

FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL / 13 MAY 1993

INTRODUCTION

1. THE NEED FOR A TRANSITIONAL EXECUTIVE COUNCIL

The Technical Committee is aware of the fact that the first question that will, and in the final analysis, have to be determined by the Negotiating Council relates to whether or not a Transitional Executive Council (TEC) should be established at all.

If, after having had the opportunity to study all the inputs that might be forthcoming in respect of this particular issue, the committee is requested to, or deems it advisable to make a recommendation as to the desirability or otherwise of establishing a Transitional Executive Council (TEC), it will do so.

For present purposes and to facilitate the debate in the Negotiating Council, the Committee has proceeded on the assumption that such a Transitional Executive Council (TEC) will have to be established and has applied its mind to the technical aspects thereof.

2. THE TEC AND SUB-COUNCILS

Within its terms of reference, and having regard to the decisions of the MPNP, certain submissions made and documents furnished to it, including the report of Working Group 3 of Codesa, the Committee recommends that the establishment of a Transitional Executive Council (TEC) and Sub-Councils could be achieved as follows:

- 2.1 By the drafting of legislation to provide for the establishment and functioning of a TEC and sub-councils.

2.2 The proposed legislation could adopt the following scheme:

2.2.1 Establishment and Objectives

2.2.2 Composition

2.2.3 Powers

2.2.4 Sub-Councils: Establishment, Composition, Appointments and Powers

2.2.5 Jurisdiction and Disputes

2.2.6 Meetings

2.2.7 Decisions

2.2.8 Finances

2.2.9 Amendment

SYSTEMATIC AND ITEMISED SET OF PROPOSALS TO FACILITATE DISCUSSION IN THE PLANNING COMMITTEE AND NEGOTIATING COUNCIL OF THE MULTI-PARTY NEGOTIATING PROCESS

(This report has been submitted in a format resembling draft legislation)

More specifically, the Committee recommends the following on the basis of the above scheme:

1. ESTABLISHMENT AND OBJECTIVES

The Transitional Executive Council shall be constituted with executive powers to facilitate, in conjunction with existing legislative and executive structures, the transition to a democratic order in South Africa by:

- (1) creating and promoting a climate for free political participation by seeking
 - (a) to eliminate any impediments to legitimate political activities;
 - (b) to eliminate intimidation;
 - (c) to ensure that political parties and organisations will be free to canvass support from voters, to organise and hold meetings, and to have access to voters for such purposes;
 - (d) to ensure that the power of government will not be used to favour or prejudice any political party or organisation;
- (2) promoting conditions conducive to the holding of free and fair elections pursuant to decisions of the Multi-Party Negotiating Process.

2. COMPOSITION

- (1) Each of the governments, administrations and organisations which constitute the Multi-Party Negotiating Process, and which commit themselves to the achievement of the objectives set out in paragraph 1 and which undertake to be bound by and implement the decisions of the Transitional Executive Council, shall be entitled to one representative on the Council: Provided that each representative may be

represented by a substitute if he or she is unable to attend a meeting of the Council.

NOTE: The implications of this sub-paragraph are that the size of the TEC will not be greater than the number of parties involved in the MPNP, that representation is confined to one representative per party in view of the large number of parties already involved in the process, and that every party does not have to be represented on the TEC. Substitutes have been provided for in view of the high percentage of concurring votes required for decisions to be reached.

- (2) Appointments to the Transitional Executive Council, including substitutes referred to in sub-paragraph (1), shall be made by the State President by proclamation in the Government Gazette: provided that in making such appointments, the State President shall act on the recommendations of the government, administration or organisation concerned.
- (3) If a member of the Transitional Executive Council loses the confidence of the government, administration or organisation which recommended his or her appointment, the State President, on being advised thereof by such government, administration or organisation shall, by proclamation in the Government Gazette, remove such person from the Transitional Executive Council.
- (4) If a member of the Transitional Executive Council dies, resigns from office, or is removed from office in terms of sub-paragraph (3), the government, administration or organisation previously represented by such member shall be entitled to a new representative on the Transitional Executive Council, and such appointment shall be made by the State President in accordance with the provisions of sub-paragraph (2).
- (5) The conditions of service, remuneration, allowances and other benefits of members of the TEC shall be determined by the State President in consultation with the Multi-Party Negotiating Process.

NOTE: The committee has noted that the Report of Working Group 3 to Codesa 2 (par 38) suggests that members of the TEC should be full-time executives. The Committee is not persuaded that this would be necessary, and would prefer not to make a specific recommendation until the full picture of the TEC and its sub-councils has evolved. Factors that influenced the Committee include the following:

- (i) *the TEC itself may be in a better position to judge on this matter;*
 - (ii) *sub-councils might rather be engaged on a daily basis, and the TEC on a periodic basis;*
 - (iii) *while some members of the TEC will have full-time briefs as members of sub-councils, others may not. This issue can be revisited later.*
- (6) The Transitional Executive Council shall have the power to recommend that any party not presently in the Multi-Party Negotiating Process but which wishes to participate in the Transitional Executive Council structure, should be allowed to recommend to have a representative appointed to the Transitional Executive Council by the State President.

3. POWERS

- (1) The Transitional Executive Council will have the necessary powers relating to its objectives, including the overriding responsibility in respect of the sub-councils.

NOTE: *The question of powers is still to be dealt with by the Committee.*

- (2) Included in these powers will be the power -
- (a) to request information relating to its mandate ;
 - (b) to establish and receive reports from sub-councils ;
 - (c) to initiate or participate in negotiations in respect of its mandate ;
 - (d) to appoint required staff and to determine their terms of employment and remuneration ;
 - (e) to request seconded staff from the Public Services ;
 - (f) to make rules governing the convening and conduct of its meetings and those of its sub-councils ;

- (g) to appoint elect its own office bearers on a permanent or rotational basis; and
- (h) to appoint a person to investigate a matter or matters relating to its functions, and to report thereon.

4. SUB-COUNCILS: ESTABLISHMENT. COMPOSITION. APPOINTMENTS AND POWERS

- (1) The Transitional Executive Council will have the following sub-councils which will report to it in such manner and at such times as it may determine:

- (a) A sub-council on local government:

NOTE: The committee is aware of the fact that Working Group 3 of Codesa has anticipated the establishment of a sub-council on regional and local government, and will in due course advise as to whether it is of the view that, in the light of the possible establishment of a commission on regions, there is a need for this sub-council to also concern itself with regional government.

- (b) A sub-council on law and order, stability and security;
- (c) A sub-council on defence;
- (d) A sub-council on finance; and
- (e) A sub-council on foreign affairs.

- (2) Save where the terms of the delegation of powers to a sub-council by the Transitional Executive Council otherwise provide, all decisions of sub-councils will be subject to confirmation by the Transitional Executive Council, which if it decides to confirm a decision, may do so unconditionally or subject to amendments required by it.
- (3) Sub-councils will have a multi-party character, and unless the Transitional Executive Council considers that good cause exists therefor, shall consist of not more than six members.

NOTE: *The Committee interprets this clause to mean, first, that not more than two persons from the same party would serve on a sub-council, and second, that the inclusion of individuals who are not members of the TEC is not precluded. The very function of a sub-council is to be a small and effective working group, and some sub-councils may not even have to have six members, whereas others may require more.*

- (4) Appointments to sub-councils, the removal and replacement of members of sub-councils, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President by proclamation in the Government Gazette: provided that such appointment, removal, replacement, or temporary appointment will be made by the State President in accordance with the recommendations of the Transitional Executive Council.
- (5) The conditions of service, remuneration, allowances and other benefits of members of the sub-councils shall be determined by the State President in consultation with the Multi-Party Negotiating Process.

NOTE: *Members of sub-councils should serve in a full-time capacity, but the Committee is not convinced that this should be prescribed by statute. It is not anticipated that persons who are in the full-time service of any government or administration will have to be remunerated.*

- (6) The TEC may delegate to sub-councils such of its powers and functions as pertain to their areas of particular concern.

NOTE: *The TEC will have general powers to establish any sub-council in addition to those mentioned in (1) above, to assist it in performing its functions. In view of the more extensive jurisdiction of the TEC and in view of the general brief of the TEC, the Committee did not deem it necessary to rigidly prescribe a further sub-council on elections, as envisaged in the Codesa report.*

- (7) For the purposes of carrying out their functions, in respect of their areas of particular concern, the sub-councils shall have the same powers, including the right to request and be furnished with information, and to have access to records, as the Transitional Executive Council would have had, if such functions had been carried out by it.

JURISDICTION AND DISPUTES

- (1) Notwithstanding the provisions of any other law, the Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions, conferred on them by the enabling legislation, in the Republic of South Africa (including the Self-governing Territories), Transkei, Bophuthatswana, Venda and Ciskei.
- (2)
 - (a) All governments and administrations will keep the Transitional Executive Council informed of, and will provide it with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in paragraph 1.
 - (b) If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations or regulations, will have an adverse impact upon any of the purposes referred to in paragraph 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.
- (3)
 - (a) All governments, administrations and participants will keep the Transitional Executive Council informed and the Transitional Executive Council will be entitled to ask for and to receive from them, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in paragraph 1.
 - (b) If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an adverse impact upon the purposes referred to in paragraph 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.
- (4) All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them by the Transitional Executive Council in terms of sub-paragraphs (2)(b) or (3)(b), and all decisions made in terms of the enabling legislation by the Transitional Executive Council, or a

(5) Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, or whether any proposed action or legislation will have an adverse impact on any of the objectives referred to in paragraph 1, such difference may be referred by any government, administration or participant to the Independent Election Commission for its decision.

- (a) the disputed issue:
- (b) the views expressed thereon by the members of the Transitional Executive Council and by the complainant government, administration or participant : and
- (c) any other matter considered by the Independent Election Commission to be relevant to its decision

(7) Any decision of the Independent Election Commission made in respect of any matter referred to it in terms of the enabling legislation shall be final and binding and not subject to appeal or review in any court.

62

- (3) A request to the Transitional Executive Council or to a sub-council thereof to procure information pursuant to the powers which it has in terms of the enabling legislation, which is supported by at least one-third of the members of the Transitional Executive Council, shall be given effect to by the Transitional Executive Council or the sub-council, as the case may be, and the information gathered in consequence of such request, shall unless otherwise provided for in the enabling legislation, be made available to all members of the Transitional Executive Council.

NOTE: The question of restricted access to certain categories of information has still to be discussed. In this regard the Committee does not want to anticipate the outcome of this discussion.

6 MEETINGS

- (1) The notice in the Government Gazette announcing the appointment of the first members of the Transitional Executive Council, shall also specify the date and place of its first meeting, which shall in any event not be later than fourteen days after the publication of the above-mentioned Gazette.
- (2) The Transitional Executive Council shall thereafter meet as often as it deems necessary.
- (3) A person appointed by the Multi-Party Negotiating Process shall preside at the first meeting of the Transitional Executive Council. At this meeting the Transitional Executive Council shall appoint a secretary, who shall be a full-time official of the Council, and who shall decide upon the procedures to be followed in convening and conducting its meetings until rules governing such procedures have been made in terms of paragraph 3(2)(f).
- (4) The secretary shall-
 - (a) carry out all duties assigned to him or her by the Transitional Executive Council;
 - (b) convene special meetings of the Transitional Executive Council if required to do so in writing by not less than one third of its members;

- (c) Fix a time, date and venue for any meeting called in terms of sub-paragraph (b) which, save in the case of urgency, shall be convened on not less than three days notice to the members of the Transitional Executive Council: provided that an urgent meeting may be called on short notice if the calling of the meeting on short notice is ratified by the Transitional Executive Council at such meeting.
- (5) Fifty percent of the members of the Transitional Executive Council shall constitute a quorum for any meeting: provided that this provision shall not detract from the provisions of paragraph 7.
- (6) Members of sub-councils and ministers of governments and administrations whose departments may be affected by the functioning of the Transitional Executive Council may attend meetings of the Council by invitation and speak on matters affecting their sub-councils or departments and shall attend when matters relating to their sub-councils or departments are being discussed.
- (7) The Transitional Executive Council may invite any other person to attend its meetings, and at its discretion allow any person present at its meetings to speak.
- (8) Members of governments and administrations whose departments may be affected by the functioning of a sub-council and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments and shall attend by invitation if a matter affecting the functioning of their departments is being considered.

7 DECISIONS

- (1) Decisions of the Transitional Executive Council shall be taken only by the members thereof, and persons who are present at meetings, but are not members of the Transitional Executive Council, shall have no right to vote on any decision.
- (2) The Transitional Executive Council and its sub-councils will endeavour to take decisions on a consensus basis.

- (3) If, notwithstanding attempts to reach consensus, such consensus has not been achieved, a decision which has the support of at least 80% of the members of the Transitional Executive Council shall be deemed to be a decision of the Council.
- (4) If any government, administration or participant in the Transitional Executive Council wishes to refer a decision made in terms of sub-paragraph (3) to the Independent Election Commission to be dealt with in accordance with the provisions of the enabling legislation, it shall refer such matter in writing to the Commission not later than three days after such decision has been made.
- (5) If a decision taken in terms of sub-paragraph (3), is not referred to the Independent Election Commission in terms of sub-paragraph (4) . . . shall, after the expiry of the period of three days, become final and binding, and shall not be subject to appeal or review in any court.
- (6) If any member of the Council or his or her substitute fails to attend two consecutive meetings of the Council, at any subsequent meeting at which such member or substitute fails to attend, he or she shall not be counted as a member for the purposes of sub-paragraph (1), (2) and (3).
- (7) The provisions of this paragraph shall apply mutatis mutandis to sub-councils.

8 FINANCES

NOTE: The method of financing the TEC and sub-councils will require further investigation and the Committee will report in due course on such further investigation.

9 AMENDMENT

- (1) The State President, in consultation with the Transitional Executive Council, shall be entitled by way of proclamation in the Government Gazette, and for the purposes referred to in paragraph 1, to repeal or amend any of the provisions of the enabling legislation.
- (2) Such proclamation shall have the force and effect of an Act of Parliament.

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THIS REPORT IS EMBARGOED UNTIL 12H00
ON FRIDAY 28 MAY 1993

**THIRD REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL / 27 MAY 1993**

1. INTRODUCTION

Since the submission of its previous two reports, the Technical Committee has begun to identify the powers and functions which, in its opinion, should be exercised through the Transitional Executive Council's specialist sub-councils. In the time at its disposal the Committee was able to deal with the powers and functions of the sub-councils on foreign affairs and finance.

Once the Negotiating Council has had occasion to express itself on the proposals that have been and will be made regarding specific powers and functions, the proposals will be appropriately integrated with the rest of the Committee's proposals in its first report.

2. POWERS AND FUNCTIONS

Based on submissions received, the Technical Committee proposes the following terms of reference in relation to foreign affairs and finance. This section of the report has been submitted in a format resembling draft legislation.

2.1 POWERS AND FUNCTIONS IN RELATION TO FOREIGN AFFAIRS

The Transitional Executive Council will, within its powers of review and other general powers, through its sub-council on foreign affairs, in regard to foreign policy, liaise, monitor, make recommendations and, where it deems necessary, assist with a view to -

- (i) achieving progressively the broadest possible consensus on matters affecting the country's international interests, particularly its long-term interests;

- (ii) securing appropriate agreements with the international community regarding the contribution this community may make to the peaceful transition to democracy;
- (iii) securing such international assistance as the sub-council deems necessary to address the socio-economic needs of the people as a whole and not one or other political grouping;
- (iv) ensuring that foreign policy initiatives benefit the country as a whole and not one or other political grouping;
- (v) promoting such international relations including trade, finance, culture and sport relations, which in the opinion of the sub-council will benefit the country as a whole.'

NOTE: *Access to information by the TEC and its sub-councils will be dealt with separately*

2.2 POWERS AND FUNCTIONS IN RELATION TO FINANCE

- (1) The Transitional Executive Council will, within the scope of its objectives, its powers of review and other general powers, have the following powers to be exercised through its sub-council on finance:
 - (i) to acquaint itself with recent economic developments, economic policy objectives and targets for the medium-term and more particularly, for the ensuing fiscal year (1994/1995);
 - (ii) to be represented on all function and budgeting committees with a view to ensuring that funds are not applied in a manner favouring one or other political grouping participating in the election of a democratic government;
 - (iii) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the sub-council to perform its functions in terms of the empowering legislation;
 - (iv) to approve any measures designed to rationalise treasury functions in the process of realignment of government structures during transition;
 - (v) to make recommendations to the relevant departments concerning the

TECHNICAL OBSERVERS/TECHNICAL REPORTERS
22 MAY 1994

privatisation or tendering out of functions currently performed by relevant departments of state;

- (vi) to request any auditor-general to investigate allegations of general or specific corruption and inefficiency, and to request such auditor-general to report to the sub-council upon completion of such investigation;
 - (vii) to review the contents of existing public service disciplinary codes and to request disciplinary investigations into the conduct of public servants who fail to perform their tasks within guidelines governing financial discipline and authorised or proper expenditure; and
 - (viii) to make recommendations regarding the prevention of wasteful expenditure.
- (2) In the performance of its functions and exercise of its powers, the sub-council shall -
- (i) have access to all relevant information available from departments of states (including the TBVC states and self-governing territories), the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum;
 - (ii) be entitled to conduct such research as it deems necessary.
- (3) The views of the sub-council shall, in the course of the preparation of the 1994/1995 national budgets, be taken into account, and specifically there shall be consultation on -
- (i) the overall level of state expenditure;
 - (ii) the broad composition of security, social, economic and general government expenditure, broken down into capital and recurrent expenditure;
 - (iii) the level and composition of any taxes to be collected;
 - (iv) the financing of budget deficits; and
 - (v) the contingent liabilities of government.

NOTE:

The Technical Committee would welcome any inputs regarding the feasibility of the recommendations in this sub-paragraph.

TECHNICAL COMMITTEE/TECHNICAL REPORT/REVISED
17 MAY 1993

- (4) The sub-council shall be informed of the creation of new posts in the public services, the filling of vacant-posts above the level of director and any deviation from the rules and regulations applicable to retirement.
- (5) The sub-council shall be provided, on a continuous basis, with full particulars, including the intended purposes, concerning any new international financial agreement which is being negotiated with any foreign government or international agency.'

NOTES:

1. *Many of the powers provided for here are intended to create transparency in financial government and administration; it should be noted that the Transitional Executive Council's and its sub-councils' power to act is provided for elsewhere (eg paragraph 5 of the draft 'bill' in the first report).*
2. *The question of secrecy provisions in existing legislation and existing secret accounts has arisen. This matter will be dealt with in a separate provision governing access to information.*

**FIFTH REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL**

FIFTH DRAFT

9 JUNE 1993

1. INTRODUCTION

Since the submission of the four previous reports, the Technical Committee has identified the powers and functions which, in its opinion, should be exercised through the Transitional Executive Council's specialist sub-council on Regional and Local Government.

Once the Negotiating Council has had the occasion to express itself on the proposals that have been and will be made regarding specific powers and functions, the proposals will be appropriately integrated with the rest of the Committee's proposals in its previous reports.

2. POWERS AND FUNCTIONS

Based on submissions received, the Technical Committee proposes the following terms of reference in relation to the sub-council on Regional and Local Government. This section of the report has been submitted in a format resembling draft legislation.

**2.1 POWERS AND FUNCTIONS IN RELATION TO REGIONAL AND
LOCAL GOVERNMENT**

'The Transitional Executive Council will, within the scope of its objectives, its powers of review and other general powers, have the following powers to be exercised through its sub-council on Regional and Local Government:

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- (i) to acquaint itself with and monitor recent developments, policy objectives and targets in relation to regional and local government for the period of transition;
- (ii) in regard to regional and local government matters administered by the South African government, provincial administrations, governments of self-governing territories, the TBVC states, regional and local governments, to propose the amendment, repeal or enactment of legislation, including subordinate legislation;
- (iii) to promote the objectives in paragraph 1 generally, and in particular in regard to regional and local government elections, including educating the public on the electoral processes;
- (iv) to liaise with all organisations and/or structures relevant to its functions and powers, including the Local Government Negotiating Forum (LGNF), the provincial and other regional governments, the Electrification Forum, the Peace Secretariat, demarcation boards or commissions, the Independent Electoral Commission and the Housing Forum;
- (v) to be advised of and to initiate proposals regarding regional and local government budgets, restructuring and rationalisation of regional and local government administrations, transitional measures, interim local government structures, demarcation, powers and functions and shall consult with the Local Government Negotiating Forum (LGNF) regarding such proposals;
- (vi) to set up committees to assist it in the exercise of its powers and functions;
- (vii) to monitor, make recommendations and render assistance, where practical, regarding the collapse of services and shortfall of finances in local government;
- (viii) to monitor the disposal of provincial, regional and local government assets;
- (ix) in regard to any regional, provincial or local government, to exercise the powers provided for in paragraph 5(2)(b) and 5(3)(b), subject to the right of appeal provided for in paragraph

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5(4) and 5(5).’ (First Report of the Technical Committee on the Transitional Executive Council, dated 13 May 1993. See Addendum A).

NOTE: *The executive power regarding the repeal or amendment of discriminatory legislation is being discussed by the Technical Committee on the Repeal of Discriminatory Legislation. Executive power regarding the repeal or amendment of legislation (including subordinate legislation) affecting the electoral process is being dealt with by the Technical Committee on the Independent Electoral Commission. The Committee is awaiting the final reports of these technical committees.*

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ADDENDUM A

RELEVANT EXTRACT FROM THE FIRST REPORT OF THE TECHNICAL COMMITTEE ON THE TRANSITIONAL EXECUTIVE COUNCIL. DATED 13 MAY 1993.

5. JURISDICTION AND DISPUTES

- (1) Notwithstanding the provisions of any other law, the Transitional Executive Council and its sub-councils shall be entitled to exercise the powers and functions, conferred on them by the enabling legislation, in the Republic of South Africa (including the Self-governing Territories), Transkei, Bophuthatswana, Venda and Ciskei.
- (2)
 - (a) All governments and administrations will keep the Transitional Executive Council informed of, and will provide it with copies of all proposed legislation, including proclamations, bills and regulations of governments or administrations that may be relevant to the purposes referred to in paragraph 1.
 - (b) *If the Transitional Executive Council has reason to believe that any proposed legislation, including bills, ordinances, proclamations or regulations, will have an adverse impact upon any of the purposes referred to in paragraph 1, it may, after taking into account the necessity for such legislation, require the government or administration concerned not to proceed therewith.*
- (3)
 - (a) All governments, administrations and participants will keep the Transitional Executive Council informed and the Transitional Executive Council will be entitled to ask for and to receive from them, information in regard to proposed executive actions by any government or administration, or contemplated actions on the part of any other participant in the Transitional Executive Council, that may have an impact on any of the matters referred to in paragraph 1.
 - (b) *If the Transitional Executive Council has reason to believe that the implementation of such executive or other action will have an*

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adverse impact upon the purposes referred to in paragraph 1 it may, after taking into account the necessity for such action as far as such government, administration or participant is concerned, require the government, administration or participant not to proceed therewith.

- (4) *All participants in the Transitional Executive Council, and all governments and administrations will be required to comply with requests made to them by the Transitional Executive Council in terms of sub-paragraphs (2)(b) or (3)(b), and all decisions made in terms of the enabling legislation by the Transitional Executive Council, or a sub-council having the authority to do so, will be binding on and will be implemented by such governments, administrations and participants: Provided that if in relation to a requirement of the Transitional Executive Council made in terms of sub-paragraphs (2)(b) or (3)(b), the government, administration or other participant concerned contends that the necessity for the proposed legislation or executive or other action outweighs its adverse impact, it may refer such issue to the Independent Election Commission for a decision thereon, and may only proceed with such legislation, executive or other action if the Independent Election Commission upholds its contention.*
- (5) *Any differences as to whether or not in any particular instance a matter falls within the scope of the powers of the Transitional Executive Council, or one of its sub-councils, or whether any proposed action or legislation will have an adverse impact on any of the objectives referred to in paragraph 1, such difference may be referred by any government, administration or participant to the Independent Electoral Commission for its decision.*

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**SIXTH REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL**

FIFTH DRAFT

11 JUNE 1993

1. INTRODUCTION

Since the submission of the five previous reports, the Technical Committee has identified the powers and functions which, in its opinion, should be exercised through the Transitional Executive Council's specialist sub-council on Law and Order, Stability and Security.

Once the Negotiating Council has had the occasion to express itself on the proposals that have been and will be made regarding specific powers and functions, the proposals will be appropriately integrated with the rest of the Committee's proposals in its previous reports.

2. POWERS AND FUNCTIONS

Based on submissions received, the Technical Committee proposes the following terms of reference in relation to the sub-council on Law and Order, Stability and Security. This section of the report has been submitted in a format resembling draft legislation.

**2.1 POWERS AND FUNCTIONS IN RELATION TO LAW AND ORDER,
STABILITY AND SECURITY**

1. The Transitional Executive Council will, within the scope of its objectives, its powers of review and other general powers, have the following powers to be exercised through its sub-council on Law and Order, Stability and Security:

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- (a) to establish a national inspectorate comprised of policemen and policewomen and such other persons as the sub-council may choose to appoint, which inspectorate shall be tasked with investigating and monitoring all police agencies and liaising with inspectorates of all relevant agencies to ensure the promotion of the objectives set out in paragraph 1;

NOTE: *The possibility of subjecting the activities of other organisations to scrutiny by the inspectorate can only be considered once the Technical Committee has examined the terms of reference of the sub-council on Defence with regard to armed formations, and has had an opportunity of perusing the code of conduct for political parties envisaged by the Technical Committee on the Independent Electoral Commission.*

The appropriate policing agencies will in any event have a general brief in respect of the enforcement of all legislation emerging from the MPNP, including the codes of conduct and regulations issued by the Independent Electoral Commission and the Government in terms of the Transitional Executive Council framework.

- (b) to investigate any matter, or order the investigation by the national inspectorate of any matter, which relates to its objectives;
- (c) for purposes of the immediately preceding paragraph the sub-council and the National Inspectorate shall have authority to interview such persons as they may deem necessary, have access to such documents as they may require and have reasonable access to Police facilities;
- (d) to establish, in consultation with the appropriate Minister or Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control

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of a civilian so as to allow for the receipt and investigation of complaints lodged by members of the public concerning alleged Police misconduct;

NOTE: *Any such mechanism which is to be established must take into account, and possibly seek to amalgamate/rationalise, existing investigative and complaints machinery, including the Police Reporting Officer (paragraph 3.2.4 of the National Peace Accord), the Goldstone Commission's investigative arm, the proposed mechanisms contained in the Security Forces Board of Inquiry Bill, the South African Police's Complaints Investigation Unit (referred to in paragraph 3.2.4.1 of the National Peace Accord) and whatever other mechanisms exist in the TBVC and self-governing States.*

- (e) to request and have access to any information or crime intelligence reports compiled by any policing agency;

NOTE: *The Technical Committee has not considered the question of national intelligence and no submissions have been made in this regard. The Committee does not consider it to be included in the Law and Order sub-council's brief.*

- (f) to establish any committee or sub-committee comprised of local and/or international experts, to evaluate or monitor any action, conduct or reform which relates to the objectives set out in paragraph 1;
- (g) to call for a report on and evaluate the impact of any steps taken by policing agencies to prevent political violence and specifically to monitor all such steps as any policing agency is required to take in terms of the National Peace Accord and relevant legislation;

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- (h) in addition to the power to recommend such steps as the sub-council deems necessary to improve the effectiveness of and community co-operation with policing agencies in the execution of its duties, to recommend to the Transitional Executive Council the adoption of such measures by it regarding steps to be taken by the participants in the Transitional Executive Council in this regard;
- (i) to receive all recommendations of the Police Board and be empowered to request the Police Board to conduct inquiries and to make recommendations with respect to any policing policy;

NOTE: *The Technical Committee is considering recommending the creation of an Independent Peace-Keeping Force and in the event of it recommending the establishment of such a force it will also make recommendations regarding its conduct, deployment, command structure and the relationship between it and the Transitional Executive Council.*

- (j) to issue recommendations regarding effective and co-ordinated control of policing agencies of members of the Transitional Executive Council;

NOTE: *The Technical Committee would regard the existence of eleven autonomous policing agencies as a matter which would complicate the work of the sub-council. A temporary single or joint co-ordinated command structure, however it is composed, might provide the solution.*

The Committee cannot specify its format since it would depend on the outcome of discussions in the MPNP, particularly in regard to the future of the TBVC and self-governing States.

The Committee consequently requires further guidance from the MPNP to enable it to make further proposals in this regard.

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- (k) to solicit minutes of and attend any relevant meeting of the policing agencies involved;
- (l) to formulate a statement of values and objectives for the promotion of law, order, peace, stability and security for policing agencies and para-military organisations and/or to introduce or amend a code of conduct which may be made binding on any policing agency, all participants in the Transitional Executive Council and with the consent of signatories of the National Peace Accord who are not involved in the Transitional Executive Council, on such signatories as well;
- (m) to require the investigation of any alleged activity or action by a member of a policing agency which, if proven, would have the effect of having undermined the objectives of the Transitional Executive Council and, in consultation with the appropriate Minister, where necessary require the suspension, with full pay, of such member pending the outcome of the investigation;
- (n) to liaise with the Independent Electoral Commission and the National Peace Secretariat concerning matters relevant to its objectives.

NOTE: *The Technical Committee is of the view that since the sub-council will conceivably be party to decisions for which the Transitional Executive Council should in the final analysis accept joint responsibility, it should also in appropriate instances accept vicarious civil liability.*

The Committee is currently considering whether a provision in this respect should apply only in respect of the activities of this sub-council or whether it should apply across the board.

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2. A Minister or Ministers responsible for policing agencies who have the authority to declare a state of emergency or an unrest area and promulgate emergency regulations, shall do so in consultation with the sub-council, provided that where the circumstances are so urgent and pressing that he is unable to consult the sub-council before making such declaration, he may make such declaration, provided further that if subsequently he and the sub-council are unable to reach consensus as to the desirability or otherwise of the declaration either party may require a sub-committee composed from the civilian membership of the Police Board to determine the matter.

NOTES: 1 *For present purposes the powers of the State President or appropriate functionary in this regard have not been addressed and the Committee has deferred this matter until a later report.*

- 2 *It should be noted that the report departs from the usual adjudicatory mechanism used so far, eg. the Independent Electoral Commission. The committee believes that this body, nominated by the National Peace committee, could constitute a more effective and expeditious method of reaching a determination.*

3. To the extent that it may impact upon the objectives set out in paragraph 1, a decision to enter into agreements of the nature contemplated in section 34G of the South African Police Act, 1958, shall be taken by the responsible Minister in consultation with the sub-council.
4. A Minister exercising the powers in terms of section 3 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in any of the Police Acts of the TBVC and the self-governing States, to the extent that it applies to officers of the rank of Brigadier or above, shall act in consultation with the sub-council, which may propose such action itself, provided that if no agreement can be reached either party can refer the matter to the sub-committee of the Police Board for determination.

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5. A Minister exercising the powers in terms of section 33 of the Police Act, 1958, or the appropriate functionary exercising corresponding powers provided for in any of the Police Acts of the TBVC and self-governing States, to issue, amend or repeal regulations governing relevant aspects of police conduct, functioning, structures and restructuring and conduct in the course of public order policing, shall act in consultation with the sub-council, which may propose such action itself, provided that if no agreement can be reached either party can refer the matter to the sub-committee of the Police Board for determination.

6. In regard to any steps which a policing agency intends to take which may directly affect the Transitional Executive Council's objectives, such agency shall inform the sub-council whose members shall, where appropriate, be bound by the requirements of confidentiality.

Presentation.

Process. Foot in door.

Interpret.