

**PROPOSALS
FOR CONSTITUTIONAL PROVISIONS
ON THE ADMINISTRATION OF JUSTICE**

We submit the following proposals on the structure and functioning of a future administration of justice for South Africa. Some parts are sketchier than others, but they comprise the chief features which we feel ought to be present in such a system. Our tentative suggestions are premised upon a constitution which is based on firm principles: of non-discrimination on the grounds of race, gender, class, origin or belief (except for affirmative action programmes to redress past wrongs); of pluralism in political, social, cultural, economic and religious life; and of democratic accountability and responsibility. We assume that such a constitution will contain a relatively non-derogable Bill of Rights which will require enforcement mechanisms, and will provide for some measure of devolution of power to regions and local areas within the united state (including the re-incorporated homelands). We further assume that a wide range of socio-economic policies will be implemented through the Bill of Rights, making a Constitutional Court desirable. We would welcome critical reaction, and would be pleased to provide further details where desired.

The following matters are dealt with below: (A) Structure of the Supreme Court (page 2); (B) Functioning of the Supreme Court (page 3); (C) Council of Justice (including Appointment and Dismissal of Judges) (page 4); (D) Constitutional Court (page 7); (E) Specialized Courts and Tribunals (page 10); (F) Regional and Magistrates Courts (page 11); (G) Attorneys General and Prosecutors (page 12); (H) Access to Justice (page 12).

A) STRUCTURE OF THE SUPREME COURT

The Supreme Court of South Africa, as presently constituted, should continue to exist, but with some important variations in regional divisions. It is proposed that there be at least nine "provincial divisions", as opposed to the current six, in addition to the Appellate Division, which should continue to have its seat in Bloemfontein. The nine divisions should be as follows (seats in parentheses):

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|----|---|---|
| 1) | Cape of Good Hope (Cape Town) | - as at present; |
| 2) | Eastern Cape (Grahamstown) | - as at present, plus the Ciskei; |
| 3) | Northern Cape (Kimberley) | - as at present, plus parts of Bophuthatswana; |
| 4) | Orange Free State (Bloemfontein) | - as at present, plus parts of Bophuthatswana; |
| 5) | Natal Coastal (Durban) | - coastal strip from "Ciskeian" northern border to Mozambican border; |
| 6) | Natal Inland (Pietermaritzburg) | - rest of Natal and inland Transkei; |
| 7) | Southern Transvaal (Johannesburg) | - Witwatersrand & southwards; |
| 8) | North Western Transvaal (Potchefstroom) | - Cape to Botswana border; |
| 9) | North Eastern Transvaal (Pretoria) | - rest of Transvaal. |

If the country is to be divided up into a larger number of regions, it may be useful to create extra divisions (e.g. "Border", an extra Transvaal region) (see map appended).

B) FUNCTIONING OF THE SUPREME COURT

Each division should be headed by a Judge President, with sufficient judges to ensure speedy but fair hearing and deciding of the case load, which will obviously vary in type and extent from region to region.

In addition to normal secretarial aid and library services, each judge should have the support of at least one clerk, paid for by the State. It must be emphasized that the administration of justice can play a vital part in ensuring equitable and democratic government, and that this can be an expensive exercise, but one that should not be neglected.

Those judges presently in office should be permitted to remain, but should be offered the option of early retirement on pension. Those who choose to continue in office should have to swear a new oath of allegiance to the Constitution with specific reference to the implementation of the Bill of Rights.

Judges should be appointed by the Council of Justice (see (C) below), and should have formal security of tenure until retirement. It is recommended that the present retirement provisions (introduced in 1989), which allow for additional service as "acting" judge until age 75 under certain circumstances, should continue to apply, as well as the appointment as "acting" judges from the ranks of senior lawyers.

Provision should be made (in the Supreme Court Act) for a State-supported Judicial Conference every two years, presided over by the Chief Justice. It would be expected that all judges would attend such a conference, at which matters of mutual interest would be discussed, and "continuing education" would take place. (It will probably be necessary for there to be fairly intensive "educational re-orientation" of most of the present judges to familiarize them with the workings and implementation of a Bill of Rights.)

C) COUNCIL OF JUSTICE

A Council of Justice should be established to serve as a general advisory body on all matters pertaining to the administration of justice. It should be responsible to the legislature, through the Minister of Justice. It should be serviced by a permanent secretariat, headed by a senior lawyer as Secretary.

The Council of Justice (CJ) should be presided over by the Chief Justice (*ex officio*) and have a further 20 members, constituted as follows:

- i) eight legal practitioners (three advocates and five attorneys, elected by all admitted advocates and attorneys in private practice, until the profession is fused);
- ii) four MPs, elected by the legislature on a proportional basis, according to strength of the parties;
- iii) three judges, elected by all serving judges;

- iv) three teachers of law, elected by all university and technikon teachers of law (those who are admitted as advocates or attorneys should have to exercise a choice as to where they wish to vote);
- v) one magistrate, elected by all serving magistrates;
- vi) one lawyer in the service of the State, elected by all lawyers working for the State.

The CJ will normally serve for a term of seven years, except that the first CJ established after the coming into operation of the new constitution should have a term of only three years, but should be eligible for re-election. The second CJ will hold office for four years, whereafter the normal term will come into operation. Members of the CJ will not be eligible for re-election. Casual vacancies during the term should be filled as though the former incumbent's term of office had expired. However, the replacement member should only serve for the unexpired portion of the term, but will be eligible for re-election.

The CJ should meet, at State expense, at least quarterly every year. It should decide matters, except where otherwise stipulated, by a 2/3 majority vote, and the Chief Justice should have a casting as well as a deliberative vote. The CJ should report annually to the Legislature, in particular the Justice Standing Committee.

Appointment and Dismissal of Judges

Among other functions, the CJ should play the central role in the appointment and dismissal of Supreme Court judges. As regards

appointment, the following procedure is suggested: While there could be exceptional cases, judges should normally be drawn from the ranks of those with a law degree and at least fifteen years of practical or academic legal experience (as attorney, academic, advocate, legal adviser). The Judge President of the division in which the vacancy exists should be required to consult with all his or her fellow judges in that division, and to propose (X+2) names to the CJ (where X is the number of vacant judicial post(s)). The CJ should give public notice of those proposed and invite comment, particularly from the divisional lawyers' organizations (e.g. Bar Council, Law Society, Law Faculties). After considering any such comment, and hearing all the nominees (in public), the CJ should recommend one nominee per vacancy to the Minister of Justice, for confirmation by the Justice Standing Committee (JSC) of the Legislature. If this Committee rejects the nominee, the process should be repeated, without the rejected nominee as a candidate. Should this second attempt likewise fail, the CJ's third nominee will be deemed appointed.

For the appointment of a Judge President, the serving judges of that division should be required to submit two names of sitting judges, whether from that division or another, to the CJ. Comment should be invited from divisional lawyers' organizations, whereafter the CJ should recommend one of the nominees for appointment. Should the JSC reject this nominee, the other nominee shall be deemed appointed. (This ought to ensure that both the CJ and JSC behave with great care and circumspection.)

For the appointment of the Chief Justice, all serving judges at a Judicial Conference should be required to submit the names fo

two appellate judges to the CJ. Comment should be invited from national lawyers' organizations, whereafter the CJ should rank the two judges in order of preference. After consultation with the JSC, the Cabinet should choose one of the two as Chief Justice.

All judicial appointments and dismissals should be executed in the name of the President of the State.

As regards dismissal of a judge, the CJ should be seized of the matter on petition from a 2/3 majority of the JSC or a 2/3 majority of all the judges of that division. After hearing the judge concerned and due deliberation, the petition for dismissal should be referred (back?) to the JSC for submission to the full legislature only if a 3/4 majority (i.e. 16 members) of the CJ so vote. For dismissal to occur, a 4/5 majority vote of all members of the legislature should be obtained. Dismissal should only be on grounds of gross misconduct or inability to perform his/her duties.

(The JSC referred to should consist of at least one member of each party represented in the legislature, and thereafter proportionately in accordance with levels of representation in the directly-elected house of Parliament, if more than one house is envisaged.)

D) CONSTITUTIONAL COURT

Independent of the Supreme Court, there should be a Constitutional Court, which should be empowered to interpret the Constitution, including the Bill of Rights, and to assess the validity of legislative, administrative and, where applicable, individual

action, against the provisions of the Constitution. It should also resolve conflicts between different organs of government. Matters could come before it by reference from Parliament or the Cabinet (in an advisory capacity) or by reference from any Supreme Court division (for decision at the behest of a litigant). A mechanism should be devised for determining which challenges to the validity of legislative and executive acts the court will hear. Beyond the power to reject frivolous applications, the Court should have the right generally to reject cases which are unsuitable for hearing (as the USSC and the Federal German Constitutional Court do).

Objections to such a court on the basis that it would be a break with tradition and would prevent the Supreme Court from being involved with the enforcement of the Bill of Rights do not convince. The incorporation of a Bill of Rights already represents a radical break with tradition, and Supreme Court judges would necessarily be involved with "rights-issues" through being the first forum in which the arguments would ordinarily be aired, and through the doctrine of precedent, for the rulings of the Constitutional Court would be binding on the Supreme Court. These arguments are, in our view, outweighed in any case by the advantages represented by the institution of a Constitutional Court: the emphasis of a new beginning, an ability quickly to change the gender and race composition of the "highest" court, and formal insulation of the Supreme Court from decisions on "political questions". This does not mean that the ordinary judiciary will not be confronted with human rights issues, however, as they are likely to have to hear and decide on the unconstitutional

application of legislation, private breaches of human rights etc. This would be an important part of the Supreme Court's function, and details of the jurisdictional division on constitutional matters between it and the Constitutional Court will have to be clearly spelt out at some stage.

The Constitutional Court should consist of twelve members, at least ten of whom should have a law degree and fifteen years' experience in the administration of justice or twenty years' involvement in large-scale socio-economic planning and implementation. Members of the Court should serve a seven-year term and be eligible for re-appointment once only. Due consideration should be given to an equitable distribution of members of the Court on the basis of race, gender and region. Each case should be heard by all available judges en banc.

Members of the first Constitutional Court should be appointed as follows. The Council of Justice should nominate 18 persons for consideration by the JSC, after calling for suggestions from all political parties and public hearings of the nominees. The latter body should then select and rank twelve of the nominees as members of the court for appointment by the President, who should be bound by the selection and ranking of the first ten, but who may substitute either or both of the 11th and 12th nominees with one/two of the six persons not selected (from the list of eighteen) by the JSC.

In order to be sensitive to the needs of a rapidly changing society, six of the members of the first Constitutional Court (chosen by ballot) should retire after four years, while the others

serve a full seven-year term. The first group should be eligible for re-appointment for a seven-year term. This ought to ensure a measure of continuity. Thereafter, vacancies should be filled on the above pattern (i.e. six "retirees" every seven years), except that there would be nine nominees, of whom the JSC would select and rank six, the first five of whom, at least, would be automatically appointed by the President, who could appoint the sixth from the three persons not selected. On death or resignation of a single member during his/her term of office, the CJ should nominate two replacements, of whom the JSC should select one, who would be automatically appointed, and serve out the remainder of the dead/resigned member's period of office.

The Constitutional Court should be a permanent body, with its seat in Cape Town (or legislative capital, if elsewhere). It should have the normal support services, including judges' clerks. The members of the Court at the time should elect the President from their own ranks, for a three-year term of office. The President should have a deliberative and a casting vote.

E) SPECIALIZED COURTS AND TRIBUNALS

Without going into details, provision should be made for at least the following types of specialized courts and tribunals:

(i) Taxation; (ii) Labour; (iii) Patent; (iv) Natural Resources (Water and Land); (v) Family; (vi) Administrative Appeals Tribunals.

The State should also provide for mediation and arbitration services through the Department of Justice. In addition, an extensive network of small claims/community courts should be

established to hear local level disputes by peer groups, with the emphasis on reconciliatory rather than adversary skills. In local level courts, penal powers should be minimal.

F) REGIONAL AND MAGISTRATES COURTS

As recommended by the Hoexter Commission (1984), the administrative functions should be separated from the judicial functions of the office of magistrate. Magistrates should continue to be civil servants, but appointment, promotion and supervision should be by the CJ. Each magistrate should serve a "probationary" period of five years, but his/her appointment should be confirmed unless gross misconduct or inability is alleged. Non-confirmation or dismissal of magistrates should be by the Minister of Justice, if 2/3 of the members of the CJ so decide, after hearing the magistrate concerned.

Magistrates should retire at 65 years of age. They should sit (in all matters which come to trial and where a sentence of imprisonment and/or a fine of Rxxx or more can be imposed) with two lay assessors, elected as follows. In each magisterial district, at least 24 laypersons should be elected by the voting public at large onto a panel of assessors, at the time of local government elections. It might be that this democratically desirable means of election is impracticable, however. If so, appointment could be by local authority elected members on a proportional representation basis, with due allowance in the early stages of a new constitution for ensuring fair representation of women and different social classes. They should be bound to serve 4 weeks each year, in two stints of two weeks each. The State would be

bound to compensate their employers for time spent on the bench, which should not count against annual leave. The assessors should be judges of fact, not law.

In magisterial divisions in which case-loads are heavy, the list of assessors should be correspondingly larger.

G) ATTORNEYS-GENERAL AND PROSECUTORS

There should clearly be something on these offices in the Constitution, but we are not competent to make proposals in this regard.

H) ACCESS TO JUSTICE

As well as a commitment in principle in the constitution to the expansion of access to the administration of justice, legal aid and advice services (including para-legal work), we feel that there should be specific provision for a widened concept of standing to sue (*locus standi*), including the possibility of class actions. Without such a specific procedural channel, any substantive protections are likely to be ineffective.

I) CONCLUDING REMARKS

Some of the above proposals are relatively detailed, though even they might need to be further expanded. We would appreciate specific suggestions for improvements. We anticipate that the actual drafting into "constitutional" language will not present insurmountable obstacles, and we would be glad to attempt this if required.

PROSECUTORS IN A POST-APARTHEID
CRIMINAL JUSTICE SYSTEM

THE PRESENT POSITION

The Black population of South Africa has no faith at all in the country's criminal justice system - a system that has persecuted them by the millions for committing technical offences involving neither victims nor complainants. The main gate keeper of the criminal law, the state prosecutor, is perceived as white, racist, vindictive and merciless. This attitude is based on hard and bitter experience with the machinery of justice. Also, prosecutors themselves have a vague image in the public eye, and much of this arises because the prosecutors' own self-image is fuzzy. From the point of view of the public, the Department of Justice, by whom prosecutors are employed, is all but transparent in its workings; it imparts an aura of secrecy which is not conducive to encouraging faith in the organs of the law. It is hardly accessible to outsiders and reacts viciously to criticism.

Despite the extensive discretionary powers vested with prosecutors and the devastating effects the exercise of these powers have had on millions of Black people in the past, scholarly writings in South Africa have paid scant attention to prosecutors and their work. This, unfortunately, has not helped to foster an understanding about the nature and the mechanics of the prosecutorial office among the general public and the research communities. Thus, from the point of view of the Blacks,

who are at the receiving end of the system, prosecutors are not seen as offering a service to the community, but as agents of repression.

PROPOSALS FOR A DEMOCRATIC SOUTH AFRICA

1. THE OFFICE OF ATTORNEY-GENERAL (HEREAFTER A-G)

The present system according to which the A-G is subject to the control of the Minister of Justice should be abolished. Although an A-G will vigorously refute criticisms that in even politically-charged matters they reach their decisions independently, it is an open secret that they do not; they take their orders from the Minister. As the Minister is bound by the convention of collective cabinet responsibility, the cabinet is politically responsible for the decision of the A-G. The mere fact that the A-G is not legally obliged to give reasons for his decisions strongly underscores the suspicion that decision-making is sometimes influenced by political pressure from above.

It is proposed that in future the A-G be democratically elected by the Judiciary and the practising legal profession in the respective Divisions of the Supreme Court to which the A-G would be attached. As a safeguard against absolute discretionary powers being vested with the A-G, it is further proposed that the principle of compulsory prosecution with respect to a special category of major crimes be introduced. The West German experience teaches that the incorporation of such a safeguard serves as a powerful bulwark against party-political opportunism. Such

a rule can therefore be enforced against the prosecutor, but it can also shield him against political pressure.

2. PROFESSIONAL PROTECTION OF THE RURAL PROSECUTOR

The current practice of placing new prosecutors in rural districts under the administrative supervision of the local magistrate is wholly undesirable. This encourages young and inexperienced prosecutors to cow-tow to influential rural magistrates on whose recommendations they are dependent when it comes to promotion. It is proposed that this practice be replaced by a system in terms of which such prosecutors are seen to be both legally and factually accountable to the District Chief Prosecutor.

3. EXTENDING THE MORAL ROLE OF THE PROSECUTOR

The fact that the vast majority of accused persons standing trial are undefended is extremely disquieting. Legal Aid is hopelessly inadequate and is unlikely to meet all needs even in a Post-Apartheid South Africa. It is therefore proposed that the Criminal Procedure Act contain a provision which, in the case of the undefended accused, obliges the prosecutor from the outset to gather not only inculpatory but also exculpatory evidence that must be laid before the court in order for it to reach a just decision. Furthermore, where the undefended accused is found guilty, the law should oblige the prosecutor to furnish the court with a personal file of the accused containing information on his/her personality, social background, medical or medico-psychological examination and family situation. This is common practice in France (regardless of whether the

accused is represented) and the idea behind it is that when the state prosecutor demands enforcement of the law, he cannot be indifferent to the personality of the accused and his treatment.

4. HELPING ASPIRANT BLACK PROSECUTORS

The extent to which a post-Apartheid criminal justice system will command the respect of the greater of the population will depend on the extent to which Blacks are represented as important functionaries in that system ie as police, prosecutors, magistrates and judges. A negotiated peace settlement for the new South Africa will necessarily have to comprise a very strong and urgent commitment towards ensuring that aspirant Black prosecutors are given full material support and maximum opportunity to fulfil their ambitions.

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PUBLIC PARTICIPATION IN JUDICIAL DECISIONMAKING

1. Importance of public participation.

The Freedom Charter and the ANC's Constitutional Guidelines make democracy the guiding principle for a new constitutional order. Public participation in the political process should not, however, be limited to parliamentary representation. A true democracy demands that the public should be able to participate in decisionmaking in all spheres of public life. This principle of participatory democracy is in accordance with the Charter demand that "All people shall be entitled to take part in the administration of the country". Public participation in judicial decisionmaking gives expression to this principle.

Although the Charter does not mention the democratisation of justice, the Guidelines demand it explicitly. The Guidelines provide that "justice" shall be democratic in its "structure and functioning" (clause d). The democratisation of justice means, it is submitted, that justice should be administered with the consent of the people. Both the Charter and the Guidelines make this very clear: the courts shall be representative of all the people. This can be achieved by ensuring that first, the people participate in the appointment of professional lawyers as judicial officers and second, that the people themselves participate as judicial decisionmakers.

2. The form of public participation

Lay participation, whether through jury or a mixed bench, is regarded as an expression of participatory democracy, because it embodies the value of self-government. It represents "a commitment to the principle that the ordinary citizen is competent to debate and decide important issues in the country".

This principle is universally accepted, with the only question remaining what form such participation should take. In English-speaking Africa the institution of the jury trial has not been widely used, while a mixed bench comprising of a judicial officer and lay members, called assessors, has been more popular.

There have been a number of calls in South Africa for the return of the jury. These calls are not supported. It will be argued that a jury may lead to partisan justice. Furthermore, it is expensive, cumbersome and therefore limited in its operation.

The jury system, it is said, can only work properly where the community in which it operates is socially homogenous with no major racial, cultural, religious or linguistic cleavages. There must be a basic agreement on the laws which the jurors are required to apply. In a country with major divisions along the lines mentioned above, the result may be partisan justice.

They jury system is also expensive and cumbersome. Eleven persons

(or whatever number) must be empanelled. Challenges to jurors may take a considerable amount of time. This and jury fees increase the cost for the accused, the courts and the state.

Because of the costs and the delays involved with juries, they have been used only in the superior courts. The result is that the public participates only in a small fraction of the criminal cases.

These problems associated with jury adjudication can be addressed by a mixed bench comprising of a judicial officer and more than one assessor.

Where there are major social cleavages the joining of a professional judicial officer with more than one lay person on the bench, may counteract the problem of partisan justice. Telford Georges, a former Chief Justice of Tanzania, argues that the judicial officer plays an important guiding role on such a bench; by applying his skills of independent decisionmaking he leads the discussions seeking to counteract ignorance or prejudice. The judicial officer is, however, always subject to the majority decision.

The appointment of assessors is relatively inexpensive and quick. Two (or three) assessors are selected at random from a list derived from the common voters' roll. They act as assessors (like any juror) only for one particular case. Because the numbers of assessors are manageable, they should also be appointed in the lower courts.

In the transition phase where the majority of judges and magistrates would be white, the appointment of assessors from the common voters roll would ensure that the courts would be representative of all the people.

Finally, in Africa the system of mixed benches has proved to be workable. In superior courts the appointment of assessors, though often only in an advisory capacity, has been widespread. More recent is the introduction of assessors in lower courts. In Zimbabwe the Primary Courts and Customary Law Act of 1981 makes provision for assessors in both the village and community court, but then only in an advisory capacity. In Tanzania assessors are appointed in primary courts, but they have the power to out vote the magistrate. In Mocambique both the high and lower courts consist of judges appointed by Minister of Justice and elected judges. The lay members form the majority and have equal standing with the permanent judge (Law on Judicial Organization of 1978).

In assessing the democratic nature of adjudication, the crucial questions remain first, whether the assessors have a real and effective voice vis a vis the professional judicial officer and second, how they are appointed. Assessors, reduced to an advisory capacity and unrepresentative of the community, renders a mixed bench an exercise in sham democracy.

**THE SUBMISSION TO THE TECHNICAL COMMITTEE ON CONSTITUTIONAL
PRINCIPLES ETC.**

APPOINTMENT MECHANISM FOR THE JUDICIARY

1. The Independence and Impartiality of the Judiciary have been accepted by all negotiating partners as basic tenets for the emerging new and legitimate order. For too long, the Judiciary have been perceived as hand-maidens of the repressive and racist system of apartheid.
2. In order to restore respect for the administration of justice, it is necessary that the interim constitutional arrangements refer to the method of appointment of Judiciary and other associated matters.
3. The basic difference between the negotiated settlement and what has transpired up to now is that there will be a new and innovative creation - the Constitutional Court or Tribunal - which will be the guardian of the Constitutional Principles and the ultimate interpreter of the interim constitution. It is therefore vital that the method of appointment of the Judiciary is as transparent as possible, recognising that the enlarged Jurisdiction of Judges of the Constitutional Court or Tribunal will require judges of sensitivity who are drawn from all sections of our society and who recognise the pivotal role that they will play in Constitutional Litigation.

4. Some new features of the Jurisdiction of our Courts should be mentioned at the outset.

First, a proportion of members of the Constitutional ~~Ass~~ Assembly will have the authority to refer proposals before the Assembly to the Constitutional Court or Tribunal to determine whether such proposals are consistent with the Constitutional Principles adopted by the MPNF. The Assembly will be bound by the determination of the Constitutional Court or Tribunal.

Secondly, it is envisaged that a proportion of members of the Legislature should be enabled to refer a Bill before it to the Court/Tribunal, before it becomes law, to determine its Constitutional validity.

Thirdly, a person affected by any legislation, regulation or administrative act will be able to make a challenge before the Ordinary Courts to determine the constitutional validity of such laws or actions, especially in relation to the Bill of Rights. The decision of the Courts - ultimately the Constitutional Court or Tribunal - will bind the administration or entity.

5. The African National Congress believes that without interfering with its independence and with a view to ensuring that justice is manifestly seen to be done in a non-racial way and that the wisdom, experience and Judicial Skills of all South Africans are represented on the bench, the Judiciary shall be transformed in such a way as to consist of men and women drawn from all sectors of South African society, so that the legal system is transformed to be consistent with the new constitution.

6. The Courts shall be accessible to all and shall guarantee to all equal right before the law.
7. The African National Congress therefore believes that there should be a single and integrated Court and Judicial system throughout South Africa, with regional divisions.
Consistent with this approach, Judicial appointments shall be made by a national and co-ordinated system and this should be reflected in the Interim Constitution. We reject the present system which provides the Executive with virtually untrammelled unsupervised powers to appoint the Judiciary.
8. For appointments to the regional divisions and for the Appellate Division, there shall be a Judicial Service Council which shall recommend appointments to the Ordinary Judiciary to the President who shall make the formal appointment or appointments.
9. The Judicial Service Council shall be appointed by the President and shall comprise of:
 - 9.1 The Speaker of the National Assembly who shall preside at meetings of the Council;
 - 9.2 One Judge chosen by members of the Appellate Division;
 - 9.3 One Judge drawn from the present Provincial Divisions;
 - 9.4 A representative from, inter alia, of each of the following professional Lawyer's Association,

- 9.4.1 The Natal Association of Democratic Lawyers,
- 9.4.2 The Black Lawyers' Association,
- 9.4.3 The Association of Law Teachers of South Africa,
- 9.4.4 The Association of Law Societies of South Africa.
- 9.4.5 The General Council of the Bar.

10. The African National Congress believes that the appointment of the Judiciary to the normal Higher Courts is not a matter that should be left entirely to the legal profession. The public interest would therefore be represented in the Judicial Service Council by the election of at least seven members from the National Parliament on the basis of proportional representation in relation to party strength so that no single party would, as at present, have either a monopoly of power or the preponderant role in such appointments. These seven elected representatives would provide a degree of public participation lacking at present.
11. Such a Judicial Service Council would, by working out its procedure in such matters as interviewing candidates for appointment, open up the system of appointment.
12. The Chief Justice shall be appointed by the President, following consultations with the Cabinet.
13. Appointment to the Ordinary Judiciary should not be limited to practising Advocates of Seniority but should be opened up to enable other lawyers such as Attorneys and Academics to be appointed.

14. As the Constitutional Court/Tribunal is an innovation in South Africa and will be the Apex of the Judicial System in the interim, a special procedure for its appointment should be established. The concept of the Constitutional Court is alien to the common law system and is adopted from the Constitutional system. It must therefore be seen to have a proper basis of legitimacy because of its exceptional jurisdiction and sensitive role. Its seat should be separate from the Appellate Division and should be located elsewhere in South Africa.
15. The African National Congress therefore proposes that the National Parliament should establish a special Joint Judicial Committee for the purpose of appointment of members of the Constitutional Court/Tribunal. The term of office of the interim Constitutional Court would be coterminous with the duration of the Interim Constitution as the Constitutional Assembly would have the right to revise the arrangements proposed here.
16. The Joint Judicial Committee of the Assembly and the Senate would follow the practice of most European countries in that it would be elected on the basis of proportional representation in accordance with the representation of parties in the National Parliament, ensuring that no party would be able to dominate the proceedings. In addition, decisions concerning the appointment of justices to the Constitutional Court shall be taken by a two-thirds majority, further ensuring that a high degree of acceptance would be necessary.

17. The first appointments to the Constitutional Court shall be on the basis of an election en bloc by a two-thirds majority of the Judicial Committee.
18. As far as eligibility for appointment is concerned, the African National Congress believes that the widest possible criteria for appointment should be used, as done in a number of European countries. If the Constitutional Court comprises of nine members then at least two could be chosen from any of the serving Judges of the Appellate Division and the Provincial Divisions. The others should be chosen from among practising lawyers, academic lawyers and persons with legal qualifications. The Court should be enabled to sit in divisions and consideration should be given to the appointment of assessors, where, in the opinion of the Court or a division it is appropriate or necessary.
19. The President should appoint the President of the Constitutional Court.
20. The interim Constitution should provide for the expedited hearing of constitutional cases, providing for priority for such cases. Parties should have freedom to be represented by representatives of their choice and not limited to practising Advocates and Attorneys. The rules of Court shall be amended to allow for informal applications to be made to the Constitutional Court. It is our view that costs in Constitutional cases should not be awarded in favour of the State or Public Authority and that the Human Rights Commission should assist applications who cannot afford access to the Courts in Constitutional cases.

Structure of Control and Command

1. ~~1.1~~ National Policing Advisory
Council shall be established

~~It shall be consist~~

with responsibility for advising
the President on police matters,
~~and exercising civilian control~~

determining policy within the
framework of this Act, and
maintaining civilian control
over the SAPS

(ii) The NPAC shall consist
of the Minister responsible for
Police in the National Executive,
~~who shall preside,~~
and the Ministers in the
Regional Executives with
similar responsibilities.

2). The State President shall appoint a National Police Commissioner who shall be the operational head of the SAPS

3). The State President shall on the advice of the NPAC and in consultation with the Premier of the Province concerned, appoint Regional Police Commissioners

4). (i) The National Police Commissioner and the Regional Police Commissioners shall together constitute a National Police Command

(ii). The National Police Command shall be headed by the National Police Commissioner and shall make its decisions known through him or her.

(iii). The National Police Command shall be responsible for operational command of the SAPS

~~REGIONAL~~ ~~REGIONAL~~ ACCOUNTABILITY

i. The ~~Regional Assembly~~ minister ^{in the Regional Executive concerned} ~~with police matters~~ shall be responsible ~~for~~ to the Regional Assembly for the ^{performance by and} conduct of the members of the regional units of the SAPS

(ii). The Regional executive and legislative authorities shall refer proposals, recommendations and criticisms concerning performance and conduct by national units to the relevant ~~relevant~~ ~~to the~~ NPAC and the N Pol. Command for attention.

~~i. The SAPS shall carry out its functions in conformity with the principles of the Code and the provisions of the~~

- 1). SAPS
- 2). Powers & Functions
- 3). Structure of Control and Command
- 4). Uniform Standards
- 5). Functional Division of Responsibilities
 - A: National Units
 - B: Regional Units
- 6). Accountability
 - National
 - Regional
- 7). Police Community.

8). Police Board & ^{Ind.} Complaint
Machinery

9). Transitional ass.

across boundaries

2 tier. Natl -
where.

Laws?

Appts.

Control
Appts.

Mon - Weds.

Natl Police ~~Board~~ Commissioner

- cross front
- appts above cert level
- transfers - regn/ one to other
- coordin.
-

186.

~~Junction under~~

2). Act - proved for

1).

Natl. Gov.

189. R Goms -

Out.

R Goms - appted by U. Gov.
in cons. w/ Regal Min. Police.

R - Gov. -

Regal. Min. - Govs. - appts.
- answerable to Regal Ass
for perf. of police under
R Gov.

Civilian Control and Command Structure

C. The NPG shall
be appointed by the Pres on
advice of Council

D Reg PG shall be
appointed by the N-Gem on
the advice of the Council,
after consult with the
Regul Premier

The Power - Functions of the
NPG

B A Hall Pol Com.
responsible for operational
control of the SAPS

A Civilian ~~authority over~~
the SAPS shall be
exercised by a ~~Pol. Ad. Council~~
consisting of -

B Operational command shall be
~~exercised by~~ ~~the~~ ~~Pol. Ad. Council~~
~~who shall be guided~~
~~by~~ a Hall - Police Com.

consisting of the Hall Com
of Police and the Repul C/Ps
The Hall C/P shall preside
over meetings and decisions
of the Council ~~and~~ shall be
communicated in his or her name

Legislation shall provide for:
~~Decision~~ ~~Nat~~ Policing Advisory
~~Advisory~~

Council shall be established
Leg. shall provide for:
The establishment of a N-Pol-Adv

Council, consisting of the
~~National~~ Minister of Police
in the NEC and the Ministers
of Police of the S.P.A's

This Council shall advise
the Presid. on appts of Natl Com
& Regl Comm
policy for the S.A.P.S

formulate
the
agency resp. for civil control
of the S.A.P.S

Structure of SAPS

Functions of

Leg. may provide for specialised functs such as
natl security

which will fall under the
direct control of ~~AP~~ Com

& normal visible police

which shall fall under

the direct ^{day to day} control of RPC's

acting under the overall
command of the NP ^{through the NP} as above

In addition, functions relating
to regional police may be
delegated to the RPC's.

Role of Regnl. Assemblies

1. Choose Regnl Pol ~~Minister~~ Minister

2. ~~NP~~ Gov who will supervise the
activities of RPC's in ^{as commander} SAPS ~~use~~.

POLICE SERVICE

186. South African Police Service

Subject to the provisions of this chapter,

Newly Police Service for the Republic

(1) There shall be a ~~two tier~~ South African Police Service, which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa, in accordance with the provisions of this chapter.

and which shall be

(2) The Act of Parliament referred to in Sub-section (1) shall -

(a) provide for the appointment of a Commissioner of the South African Police Service and a Commissioner for each SPR;

(b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding:

- the exercise of police powers;
- recruitment;
- appointment,
- suspension;
- dismissal;
- retrenchment;
- retirement;
- training;
- conduct;
- conditions of service;
- disciplinary and grievance procedures;
- promotion;
- transfer;
- the provision of stores, arms, ammunition, saddlery, forage and other articles of equipment and of means of transport and draught or other animals required for the Police Service, and the care, safe custody and maintenance thereof;
- returns, registers, records, documents, books, forms and correspondence relating to the Police Service;

- the control of funds which are administered by a committee or other like body under the chairmanship of a member of the Police Service and have been collected or accepted by or from members of the Police Service, for the benefit of members and ex-members of the Police Service, or their dependants;
- the general government, control and maintenance of the Police Service;
- all matters which are generally considered necessary or expedient to prescribe in order to achieve the purposes of this Constitution.

provide for
 (c) ~~mechanisms to ensure~~ ^{effective} ~~regulation of the SAPS.~~ ^{coordination and}

187. Powers of the South African Police Service

The powers of the South African Police Service shall be -

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence; and
- (d) the prevention of crime.

188. Powers of STATE PRESIDENT AND CABINET

(1) The State President acting through the relevant Minister in Cabinet -

- (a) shall appoint the Commissioner of the South African Police Service, by a two thirds majority of the Cabinet;
- (b) shall monitor the performance of the South African Police Service within its jurisdiction and may establish bodies to assist it in this regard;
- (c) shall subject to the provisions of this Constitution initiate laws and make regulations regarding the functions set out in section 191;

- or an SPR Commissioner
- (d) may remove the said Commissioner from his/her post subject to similar procedures as prescribed in section 18 of the current **Public Service Act**, No 111 of 1984;
 - (e) may require the said Commissioner to make regular reports on the performance of his/her responsibilities set out in section 191.

189. Powers of SPR Premier and Executive

- (1) An SPR Premier acting through the relevant Minister in the SPR Executive
 - (a) shall appoint an SPR Commissioner in consultation with the State President: Provided that in the exercise of the President's powers the provisions of section 183 of this Constitution shall apply *mutatis mutandis*;
 - (b) shall monitor the performance of the police service within its jurisdiction and may establish bodies to assist it in this regard;
 - (c) shall subject to the provisions of this Constitution initiate laws and make regulations regarding the functions set out in section 192;
 - (d) may remove an SPR Commissioner from his/her post subject to procedures prescribed in section 18 of the current Public Service Act, no 111 of 1984;
 - (e) may require an SPR Commissioner to make regular reports on the performance of his/her responsibilities set out in section 192.
- (2) No SPR law may permit lower standards of performance of the functions of the police service than those provided by an Act of Parliament or detract from the rights which citizens would have under an Act of Parliament.

190. Co-ordination and co-operation

Efficient co-ordination and co-operation shall be established between the relevant ~~Cabinet Minister and the relevant SPR Ministers to ensure that the various Commissioners shall~~ effectively perform their duties set out in this Constitution.

to ensure that they

191. Responsibilities and duties of the Commissioner of the South African Police Service

Subject to the provisions of section 186, and under the direction of the relevant Minister, the Commissioner of the South African Police Service shall be responsible for:

- (a) *ensuring effective co-ordination and co-operation between the Commissioners*
~~fall to co-ordination and regulation of the SAPS~~
- (a) the provision of an impartial, accountable, transparent and efficient police service by the members under his/her command;
- (b) the preservation of the internal security of the Republic;
- (c) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: Provided that the Act referred to in section 186 shall set out the circumstances which shall be regarded as organised crime and the conditions which will require national investigation and prevention or specialised skills;
- (d) international police liaison;
- (e) the keeping and provision of criminal records;
- (f) the training of all members of the police service, including any Municipal or Metropolitan Police Services to be established;
- (g) the recruitment, appointment, promotion and transfer of all members responsible for functions set out in this section;
- (h) the provision of forensic laboratory services;

(ii) The circumstances set out in the Act shall ~~it~~ provide for the deployment of the unit on the request of the SPA Commission

(iii) - - - - - shall further provide - - -

designated by the Minister referred to in section 186(1)

- (i) the establishment and maintenance of a national public order policing unit which shall be responsible for the provision of public order policing services in the Republic: Provided that the Act referred to in section 186 shall set out the circumstances in which the unit may be deployed and provide that the national unit ^{when so deployed shall} ~~shall then~~ assume the public order duties of the SPR Commissioner in designated areas while so deployed; (iii) ^{by proclamation in the Gazette designate those areas in which the unit is deployed and in which it shall assume the public order duties of the SPR Commissioner} The national unit shall
- (j) protection services in regard to institutions and personnel other than those mentioned in section 192(g);
- (k) establishment of a special task force to deal with hostage situations, hijackings, rural and urban terror situations, underwater rescue operations, special protection services to VIP's and other high risk operations which will require specialised skills;

Provided that the said Commissioner may in his/her discretion and with the approval of the relevant SPR Executive delegate responsibility for any function set out in this section to a SPR Commissioner.

192. Functions and duties of SPR Commissioner

Subject to the provisions of sections 186 and 191 and under the direction of the relevant SPR Minister, a SPR Commissioner shall be responsible for -

- (a) the provision of an impartial, accountable, transparent and efficient police service by the members under his/her command;
- (b) the recruitment, appointment, transfer and promotion of all members in the relevant SPR responsible for functions set out in this section;
- (c) the investigation and prevention of crime;
- (d) the development of community policing services;
- (e) the maintenance of public order in the SPR;
- (f) the provision in general of all other visible police services, including:

- (i) the establishment and maintenance of police stations;
 - (ii) crime reaction units; and
 - (iii) patrolling services;
- (g) protection services in regard to SPR institutions and personnel.

193. Local Authorities

- (1) The Act of Parliament referred to in section 186 shall provide for the establishment of community-police forums at police station level.
- (2) The functions of community-police forums referred to in sub-section (1) shall be to -
- (a) promote local accountability of the police service to communities and co-operation of communities with the police;
 - (b) monitor the effectiveness and efficiency of the police service;
 - (c) advise the police service regarding local policing priorities;
 - (d) evaluate the provision of visible police services, including -
 - (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;
 - (iii) the provision of protective services at gatherings;
 - (iv) the patrolling of residential and business areas;
 - (v) the prosecution of offenders.

(3) The Act of Parliament referred to in section 186 shall provide that -

(a) a local authority may establish a Municipal or Metropolitan Police Service, provided that:

- (i) such a police service may only be established with the agreement of the SPR Minister;
- (ii) ~~the SPR Minister shall determine the powers, duties and functions of such a police service which may have powers relating to crime prevention and municipal and metropolitan by-laws;~~
- (iii) the provisions of the Act of Parliament referred to in section 186 shall apply *mutatis mutandis* to any such police service.

194. Independent complaints mechanism

There shall be an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the South African Police Service which mechanism shall be established and regulated by Act of Parliament.

195. Transitional provision

- (a) At the commencement of this Constitution the South African Police established by the Police Act 7 of 1958 shall be deemed to be the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.
- (b) The national and SPR governments shall assume responsibility for the consolidation and rationalisation of all statutory police forces in South Africa into the South African Police Service in terms of this Constitution. (This provision should be checked with regard to section 119).

Section 191 (i)

The establishment and maintenance of a national public order policing unit which shall be responsible for the provision of public order policing services in the Republic in such circumstances as shall be specified in the Act referred to in section 186 in areas designated for such purpose by the Commissioner of the South African Police Service in consultation with the SPR Commissioner concerned, and while the set unit is deployed, it shall assume the public order police duties referred to in section 192(e) of such SPR Commissioner in the designated area concerned;

The SPR Commissioner shall ensure that the community-police forum or forums established in terms of section 193(1) of this Constitution and which are responsible for the functions contemplated in section 193(2) in the area where the unit is to be deployed, be informed in advance of any such deployment.

In the event of such deployment the provisions of section 193(2)(a) - (c) shall be applicable to the unit.

Const Ct. - not have
from lower courts
Appeals on questions of the
constitutional^{state action or}ity of conduct; ~~not~~
~~state official~~

by state officials

ANC DRAFT

POLICE SERVICE

186 South African Police Service

(1) There shall be one South African Police Service which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa in accordance with the provisions of this chapter.

(2) The Act of Parliament referred to in subsection (1) shall *provide for the following:*

(a) *provide for the appointment of a Commissioner of the South African Police Service and Regional Commissioners.* *Uniform Standards*

(b) Provide for the establishment and maintenance of uniform standards of policing at all levels regarding:

- the exercise of police powers;
- recruitment, appointment, suspension, dismissal, retrenchment, retirement, training conduct and conditions of service;
- disciplinary and grievance procedures;
- promotion and transfer;
- the provision of stores, arms, ammunition, saddlery, forage and other articles of equipment and means of transport and draught or other animals required for the Police Service, and the care, safe custody and maintenance thereof;
- returns, registers, records, documents, books, forms and correspondence relating to the Police Service;
- the control of funds which are administered by a committee or other like body under the chairpersonship of a member of the Police Service and have and have been collected or accepted by or from members of the Police Service, for the benefit of members and ex-members of the Police Service, or their dependents;
- the general government, control and maintenance of the Service;
- generally all matters which are necessary or expedient to prescribe in order that the purposes of this Constitution may be achieved.

187 Powers of the South African Police Service

and functions
The powers of the South African Police Service shall *include* -

- (a) *the preservation* of the internal security of the Republic.
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

188 Powers of the State President

Structure of Control and Command

Draft - for discussion

POLICE SERVICE

186 South African Police Service

(1) There shall be ^{d/}one South African Police Service which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa in accordance with the provisions of this chapter.

187 Powers and functions of the South African Police Service

The powers and functions of the South African Police Service shall include

- (a) the preservation of the internal security of the Republic.
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

~~188. 190.~~
The Act of Parliament referred to in subsection (1) shall provide for the following:

~~189.~~
~~(a) provide for the appointment of a Commissioner of the South African Police Service and Regional Commissioners.~~

~~(b) Provide for the establishment and maintenance of uniform standards of policing at all levels regarding:~~

- the exercise of police powers;
- recruitment, appointment, suspension, dismissal, retrenchment, retirement, training conduct and conditions of service;
- disciplinary and grievance procedures;
- promotion and transfer;
- the provision of stores, arms, ammunition, saddlery, forage and other articles of equipment and means of transport and draught or other animals required for the Police Service, and the care, safe custody and maintenance thereof;

-returns, registers, records, documents, books, forms and correspondence relating to the Police Service;

-the control of funds which are administered by a committee or other like body under the chairpersonship of a member of the Police Service and have and have been collected or accepted by or from members of the Police Service, for the

benefit of members and ex-members of the Police Service, or their dependents;

- the general government, control and maintenance of the Service;
- generally all matters which are necessary or expedient to prescribe in order that the purposes of this Constitution may be achieved.

APPOINTMENTS

189.

A Uniform Standards
Uniform standards at
all levels of policing shall
be established
regarding:

Division of Responsibilities

(1) Further to the provisions of section 186 and 187, the National Police Command shall be responsible for:

(a) The provision of an impartial, accountable, transparent and efficient police service by the members of the South African Police Service;

(b) monitoring the performance of the police service in the Republic and establishing if necessary bodies to assist in this regard.

(c) the preservation of internal security in the Republic;

(d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills. Provided that the Act referred to in section 186 shall set out the circumstances which shall be regarded as

organised crime and the conditions which will require national investigation and prevention or specialised skills.

(e) international police liaison;

(f) the keeping and provision of criminal records

(g) the training of all the police service, including any municipal or Metropolitan Police Services to be established

(h) the recruitment of all senior members responsible for the functions set out in this section.

(i) the provision of laboratory services;

(j) the establishment and maintenance of a national public order policing unit which shall be responsible for the provision of public order policing services in the Republic: Provided that the Act referred to in section 186 shall set out the

circumstances in which the unit may be deployed and provided that the national unit shall when so deployed be acting under the Police National Command in those designated areas;

(k) protection services in regard to the institutions and personnel other than those mentioned in section 192(g);

(l) establishment of a special task force to deal with hostage situations, hijackings, rural and urban terror situations, underwater rescue operations, special protection services to VIP's and other high risk operations which will require

specialised skills

Provided that the National Commissioner may in his/her discretion and with the approval of both the National Policing Advisory Council and the National Police Command delegate responsibility for any function set out in this section to a Regional Commissioner.

(2) The National Police Command shall have responsibility for all other police departments not referred to in section 191 and 192.

191 Functions and Duties of Regional Commissioners

Subject to the provisions of sections 186 and 190 and under the relevant Regional Executive, the Regional Commissioner shall be responsible for:

(a) the provision of an impartial, accountable, transparent and efficient police service under his/her command;

(b) the recruitment, appointment, transfer and promotion of junior members in the relevant region for functions set out in this section, subject to notification of the National Police Commissioner;

(c) Subsection (b) shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination in order to enable their full and equal enjoyment of

all rights and freedoms.

(d) the development of community policing services;

(e) the provision in general of all other visible police services, including

(f) any other functions delegated to the Regional Commissioner by legislation.

192 Local Authorities

(1) The Act of Parliament referred to in section 186 shall provide for the establishment of community -police forums at police station level.

(2) The functions of community -police forums referred to in subsection (1) shall be to-

(a) promote local accountability of the police service to communities and co-operation of communities with the police;

(b) monitor the effectiveness and efficiency of the police service;

(c) advise the police service regarding local policing priorities;

(d) evaluate the provision of visible police services, including-

(i) the provision, siting and staffing of police stations;

(ii) the reception and processing of complaints and charges;

(iii) the provision of protective services at gatherings;

(iv) the patrolling of residential and business areas;

(v) the prosecution of offenders.

(3) The Act of Parliament referred to in section 186 shall provide that-

(a) a local authority

(3) The Act of Parliament referred to in section 186 shall provide that -

(a) a local authority may establish a Municipal or Metropolitan Police service, provided that

(i) such a police service may only be established with the agreement of the SPR Minister and the National Police command.

(ii) the SPR Minister shall determine the powers, duties and functions of such a police service which may have powers relating to crime prevention and municipal and metropolitan by-laws;

(iii) the provisions of the Act of Parliament shall apply mutatis mutandis to any such police service.

193. Independent complaints mechanism

There shall be an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences allegedly committed by members of the South African Police Service which mechanism shall be established and regulated by Act of Parliament.

194 There shall be a National Police Board whose functions shall be determined by law.

195 Transitional Provision

(a) At the commencement of this Constitution the South African Police established by the Police Act 7 of 1958 shall be deemed to be the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.

(b) The national and SPR governments shall assume responsibility for the consolidation and rationalisation of all statutory police forces in South Africa into a national Police Service in terms of this Constitution. (This provision should be checked with regard to section 119).

B

Structure of Control and Command

(1) The State President

(a) shall appoint the National Commissioner of the South African Police Service;

(b) shall appoint Regional Police Commissioners on the advice of the National Advisory Council after consultation with the Regional Premier;



(c) there shall be a National Police Command which shall be chaired by the National Police Commissioner

(d) Regional Commissioners shall be members of the National Police Command advising the National Police Commissioner who shall be the head of the South African Police Service.

(e) ~~He~~ ^{the State President} may remove the National Commissioner and or a Regional Commissioner from his or her post at the request or advice of the National advisory Council;

(ii) in the event of a removal requested being acceded to, procedures as prescribed in section 18 of the current Public Service Act, No 111 of 1984 shall be complied with.

(f) may require the said National Commissioner or regional Commissioners to make regular reports on the performance of his/her or their responsibilities as set out in section 191.

189 Powers of the SPR [NATIONAL ADVISORY COUNCIL or PREMIER AND EXECUTIVE]

(1)(a) There shall be established a National advisory Council which shall be the senior organ of the civilian control of the police.

(b) The National Advisory Council shall advise the President on Policing matters.

(c) Regional Ministers of the police or their equivalent as decided by the SPR Executive Council shall be members of the National Advisory Council.

(2)(a) The Regional Assembly will debate, supervise and scrutinise the performance of all South African police personnel in the area of the region in relation to matters which fall within the delegated powers and functions of the Regional

Commissioner.

(b) The Regional Assembly shall exercise direct supervision and control through the Regional Minister of Police or his/her designate who will be accountable to it in this respect.

(c) In relation to any other matter not falling within the powers, duties and functions of the Regional Assembly, the said Regional Minister and Commissioner respectively to take up the matter at the national level.

190 Responsibilities and Duties of the National Police Command

188 Structure of Control and Command

1 (i) A National Policing Advisory Council shall be established with responsibility for advising the President on police matters, determining policy within the framework of this Act, and maintaining civilian control over the SAPS.

(ii) The NPAC shall consist of the Minister responsible for police in the National Executive, who shall preside, and the Ministers in the Regional Executives with similar responsibilities.

2 (i) The State President shall appoint a National Police Commisar, who shall be the operational head of the SAPS

3. The State President shall, on the advice of the NPAC and in consultation with the Premier of the Province concerned, appoint Regional Police Commisars.

4 (i) The National Police Commisar and the Regional Police Commisars shall together constitute a National Police Command

(ii) The National Police Command shall be headed by the National Police Commisar and shall its decisions known through him or her.

(iii) The National Police Command shall be responsible for operational command of the SAPS.

Regional accountability

(i) The Minister in the Regional Executive concerned with police matters shall be responsible to the Regional Assembly for the performance by and conduct of the members of the regional units of the SAPS.

(ii) The Regional executive and legislative authorities shall refer proposals, recommendations and criticisms concerning performance and conduct by national units to the NPAC and the National Police Command for attention.

1) SAPS

2) Powers and Functions

3) Structure of Control and Command

4) Uniform Standards

a) Lawful Functioning

5) Functions and Division of Responsibilities

A : National Units

B : Regional Units

6) Accountability

National

Regional

7) Police Community

8) Police Board and Complaints Machinery

9) Transitional arrangements

POLICE SERVICE

186. South African Police Service

Subject to the provisions of this chapter.

the only Police Service for the Republic

(1) There shall be a ~~two tier~~ South African Police Service, which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa, in accordance with the provisions of this chapter.

(2) Powers & Functions

(2) The Act of Parliament referred to in Sub-section (1) shall -

(3) The State President shall, on the advice of the J.P. AG.

(a) provide for the appointment of a Commissioner of the South African Police Service and a Commissioner for each SPR;

(b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding:

- the exercise of police powers;
- recruitment;
- appointment,
- suspension;
- dismissal;
- retrenchment;
- retirement;
- training;
- conduct;
- conditions of service;
- disciplinary and grievance procedures;
- promotion;
- transfer;
- the provision of stores, arms, ammunition, saddlery, forage and other articles of equipment and of means of transport and draught or other animals required for the Police Service, and the care, safe custody and maintenance thereof;
- returns, registers, records, documents, books, forms and correspondence relating to the Police Service;

- the control of funds which are administered by a committee or other like body under the chairmanship of a member of the Police Service and have been collected or accepted by or from members of the Police Service, for the benefit of members and ex-members of the Police Service, or their dependants;
- the general government, control and maintenance of the Police Service;
- all matters which are generally considered necessary or expedient to prescribe in order to achieve the purposes of this Constitution.

provide for
 (c) ~~mechanisms to ensure efficient~~ ^{effective} coordination and regulation of the SAPS.

187. Powers of the South African Police Service

The powers of the South African Police Service shall be -

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence; and
- (d) the prevention of crime.

188. Powers of STATE PRESIDENT AND CABINET

(1) The State President acting through the relevant Minister in Cabinet -

- (a) shall appoint the Commissioner of the South African Police Service, by a two thirds majority of the Cabinet;
- (b) shall monitor the performance of the South African Police Service within its jurisdiction and may establish bodies to assist it in this regard;
- (c) shall subject to the provisions of this Constitution initiate laws and make regulations regarding the functions set out in section 191;

- or an SPR Commissioner
- (d) may remove the said Commissioner from his/her post subject to similar procedures as prescribed in section 18 of the current **Public Service Act**, No 111 of 1984;
 - (e) may require the said Commissioner to make regular reports on the performance of his/her responsibilities set out in section 191.

189. Powers of SPR Premier and Executive

- (1) An SPR Premier acting through the relevant Minister in the SPR Executive
 - (a) shall appoint an SPR Commissioner in consultation with the State President: Provided that in the exercise of the President's powers the provisions of section 183 of this Constitution shall apply *mutatis mutandis*;
 - (b) shall monitor the performance of the police service within its jurisdiction and may establish bodies to assist it in this regard;
 - (c) shall subject to the provisions of this Constitution initiate laws and make regulations regarding the functions set out in section 192;
 - (d) may remove an SPR Commissioner from his/her post subject to procedures prescribed in section 18 of the current Public Service Act, no 111 of 1984;
 - (e) may require an SPR Commissioner to make regular reports on the performance of his/her responsibilities set out in section 192.
- (2) No SPR law may permit lower standards of performance of the functions of the police service than those provided by an Act of Parliament or detract from the rights which citizens would have under an Act of Parliament.

190. Co-ordination and co-operation

~~Efficient co-ordination and co-operation shall be established between the relevant Cabinet Minister and the relevant SPR Ministers to ensure that the various Commissioners shall effectively perform their duties set out in this Constitution.~~

to ensure that they

191. Responsibilities and duties of the Commissioner of the South African Police Service

Subject to the provisions of section 186, and under the direction of the relevant Minister, the Commissioner of the South African Police Service shall be responsible

for:

- (a) ~~ensuring effective co-ordination and co-operation between the Commissioners~~
~~fall to co-ordinate and regulation of the SAPS~~
- (a) the provision of an impartial, accountable, transparent and efficient police service by the members under his/her command;
- (b) the preservation of the internal security of the Republic;
- (c) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: Provided that the Act referred to in section 186 shall set out the circumstances which shall be regarded as organised crime and the conditions which will require national investigation and prevention or specialised skills;
- (d) international police liaison;
- (e) the keeping and provision of criminal records;
- (f) the training of all members of the police service, including any Municipal or Metropolitan Police Services to be established;
- (g) the recruitment, appointment, promotion and transfer of all members responsible for functions set out in this section;
- (h) the provision of forensic laboratory services;

designated by the Minister referred to in section 188(1)

- (i) the establishment and maintenance of a national public order policing unit which shall be responsible for the provision of public order policing services in the Republic: Provided that the Act referred to in section 186 shall set out the circumstances in which the unit may be deployed and provide that the national unit ~~shall then~~ ^{when so deployed shall} assume the public order duties of the SPR Commissioner in designated areas while so deployed; (ii) ^{(iii) The National Minister shall} protection services in regard to institutions and personnel other than those mentioned in section 192(g);

- (k) establishment of a special task force to deal with hostage situations, hijackings, rural and urban terror situations, underwater rescue operations, special protection services to VIP's and other high risk operations which will require specialised skills;

Provided that the said Commissioner may in his/her discretion and with the approval of the relevant SPR Executive delegate responsibility for any function set out in this section to a SPR Commissioner.

192. Functions and duties of SPR Commissioner

Subject to the provisions of sections 186 and 191 and under the direction of the relevant SPR Minister, a SPR Commissioner shall be responsible for -

- (a) the provision of an impartial, accountable, transparent and efficient police service by the members under his/her command;
- (b) the recruitment, appointment, transfer and promotion of all members in the relevant SPR responsible for functions set out in this section;
- (c) the investigation and prevention of crime;
- (d) the development of community policing services;
- (e) the maintenance of public order in the SPR;
- (f) the provision in general of all other visible police services, including:

- (i) the establishment and maintenance of police stations;
 - (ii) crime reaction units; and
 - (iii) patrolling services;
- (g) protection services in regard to SPR institutions and personnel.

193. Local Authorities

- (1) The Act of Parliament referred to in section 186 shall provide for the establishment of community-police forums at police station level.
- (2) The functions of community-police forums referred to in sub-section (1) shall be to -
- (a) promote local accountability of the police service to communities and co-operation of communities with the police;
 - (b) monitor the effectiveness and efficiency of the police service;
 - (c) advise the police service regarding local policing priorities;
 - (d) evaluate the provision of visible police services, including -
 - (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;
 - (iii) the provision of protective services at gatherings;
 - (iv) the patrolling of residential and business areas;
 - (v) the prosecution of offenders.

(3) The Act of Parliament referred to in section 186 shall provide that -

(a) a local authority may establish a Municipal or Metropolitan Police Service, provided that:

- (i) such a police service may only be established with the agreement of the SPR Minister;
- (ii) the SPR Minister shall determine the powers, duties and functions of such a police service which may have powers relating to crime prevention and municipal and metropolitan by-laws;
- (iii) the provisions of the Act of Parliament referred to in section 186 shall apply *mutatis mutandis* to any such police service.

194. Independent complaints mechanism

There shall be an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the South African Police Service which mechanism shall be established and regulated by Act of Parliament.

195. Transitional provision

- (a) At the commencement of this Constitution the South African Police established by the Police Act 7 of 1958 shall be deemed to be the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.
- (b) The national and SPR governments shall assume responsibility for the consolidation and rationalisation of all statutory police forces in South Africa into the South African Police Service in terms of this Constitution. (This provision should be checked with regard to section 119).

DRAFTMP\DG
C:\MP\POLPRI.02**POLICE SERVICE****DRAFT AGREEMENT BETWEEN ANC AND SAG**
INCLUDING OUTSTANDING ISSUES**186 South African Police Service**

- (1) There shall be a South African Police Service, which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa, in accordance with the provisions of this chapter.
- (2) The Act of Parliament referred to in **Sub-section (1)** shall -
 - (a) provide for the appointment of a Commissioner of the South African Police Service and a Commissioner for each SPR;
 - (b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding inter alia the exercise of police powers and the appointment, training, conduct, conditions of service, disciplinary and grievance procedures, promotion and transfer of members of the police service.

187 Functions of the South African Police Service

The functions of the South African Police Service shall be -

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence;
- (d) the prevention of crime.

188 Functions of Commissioner of the South African Police Service

Subject to the provisions of **Sections 186 and 187**, and under the direction of the relevant Minister, the Commissioner of the South African Police Service shall be responsible for, inter alia -

- (a) the establishment and maintenance of an impartial, accountable and efficient police service;
- (b) the preservation of the internal security of the Republic;
- (c) the investigation and prevention of organised crime or crime

which in his/her opinion requires national investigation and prevention or specialised skills;

- (d) international police liaison;
- (e) the keeping and provision of criminal records;
- (f) the appointment, training, promotion and transfer of all members of the police service; (ANC version)
- (f) the training and promotion of all members of the police service; (SAG version)
- (g) the provision of forensic laboratory services;
- (h) the establishment and maintenance of a national public order unit;
- (i) the provision of public order services in support of any SPR Commissioner : Provided that the Act referred to in **Section 186** shall set out the circumstances in which the Commissioner of the South African Police service may deploy such services in his/her sole discretion; *and the respective responsibilities of the Commissioner and SPR Commissioner in such circumstances*
- (k) protection services other than those referred to in **Section 189(f)**;
- (l) establishment of a special task force to deal with kidnappings, hijackings and similar incidents;

Provided that the said Commissioner may in his/her discretion and with the approval of the relevant SPR executive delegate responsibility for any function to an SPR Commissioner.

189 Functions of SPR Commissioner

Subject to the provisions of **Sections 186 and 188**, and under the direction of the relevant SPR Minister, an SPR Commissioner shall be responsible for -

- (a) the investigation and prevention of crime;
- (b) the development of community policing services;
- (c) the maintenance of public order in the SPR;
- (d) traffic policing in respect of SPR roads;
- (e) the provision in general of all other visible police services,

including:

- (i) the establishment and maintenance of police stations;
 - (ii) crime reaction units; and
 - (iii) patrolling services;
- (f) protection services in regard to SPR institutions and personnel.

190 Powers of SPR

(1) An SPR executive/legislature subject to Cabinet may -

- (a) veto the appointment of an SPR Commissioner within its jurisdiction by a two thirds majority resolution; (ANC version)
- (a) appoint an SPR Commissioner, provided that the National Cabinet may veto the appointment if in its opinion the SPR Commissioner so appointed is not suitably qualified for the position; (SAG version)
- (b) require the removal of an SPR Commissioner within its jurisdiction by a two thirds majority resolution; (ANC version)
- (b) remove an SPR Commissioner from his/her post; (SAG version)
- (c) require an SPR Commissioner within its jurisdiction to make regular reports to it on the performance of his/her functions;
- (d) monitor the performance of the police service within its jurisdiction and may establish bodies to assist it in this regard;
- (e) make laws regarding the functions set out in **Section 189**.

(2) The National Cabinet may on good grounds require the removal, transfer or discipline of an SPR Commissioner (ANC proposal if SAG version of (b) is agreed to).

(3) No SPR law may permit lower standards of performance of the functions of the police service than those provided for by an Act of Parliament or detract from the rights which citizens would otherwise have under an Act of Parliament.

191 Local authorities

- (1) The Act of Parliament referred to in **Section 186** shall provide for the establishment of community - police relations bodies at the local level.
- (2) The functions of community-police relations bodies referred to in **Sub-section (1)** shall be to -
 - (a) promote local accountability of the police service to communities and co-operation of communities with the police;
 - (b) monitor the effectiveness and efficiency of the police service;
 - (c) advise the police service regarding local policing priorities;
 - (d) evaluate the provision of visible police services, including -
 - (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;
 - (iii) the provision of protective services at gatherings;
 - (iv) the patrolling of residential and business areas;
 - (v) the prosecution of offenders.
- (3) The Act of Parliament referred to in **Section 186** shall provide that -
 - (a) a local authority may, on a seventy five percent majority resolution of that authority, require the Commissioner of the South African Police Service to remove or institute disciplinary procedures against an officer responsible for the management and delivery of the police service within its jurisdiction. (ANC only)
 - (b) a local authority may establish a Municipal or Metropolitan Police Service, provided that such a police service may only be established with the agreement of the Minister, provided further that the Minister shall determine the powers, duties and functions of such a police service, which may have powers relating to crime prevention, municipal by-laws and the enforcement of laws relating to traffic. (ANC proposes National Minister, SAG proposes SPR Minister)

192 Commissioners

- (1) The State President shall, on the advice of the Cabinet, appoint and remove the Commissioner of the Police Service who shall be responsible for the day to day management of the police service subject to the directions of the relevant Minister.
- (2) The State President shall appoint, remove and transfer SPR Commissioners, subject to the provisions of **Section 190(1)**. (ANC version)
- (2) The SPR Premier shall appoint, remove and transfer SPR Commissioners, subject to the provisions of **Section 190(1)**. (SAG version)
- (3) The Commissioner of the South African Police Service shall be responsible for the performance of his/her functions to the Cabinet.
- (4) An SPR Commissioner shall be responsible for the performance of his/her functions set out in **Section 189** to the relevant SPR executive.
- (5) In respect of any functions delegated by the Commissioner to an SPR Commissioner in terms of **Section 188**, an SPR Commissioner shall be responsible for the performance of those functions to the Commissioner.

193 Independent complaints mechanism

There shall be an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the South African Police, which mechanism shall be established and regulated by Act of Parliament.

194 Transitional provision

At the commencement of this Act the South African Police established by the Police Act 7 of 1958 shall be deemed to be the South African Police Service in terms of this Act and the national government shall assume responsibility for the consolidation and rationalisation of all statutory police forces in South Africa in terms of this Act. (This provision should be checked with regard to **Section 119**)

PRISONS SERVICE**194 Department of Correctional Services**

- (1) There shall be established a correctional services department with

national jurisdiction to be known as the Department of Correctional Services.

- (2) The Department of Correctional Services shall be established by a statute of the Parliament of the Republic of South Africa which shall provide for the establishment, organisation, control, powers and functions of the Department of Correctional Services.
- (3) At the commencement of this Act the Department of Correctional Services established by the Correctional Services Act of 1959 shall be deemed to be the Department of Correctional Services in terms of this Act and the National Government shall assume responsibility for the consolidation and rationalisation of all statutory prisons and correctional services departments in South Africa in terms of this Act.

The Regional element is accounted for by the following:

1. Representation of regional Ministers of police in the National Policing Advisory Council which advises the President and is the senior organ of civilian control of the police.
2. Regional Police Commissioners are members of the national Police Command which advises the National Police Commissioner as operational head of the Police Service.
3. The Regional Police Commissioners are appointed by the President on the advice of the National Advisory Council after consultation with the Regional Premier.
4. Special functions and powers in connection with regional policing will be delegated by legislation to the regional commissioners.
5. The Regional Assembly will debate, supervise and scrutinise the performance of all South African police personnel in the area of the region, in relation to matters which fall within the delegated powers and functions of the Regional Commissioner, the Regional Assembly shall exercise direct supervision and control through the Regional Minister of Police who will be accountable to it in this respect. in relation to other matters, the Regional Assembly shall instruct the Regional Minister and Commissioner respectively to take up the matter at the national level.
6. There shall be a National Police Board and a National Machinery to receive complaints which shall have regional components

POLICE SERVICE

- 1) SAPS
- 2) Powers and Functions
- 3) Structure of Control and Command
- 4) Uniform Standards
- 5) Lawful Functioning
- 6) Functions and Division of Responsibilities
- A : National Units
- B : Regional Units
- 7) Regional Accountability
- 8) Local Policing
- 9) Transitional arrangements

186 South African Police Service

- (1) There shall be one South African Police Service which shall be established and regulated by Act of Parliament and which shall have jurisdiction in respect of the laws of South Africa in accordance with the provisions of this chapter.

187 Powers and functions of the South African Police Service

The powers and functions of the South African Police Service shall be

- (a) the preservation of the internal security of the Republic.
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

188 Structure of Control and Command

- 1 (i) A National Policing Advisory Council shall be established with responsibility for advising the President on police matters, determining policy within the framework of this Act, and maintaining civilian control over the SAPS.

(ii) The NPAC shall consist of the Minister responsible for police in the National Executive, who shall preside, and the Ministers in the Regional Executives with similar responsibilities.

(iii) The NPAC may be assisted by a National Police Board composed of community representatives, which may, if established, monitor the performance of the SAPS and make recommendations on the delivery of the policing service.

2. The State President shall appoint a National Police Commissioner

3. The operational command of the SAPS shall be exercised by a National Police Directorate, headed by the National Commissioner

4. The State President shall, on the advice of the NPAC and in consultation with the Premiers of the Provinces, appoint Regional Police Commissioners who shall be members of the NPD.

189 Lawful Functioning

1) The SAPS shall function within the terms of the Constitution and the law.

2) It shall conduct itself as an impartial, accountable and efficient force

3) Bodies shall be established to ensure effective monitoring of its activities

4) There shall be an independent mechanism under civilian control to investigate efficiently and effectively complaints concerning offenses or misconduct allegedly committed by members of the SAPS

190 Uniform Standards

The Act of Parliament referred to in subsection (1) shall provide for the establishment and maintenance of uniform standards of policing regarding *inter alia*:

- the exercise of police powers;
- recruitment, appointment, suspension, dismissal, retrenchment, retirement, training conduct and conditions of service;
- disciplinary and grievance procedures;
- promotion and transfer;

- the general government, control and maintenance of the Service;
- generally all matters which are necessary or expedient to prescribe in order that the purposes of this Constitution may be achieved.

191 National and Regional units of the SAPS

1 National Units of the SAPS will be established with responsibility for

- (a) the preservation of the internal security in the Republic;
- (b) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills.
- (c) international police liaison;
- (d) the keeping and provision of criminal records
- (e) the training of all the police service, including any municipal or Metropolitan Police Services to be established
- (f) the provision of laboratory services;
- (g) the establishment and maintenance of a national public order policing unit which shall be responsible for the provision of public order policing services in the Republic.
- (h) national protection services
- (i) establishment of a special task force to deal with hostage situations, hijacking, rural and urban terror situations, underwater rescue operations, special protection services to VIP's and other high risk operations which will require specialised skills

Provided that the National Commissioner may in his/her discretion and with the approval of both the National Policing Advisory Council and the delegate responsibility for any function set out in this section to Regional units.

2 Regional units of the SAPS shall be formed with responsibility for the following activities in the area of the province:

- (a) the investigation and prevention of crime;
- (b) the development of community-policing services
- (c) the maintenance of public order

- (d) the provision in general of all other visible policing services, including
 - i) the establishment and maintenance of police stations
 - ii) crime reaction units
 - iii) patrolling services
- e) the furnishing of protection services in regard to provincial institutions and personnel
- (f) the performance of any other functions delegated to Regional units

192 Regional accountability

- (i) The Regional Commissioner shall account to the Regional Assembly for the performance by and conduct of the members of the regional units of the SAPS.
- (ii) The Regional executive and legislative authorities shall refer proposals, recommendations and criticisms concerning performance and conduct by national units to the NPAC and the National Police Command for attention and may require disciplining or removal of a Provincial Commissioner by a 2/3 majority resolution.

193 Local Policing

- 1 The Act of Parliament referred to in section 186 shall provide for the establishment of community-police forums at police station level.
- 2 The functions of community-police forums referred to in sub-section (1) shall be to:-
 - (a) promote local accountability of the police service to communities and co-operation of communities with police;
 - (b) monitor the effectiveness and efficiency of the police service,
 - (c) advise the police service regarding local policing priorities;
 - (d) evaluate the provision of visible police services, including -
 - i) the provision, siting and staffing of police stations;
 - ii) the reception and processing of complaints and charges;
 - iii) the provision of protective services at gatherings;
 - iv) the patrolling of residential and business areas;
 - v) the prosecution of offenders.

- 3 (i) The Act referred to in section shall provide that a local authority may establish a Municipal or Metropolitan Police Service subject to the approval of the National Police Advisory Council and the Regional Commissioner.
- (ii) Such a police Service may have powers relating to crime prevention and the enforcement of municipal and metropolitan by-laws

194 Transitional Provisions

- (a) At the coming into operation of this Constitution the South African Police established by the Police Act 7 of 1958, and all other police forces with statutory recognition within the area of South Africa, including TBVC, shall be deemed to constitute the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.
- (b) Any reference in any Act to the South African Police shall, unless clearly appropriate, bear the meaning and be interpreted as the South African Police Service in terms of this Constitution.
- (c) Arrangements shall be made for the integration of units and members of security departments of political organisations which have been members of the TEC.
- (d) The national and provincial governments shall assume responsibility for the consolidation and rationalisation of all the police forces and operational security departments in South Africa into a national South African Police Service in terms of this Constitution. (This provision should be checked with regard to section 119).

CONSTITUTIONAL PROVISIONS ON THE POLICE SERVICE

186 South African Police Service

- (1) There shall be a two tier South African Police Service which shall -
 - (a) be established and regulated by Act of Parliament;
 - (b) have jurisdiction in respect of the laws of South Africa;
 - (c) function under the direction of both national and provincial government, in accordance with the provisions of this chapter.
- (2) The Act of Parliament referred to in sub-section 1 shall -
 - (a) provide for the appointment of a Commissioner of the SAPS and a Commissioner for each Province;
 - (b) provide for the establishment and maintenance of uniform standards of policing at all levels regarding:
 - (i) the exercise of police powers;
 - (ii) the recruitment, appointment, promotion and transfer of members of the SAPS
 - (iii) suspension, dismissal, disciplinary and grievance procedures;
 - (iv) training, conduct, and conditions of service of members of the SAPS;
 - (v) the general government, control, maintenance and provisioning of the Service;
 - (vi) returns, registers, records, documents, forms and correspondence;
 - (vii) generally all matters which are necessary or expedient to prescribe in order that the purposes of this Constitution may be achieved.

187 Powers and functions of the South African Police Service

The powers and functions of the South African Police Service shall be:

- (a) the preservation of the internal security of the Republic;
- (b) the maintenance of law and order;
- (c) the investigation of any offence or alleged offence, and
- (d) the prevention of crime.

188 Powers of State President

1. The State President, acting through the relevant Minister in Cabinet, shall appoint the Commissioner of the SAPS, subject to law and to the provisions of this Constitution.
2. The State President may, if the Commissioner has lost the confidence of the Cabinet, institute appropriate proceedings against the Commissioner in accordance with law.
3. The State President shall appoint a Minister charged with responsibility for the SAPS subject to the provisions of this Constitution.

189 Powers of Province

1. The Provincial Premier shall appoint a Minister charged with responsibility for the performance by the Police Service of the functions set out in section 192(2).
2. The Minister referred to in subsection (1):
 - (a) shall approve or veto the appointment of the Provincial Commissioner in terms of section 191(1)(b);
 - (b) may, if the Provincial Commissioner has lost the confidence of the Provincial Executive, institute appropriate proceedings against the said Commissioner according to law.
3. The Provincial legislature may pass laws not inconsistent with national legislation regarding the functions set out in section 192 (2).
4. No Provincial law may permit lower standards of performance of the functions of the SAPS than those provided for in an Act of Parliament or

detract from the rights which citizens have under an Act of Parliament.

190 Co-ordination and cooperation

- (1) A committee consisting of the Minister referred to in section 188 and the Ministers referred to in section 189(1) shall be established to ensure the effective co-ordination of the SAPS and effective co-operation between the various Commissioners.
- (2) A Board of Commissioners consisting of the National Commissioner and the Provincial Commissioners shall be established, chaired by the National Commissioner, or his/her nominee, which shall promote co-operation and co-ordination in the Police Service.

191 Responsibilities and duties of the Commissioner of the SAPS

1. Subject to the provisions of section 186, and under the direction of the relevant Minister, the Commissioner of the SAPS shall be responsible for -
 - (a) the maintenance of an impartial, accountable, transparent and efficient police service;
 - (b) the appointment of provincial commissioners, subject to the provisions of section 189 (2)(a);
 - (c) the preservation of the internal security in the Republic;
 - (d) the investigation and prevention of organised crime or crime which requires national investigation and prevention or specialised skills: Provided that the Act referred to in section 186 shall set out the circumstances which shall be regarded as organised crime and the circumstances which require national investigation and prevention or specialised skills;
 - (e) international police liaison;
 - (f) the keeping and provision of crime intelligence data, criminal records and statistics;
 - (g) the training of the police service, including any Municipal or Metropolitan Police Services to be established;
 - (h) the recruitment, appointment, promotion and transfer of all members of the SAPS;

- (i) the provision of forensic laboratory services;
- (j) such functions relating to border control and the import and export of goods as may be allocated to the SAPS by law;
- (k) the establishment and maintenance of a national public order policing unit to be deployed in support of and at the request of the Provincial Commissioner: Provided that the Act referred to in section 186 shall provide that the President, with the consent of the Cabinet, may direct the National Commissioner to deploy the said unit in circumstances where the Provincial Commissioner is unable to maintain public order and the deployment of the said unit is necessary to restore public order;
- (l) national protection services;
- (m) establishment of a special task force for high risk operations which require specialised skills;
- (n) such other functions not referred to in section 192 which:
 - (i) are necessary to achieve the objectives set out in section 187;
 - (ii) it is appropriate for the National Commissioner to take responsibility for.

2. The National Commissioner may [and with the approval of the relevant SPR executive] delegate responsibility for any function set out in this section to a Provincial commissioner.

192 Functions and duties of Provincial commissioner

1. Subject to the provisions of section 186 and section 191 and under the direction of the relevant Provincial Minister, a Provincial Commissioner shall be responsible for:
 - (a) the investigation and prevention of crime;
 - (b) the development of community-policing services;
 - (c) the maintenance of public order;
 - (d) the provision in general of all other visible policing services, including
 - (i) the establishment and maintenance of police stations,
 - (ii) crime reaction units,

- (iii) patrolling services;
 - (e) protection services in regard to provincial institutions and personnel.
 - (f) Transfers within the Province of members of the SAPS performing functions in this section;
 - (g) Promotion of members of the SAPS performing functions set out in this section up to the rank of lieutenant-colonel.
2. Subject to the provisions of sections 186 and 191, and under the direction of the national commissioner, the provincial commissioner shall be responsible for:
- (a) the maintenance and discipline of the SAPS in the Province;
 - (b) the recruitment, and, the promotion to the rank of colonel and above of all members of the SAPS responsible for functions set out in this sub-section;
 - (c) such other functions as may be delegated to him/her by the national commissioner;
 - (d) subject to any procedures or mechanisms established by the Board of Commissioners referred to in section 192, the transfer of members of the SAPS under his/her command to positions outside his/her jurisdiction, or vice versa.

193 Local Policing

1. The Act of Parliament referred to in section 186 shall provide for the establishment of community-police forums at police station level.
2. The functions of community-police forums referred to in sub-section (1) may include to:
 - (a) promote local accountability of the police service to communities and cooperation of communities with the police;
 - (b) monitor the effectiveness and efficiency of the police service;
 - (c) advise the police service regarding local policing priorities;
 - (d) evaluate the provision of visible police services, including -
 - (i) the provision, siting and staffing of police stations;
 - (ii) the reception and processing of complaints and charges;

- (iii) the provision of protective services at gatherings;
- (iv) the patrolling of residential and business areas;
- (v) the prosecution of offenders.

(e) request an enquiry into policing matters in the locality.

3. The Act referred to in section 186 shall provide that -

- (a) a local authority may establish a Municipal or Metropolitan Police Service:
Provided that :
 - (i) such a police service may only be established with the agreement of the Provincial Minister;
 - (ii) the Provincial Minister shall, subject to the provisions of national statute, determine the powers, duties and functions of such a police service which may have powers relating only to crime prevention and municipal and metropolitan by-laws;
 - (iii) the provisions of the Act of Parliament referred to in section 186 shall apply *mutatis mutandis* to any such police service.

194 Independent complaints mechanism

There shall be an independent mechanism under civilian control to efficiently and effectively investigate complaints of offences and misconduct allegedly committed by members of the SAPS which mechanism shall be established and regulated by Act of Parliament.

195 Validity of Acts

- (1) No act of a member of the SAPS shall be invalid solely by reason of the fact that it was committed outside the region in which that member is based.
- (2) The National Commissioner shall establish the procedures and the powers of the members of the Police Service to perform their functions outside their area of regional jurisdiction.

196 Transitional Provisions

- (a) At the coming into operation of this Constitution the South African Police established by the Police Act 7 of 1958, and all other police forces with statutory recognition within the area of South Africa, including TBVC, shall be deemed to constitute the South African Police Service in terms of this Constitution and any reference to the South African Police in the said Act shall be deemed to be a reference to the said Service.
- (b) Any reference in any Act to the South African Police shall, unless clearly appropriate, bear the meaning and be interpreted as the South African Police Service in terms of this Constitution.
- (c) The national and provincial governments shall assume responsibility for the consolidation and rationalisation of all the police forces in terms of section 119.

President

Model 2

National Police
High Command

- Integrate RC to NPHC chaired by NC
- function = appts, transfers, senior appts transfer of sub officers.
- deal with regional issues threatening peace & order as a whole
- ^{consult} convene when there's threat to security of any of the regions

Regional
Commissions

Regional
Commissions

RC

RC

Model 3

President

~~Political High
Command~~

National Police Authority

~~N.P.A.~~

Regional
Ministers

~~RM~~

~~RM~~

~~RM~~

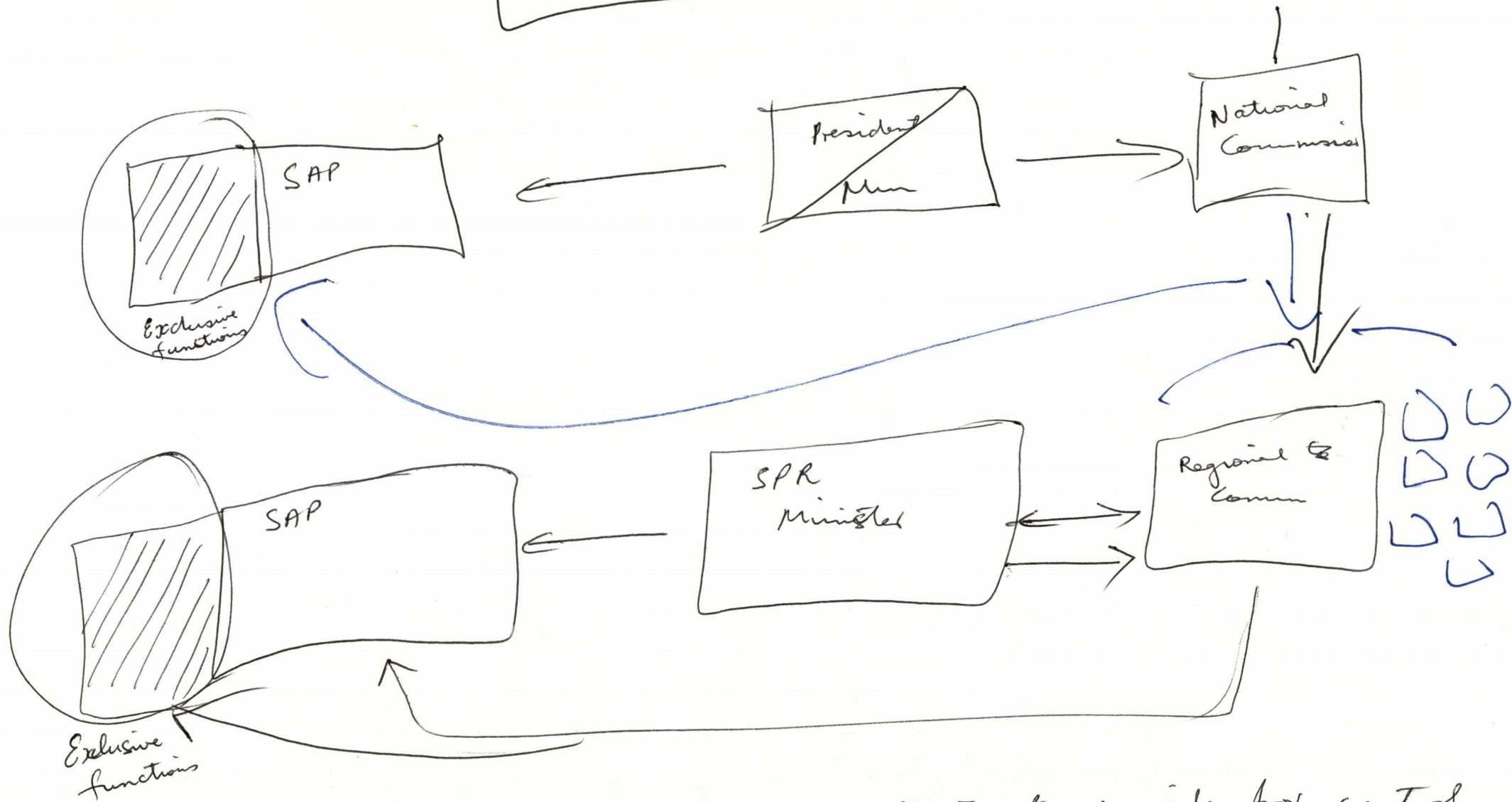
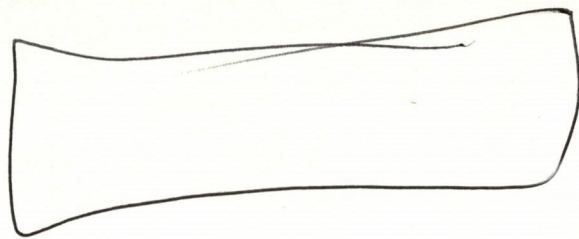
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Model 34



Allow Parliament to pass legislation to provide for control of the gaps.

Model 816

Pres

Nat. Pol. Advisory Com.

W.M.

RM

RM

RM

RM

RM

N. Com.

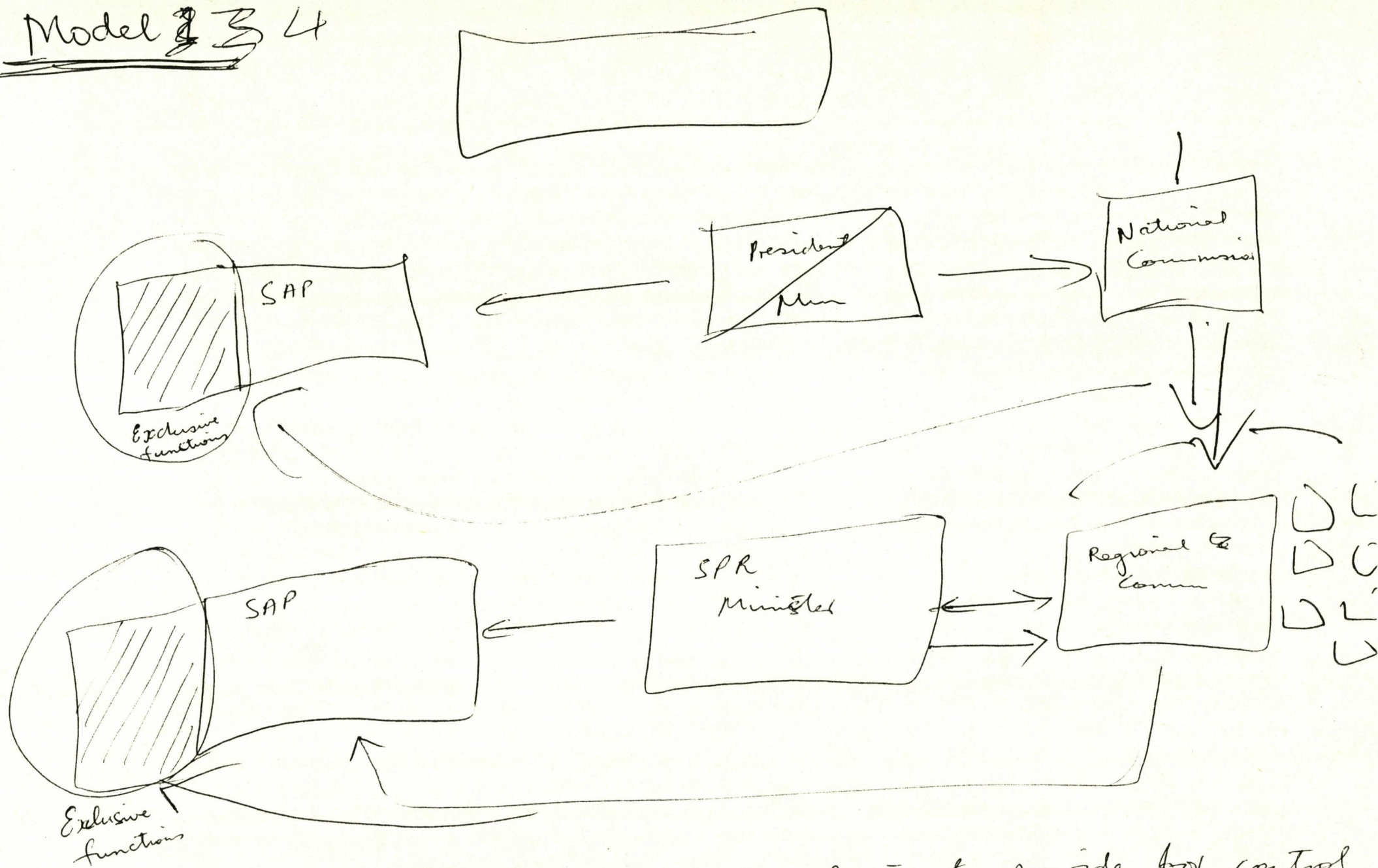
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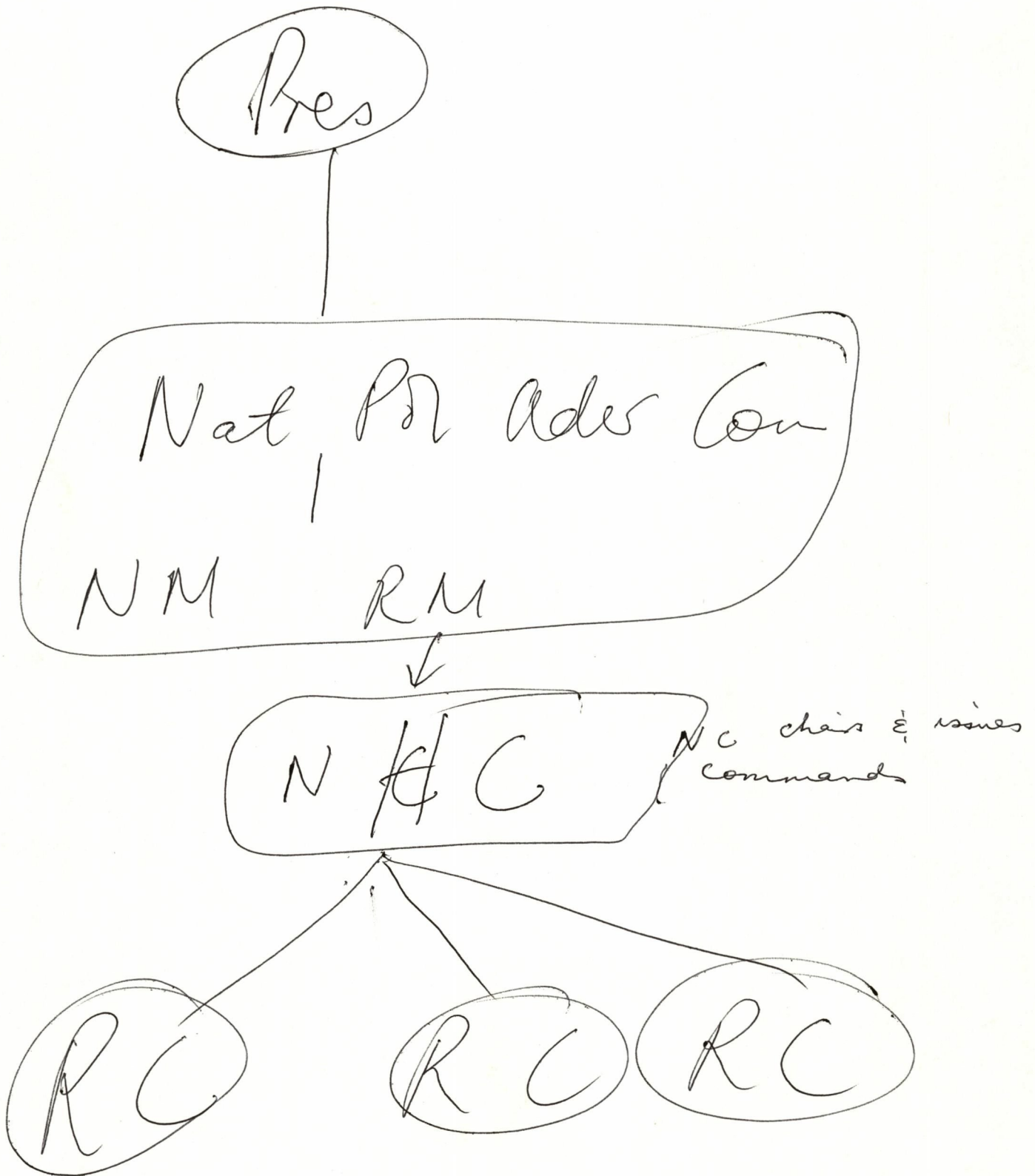
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Model 34



Allow Parliament to pass legislation to provide for control of the gaps.

Model 1(d)



President
↓

National Police
High Command

Model 2 21(c)

- Integrate RC to NPHC chaired by NC
- function = appts, transfers, senior appts + transfers of snr officers.
- deal with regional issues threatening peace & order as a whole
- ^{consult} convene when there's threat to security of any of the regions

Regional
Commissions

Regional
Commissions

RC

RC

Model 3

President

~~Political High
Command~~

National Police Authority

~~N.P.A~~

Regional
Ministers

~~RM~~

~~RM~~

~~RM~~

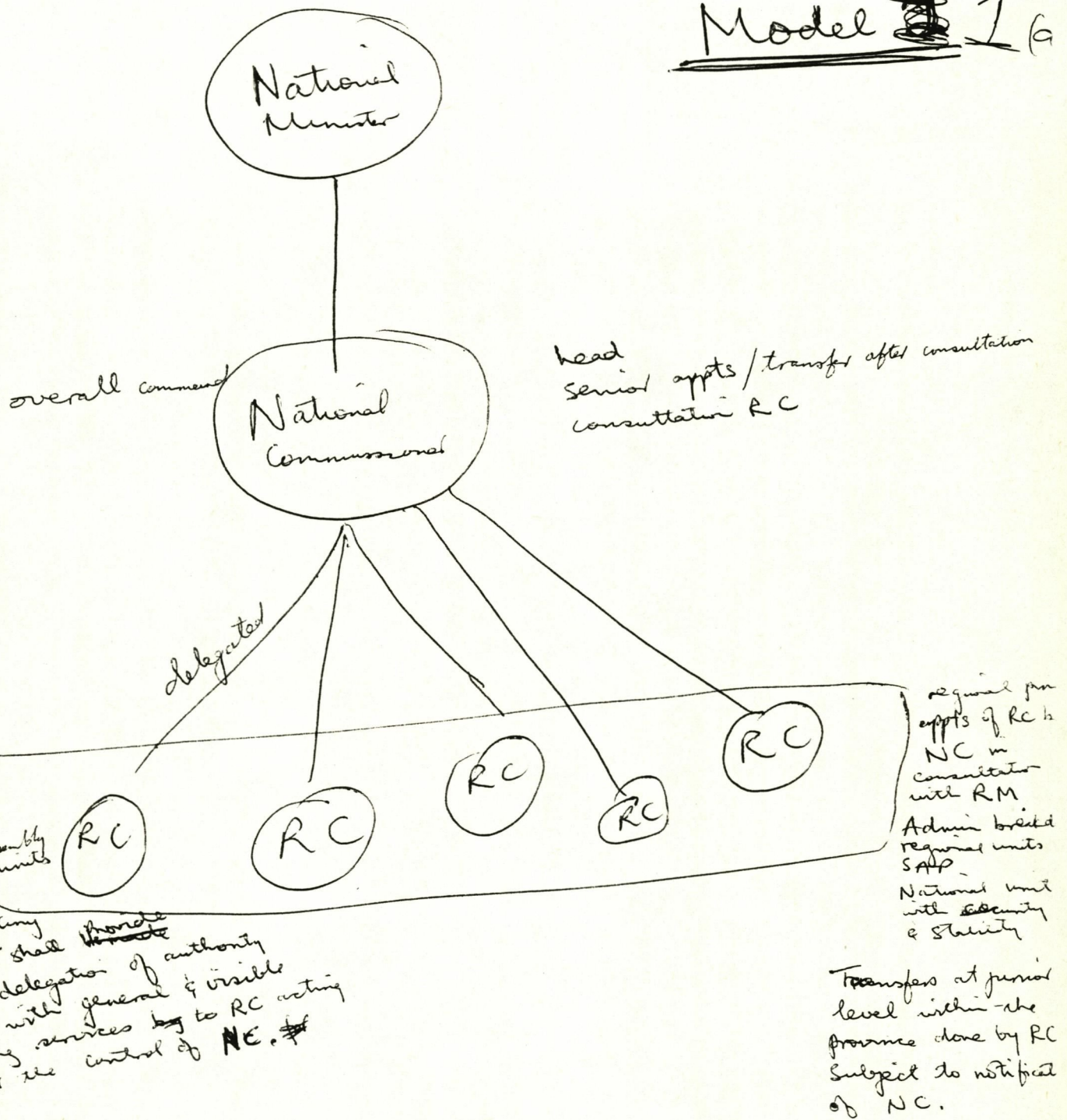
~~RC~~

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Model 1 (a)



189 - Amend. to state that NC appoints RC
in consultation

— operational & functional problem

PRESIDENT

NATIONAL POLITICAL ADVISORY COUNCIL
Consisting of National Minister
and all Regional Ministers of Police

NATIONAL HIGH COMMAND
National Commissioner + Regional Commissioners

chaired by NC
who acts in the name
and on the advice of
the National High
Command.

Heads of National
Police Units

Security	Narcotics
forensics,	Human Resources
training	specialised national units
etc	

Regional
Commissioner

R C

R C

R C

Police/
Community
Forums