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- (I) PROPOSED TERMS OF REFERENCE FOR SUB-COUNCIL ON LAW AND ORDER, STABILITY AND SECURITY; AND
 - (II) PROPOSED ANCILLARY MECHANISMS AND STRUCTURES RELATED TO THE CONTROL AND SUPERVISION OF THE AGENCIES CHARGED WITH MAINTAINING LAW AND ORDER IN SOUTH AFRICA INCLUDING THE HOMELANDS DURING THE PERIOD OF TRANSITIONAL EXECUTIVE COUNCIL
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A. TERMS OF REFERENCE OF THE SUB-COUNCIL ON LAW AND ORDER, STABILITY AND SECURITY

1. Objectives of Sub-Council

Further to the final report of CODESA Working Group 3, in which the nature and method of functioning of the Sub-Council is set out, it is proposed that the sub-council should have the following objectives:

- 1.1 To take all such steps to ensure that all lawful policing agencies in South Africa, and the public, promote the maintenance of law and order, the investigation and prevention of crime, and specifically politically motivated violent crimes, the creation of peace, stability, and a climate for a free political activity in the transition to democracy and a fair political climate for elections.
- 1.2 to monitor, investigate and acquaint itself with all matters relating to the objectives set out in paragraph 1.1 above.

2. Powers

- 2.1 In order to perform its function and achieve the above objectives the Sub-Council shall have the powers set out below:

- 2.1.1 to establish a national inspectorate comprised of policemen and such other persons as the Sub-Council may choose to appoint, which inspectorate shall be tasked with investigating and monitoring all policing agencies to ensure the promotion of the objectives set out in paragraph 1.1 above and compliance with the directives of the Sub-Council and the TEC. Such inspectorate shall be accountable to the Sub-Council;
- 2.1.2 to investigate or order the investigation of any matter which relates to its objectives, which power to investigate shall include the power to seize documents, subpoena persons to give evidence, to search premises, and to call for any minute or record of decisions of anybody or structure. The Sub-Council shall have right of unimpeded access to any police facility at all times;
- 2.1.3 to establish an independent complaints mechanism under the control of a civilian so as to allow for the lodging of complaints by members of the public against the police and the investigation of such complaints or any alleged misconduct;
- 2.1.4 to have access to any information or intelligence report compiled or collected by any policing agency;
- 2.1.5 to direct any policing agency, through the appropriate ministry to take such steps, or refrain from taking any steps, as the Sub-Council deems necessary to achieve the objectives set out in paragraph 1.1 above, and, in the event of the agency refusing to obey the directive of the Sub-Council to refer such refusal to the TEC;

2.1.6 to review, and approve or veto all decisions taken by the general chiefs of staff of the SAP, or the Ministry or the police commissioner and/or region commissioner relating to the matters referred to in paragraph 1.1 above and including -

2.1.6.1 appointments or dismissals of any officer over or of the rank of brigadier;

2.1.6.2 all decisions relating to the drafting of or deviation from any budget of such agency;

2.1.6.3 all significant policy decisions relating to the restructuring of the police or regarding the direction or operation of the police force;

2.1.6.4 all decisions relating to police conduct at, and procedures for police deployment at any demonstration, gathering, or political meeting;

No policing agency may implement any decision unless it has been approved by the Sub-Council.

2.1.7 to establish any committee or sub-committee comprised of local or international experts, to evaluate or monitor any action, conduct or reform, or to perform such other business;

2.1.8 to call for a report on and evaluate the impact of any steps taken by the police 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;

- 2.1.9 to direct the SAP through the Ministry of Law and Order, to take such steps as the Sub-Council deems necessary for the reform of the SAP or to improve the effectiveness, image, credibility of, and community support for the SAP;
- 2.1.10 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;
- 2.1.11 to liaise with the independent electoral commission in regard to the:
 - 2.1.11.1 formation and control of an independent peace-keeping force;
 - 2.1.11.2 the deployment and conduct of members of any policing agency at any political meeting.
- 2.1.12 to issue specific directions for the creation of a single command structure governing all policing agencies of the signatories and to take steps to integrate the members of all such forces into a single police force. And, notwithstanding the above specific power, to exercise all the powers in respect of the policing agencies of the self-governing states and shall be empowered to veto any liaison mechanisms, secondments, financial or logistical assistance between any of the policing agencies in South Africa;
- 2.1.13 to attend, or to send representatives to attend on behalf of the Sub-Council (including members of the national inspectorate), to any official meeting of a policing agency including meetings convened by or at the Ministry of Law and Order, and to call for

the records and minutes of any meeting or class of meetings to be remitted to the Sub-Council;

2.1.14 to formulate a statement of values and objectives for the policing agencies or to introduce or amend a code of conduct which may be made binding on any policing agencies and with the consent of the signatories, on such signatories as well;

2.1.15 to order the suspension of any member of a policing agency pending any internal or criminal proceedings if such member is alleged to have undertaken any activity or action which may undermine the objectives which the Sub-Council is charged to achieve;

2.1.16 to order an investigation, and/or the confinement of any unit alleged to have undermined the objective of the Sub-Council.

3. The Sub-Council shall report regularly to the Transitional Executive Council to which it shall be responsible. This Council shall have the power to reverse or set aside any decision of the Sub-Council, and shall in any event review decision stake by it. The Council shall also have the power to refer any matter which may ordinarily be dealt with by the Sub-Council to the Independent Electoral Commission for a determination as contemplated in paragraphs 27, 28 and 33 of the Report of CODESA Working Group 3.

B. ANCILLARY MECHANISMS NEEDING FURTHER ELABORATION

1. NATIONAL INSPECTORATE

Any council attempting to effectively supervise and monitor policing will be captive to the upward control of information from the forces themselves. If such control is perceived to threaten the managers of the police forces the information flow may be restricted. Accordingly it is proposed that an inspectorate should be established made up of at least 40 persons, appointed by consensus from among the parties on the TEC. This inspectorate could certainly draw from existing members of the police force, especially the existing National Inspectorate/Efficiency Services Division. But it should also include persons from other groups outside the police and could be commanded by a civilian. It would act as the eyes and ears of the Sub-Council, attending meetings monitoring the implementation of decisions and investigating policing activities as it perceives the need to do so or as directed.

2. INDEPENDENT PEACE-KEEPING FORCE

2.1 The Independent Peace-Keeping Force opens the possibility of creating and training a highly credible and specially trained force to police public order, specifically political gatherings and meetings during this phase of the transition process. Its specific advantages are as follows:

2.1.1 It allows for the integration of a broader range of forces into a single unit. It is envisaged that such a unit would comprise elements from the existing ISU's, homeland police forces, representatives of some of the parties in the TEC, and international experts in a advisory or command capacity;

2.1.2 This body, exclusively tasked with public order policing,

would require training only in this field and accordingly could be the subject of intensive and expedited training by both international and local experts;

- 2.1.3 Because of its special composition and command structure it could enjoy high credibility and be used in all situations requiring highly visible policing.
- 2.1.4 The command structure could be especially fashioned to meet the needs of competence and credibility. The unit would in the final instance be placed under the direct command of the Electoral Commission.
- 2.2 This proposal removes some of the pressures on the Sub-Council to exercise intense control over the whole police force as a whole but should not detract from the need by the Council to gain greater access to and supervision of policing and intelligence agencies.
- 2.3 The appropriate size of such a force in order to perform its task effectively would be approximately 10,000. This however raises substantial problems for the construction of such a force. The time and resources required to train such a force should not be underestimated and would in all probability entail the wholesale recruitment of the already trained members of the Internal Stability Unit. Untrained persons should under no account be placed in crowd control situations where they be required to exercise life and death decisions and use technical equipment. It has been proposed that the unit, to be called the Election Police should number approximately 2,000 - 4,000 persons and should act partly as a supervisory agency in conjunction with conventional police units who would be effectively subordinate units. A real danger arises, however, in that there may be competition and conflict between such "Election Police" and

the ISU's who are not recruited into the ranks of the independent peace-keeping force. For these reasons it is proposed that the "election police" should consist of two divisions. The first division should include the entire existing ISU and the second the integrated peace-keeping force. Both these units would fall under the command and control structure established by the Electoral Commission. In this way the ISU and the independent peace-keeping force would at least be under one command structure.

3. PUBLIC COMPLAINTS MACHINERY

The purpose of the Public Complaints Machinery is simply to provide a mechanism for members of the public to play a part in policing the police. Such a mechanism is both practical and more effective than top-down mechanisms as it allows the members of communities throughout South Africa to play a monitoring role in respect of on-the-ground policing activities. The critical elements of such a mechanism would be independence, geographical separation from existing policing facilities, civilian control (although some members of the police would be required to investigate complaints). The jurisdiction of the complaints machinery would include all misconduct and not merely criminal activities. Such a mechanism would also improve the image of the police.

4. SINGLE COMMAND STRUCTURE AND THE HOMELANDS

4.1 In regard to the TBVC states the mechanisms for ensuring control over the law enforcement agencies should be exactly the same mechanisms as is applicable in South Africa. For this reason the only acceptable formula to ensure the levelling of the playing fields and the same degree of political freedom throughout South Africa would be for these states to

submit to the mechanisms and arrangement which will apply to the self-governing homelands and South Africa.

- 4.2 The most expeditious and simple procedure for establishing an equivalent and an effective control over the security forces in both the homelands and central South Africa would be for the establishment of a single command structure. In the first instance the commissioner of the SAP could become the commissioner of police for all the respective homelands. The existing homeland commissioners would then possess the status and powers of regional commissioners and would be required to obey instructions from Pretoria. The only functionary who would be required to relinquish control would be the existing homeland ministers of law and order. Such a development would require minimal statutory intervention in regard to the self-governing homelands and would place the entire police structure more directly under the supervision of the Sub-Council through the Commissioner (or the Ministry of Law and Order). Should the Sub-Council be required to deal with several policing structures as if they were entirely independent then the position of the Sub-Council would be nearly impossible.
- 4.3 The proposed terms of reference also place the Sub-Council in a supervisory role in respect of all the police agencies and in respect of their inter-relationships. The Sub-Council is thus empowered to design and direct further and appropriate steps to secure proper and full integration once a single point of command has been established.
- 4.4 One of the issues that will need to be addressed in any proposed integration is the ranking and privileges of homeland police officers who may feel threatened by integration on account of their qualifications being lower than junior officers in the SAP.

- 4.5 There are no substantial policing objections or problems to the integration of the various police forces except that of the political will of the players. Indeed most police members would privately admit that the current jurisdictional confusion and duplication is a barrier to effective policing.