

**DETAILS OF MATTERS AGREED UPON BETWEEN THE PARTIES IN
WORKING GROUP NUMBER TWO**

NOTE:

ISSUES STILL UNDER CONSIDERATION

- (1) Matters in brackets have not finally be discussed. It is proposed that it remains on the agenda of this Working Group.
- (2) *Matters typed in this letter type represents proposals by the ANC and has not yet been discussed. It is proposed that it remains on the agenda of this Working Group.*

A. **PREAMBLE**

The current prevalence of political violence in the country has already caused untold hardship, disruption and loss of life and property in our country. It now jeopardises the very process of peaceful political transformation and threatens to leave a legacy of insurmountable division and deep bitterness in our country. Moreover many, probably millions, of citizens live in continuous fear as a result of the climate of violence. This dehumanising factor must be eliminated from our society.

The national police force has a central role to play in terminating the violence and in preventing the future perpetration of such violence. However the past role of the police has engendered suspicion and distrust between the police and many of the affected communities. In recognition of the need to promote more effective policing, a commitment to sound policing practices and a co-operative relationship between the police and the communities is necessary.

The parties have agreed upon a Code of Conduct to be accepted by every Police Official.

B. GENERAL PRINCIPLES

1. The police shall endeavour to protect the people of South Africa from all criminal acts and shall do so in a rigorously non-partisan fashion, regardless of the political belief and affiliation, race, religion, sex or ethnic origin of the perpetrators or victims of such acts.
2. The police shall endeavour to prevent crimes and shall attempt to arrest and investigate all those reasonably suspected of committing crimes and shall take the necessary steps to facilitate the judicial process.
3. The police shall be guided by a belief that they are accountable to the community in rendering their policing services and shall conduct themselves so as to secure and retain the respect and approval of the public. Through such accountability and friendly, effective and prompt service, the police shall endeavour to obtain the co-operation of the public whose partnership in the task of crime control and prevention is essential.
4. The police, as law enforcement officers, shall expect a higher standard of conduct from its members than they expect from others and in pursuance hereof, supports prompt and efficient investigation and prosecution of its own members alleged to have acted unlawfully and shall commit itself to the proper training and retraining of its members in line with the objectives of professional policing and the principles set out in the code of conduct and this agreement. The police in particular shall emphasise that there is no place in the police force for policing practices based on personal or racial prejudice, corruption, excessive force or any unlawful actions.
5. In the pursuance of their duties, the police shall exercise restraint and shall use the minimum force necessary to achieve the aim of policing, and then only after persuasion, advice and warnings have failed to secure co-operation or compliance with the law.

C. IN FURTHERANCE OF THIS AGREEMENT THE POLICE SHALL OBSERVE THE FOLLOWING MORE DETAILED SET OF REQUIREMENTS:

1. **The police shall endeavour to protect the people of South Africa from all criminal acts and acts of political violence, and shall do so in a rigorously non-partisan fashion, regardless of the political belief and affiliation, religion, sex, race, or ethnic origin of the perpetrators or victims of such acts.**
 - a) The SAP must always respond promptly to calls for assistance and intervention.
 - b) Where prior warning is given of possible violence, the police must take all reasonable steps to prevent such an outbreak of violence.
 - c) The police shall endeavour to disarm those persons illegally bearing dangerous weapons in any gathering or procession.
2. **The police shall endeavour to prevent crimes and shall attempt to arrest and investigate all those reasonably suspected of committing crimes and shall take the necessary steps to facilitate the judicial process.**
 - a) Where violent clashes occur the police shall attempt to arrest all those reasonably suspected of participating in those clashes. If the police are unable for any reason to arrest all suspects, efforts must be made to photograph the suspects.
 - b) After a suspect has been arrested, the police shall conduct a full, proper and expeditious investigation into the complaint, shall endeavour to submit the necessary evidence to the Attorney-General as soon as possible and shall give all the necessary co-operation in this regard.

- c) Suspects arrested for crimes related to violence should be informed of their rights and given the opportunity to telephone their family or a lawyer. Judges Rules shall consistently be applied by all police officials.
 - d) All criminal complaints shall be accepted at a charge office. After the complaint is accepted, the complainant shall be given a form containing the complaint number and the nature of the charge. The name and the telephone number of the investigating officer shall be made available or dispatched within seven days to the complainant.
 - e) The complainant shall be entitled to be reported to by the investigating officer on the progress of the investigation.
 - f) In order to investigate all crimes related to political violence the SAP shall establish a specifically dedicated national police investigation unit,(to investigate and/or supervise the investigation of such crimes, also on regional or district levels).
3. **The police shall be guided by the belief that they are accountable to the community to whom they render service.**
- a) In order to facilitate better communication with the community, the police shall, in each locality where a local peace committee exists, that is a committee comprising the major political parties involved in the conflict and other co-opted community leaders :
 - (i) consult regularly with the local peace committee, or in its absence, bodies and groups in that community which are branches or affiliates of signatories to the Code of Conduct for Political Parties and Organisations, and other community leaders on the efficient functioning of the SAP in that community and shall regularly

communicate with such committee or bodies on the issues raised by them with the SAP.

- (ii) establish a liaison officer of rank, not lower than a warrant officer, in each police district, to which requests for urgent assistance may be directed.
- b) In addition to the normal channels available within the Department of Law and Order complaints against (and by) the SAP may also be referred to the Ombudsman or, depending on the nature of such complaints, to the Standing Commission on Violence and Intimidation.
4. **The police shall expect a higher standard of conduct from themselves than they expect from others**
- a) Complaints of alleged material police misconduct which is of such a serious nature (to be defined) that it may affect police/community relations detrimentally should be referred for investigation to a unit of the South African Police specifically established for this purpose, under the supervision of a designated general of the SAP. The units will be available as far as possible in each police region.
 - b) The work of this unit shall be overseen by the Ombudsman to which the unit shall submit a report on the complaints submitted to it, as well as the progress and outcome of investigations into complaints. The Ombudsman will have the power to ensure that the investigation is a full and proper investigation.

The Ombudsman shall be appointed in the following manner:

- (i) The national Law Society and/or national Bar Association shall recommend to the Minister of Law and Order ~~three~~ candidates per region for the appointment of a regional police Ombudsman.
- (ii) Such Ombudsman may be a prosecutor, a member of the attorney general's staff, a lawyer in private practise, a former magistrate, or a present or a former policeman.
- c) The Ombudsman may recommend to the Commissioner of Police the suspension or transfer of the police official under investigation until the completion of the investigation.
- d) The Ombudsman shall, on the completion of the investigation, make a recommendation as to the disciplinary action that should be taken against the police involved in the misconduct. The complainant shall be notified of the outcome of his complaint.
- e) All policemen in uniform should carry a legible external form of identification.
- f) All official police (and SADF) vehicles shall have an identification number painted on the side provided that this shall not apply to police cars which are required for official undercover work, not in breach of clause-Db related to clandestine or covert operations. It shall be an offence for a police (or SADF) vehicle to be driven on a public road without numberplates or without the numberplates allocated to such vehicle by the relevant registration authority.

- g) (The establishment of a Police Board its composition and functions shall be further discussed).
5. **The police shall exercise restraint in the pursuance of their duties and shall use the minimum force that is appropriate in the circumstances**
- a) Clear guidelines should be issued by the SAP for dealing with unlawful gatherings and the following aspects should clearly be addressed in such guidelines.
- (i) When a confrontation between a police unit and a gathering is reasonably foreseeable, a senior police official should where possible be in command of that unit.
 - (ii) The police unit performing crowd control duties should be equipped with public address systems and someone who can address the crowd in a language the crowd will understand.
 - (iii) Before ordering a gathering to disperse an attempt must be made to ascertain the purpose of the gathering and to negotiate the immediate dispersal of the group.
 - (iv) Where residents of a community or a hostel are clearly the subject of an attack the police shall endeavour to disarm and disperse the aggressors.
 - (v) A reasonable time must be given to the gathering to comply with the requests or instructions of the commanding officer.
 - (vi) The commanding officer should only authorise the use of injurious or forceful methods of crowd dispersal if he believes that the crowd constitutes a danger to the public safety or to the safety of any individual or to any valuable moveable or immoveable property and if he has reason to believe that less injurious methods will not

succeeded in dispersing the gathering. It is emphasised that the least possible degree of force should be used in attaining the aim of policing, and then only when persuasion, advice and warnings have failed to secure co-operation, compliance with the law and the restoration of order.

- (vii) The SAP should focus on making less injurious equipment available to police stations in order to minimise the risk of forceful actions.

C. OPERATION OF THE CODE OF CONDUCT

- a) The Code of Conduct and this document shall, where applicable, be issued as a directive by the Commissioner of the South African Police.
- b) The South African Police shall take steps to retrain their members on the proper functions of the SAP as set out in this code and in particular in methods of defusing conflict through discussion.
- c) *(The Police Board shall evaluate training and recruitment of members of the SAP and oversee the implementation of their recommendation. The Police Board shall assist with the evaluation of training and recruitment of members of the SAP).*
- d) The code of conduct shall be binding on the South African Police and its application to the police forces of the Self Governing States will be negotiated with them in this peace process.
- e) (The SADF shall be bound by this code in as much as they perform any policing function).

D. COMPOSITION OF SECURITY FORCES

- a) There is a need to address the provision of policing throughout South Africa in terms of policy, training, effectiveness, discipline accountability and management with special reference to the Self Governing States. The SAP acknowledge that their duty to prevent crime extends throughout South Africa, including the self-governing homelands. *(Until such time there is a rationalisation of the various police forces in South Africa in the light of constitutional negotiations, the SAP shall assume overall command of the police forces in the self-governing homelands. Where the police forces of any self-governing state is alleged to be a party to the conflict, the Standing Commission shall investigate this and should it find this to be true, the policing function for that/those area(s) shall be transferred to the SAP).*
- b) The SAP (and SADF) shall not countenance the establishment or maintenance of any clandestine or covert action or operation which is contrary to the letter or spirit of this agreement, including but not limited to :
1. Any operation which is partial or biased toward or against any political party, organisation or group;
 2. Any operation which is illegal or includes as an aspect thereof illegal acts:
 3. Any operation which has the effect of influencing, undermining or promoting any political party, organisation or group at the expense of another by means of illegal acts :
 4. Any operation which has the effect of influencing, undermining or promoting any political party, organisation or group at the expense of another by means of disinformation links or campaigns;

5. Functioning as a source of or a channel of funds for any political party, trade union, political association or group whatsoever, for any purpose whatsoever;
6. The training or provision of logistical support or finances or weapons or ammunition to any group or individual who is not a member of the security forces to perform such acts as mentioned above.

In order to monitor compliance with this provision, the SAP (and SADF) shall disclose to the parties to this agreement the existence of any operations and/or units which constituted a breach of this clause, and if none so existed, the SAP (and SADF) shall say so.

If any of the signatories to this agreement has reason to believe that any SAP (and SADF) operation is or has been conducted in breach of this clause it may lodge a complaint with the Ombudsman or the Standing Commission which shall attend to the alleged breach.

Any individual member of the SAP (and SADF) who is found to have breached this clause shall be dealt with in accordance with the Police Act and Regulations.

(In order to monitor ongoing compliance with this provision the Standing Commission, or a person nominated by it, shall upon receipt of any request by a party, or a complaint or on information received by it, shall be entitled by warrant to enter and inspect any place and interrogate any security force member, and sees any record or piece of evidence.

All security force accounts in which are held discretionary funds for use in covert products or operations shall be immediately frozen. No further allocation of public funds to such accounts shall be authorised. Any fund held for use by the security

forces, whether such fund is controlled by the Department of Law and Order or Defence or not, shall be deemed to be security force accounts for the purpose of this provision.

To monitor compliance with this provision the Standing Commission or a person appointed by it, may investigate the use of funds allocated to any defence or Law and Order Account or any other secret Government account and shall report on whether or not such funds have been used in contravention of the Peace Agreement. Such person shall also make recommendation to the National Peace Committee on the need for such funds and if so, appropriate procedures to regulate its use and administration.

These provisions shall equally apply to the self-governing homelands).

E. DANGEROUS WEAPONS

(The bearing and display of any dangerous weapons at any political or cultural gathering shall be prohibited. This prohibition shall be made effective by Government proclamation and will remain in force, for so long as the current prevalence of political violence persists.

A party to this peace agreement may make application to the local magistrate for permission to bear cultural weapons which are also dangerous weapons at a bona fide cultural event and the magistrate shall only approve such application where:

- (a) *He has good reason to believe that no violence will ensue or arise from such gathering.*

- (b) *He has consulted and received approval from a regional Peace Committee that the said event is a cultural event and that the bearing of arms will not threaten the safety of the public, or in the event of there being no regional Peace Committee, has consulted principal political parties in the district, and*
- (c) *the local police commander approves of the application provided that no local police commander shall approve of such application unless he also arranges for an adequate police presence at any such gathering.*
- (d) *Provided that the magistrate may dispense with the requirements in clauses (b) and (c) if there has been no violence in his magisterial district for the past six months).*

F. **SELF PROTECTION UNITS**

- (1) The Law accords all individuals the right to defend themselves and their property, and to establish voluntary associations or self protection units in any neighbourhood to prevent crime and to prevent any invasion of the lawful rights of such communities. This shall include the right to bear licensed arms and to use them in legitimate and lawful self-defence.
- (2) The parties also agree that no party shall establish such units on the basis of party affiliation, such units being considered private armies.
- (3) No private armies shall be formed.

- (4) The parties also recognise that a liaison structure should operate between any community based self protection unit and the SAP so as to facilitate education on citizens rights, police responsiveness and other aspects in respect of which there is a legitimate and common interest.
- (5) The SAP remains responsible for the maintenance of law and order and shall not be hindered in executing their task by any self protection unit.

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