear complaints concerning military formations of government and other participants in the TEC from the Independent Electoral Commission, the Goldstone Commission, National Peace Accord structures, the TEC and any participant in the TEC.

8. Investigation

The sub-council shall have the power to investigate or order the investigation of any matter which relates to its mandate. This power shall include the power to search premises, to seize documents and to subpoena persons to give evidence before it under oath.

9. Disciplinary Powers

If, after thorough investigation, the sub-council is of the opinion that any member of a military formation of the government or any participant in the TEC is guilty of serious misconduct, it shall have the power to take appropriate disciplinary measures.

Serious misconduct by a member of a military formation shall be construed as the instigation or commission of unlawful violence; the obstruction of the operation of the sub-council or the TEC; a violation of the Code of Conduct; or any other activity intended to undermine free political participation or the transition to democracy.

Appropriate disciplinary measures shall include the censure or the suspension or dismissal of the member concerned from the military formation concerned.

The sub-council shall also have the power to recommend that criminal proceedings be instituted against the member concerned.

The sub-council shall have the further power to investigate the military unit of a member found guilty of serious misconduct.

10. Planning for the new Defence Force

The sub-council shall have the power to begin the process of planning and formulating policy for the integration of armed forces and the establishment of a Defence Force.

11. Support for non-government military formations

The sub-council shall allocate resources to support the welfare of members of military formations of non-government participants in the TEC.

12. Sub-Structures.

The sub-council shall have the authority to consult experts, or establish committees of experts, to assist it in administration, research, investigation, implementation or any other activity necessary for its effective functioning.

13. Joint Military Co-ordinating Committee

The sub-council shall have the power to establish a Joint Military CO-ordinating Committee, comprised of senior representatives of military formations of government and other participants in the TEC, to oversee and monitor the implementation of its decisions and instructions.

GUIDING PRINCIPLES

The sub-council shall be guided by the following principles:

- South Africa shall be committed to resolving internal and external conflict primarily through non violent means.
- National security and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
- South Africa shall pursue peaceful and co-operative relations with neighbouring states.
- The security institutions shall be bound by the principle of civil supremacy and shall be subject to public scrutiny and open debate.
- The security institutions shall reflect the national and gender composition of South African society and shall implement affirmative action programmes to this effect.
- ✓ The security institutions shall be accountable and answerable to the public through a democratically elected parliament.
- ✓ The security institutions shall respect human rights, non-racialism and democracy, and shall act in a non discriminatory manner towards the citizenry.
- ✓ The security institutions shall be politically non-partisan.

CONTINUING RESPONSIBILITY FOR CONDUCT OF MILITARY FORMATIONS

Nothing in these terms of reference or the operation of the sub-council shall be construed as detracting in any way from the responsibility of government and other participants in the TEC to ensure that their respective military formations, and the members thereof, comply with the Code of Conduct and other-wise conduct themselves in a manner conducive to the fulfillment of the mandate of the TEC.