

MEMORANDUM

TO: ANC: NEGOTIATING COUNCIL DELEGATES
(ATTENTION: VALLI MOOSA)

FROM: FINK HAYSOM

DATE: 4 AUGUST 1993

RE: CONCURRENT POWERS IN REGARD TO POLICING /
NATIONAL AND REGIONAL POLICING POWERS

INTRODUCTION

The following statement has been drafted for the purposes of the ANC's election platform and sets out in a very general outline the precepts upon which a future policy towards policing should be based.

"The African National Congress believes every South African is entitled to live safely, free from crime and violence. The first steps towards redressing the unacceptable levels of crime in our society, caused by apartheid itself, must be the creation of social justice and the establishment of a democratic constitutional order in which all citizens can, for the first time, respect the laws of the country and those who enforce the law.

In addition South Africa desperately needs an effective police force, a force in which its citizens can have the fullest confidence. This requires a break with the apartheid past which, in its exploitation of the police as a political instrument, created a militaristic, secretive, unaccountable, racist, and violent institution. In the ANC's view a new South African police force can only be established on the basis of the following principles:

1. The police must be an impartial, well-trained and competent professional service.
2. The police must be non-racial and non-sexist in practice and in structure.
3. The police must respect human dignity and uphold and protect human rights.
4. The police service must be established on the ethics of public service and not view itself as the 'masters' of the public.
5. Policing resources must be fairly distributed to all communities particularly those which have been neglected under apartheid.
6. The police must be subject to an independent complaints and investigation body to ensure that there is no corruption.
7. The police must be representative of the community drawing on those talented individuals who have not enrolled in the police force because of its stigma and historical role.
8. Above all, the police must be accountable to the people whom they serve. Unless the police are rooted in and accountable to the communities in whose name they police, they will not enjoy the support of these communities. Without the support of the people no police force can perform its task of preventing and combatting crime. The ANC believes that the police must establish its policing priorities in consultation with local communities and be subject to such communities' evaluation and control. The police, in short, must work with communities, not against them. The police have the most to gain

from popular support.

Informed by the experience of Bantustan policing and international experience, the ANC has set its face against entirely autonomous, regional and local police. Such forces hold out the possibility of lower standards of policing, jurisdictional confusion, partisan and discriminatory policing, and the creation of ethnic or regional militias.

The ANC believes that the only framework which would ensure such an effective, competent and accountable police force would be a single national police force, which is obliged by law to subject itself to national, regional, and local mechanisms of accountability and evaluation/control. The ANC believes that only such a framework would ensure the high standards of professionalism, impartiality and accountability."

THE TECHNICAL COMMITTEE REPORT

The Technical Committee on Constitutional Issues has or will recommend that policing be a matter in respect of which both the regions and the constituent assembly/interim parliament should have concurrent powers. I believe the document also specifies that regions/SPRs will have powers in respect of regional policing issues. These powers will be subject to the power of the centre to legislate or enact overriding legislation, in the circumstances which allow this 'override' to be exercised, i.e. the establishment of national standards, provide a national framework, where the issue concerns more than one SPR etc.

This proposal is of concern because it allows, or does not prevent, the coming into being of fully-fledged, autonomous, regional police forces. Indeed this formula would, as in the cases of the USA, Germany, Australia, suggest the existence of regional police forces subject to the control of regional legislatures/executives, but applying or structured in accordance with any national statute. This framework is not in accordance with the ANC's current policy nor

in accordance with the advice given to the ANC by its Police Policy Group. It is necessary therefore to restate the grounds for our opposition to autonomous regional police forces, or more positively, our belief in the necessity for a single national police force, albeit subject to regional and local accountability in respect of certain aspects of their policing performance.

ANC POSITION

1 Appropriate Local and Regional Control

We must accept as a starting point that, in accordance with contemporary policing practice and experience, policing is most effective where it enjoys the support of the community, and concomitantly when the police are accountable to those in whose name they exercise their powers and deliver their services. In the contemporary view of policing, policing is a public service function (not a military one). Accordingly the ANC does not deny the need for regional and local control through appropriate mechanisms of accountability in regard to the performance of certain police functions and duties. Such regional and local accountable/supervision is positive and should be endorsed.

This however is not the same as establishing an autonomous, regional or municipal police force. Such accountability can be established by statute, through the creation of appropriate boards, and should be in respect of specified policing functions - usually those referred to as 'visible policing' functions. It is generally accepted that such regional and local accountability is not appropriate to policing tasks such as data-collection, criminal records and fingerprinting, maintenance of forensic laboratories, specialised crime units such as organised crime/narcotics/car-theft/missing persons/internal security/protection of endangered species/smuggling, customs and exchange control breaches/specialised commercial crimes/and certain kinds of public order policing. Where communities should have a legitimate claim to hold their local police to account is in respect of ordinary crime, patrolling, and policing of public events. In this regard the public should have a right to monitor reaction times by

police to calls by community residents, the capacity of the police to take preventative measures against criminal activity, traffic policing, and the general behaviour and demeanour of the police on the beat or in charge offices.

None of the above concerns necessarily requires a regional or autonomous police force. If anything, contemporary theory on accountable policing suggests greater civic participation at a local level (not a regional level) in order to ensure that police are responsive to the public. Such measures could for example go hand in hand with management boards/public complaints bodies/accessible and independent investigative units. In short there is nothing in the demand for 'accountable policing' which necessarily requires autonomous, regional police forces.

2 Why we are opposed to regional, autonomous police forces

- 2.1 It is certainly arguable that available resources in South Africa do not permit the huge duplication of functions, units and expenses incurred in replicating nine or ten training and other support institutions for the nine regional police forces and the national police service.
- 2.2 The experience in the USA and elsewhere suggests that where policing forces are fragmented the standard of training and general policing are likely to diminish on account of the lack of resources.
- 2.3 There is no evidence to suggest that regional police forces are more human rights conscience or non-discriminatory than national police forces. In fact the experience in the United States suggests just the opposite. The national agencies had to be called in to force local and regional police forces to uphold basic human rights or to prevent racism in the Southern states.
- 2.4 It is critical in South Africa that national effort be undertaken to retrain and

create an appropriate police force in line with the values in the Constitution, more specifically, respect for human rights and dignity, appropriate restraints in the use of force and violence, the institution of a culture of public service, non-racialism, gender sensitivity, and to ensure that policing resources be reallocated on a fairer and more equitable basis, (i.e. to communities who have been historically neglected).

2.5 Regional and local police forces are particularly susceptible to the persecution of regional 'outsiders'. Such police forces have no national perspective and can accordingly replicate the prejudices of the communities in which they work. In addition, in South Africa, such regional police forces would necessarily have a predominantly ethnic exclusive composition (e.g. Eastern Cape, Natal, Western Transvaal, Northern Cape etc.). This does not bode well for outsiders living in those regions. Although it is often argued that members of a police force should be drawn from the members of the community in which the police force is located, it is precisely for the reasons mentioned above that the police in India, consciously strove to avoid the construction of homogenous police units and instead attempted to create through the police force a model of the religious, language and ethnic diversity of the nation.

2.6 The most compelling concern regarding regional police forces is that such forces will become regional militias. Such a development holds out the spectre of a Yugoslavia. This impression is fortified by the attitude of Chief Buthelezi towards the KwaZulu Police and the express mention in the KwaZulu/Natal Constitution of the need for regional militias. In South Africa we already have the experience of the Bantustan Police and there has been very little to commend it, and a lot from which we can draw only the most adverse conclusions.

- 2.7 It can certainly be argued that corruption in the police force is as likely, and indeed more likely, to occur amongst regional police forces as it is in a national police force. Regional police forces bring the loci of policing and political power closer together and provide very direct and close dependency linkages. (See for example the experience in many US cities where police chiefs are dependent on 'city hall'.
- 2.8 There are good policing reasons to avoid the construction of artificial boundaries and barriers (geographical or otherwise) between police forces. It makes the task of policing more difficult and raises serious problems in regard to the jurisdiction of one police force in regard to crimes committed in one area and where the suspects have crossed the border into another area. It is precisely these problems that the South African Police complain of in regard to the existing Bantustan Police.
- 2.9 The existence of regional police forces in other countries arises out of distinct historical conditions and, if anything, the tendency throughout the world is for greater centralisation and co-ordination of policing agencies in the interests of crime-prevention and detection.

3 CONCLUSION

In short, there is no compelling reason to opt for regional autonomous police forces, and there are a considerable number dangers which such police forces present. The apparent concern which motivates the call for regional police forces can be accommodated within a framework which provides for statutory (and if necessary constitutional) requirements of accountability by police services, and even then predominantly at a local or district level. If regional police forces are established during the period of interim government it will be extremely difficult to reverse such a development later on. The idea of a national police force being subjected to local

and regional standards but being responsible for the overall training and maintenance of a national police force can be borrowed from Canada.

4 PROPOSAL

It is proposed that the report of the Technical Committee be simply made subject to the caveat that 'provided that there be only a single national police force having jurisdiction throughout South Africa'.