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**SOUTH AFRICAN GOVERNMENT OFFICE
- WORLD TRADE CENTRE -**

31 August 1993


Head of the Administration
Multi-Party Negotiating Process
World Trade Centre

Dear Dr Eloff

**SUBMISSION BY THE SOUTH AFRICAN GOVERNMENT FOR THE
ATTENTION OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL
EXECUTIVE COUNCIL**

1. Attached is a submission by the South African Government entitled ***POWERS AND DUTIES IN REGARD TO LAW AND ORDER, STABILITY AND SECURITY.***
2. Kindly transmit the document for immediate attention to the Technical Committee.

Yours sincerely


GOVERNMENT OFFICE: WORLD TRADE CENTRE

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**SUBMISSION BY THE SA GOVERNMENT TO THE
TECHNICAL COMMITTEE ON THE
TRANSITIONAL EXECUTIVE COUNCIL**

**TRANSITIONAL EXECUTIVE COUNCIL
BILL - ELEVENTH WORKING DRAFT**

**POWERS AND DUTIES IN REGARD TO
LAW AND ORDER, STABILITY AND SECURITY**

1. In the Sixth Report of the Technical Committee on the Transitional Executive Council, fifth draft, dated 11 June 1993, the following note appeared in connection with paragraph 1(a) of the report :

"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

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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".

2. The powers and duties in regard to defence have, to a large extent, been finalised in the eleventh working draft of the Transitional Executive Council Bill. In clause 16(1)(c) reference is made of the Council's powers to "investigate through an independent body appointed or designated by the Council, or to order the investigation of the conduct of any member or unit of a military force which is likely to have an adverse effect on the attainment of the objects of the Council". In clause 16(5) the following is stated : "The Subcouncil may establish 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."
3. The mechanisms referred to in these clauses are intended to investigate and monitor the activities of the various military forces or members of such forces. It is not applicable to the broader definition of participants in the Council or political parties as defined in the eleventh working draft.

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4. In clause 15(1)(k) of the eleventh working draft reference is made of the Council's powers 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."
5. In view of this clause, the mechanisms and procedures referred to in clauses 15(1)(a), 15(1)(b), 15(1)(c) and 15(1)(f) should not only be applicable to the activities of policing agencies. The said clauses should also be applicable to all participants in the Council. This will provide the Council with an instrument to determine whether participants in the Council are promoting its objects.
6. The said clauses should thus be amended to read as follows :
- 15(1)(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 participants in the Council and policing agencies, and shall liaise with all such agencies or their inspectorates as well as participants in the council in order to promote the objects of the Council.
- 15(1)(b) : to investigate, or order the investigation

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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 this Act have the authority to interview such persons as they may consider necessary, and shall subject to the provisions of this Act have access to all such documents and facilities of any participant in the Council or policing agency as may be necessary for purposes of the investigation;

15(1)(c) : to establish, in consultation with the appropriate Ministers responsible for the various policing agencies and the relevant functionaries of participants in the council a national independent complaints mechanism under the control of a civilian, which shall be tasked with the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct or alleged misconduct by members of participants in the Council : Provided that if no agreement is reached between the Ministers the functionaries concerned and the subcouncil, the matter shall be referred to the committee referred to in subsection (2)(c) for final determination;

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15(1)(f) : to call for a report on and evaluate the impact of any steps taken by any participant in the Council or policing agency to prevent political violence, including such steps as any policing agency or participant is required to take in terms of the National Peace Accord and relevant legislation;

15(1)(l) : to require the investigation of any activity or action by a member of a participant in the Council or 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 or relevant functionary of such participant, where necessary, require the suspension, with full pay, where applicable of such member pending the outcome of the investigation;

7. It is of the utmost importance that all participants in the Council should promote law, order, peace, stability and security during the transition to democracy. To obtain these objects, clause 15(1)(k) should be amended to include "all participants in the Council" in this regard. The relevant clause should thus read as follows :

15(1)(k) : to formulate a statement of values and

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objects for the promotion of law, order, peace, stability and security for all participants in the Council and 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.

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