

PROPOSED TERMS OF REFERENCE FOR SUB-COUNCIL ON LAW AND
ORDER, STABILITY AND SECURITY

A. TERMS OF REFERENCE OF THE SUB-COUNCIL ON LAW AND
ORDER, STABILITY AND SECURITY

1. Objectives of Sub-Council

The Sub-council will acquaint itself with developments in law and order, stability and security at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will take steps to identify and to 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.

2. Powers

2.1. Notwithstanding the provisions of Section 4(1) of the Public Safety Act, No 3 of 1953, the Minister of Law and Order shall not exercise the powers defined in that section, unless he does so in consultation with the intended Council.

2.2. Notwithstanding the provisions of Section 34 G of the Police Act, No 7 of 1958, the Minister of Law and Order shall not come to any arrangement as defined in that section, unless he does so in consultation with the intended Council.

2.3. Notwithstanding the provisions of Section 5 A of the Public Safety Act, No 3 of 1953, the Minister of Law and Order shall not declare any area as an unrest area, as defined in that section, unless he does so in consultation with the intended Council.

3. Functions

3.1. In order to achieve the objectives as set out in paragraph 1 the Sub-Council shall have the functions set out below :

3.1.1. to establish a Law and Order inspectorate as part of a national inspectorate comprised of Police members and persons as the Sub-council may choose to appoint, which inspectorate shall be tasked with investigating and monitoring all policing agencies in conjunction

with the inspectorates of the relevant agencies to ensure the promotion of the objectives set out in paragraph 1 above and compliance with the directives of the Sub-Council.

- 3.1.2. to request the investigation of any matter which relates to its objectives by one of the existing investigative bodies such as the Goldstone Commission of Inquiry, the investigation units as established in accordance with paragraph 3.2.4.1. of the National Peace Accord, the Law and Order inspectorate or the complaints mechanism referred to in paragraph 3.1.3 of this document.
- 3.1.3. to establish an independent complaints mechanism under the control of a civilian so as to allow for the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct or breaches of the Code of Conduct for Political Parties as stipulated in the National Peace Accord;
- 3.1.4. to pronounce on any steps or failure to take steps by any police agency as the Sub-Council deems necessary to achieve the objectives set out in paragraph 1 above, and to communicate that pronouncement to the agency either direct or through political channels and to make public its pronouncements in cases where it is

deemed appropriate;

- 3.1.5. to pronounce approval or disapproval of any decisions taken by the supreme or regional command structures of a police force or the relevant Minister of Police that may impact on the Sub-Councils terms of reference, and including :
- 3.1.5.1. appointments or dismissals of any police officer of the rank of brigadier or above;
- 3.1.5.2. all decisions relating to the drafting of or deviation from any budget of a police force;
- 3.1.5.3. all significant policy decisions relating to the restructuring of such a force or regarding the direction or operation of such force;
- 3.1.5.4. all decisions relating to the conduct of members of such a force and procedures for its deployment at any demonstration, gathering, or political meeting;
- 3.1.6. to establish any committee or sub-committee comprised of local or international experts, in conjunction with the relevant Minister of Police or Senior Political office bearer(s) of the applicable/relevant political party or organisation to evaluate or monitor any action, conduct or reform, by a police force.

- 3.1.7. to call for a report on and evaluate the impact of any steps taken by a police force to prevent political violence and specifically to monitor all such steps as any police force is required to take in terms of the National Peace Accord and relevant legislation;
 - 3.1.8. to pronounce on such steps as the Sub-Council deems necessary for the reform of a police force as well as steps by a police force to improve its effectiveness, image, credibility and community support;
 - 3.1.9. to receive all recommendations of the Police Board and be empowered to request the Police Board in conjunction with the Minister of Law and Order to conduct inquiries and to make recommendations with respect to any policing policy;
 - 3.1.10. to formulate a statement of values and objectives for police forces and para-military organisations and / or to introduce or amend a code of conduct which may be made binding on any police force;
4. The Sub-Council shall report regularly to the Transitional Executive Council to which it shall be responsible. This Council shall have the power to reverse or set aside any decision of the Sub-Council, and shall in any event review decisions taken by it. TEC decisions can also be referred to the Independent Electoral Commission for a

determination as contemplated in paragraphs 27, 28 and 33
of the Report of CODESA Working Group 3.

109.TXT/pvd

PROPOSED TERMS OF REFERENCE FOR TEC SUB-COUNCIL ON DEFENCE

TERMS OF REFERENCE

1. 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.

FUNCTIONS

2. In the execution of its terms of reference, as set out in par 1, the Sub-Council on Defence may:

- a. Do research on inter alia the following matters:

- i. Political control over military structures.
- ii. The employment of a defence force or any part or member thereof within the borders of the country, with the aim of a peaceful transition to a new democratic constitutional dispensation.

- iii. Parliamentary control over a future South African Defence Force.
- iv. The relationship between the Executive Authority and the future South African Defence Force.
- v. Possible future amendments to the Defence Act, No 44 of 1957.
- vi. The composition and organisation of a future South African Defence Force which, apart from a Reserve, includes the following:
 - (1) A permanent force
 - (2) A citizen force
 - (3) Commandos
- vii. The executive military command over the future South African Defence Force and the Reserve.
- viii. National service.
- ix. Exemption, exemption boards and boards for conscientious objection.
- x. Manpower policy, including (but not restricted to) aspects like standards, recruiting, selection, training, promotion and equal opportunity.
- xi. Participation in political activities.
- xii. The *raison d'être* of unofficial military organisations and activities.

- b. Pronounce on the prevention of instability.
- c. Acquaint itself with the military environment through official visits to and briefings by military organisations.
- d. Pronounce on future planning and development.
- é. Acquaint itself with defence-related developments through official visits to and briefings by ARMSCOR and the SADF.
- f. Do monitoring of force deployment, eg operations.
- g. Pronounce on any research which has been done.
- h. Do monitoring of the integration program which inter alia, includes facilities and logistic integration, inclusive of the TBVC countries.
- i. Pronounce on the integration program of the defence forces of the TBVC countries with the SADF.
- j. The creation and management of interaction mechanisms between the Sub-Council and defence forces, amongst others to keep such defence forces informed of the activities, views, findings, pronouncements, etc of the Sub-Council on Defence.
- k. Review existing legislation relating to defence matters and pronounce on its suitability.
- l. Do monitoring of force preparation.
- m. Pronounce on the circumstances under which a military force may be deployed in an operational capacity within the borders of the country.

- n. Request any military action that will assist in ensuring the stability, the levelling of the playing fields, or the creation of a climate conducive to free and fair elections or free political activity.
- o. Initiate a Code of Conduct which shall be binding on all members of military formations of governments 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.
- p. Be kept informed of and be able to ask for and be entitled to receive information in regard to proposed legislation on military-related matters including bills, proclamations and regulations, and of executive actions that may impact on the levelling of the political playing field and on free political participation.
- q. Consider and pronounce on complaints concerning military formations from the Independent Electoral Commission, National Peace Accord structures and any participant in the TEC.
- r. Do monitoring of published media reporting on defence-related matters.
- s. Investigate any matter which relates to its terms of reference.
- t. If, after thorough investigation by an independent body, the Sub-Council is of the opinion that any member of a military force is guilty of serious misconduct, it may promote appropriate disciplinary measures. Serious misconduct by members of a military formation shall include 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. The Sub-Council may recommend that appropriate disciplinary or criminal proceedings, in a military or criminal court respectively, be instituted against the member concerned.

- u. Within its own budget to consult experts, or establish committees of experts, to assist it in administration, research, investigation, or any other activity necessary for its effective functioning.

POWERS

3. Notwithstanding the provisions of section 6(3)(f) and (g) of the Republic of South Africa Constitution Act, No 110 of 1983, the State President will not declare martial law and will not declare war, unless he does so in agreement with the Sub-Council.

GUIDING PRINCIPLES

4. The Sub-Council shall be guided by the following principles:
- a. South Africa shall be committed to resolving internal and external conflict primarily through non-violent means.
 - b. Internal and personal security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the people.
 - c. South Africa shall pursue peaceful and co-operative relations with neighbouring states.
 - d. The security institutions shall be bound by the principle of constitutional accountability and shall be subject to public scrutiny and open debate.
 - e. The security institutions shall reflect the national and (subject to the principle that females are not employed in a combatant capacity) the gender composition of South African society and shall take steps to achieve this goal. Actions in this regard should be subject to the maintenance of professional norms and standards, as required by doctrine, training and requirements to utilise military equipment.

- f. The security institutions shall be accountable and answerable to the public through a democratically elected parliament.
- g. The security institutions shall respect human rights and democracy, and shall act in a non-discriminatory manner towards the citizenry.
- h. The security institutions shall be politically non-partisan.

CONTINUING RESPONSIBILITY FOR CONDUCT OF MILITARY FORMATIONS

5. Nothing in these terms of reference or the operations of the Sub-Council shall be construed as detracting in any way from the responsibility of governments and other participants of the TEC to ensure compliance with the Code of Conduct and otherwise conduct themselves in a manner conducive to the fulfilment of the mandate of the TEC.

PROPOSED TERMS OF REFERENCE FOR THE TEC SUB-COUNCIL ON FINANCE (SCF)

1. FUNCTIONS

The SCF will

- (i) acquaint itself with recent economic developments, economic policy objectives and targets for the medium term and more particularly, for the ensuing (1994/95) fiscal year.
- (ii) express opinions regarding the ensuing (1994/95) fiscal year on:
 - (a) the overall level of state expenditure;
 - (b) the broad composition of expenditure - security, social, economic and general government broken down into capital and recurrent expenditure;
 - (c) the level and composition of taxes to be collected;
 - (d) and the financing of the budget deficit;
- (iii) be entitled to representation on all function and budgeting committees with a view to ensuring that funds are not applied in a manner aimed to favour the one or other political grouping participating in the election of a democratic government and, if warranted, report its findings to the Transitional Executive Council.
- (iv) receive reports controlling expenditures against budgeted amounts.
- (v) be informed regarding the rationalisation of treasury functions in the process of realignment of government structures during transition.

2. STATUTORY COMPETENCE

The SCF, as a co-ordinating and advisory body, shall exercise its powers and perform its duties within the provisions of current legislation and particularly the following:

- (i) the various taxation acts;
- (ii) the Exchequer Act, Financial Regulations and the Treasury Instructions framed thereunder;
- (iii) the various specific Acts relating to the bodies and institutions referred to above; and
- (iv) shall have access to all relevant information, (but with due regard to the applicable secrecy provisions in various Acts of Parliament) available from

departments of state, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum.

2. FUNCTIONS

In the execution of its terms of reference the SCF

- (i) shall have access to all relevant information, but with due regard to the applicable secrecy provisions in various Acts of Parliament, available from departments of state, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;
- (ii) shall be entitled to research or otherwise acquire for the account of the political parties represented on the SCF such other information not available from the sources mentioned in par 2(i);
- (iii) shall be entitled to approach the State President regarding information of disbursements made from the Secret Funds operated by the Government in order to determine whether a particular political party is being favoured.

**PROPOSED TERMS OF REFERENCE OF THE SUB-COUNCIL ON
FOREIGN AFFAIRS**

1. The Sub-Council shall be set up as a body which will work with existing legislative and executive structures with the aim of achieving progressively the broadest possible consensus on matters affecting the country's international interests, particularly its long term interests.
2. The Sub-Council should assist with regard to securing agreements with the international community concerning any contribution that this community may make to assist in the peaceful transition to democracy.
3. The Sub-Council should assist in generating such international resources as may be available to help the country to address the socio-economic needs of the people as a whole.
4. As agreed at Codesa, the Sub-Council will report to the Transitional Executive Council.