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INSTRUCTION: CONSULTATION WITH THE RESERVE FORCE COUNCIL

Reference A: Sec 48 of the Defence Act (Act No 42/2002)

INTRODUCTION

1. The Reserve Force Council (RFC) was established in 1992 as an advisory and consultative body on the Reserve Force of the SANDF and its Constitution was approved by the then Minister of Defence and Defence Staff Council.

2. With the promulgation of the Defence Act, 2002 (hereinafter referred to as the Act), the RFC has become a statutory body in terms of the Act which also stipulates that the RFC must be consulted on all matters affecting the Reserve Force.

AIM

3. The aim of this document is to determine the nature of the consultation as stipulated in the Act and to determine how such consultation is to be effected.

LEGAL NATURE OF THE CONSULTATION WITH THE RESERVE FORCE COUNCIL

4. In terms of Section 48(4) of the Act, the RFC is a consultative and advisory body representing the Reserve Force, established to promote and maintain that force as an integral part of the Defence Force and which must be consulted on any legislation, policy or administrative measures affecting the Reserve Force.

5. The consultation which any functionary in the DOD is required to conduct with the RFC does not require that functionary to take a decision in consultation with the RFC. It in fact requires decisions to be taken after consultation with the RFC.

6. The nature of the consultation with the RFC is described in Section 233(4) of the Constitution, 1993 which reads:

"(4) Where in this Constitution any functionary is required to take a decision after consultation with another functionary, such decision shall be taken in good faith after consulting and giving serious consideration to the views of such other functionary."

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7. This means that any functionary involved in a legislative, policy or material administrative measure must, prior to final promulgation or commencement of such measure, first consult with the RFC, if any such legislative, policy or material administrative measure will, on any such final promulgation or commencement, affect the Reserve Force.

DEFINITIONS

8. For the purpose of this consultation -

- a. "affect", in relation to the Reserve Force, means to have any material or significant impact or effect, whether prejudicially or not, on the existence, constitution, rights or obligations of the Reserve Force, including the RFC.
- b. "functionary" means any functionary of the Department of Defence including levels one to three, vested with the power to initiate, promote or otherwise establish, promulgate or determine the commencement of the legal effect of any law, policy or subordinate measure which will affect the Reserve Force, including the RFC.

POLICY ON CONSULTATION WITH THE RESERVE FORCE COUNCIL

9. a. Any functionary must, prior to the final establishment, promulgation or determination of the commencement of the legal effect of any law, policy or subordinate measure which will have a material or significant impact or effect on the Reserve Force -
 - (1) conduct consultation with the RFC prior to taking a decision on any such matter affecting it or the Reserve Force;
 - (2) provide the RFC with all written drafts and accompanying documentation relating to any such law, policy or material measure, a written explanation of the reasons underlying the drafting thereof, furnish the RFC with a reasonable opportunity to scrutinise such documentation and request it to provide, in the reasonable manner as indicated in the request, comments on the proposed law, policy or measure, including recommendations, with full reasons for such comments or recommendations, and
 - (3) take steps to continue further consultations with the RFC flowing from its said comments, until the functionary is able to take a final decision on the content of such law, policy or material measure.
- b. Where any such functionary decides to reject, in whole or in part, such comments or recommendations by the RFC, the RFC must be furnished in writing with due notice thereof.

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- c. The RFC may, in any case where it establishes that a functionary has not acted in accordance with sub-para 9.a above, take steps to inform the functionary of its interest in the matter and request that the procedures as set out therein be followed.

REFERRAL AFTER CONSULTATIONS

10. Where the RFC is of the opinion that a functionary has not reacted to a reasonable request envisaged in paragraph 9(c) or otherwise, that a rejection of its comments or recommendations by a functionary at the completion of the procedures set out in paragraph 9, has not been done in good faith or after serious deliberation, it may refer the matter to the Minister for advice.

THE INTENTION OF THE ACT

11. The Defence Act stipulates that the RFC must be consulted on all legislative, policy and administrative matters affecting the Reserves. The RFC's input, advice and opinions should therefore be sought during the process of formulating legislation, policy or material administrative measures, ie the RFC's advice and opinion should be taken into account in the formulation of such legislation, policy and material administrative measures prior to decisions in this regard being taken.

EXECUTION

12. The Defence Reserve Board (DRB) is a body constituted by the C SANDF as an advisory body on the Reserve Force.

13. Matters which materially affect the Reserve Force must therefore be tabled at the DRB before being submitted to any approving authority.

14. As all Services and Divisions sit on the DRB, the opportunity exists for any material measures affecting the Reserve to be tabled and discussed before submission for approval.

15. The RFC attends the DRB and thus has insight into all matters affecting the Reserve which are raised at the DRB. However, the intentions of the legislator are not given effect to if the Council's first insight in to such matters occurs only at the DRB.

16. The Council should therefore be approached by all Services and Divisions to participate in the formulation of legislation or policy and the determination of material administrative measures which materially affect the Reserve Force prior to a final decision being taken in the matter.

17. The DRB is the nodal point for contact with the RFC and can facilitate the process of consultation with the RFC.

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CONCLUSION

18. Nothing in the foregoing implies that the DOD is obliged to accept the advice or opinions of the RFC. The opportunity must, however, be created to hear and seriously consider such advice and opinions.
19. The RFC is, conversely, not obliged to endorse or recommend any legislative, policy or administrative measure affecting the Reserve Force. Should such instances occur, the Services and Divisions making any proposals affecting the Reserve Force for approval must state that the proposals are not supported by the RFC and the reasons therefore.
20. The RFC is also free to make representations to the C SANDF, the Sec Def or the Minister regarding any measures affecting the Reserve Force.
21. The SANDF and the RFC accept the responsibility to consult in a timeous, open and transparent manner on all material matters affecting the Reserve Force.
22. This Instruction is a product of collaborative deliberations between the SANDF and the RFC and is accepted by both parties.
23. This Instruction is therefore promulgated for execution in the DOD with immediate effect and must be communicated by Service and Division chiefs to their subordinate Level 3 structures.

U.S. Amulisa v.i. Amulisa
 PP (G.N. NGWENYA) ACTG CSANDF
CHIEF OF THE SA NATIONAL DEFENCE FORCE: GEN

14th September 2005

J.B. Masilela
 PP (J.B. MASILELA)
SECRETARY FOR DEFENCE: DIR GEN
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For Action

Sec Def
 CPP
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