

- (h) to monitor the disposal of provincial, regional and local government assets; and
- (i) in regard to any regional, provincial or local government, to exercise the powers provided for in section 14(1)(b) and 14(2)(b), subject to the right of appeal provided for in section 16(1) and 16(2).

Powers and functions in regard to Law and Order, Stability and Security

- 12B. (1)** The Council shall, within the scope of its objects, its powers of review and other general powers, have the following powers to be exercised through its Subcouncil on Law and Order, Stability and Security -
- (a) to establish a national inspectorate comprised of policemen and policewomen and such other persons as the Subcouncil 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 objects set out in section 3;
 - (b) to investigate any matter, or order the investigation by the national inspectorate of any matter, which relates to the Council's objects and for the purposes hereof the Subcouncil and the national inspectorate shall have the 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;
 - (c) to establish, in consultation with the appropriate Minister or Ministers responsible for the various policing agencies, a national independent complaints mechanism under the control of a civilian so as to allow for the receipt and investigation of complaints lodged by members of the public concerning alleged police misconduct;
 - (d) to request and have access to any information or crime intelligence reports compiled by any policing agency;
 - (e) to establish any committee or sub-committee comprised of local and/or international experts, to evaluate or monitor any police action, conduct or reform which relates to the objects set out in section 3;
 - (f) 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;

- (g) in addition to the power to recommend such steps as the Subcouncil deems necessary to improve the effectiveness of and community co-operation with policing agencies in the execution of its duties, to recommend to the Council the adoption of such measures by it regarding steps to be taken by the participants in the Council in this regard;
 - (h) to receive all recommendations of the Police Board and to request the Police Board to conduct inquiries and to make recommendations with respect to any policing policy;
 - (i) to issue recommendations regarding effective and co-ordinated control of policing agencies of participants in the Council;
 - (j) to solicit minutes of and attend any relevant meeting of the policing agencies involved;
 - (k) to formulate a statement of values and objects for the promotion of law, order, peace, stability and security for policing agencies and paramilitary organisations and/or to introduce or amend a code of conduct which may be made binding on any policing agency, all participants in the Council and with the consent of signatories of the National Peace Accord who are not involved in the Council, on such signatories as well;
 - (l) to require the investigation of any alleged activity or action by a member of a policing agency which, if proven, had or would have the effect of having undermined or undermining the objects of the 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; and
 - (m) to liaise with the Independent Electoral Commission and the National Peace Secretariat concerning matters relevant to its objects.
- (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 Subcouncil: Provided that where the circumstances are so urgent and pressing that he or she is unable to consult with the Subcouncil before making such declaration, he or she may make such declaration: Provided further that if he or she and the Subcouncil are thereafter 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, which determination shall be final and binding and be given effect to.

- (3) The sub-committee referred to in subsection (2) shall comprise the Chairperson and Vice-Chairperson of the Police Board and one other member elected by the members of the Board.
- (4) To the extent that it may impact upon the objects as contemplated in section 3, a decision to enter into agreements of the nature contemplated in section 34G of the South African Police Act, 1958 (Act No 7 of 1958), shall be taken by the responsible Minister in consultation with the Subcouncil.
- (5) A Minister, exercising the powers in terms of section 3 of the Police Act, 1958, (Act No. 7 of 1958) or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republics of Transkei, Bophuthatswana, Venda and Ciskei and the self-governing territories, to the extent that it applies to officers of the rank of brigadier or above, shall act in consultation with the Subcouncil which may propose such action itself: Provided that if no agreement is reached, either party may refer the matter to the sub-committee of the Police Board for determination, which determination shall be final and binding and be given effect to.
- (6) To the extent that it may impact upon the objectives as contemplated in section 3, a Minister, exercising the powers in terms of section 33 of the Police Act, 1958, (Act No. 7 of 1958) or the appropriate functionary exercising corresponding powers provided for in corresponding legislation of the Republics of Transkei, Bophuthatswana, Venda and Ciskei and self-governing territories, to issue, amend or repeal regulations governing relevant aspects of police conduct, functioning, structures and restructuring in the course of public order policing, shall act in consultation with the Subcouncil, which may propose such action itself: Provided that if no agreement is reached, either party may refer the matter to the sub-committee of the Police Board for determination, which determination shall be final and binding and be given effect to.
- (7) In regard to any steps which a policing agency intends to take which may directly affect the Council's objects, such agency shall inform the Subcouncil whose members shall, where appropriate, be bound by the requirements of confidentiality.

Powers and functions in regard to Defence

- 12C. **NOTE:** *The Technical Committee is still addressing the powers and functions with regard to the Subcouncil on Defence.*

Powers and functions in regard to Finance

- 12D. (1) The Council shall, within the scope of its objects, its powers of review and other general powers, have the following powers to be exercised through its Subcouncil on Finance -
- (a) 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);
 - (b) 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;
 - (c) to receive such reports, and in addition such information relating to fiscal transfers, as are reasonably necessary for the Subcouncil to perform its functions in terms of this Act;
 - (d) to approve any measures designed to rationalise Treasury functions in the process of realignment of government structures during the transition;
 - (e) to make recommendations to the relevant departments concerning the privatisation or tendering out of functions currently performed by relevant departments of state;
 - (f) to require an investigation into allegations of general or specific corruption and inefficiency;
 - (g) 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
 - (i) to make recommendations regarding the prevention of wasteful expenditure.

- (2) In the performance of its functions and exercise of its powers, the Subcouncil shall -
 - (a) have access to all relevant information available from any government department, administration, the South African Reserve Bank, the Central Economic Advisory Service, the Tax Advisory Committee and the National Economic Forum; and
 - (b) be entitled to conduct such research as it deems necessary.
- (3) The views of the Subcouncil shall, in the course of the preparation of the 1994/1995 government budgets, be taken into account, and there shall be consultation on -
 - (a) the overall level of state expenditure;
 - (b) the broad composition of security, social, economic and general government expenditure, broken down into capital and recurrent expenditure;
 - (c) the level and composition of any taxes to be collected;
 - (d) the financing of budget deficits; and
 - (e) the contingent liabilities of government.
- (4) The Subcouncil shall be informed of the creation of new posts in the Public Service, the filling of vacant posts above the level of director and any deviation from the rules and regulations applicable to retirement.
- (5) The Subcouncil 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.

Powers and Functions in regard to Foreign Affairs

- 12E. The Council shall, within its powers of review and other general powers, through its Subcouncil on Foreign Affairs, in regard to foreign policy, liaise, monitor, make recommendations and, where it deems necessary, assist with a view to -

- (a) achieving progressively the broadest possible consensus on matters affecting South Africa's international interests, particularly its long-term interests;
- (b) securing appropriate agreements with the international community regarding the contribution this community may make to the peaceful transition to democracy;
- (c) securing such international assistance as the Subcouncil deems necessary to address the socio-economic needs of the people as a whole and not one or other political grouping;
- (d) ensuring that foreign policy initiatives benefit the country as a whole and not one or other political grouping; and
- (e) promoting such international relations including trade, finance, culture and sport relations, which in the opinion of the Subcouncil will benefit the country as a whole.

Powers and functions in regard to the Status of Women

12F. The Council shall, within the scope of its objects, its powers of review and other general powers, have the following powers to be exercised through its Subcouncil on the Status of Women -

- (1) In regard to the status of women, at national, regional and local levels -
 - (a) to acquaint itself with and advise all Subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, governments, relevant departments, local government including traditional authorities and policy making forums;
 - (b) to exercise the powers provided for in section 14(1)(b), propose amendments to existing or proposed legislation and facilitate the implementation of such legislation;
 - (c) to exercise the powers provided for in section 14(2)(b), be informed of and make formal and substantive representation on all such actions;
 - (d) to liaise with all employee and employer organisations, non-governmental organisations, all groups of women (in particular rural women and women under customary unions) and any other relevant organisations and/or structures;

- (e) to investigate any matter which affects the status of women for which purpose it shall, inter alia, have the authority to interview officials and have access to such documents as it may require;
- (f) to commission research concerning the status of women;
- (g) to establish any committee to assist in the exercise of its powers and functions;
- (h) to require that positive practical steps be taken to enable all women to exercise fully their right to -
 - (i) vote in all elections and public referenda, be eligible for election to all publically elected bodies and freely participate in the political and electoral processes, including non-governmental organisations concerned with the public and political life of the country;
 - (ii) participate in the formulation and implementation of policy of any governmental agency including the Council;
 - (iii) non-discrimination in the appointment, participation, election and promotion in all structures and at all levels of government; and
 - (iv) freedom from intimidation and harassment.
- (j) to ensure that the Subcouncils, the Independent Electoral Commission, the Independent Media Commission, the Independent Broadcasting Authority, the National Peacekeeping Secretariat, policy-making forums, all other commissions and existing or future educational programmes promote the free and equal participation of women in the electoral process.
- (k) to submit proposals to the Subcouncil on Finance and the relevant government departments in regard to the 1994/1995 budget on the allocation of resources for the promotion of the status of women and gender issues generally, the social and economic welfare of women and programmes and mechanisms to promote the participation of women at all levels of government.

Application of Act

13. Notwithstanding the provisions of the Self-governing Territories Constitution Act, 1971 (Act No 21 of 1971), or any other law, this Act and any amendment thereof shall also apply in all self-governing territories as defined in section 38(1) of the said Act.

Duties of governments and political parties

14. (1) (a) Each government which participates in the Council, shall keep the Council informed of and shall provide it with copies of all of its proposed legislation, including bills, proclamations, ordinances and regulations which have a bearing on the objects of the Council.
- (b) If the Council has reason to believe that any proposed legislation, including bills, proclamations, ordinances and regulations, may have an adverse impact on the attainment of the objects of the Council as contemplated in section 3, it may, after taking into account the necessity for such legislation, direct the government concerned not to proceed with such legislation, and the government concerned shall, subject to the provisions of section 16, comply therewith.
- (2) (a) Each government or political party which participates in the Council and any other political party shall keep the Council informed and the Council shall be entitled to request and receive, information in regard to its proposed executive actions or any other actions, as the case may be, which may have a bearing on the objects of the Council.
- (b) If the Council has reason to believe that such an executive or other action may have an adverse impact on the attainment of the objects of the Council as contemplated in section 3, it may, after taking into account the necessity for such action, direct the government or political party concerned not to proceed with such action, and the government or political party concerned shall, subject to the provisions of section 16, comply therewith.
- (3) Each government or political party which participates in the Council and any other political party shall comply with requests made to them by and decisions of the Council or a Subcouncil having the jurisdiction to do so, which requests and decisions shall, subject to the provisions of section 16, be final and binding.

Duties of Council and Subcouncils

15. The Council or a Subcouncil shall comply with a request by a member of the Council or a Subcouncil to the Council or Subcouncil concerned to procure information in terms of this Act if that request has the support of at least one-third of the members of the Council or Subcouncil, as the case may be, and the information so procured, shall, subject to the provisions of this Act, be made available to all members of the Council and the Subcouncil concerned.

NOTE: *The question of restricted access to certain categories of information has still to be discussed. Such a discussion will inter alia deal with confidentiality, special accounts and the method of compelling delivery of information if required.*

Resolution of disputes

16. (1) If any government or political party contends, in relation to a directive issued by the Council in terms of section 14(1)(b) or (2)(b), that the necessity for the proposed legislation, executive or other action, as the case may be, outweighs the adverse impact it may have on the attainment of the objects of the Council, it may refer such issue to the Independent Electoral Commission for its decision and it may only proceed with such legislation, executive or other action, as the case may be, if the Independent Electoral Commission upholds its contention.
- (2) If there is any disagreement as to whether a matter falls within the scope of the powers of the Council or one of its Subcouncils, or as to whether any proposed legislation or executive or other action may have an adverse impact on the attainment of the objects of the Council, such disagreement may be referred by any government or political party to the Independent Electoral Commission for its decision.
- (3) If any issue is referred by any government or political party in terms of this Act to the Independent Electoral Commission for decision, the said Commission shall as soon as possible, and after consideration of -
- (a) the issue in dispute;
 - (b) the views expressed thereon by the members of the Council and by the complainant government or political party; and
 - (c) any other matter considered by the Independent Electoral Commission to be relevant for its decision;

give its decision on the issue so referred to it.

- (4) Any decision made by the said Commission in respect of any matter referred to it in terms of this Act shall be final and binding and shall not be subject to appeal or review in any court of law.
- (5) If any government or political party wishes to refer a request by or a decision of the Council in terms of this Act to the Independent Electoral Commission for its decision, it shall refer such matter in writing to the said Commission not later than three days after such decision has been made.
- (6) A request by or a decision of the Council which is not referred to the Independent Electoral Commission within the prescribed period as contemplated in subsection (5), shall become final and binding and shall not be subject to appeal or review in any court of law.

NOTE: *A final recommendation on the adjudicatory function of the Independent Electoral Commission will only be possible after consideration of the report and recommendations of the Technical Committee on the Independent Electoral Commission.*

The Technical Committee will also have to look at harmonising the various adjudicatory mechanisms that have been proposed.

Meetings of Council



17. (1) The first meeting of the Council shall take place on the date and at the place which shall be specified by the State President in the proclamation referred to in section 4(1) in terms of which the first members of the Council are appointed, which date shall not be later than fourteen days after the publication of the said proclamation.
- (2) The Council shall, after its first meeting, meet at such times and places as it may determine.
- (3) The Council shall elect a chairperson from among its members at its first meeting, at which a person designated by the Multi-Party Negotiating Process shall preside until a chairperson is elected.
- (4) (a) The Council shall elect a secretary from among its members at its first meeting, who shall be a full-time member of the Council and who shall, until the rules governing the convening of and procedure at meetings are made in terms of section 7(g), determine the manner of convening meetings and the procedure thereat.

- (b) The secretary shall -
- (i) carry out all duties assigned to that office by the Council;
 - (ii) convene special meetings of the Council if requested thereto in writing by not less than one-third of its members; and
 - (iii) determine a time, date and place for any meeting called in terms of sub-paragraph (ii) which, save in the case of urgency, shall be convened with at least three days' notice to members of the Council: Provided that an urgent meeting may be convened without the said notice if such convening is ratified by the Council at that meeting.
- (5) The presence of at least one-half of the members of the Council shall constitute a quorum for any meeting.
- (6) Members of Subcouncils and ministers of governments and heads of administrations whose Subcouncils or departments may be affected by decisions of the Council may attend meetings of the Council on invitation to speak on matters affecting their Subcouncils or departments and shall attend when matters relating to their Subcouncils or departments are being discussed, but shall not be entitled to vote.
- (7) Any person may, on the invitation of the Council, attend a meeting of the Council and may, in the discretion of the Council, address it, but shall not be entitled to vote.
- (8) Representatives of governments and administrations whose departments may be affected by the decisions of a Subcouncil and who are not represented on that subcouncil, may attend meetings of that Subcouncil and address it on matters affecting the functioning of their departments and shall attend if requested thereto if a matter affecting the functioning of their departments is being considered, but shall not be entitled to vote.

Decisions

18. (1) (a) All decisions of the Council shall be made by members thereof alone and shall, as far as possible, be made on a basis of consensus; and
- (b) In the event of there not being total consensus in respect of any decision, a decision which has the support of at least 80% (eighty percent) of the members of the Council, shall be deemed to be a decision of the Council.

- (2) If any member of the Council or a substitute fails to attend more than two consecutive meetings of the Council, such member shall not, at the meeting thereafter, be deemed to be a member for the purposes of subsection (1).
- (3) The provisions of section 17(5) and of this section shall apply *mutatis mutandis* to subcouncils.

Amendment of Act

- 19. (1) The State President, in consultation with the Council, may, for the purposes of attaining the objects of the Council, repeal or amend the provisions of this Act by proclamation in the Gazette.
- (2) Any such repeal or amendment shall have the force and effect of an Act of Parliament.

Short title and commencement

- 20. This Act shall be called the Transitional Executive Council Act, 1993 and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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

**FOURTH REPORT OF THE TECHNICAL COMMITTEE ON
THE TRANSITIONAL EXECUTIVE COUNCIL / 28 MAY 1993**

1. INTRODUCTION

Having thus far produced three reports which mainly dealt with the composition and functioning of the Transitional Executive Council/Authority and its sub-councils were they to be established, the Technical Committee at this stage deems it advisable to facilitate a debate in the Negotiating Council regarding the need for the establishment of such a Transitional Executive Council. To this end, the Committee proposes to furnish the Negotiating Council with an overview of the positions of various participants as they emerged from submissions at the disposal of the Technical Committee.

The Committee should like to point out that a summary of the 13 submissions received until 13:00 on Wednesday 19 May 1993 is to be found in the second report of the Technical Committee (dated 21 May 1993). Six further submissions had been furnished, a summary of which appears as Addendum A to this report.

2. OVERVIEW OF POSITIONS

Even where a participant did not expressly indicate its attitude on the need or desirability of a transitional executive structure, its position could be inferred from the contents and nature of the submission(s).

The majority of participants expressed themselves in favour of a transitional executive body, albeit not necessarily in the form proposed by Working Group 3 of Codesa. The positions in support of such a body range from acceptance that there will be such a body, and that the only question is what it will look like and how it will function, to support which can hardly be expressed in other terms than overtly enthusiastic and

insisting that it should be established immediately.

In two submissions the need of a transitional executive body was questioned, one indicating that there was neither need nor time for such an institution, the other that if a transitional structure became a *fait accompli*, the right to make further inputs was reserved.

Three submissions did not express principled opposition to the notion of a transitional executive body, but intimated that other matters, such as the form of state, constitutional principles, the boundaries, powers and structures of regions and an interim constitution should first be addressed.

One submission contained an ambivalent position, suggesting on the one hand that there is no objection in principle to the establishment of a transitional executive, stating later on, however, that the powers of such a transitional executive should be exercised through 'established government structures and powers'.

3. CONCLUSION

From the above it would appear that, with the exception of one participant who felt that there was no time for a transitional executive structure, there was no opposition in principle to a transitional executive structure.

ADDENDUM A

SUMMARY OF REMAINING INPUTS RECEIVED BY THE COMMITTEE (FOR THE OTHERS SEE SECOND REPORT OF THE TECHNICAL COMMITTEE DATED 21 MAY 1993)

1. Inkatha Freedom Party

The IFP supports a two phase transitional process on the condition that the following should be agreed upon prior to further negotiations on a Transitional Executive Council: interim constitution; a set of constitutional principles that would be binding on the constitution making body; final and entrenched boundaries, powers and structures of regions; form of state; full agreement on the nature of the political dispensation.

2. Intando Yesizwe

Intando Yesizwe supports the establishment of the Transitional Executive Council and maintains that its decisions should be binding on parliament, departments of state and administrations; that it should be entitled to overrule decisions of any of these bodies; that it should have the power to prescribe to these bodies on matters within its jurisdiction.

3. Inyandza National Movement

Inyandza supports the establishment of a Transitional Executive Council with a multi-party character with effective executive powers. A sub-council on elections is further proposed.

4. KwaZulu Government (in conjunction with Inkatha Freedom Party)

The KwaZulu Government expresses the view that the Transitional Executive Council should not be established until an agreement on the process of transformation and on the form of state has been reached. However, it is also of the opinion that the powers of the Transitional Executive Council could be exercised through existing government structures and powers.

5. Transvaal Indian Congress/Natal Indian Congress

In a further submission, the Transvaal Indian Congress and the Natal Indian Congress

propose the following:

- 5.1 The Transitional Executive Council should be established by mid-1993.
- 5.2 It should have cabinet status and full executive powers.
- 5.3 The State President, ministers and officials (of all administrations) should only act with the prior approval of the Transitional Executive Council in regard to matters falling within the Transitional Executive Council's jurisdiction.
- 5.4 The Transitional Executive Council should have full access to all relevant information and personnel.
- 5.5 The Transitional Executive Council should have specific powers of intervention.
- 5.6 Decisions should be taken by a two-thirds majority.
- 5.7 Disputes should be resolved by the Transitional Executive Council.

6. Venda

Venda supports the fact that the Transitional Executive Council should have effective executive powers, that it should have access to all relevant information, and that it should be able to delegate powers to sub-councils.

7. African National Congress

Two further detailed submissions dealing specifically with the terms of reference of sub-councils were subsequently provided by the African National Congress.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

**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:

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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

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

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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*

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.*

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

**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:

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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*

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.*

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

**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:

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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;

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.

1. INTRODUCTION

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.

Once the Negotiating Council has had the occasion to express views 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 proposed the following areas 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:

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

**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:

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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;

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

- (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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.

CONFIDENTIAL
THIS REPORT IS EMBARGOED UNTIL DELIVERY

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.



JC208392

GOVERNMENT PUBLICATIONS