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**SIXTH REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL**

FIFTH DRAFT

11 JUNE 1993

1. INTRODUCTION

Since the submission of the five previous reports, the Technical Committee has identified the powers and functions which, in its opinion, should be exercised through the Transitional Executive Council's specialist sub-council on Law and Order, Stability and Security.

Once the Negotiating Council has had the occasion to express itself on the proposals that have been and will be made regarding specific powers and functions, the proposals will be appropriately integrated with the rest of the Committee's proposals in its previous reports.

2. POWERS AND FUNCTIONS

Based on submissions received, the Technical Committee proposes the following terms of reference in relation to the sub-council on Law and Order, Stability and Security. This section of the report has been submitted in a format resembling draft legislation.

**2.1 POWERS AND FUNCTIONS IN RELATION TO LAW AND ORDER,
STABILITY AND SECURITY**

1. The Transitional Executive Council will, within the scope of its objectives, its powers of review and other general powers, have the following powers to be exercised through its sub-council on Law and Order, Stability and Security:

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- (a) to establish a national inspectorate comprised of policemen and policewomen and such other persons as the sub-council may choose to appoint, which inspectorate shall be tasked with investigating and monitoring all police agencies and liaising with inspectorates of all relevant agencies to ensure the promotion of the objectives set out in paragraph 1;

NOTE: *The possibility of subjecting the activities of other organisations to scrutiny by the inspectorate can only be considered once the Technical Committee has examined the terms of reference of the sub-council on Defence with regard to armed formations, and has had an opportunity of perusing the code of conduct for political parties envisaged by the Technical Committee on the Independent Electoral Commission.*

The appropriate policing agencies will in any event have a general brief in respect of the enforcement of all legislation emerging from the MPNP, including the codes of conduct and regulations issued by the Independent Electoral Commission and the Government in terms of the Transitional Executive Council framework.

- (b) to investigate any matter, or order the investigation by the national inspectorate of any matter, which relates to its objectives;
- (c) for purposes of the immediately preceding paragraph the sub-council and the National Inspectorate shall have authority to interview such persons as they may deem necessary, have access to such documents as they may require and have reasonable access to Police facilities;
- (d) to establish, in consultation with the appropriate Minister or Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control

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of a civilian so as to allow for the receipt and investigation of complaints lodged by members of the public concerning alleged Police misconduct;

NOTE: *Any such mechanism which is to be established must take into account, and possibly seek to amalgamate/rationalise, existing investigative and complaints machinery, including the Police Reporting Officer (paragraph 3.2.4 of the National Peace Accord), the Goldstone Commission's investigative arm, the proposed mechanisms contained in the Security Forces Board of Inquiry Bill, the South African Police's Complaints Investigation Unit (referred to in paragraph 3.2.4.1 of the National Peace Accord) and whatever other mechanisms exist in the TBVC and self-governing States.*

- (e) to request and have access to any information or crime intelligence reports compiled by any policing agency;

NOTE: *The Technical Committee has not considered the question of national intelligence and no submissions have been made in this regard. The Committee does not consider it to be included in the Law and Order sub-council's brief.*

- (f) to establish any committee or sub-committee comprised of local and/or international experts, to evaluate or monitor any action, conduct or reform which relates to the objectives set out in paragraph 1;
- (g) to call for a report on and evaluate the impact of any steps taken by policing agencies to prevent political violence and specifically to monitor all such steps as any policing agency is required to take in terms of the National Peace Accord and relevant legislation;

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- (h) in addition to the power to recommend such steps as the sub-council deems necessary to improve the effectiveness of and community co-operation with policing agencies in the execution of its duties, to recommend to the Transitional Executive Council the adoption of such measures by it regarding steps to be taken by the participants in the Transitional Executive Council in this regard;
- (i) to receive all recommendations of the Police Board and be empowered to request the Police Board to conduct inquiries and to make recommendations with respect to any policing policy;

NOTE: *The Technical Committee is considering recommending the creation of an Independent Peace-Keeping Force and in the event of it recommending the establishment of such a force it will also make recommendations regarding its conduct, deployment, command structure and the relationship between it and the Transitional Executive Council.*

- (j) to issue recommendations regarding effective and co-ordinated control of policing agencies of members of the Transitional Executive Council;

NOTE: *The Technical Committee would regard the existence of eleven autonomous policing agencies as a matter which would complicate the work of the sub-council. A temporary single or joint co-ordinated command structure, however it is composed, might provide the solution.*

The Committee cannot specify its format since it would depend on the outcome of discussions in the MPNP, particularly in regard to the future of the TBVC and self-governing States.

The Committee consequently requires further guidance from the MPNP to enable it to make further proposals in this regard.

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- (k) to solicit minutes of and attend any relevant meeting of the policing agencies involved;
- (l) to formulate a statement of values and objectives for the promotion of law, order, peace, stability and security for policing agencies and para-military organisations and/or to introduce or amend a code of conduct which may be made binding on any policing agency, all participants in the Transitional Executive Council and with the consent of signatories of the National Peace Accord who are not involved in the Transitional Executive Council, on such signatories as well;
- (m) to require the investigation of any alleged activity or action by a member of a policing agency which, if proven, would have the effect of having undermined the objectives of the Transitional Executive 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;
- (n) to liaise with the Independent Electoral Commission and the National Peace Secretariat concerning matters relevant to its objectives.

NOTE: *The Technical Committee is of the view that since the sub-council will conceivably be party to decisions for which the Transitional Executive Council should in the final analysis accept joint responsibility, it should also in appropriate instances accept vicarious civil liability.*

The Committee is currently considering whether a provision in this respect should apply only in respect of the activities of this sub-council or whether it should apply across the board.

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2. A Minister or Ministers responsible for policing agencies who have the authority to declare a state of emergency or an unrest area and promulgate emergency regulations, shall do so in consultation with the sub-council, provided that where the circumstances are so urgent and pressing that he is unable to consult the sub-council before making such declaration, he may make such declaration, provided further that if subsequently he and the sub-council are unable to reach consensus as to the desirability or otherwise of the declaration either party may require a sub-committee composed from the civilian membership of the Police Board to determine the matter.

NOTES: 1 *For present purposes the powers of the State President or appropriate functionary in this regard have not been addressed and the Committee has deferred this matter until a later report.*

 2 *It should be noted that the report departs from the usual adjudicatory mechanism used so far, eg. the Independent Electoral Commission. The committee believes that this body, nominated by the National Peace committee, could constitute a more effective and expeditious method of reaching a determination.*

3. To the extent that it may impact upon the objectives set out in paragraph 1, a decision to enter into agreements of the nature contemplated in section 34G of the South African Police Act, 1958, shall be taken by the responsible Minister in consultation with the sub-council.
4. A Minister exercising the powers in terms of section 3 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in any of the Police Acts of the TBVC and the self-governing States, to the extent that it applies to officers of the rank of Brigadier or above, shall act in consultation with the sub-council, which may propose such action itself, provided that if no agreement can be reached either party can refer the matter to the sub-committee of the Police Board for determination.

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5. A Minister exercising the powers in terms of section 33 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in any of the Police Acts of the TBVC and self-governing States, to issue, amend or repeal regulations governing relevant aspects of police conduct, functioning, structures and restructuring and conduct in the course of public order policing, shall act in consultation with the sub-council, which may propose such action itself, provided that if no agreement can be reached either party can refer the matter to the sub-committee of the Police Board for determination.

6. In regard to any steps which a policing agency intends to take which may directly affect the Transitional Executive Council's objectives, such agency shall inform the sub-council whose members shall, where appropriate, be bound by the requirements of confidentiality.