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Ahmed C. Motala

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HUMAN RIGHTS AND THE STRUCTURE OF SOUTH AFRICA'S SECURITY FORCES

Ahmed C. Motala*

I. INTRODUCTION

The first democratic elections held on April 27, 1994, ushered in a new government committed to human rights, democracy, equality and freedom. An interim constitution, which came into effect on April 27, 1994, includes a chapter dedicated to fundamental rights. Several structures for the protection of human rights are also established in the Constitution: the Human Rights Commission, the Public Protector, Commission of Gender Equality and Commission on Land Restitution. The Constitution also treats with the structure of the Police and Defence Forces, and the Government has expressed a commitment to change the Security Forces, in particular the Police, into agencies that will serve all South Africans, without discrimination, and without being used as a political tool by the Government of the day.

The Constitution makes provision for the adoption of legislation to restructure the security forces, and, in this regard, a Technical Committee has been established by the Government to draft the necessary legislation. The Committee has produced a draft Bill for comment. Until the Bill is presented to Parliament and obtains approval by the Legislature, provisions of the current Police Act will remain in force.

This paper deals with the legislative framework that regulates the security forces. As the Defence Forces have been utilised as a conventional military force, except in situations of emergency where they have assisted the Police and in those instances have been under the command and control of the Police, the discussion will be limited primarily to the Police. References in this paper will be made to the Constitution Act No. 200 of 1993 (referred to as the Constitution), the Police Act No. 7 of 1958 (referred to as the Act), and the Draft Police

* Lawyers for Human Rights, Pretoria, South Africa

Bill (referred to as the Bill), as well as other legislation which affect the Police Force.

II. THE INTERIM CONSTITUTION - ITS STRUCTURE

The Constitution provides for the enactment of legislation by Parliament that will provide for the regulation of the South African Police Service at both the national and regional levels. These provisions, (Sections 214-223) create a system of governance very different from the previous structure. It allows for the appointment of a National Commissioner of the Police as well as Provincial Commissioners. While the National Commissioner is accountable directly to the Minister of Safety and Security, the Regional Commissioners are accountable to the Provincial Ministers of Safety and Security. This is in keeping with the federal system of government established by the Constitution. It decentralises authority and accountability and allows for issues affecting local policing to be dealt with on a provincial level, thus providing for more immediate responses. The Provincial Ministers are also better able to perceive the needs of the communities, and more accessible to them.

The Provincial Legislatures have the power to veto the appointment of a Provincial Commissioner. The Legislature may also pass laws, not inconsistent with national legislation, regarding the functions of the Police in that province. This takes into consideration the differing needs of the provinces and allows for a greater exercise of authority at a regional level. The constitution provides for close co-operation between the National Minister and Provincial Ministers, as well as between the National Commissioner and Provincial Commissioners.

The Constitution also stipulates the responsibilities of the National and Provincial Commissioners. It allows for the National Commissioner to delegate powers to the Provincial Commissioners, but also enables him/her to retain authority throughout the country in relation to the maintenance of internal security, the investigation and prevention of organised crime, border controls and the recruitment and training members of the Police Service.

The Constitution envisages the involvement of civilians, especially representatives of local communities in community-policing forums. The role of these forums is to request accountability from the local Police Service, to monitor their efficiency and effectiveness, and to advise the Police Service on local policing priorities.

The Constitution also provides for the establishment of municipal or metropolitan Police services, with the consent of the Provincial Ministers. This allows for further decentralisation by permitting Police services to be established and funded at the municipal level, which in theory enhances accountability.

An independent complaints mechanism, under civilian control, must be established to ensure that complaints of Police misconduct are effectively and efficiently investigated. If properly constituted, this mechanism should be most effective and ensure that those members of the Police Service who are found guilty of an offence or misconduct will face appropriate consequences. The attitude of the Police in the past has been to allocate the task of investigations to a unit within the Police, with the consequence that the complaints were not thoroughly investigated nor effectively prosecuted.

A. Bill of Rights

Chapter 3 of the Constitution contain guarantees of fundamental rights, which bind all levels of Government. Certain of these rights curtail the powers and authority of the Police Service. These include:

- the right to equality and equal protection of the law (sec. 8);
- the right to life (sec.9);
- the right to human dignity (sec. 10);
- the right to freedom and security of the person which includes the right not to be subjected to torture, cruel, inhuman, degrading treatment or punishment (sec. 11);
- the right to personal privacy, including the right not to be subjected to search or the violation of private communications (sec. 13);
- the right of freedom of movement (sec. 18);
- the right to access to information (sec. 23); and
- the rights of detained, arrested and accused persons (sec. 25).

While the rights contained in Section 25, which can be referred to as the due process clause, are those which will have the most dramatic effect on the power and authority of the Police, the other rights stipulated are already affecting the way in which the Police function.

The right to equality and equal protection of the law prevent the Police from continuing their discriminatory practices. The right to life affects the use of lethal force by the Police, which they are permitted in terms of the Criminal Procedure Act. The verbal abuse of arrested persons, their incarceration in appalling conditions, their inhuman treatment, may be interpreted as violating their right to human dignity.

It is common practice for the Police to obtain a confession from an arrested person, to avoid lengthy investigations. This confession is often the result of torture, assault or coercion. While some persons suspected of having committed a crime have been able to convince the courts that the confessions were not made freely and voluntarily, many judges have been all too willing to accept the testimony of the Police, rather than that of the accused. The right to security of person and not to be tortured will help to regulate the way in which the Police treat accused persons, and their method of investigations.

In the past the Police, especially the division which was responsible for internal security, regularly violated the right to privacy of individuals whom they suspected of opposing the apartheid Government. They placed listening devices in their homes and workplaces, intercepted and tampered with their mail, and took photographs of their families and friends. The information gathered by illegal means was often used to extract confessions and information from such persons. It was also used in criminal proceedings. The right to privacy will prevent the Police from continuing such practices.

The right of access to information has been used effectively by lawyers to obtain the contents of Police dockets in cases where civil claims have been filed against the Police for wrongful arrest and detention, and in cases where accused persons need to prepare their defence in criminal trials. Prior to this Constitution, attempts to obtain

access to Police dockets failed and courts generally upheld the contentions of the Police that such information was privileged.

The due process clauses in Section 25 provide for the most restraint on the powers and functioning of the Police. The section includes the right to legal representation, the right against self-incrimination, the right to be brought to court within forty-eight hours, the right to be released on bail, and rights which pertain to a fair trial. Past practices of the Police of arresting a person as a suspect and then opposing the person's release on bail, resulting in the person spending long periods in detention, and finally the person being acquitted by the court, will have to change. Once the courts begin recognising the individual's rights enshrined in this section and begin acquitting persons on procedural grounds, the Police will understand that they will have to respect these rights in order to obtain a conviction. They will have to accept that their efficiency and effectiveness depends on affording the arrested, detained and accused persons these rights rather than denial of these rights.

Where there is a limitation placed on any right, either through legislation or by an act of a Government agency, the Government will be obliged to justify such limitation as required under Section 33 of the Constitution. This section requires the Government to show that the limitation is reasonable and justifiable in an open and democratic society based on equality and freedom, and that it does not negate the essential content of the right. In addition, with respect to the rights of human dignity, security of the person, and the due process rights of the arrested, detained, and accused persons, the Government will have to show that the limitation is necessary.

B. Human Rights Institutions

Apart from the courts, the Constitution establishes various governmental bodies to protect and promote human rights. These are the Public Protector, Human Rights Commission, Commission on Gender Equality and Commission on Restitution of Land Rights. The first two of these should affect the power and authority of the Police.

The appointment of the *Public Protector* is made upon a recommendation of a joint committee of Parliament, by a 75% majority of both houses. The office of Public Protector is independent and impartial, having been granted immunity and privileges in the Constitution to perform its duties independently. The powers of the Public Protector, include the power to investigate mal-administration, abuse or unjustifiable exercise of power, dishonesty and corruption, and any act or omission by a government employee which results in prejudice to any person. The Public Protector has the power to subpoena persons to testify before it, and to subpoena the production of documents, and enter any premises for the purposes of investigation or to seize any document or thing. The Public Protector is directly accountable to the Parliament.

This is an important structure and is similar to the office of Ombudsman found in Scandinavian countries, but it includes the power to investigate abuses by the Police, as well as allegations of corruption. Nominations for the position of Public Protector have been received by the Government and it is hoped that a person will be appointed during the current session of Parliament. The Constitution provides for the establishment of provincial offices of the Public Protector and does not allow the Provincial Legislature to adopt legislation that will derogate from those enunciated in the Constitution

The Constitution, in Section 115, provides for the establishment of a *Human Rights Commission* consisting of eleven persons, to be nominated by a joint committee of Parliament and approved by a majority of 75% of both houses. The powers of the Commission include promoting popular awareness of human rights, advising government organs on the adoption of measures to respect human rights, commenting upon proposed legislation which may affect human rights, and investigating complaints of human rights violations, which includes the power to investigate of its own initiative. In this regard, it may assist victims of human rights abuse to obtain civil redress and may provide financial assistance to such persons. The Commission has the power to subpoena individuals to testify before it

and to subpoena the production of documents. It also has powers of search and seizure.

As the Commission has a broader mandate than the Public Protector, it will be the body to which complaints of human rights violations will be lodged. It is envisaged that the Public Protector will deal with the more serious and widespread complaints of corruption or abuse of power, while the Commission will deal with the individual complaints.

C. State of Emergency

A state of emergency can be declared only where the security of the country is threatened by war, invasion, general insurrection or disorder, or a national disaster, and then only if the declaration of an emergency is necessary to restore peace and order. The President may declare a state of emergency only with the approval of Parliament. A state of emergency may be in effect for a maximum of twenty-one days; whereafter, it may be extended for a maximum of three months or for consecutive periods of three months, but only by a resolution of the National Assembly, adopted by a two-thirds majority. The courts are granted the authority to enquire into the validity of a state of emergency, as well as any regulation promulgated under such declaration. Although the Constitution allows in Section 34 for rights to be suspended to the extent necessary to restore peace and order, certain rights may not be suspended. These include: right against discrimination; right to life; right to human dignity; right against torture or inhuman treatment or punishment; right not to be subjected to servitude or forced labour; right to freedom of religion, belief or conscience; right to fair labour practices and the right to form and join trade unions; the right of children not to be subject to neglect or abuse or to exploitative labour practices.

Section 34, also, stipulates the rights of persons detained during a state of emergency, and these include: notification to a family member of the detention; publication of names of all detainees; review of detention by a court within ten days, and the court may order the release of the detainee; access to legal representation of his/her choice;

access to a medical practitioner of his/her choice. When the detention is being reviewed by a court, the state will have the burden to provide reasons to justify the detention.

The Public Safety Act No. 3 of 1953, which has been used in the past to declare states of emergency over lengthy periods, will be subject to these provisions of the Constitution. In this Act the power to declare a state of emergency is vested in the President, with the power to suspend the ordinary law of the land. Many remember, all too clearly, the drastic and devastating effects of the state of emergencies declared during the 1980s. Thousands of people were detained without trial for lengthy periods without access to a legal representative or medical practitioner. Some of these former detainees are now Ministers and Members of Parliament in the present Government.

III. THE POLICE ACT

Although this Act was initially passed by Parliament on 10 February 1958, it has been amended almost forty times since then, the last in 1993. While the new Police legislation is being drafted by the Technical Committee, provisions of the Act are still applicable based on the Proclamation of the President made on 27 January, 1995. The Proclamation is known as the South African Police Service Rationalisation Proclamation. The sections of the Constitution that set out the structure of the Police Service, discussed above, have been promulgated in the terms of the Proclamation.

At the time when independent homelands were created (Bophuthatswana, Venda, Ciskei and Transkei) and where autonomous homelands existed, this Act applied only within the territory of South Africa, excluding these homelands. The homelands adopted their own legislation that was very similar to this Act. Until 27 April, 1994, eleven separate Police Forces existed throughout South Africa. While the South African Police Force was under the control of the Commissioner, who was accountable to the Minister, the Police Forces from the various homelands were under the control of their separate commissioners. Each legislature had a Minister designated to exercise

political control. This discussion will be limited to the Police Act that was in effect in South Africa, and will not consider those of the homelands. The present position is that the legislation of the homelands had been in effect until they were repealed by the promulgation of the Presidential Proclamation. Therefore, until a new Police Act is passed by Parliament, the Proclamation remains valid. However, in practice, the Provincial Legislatures, with boundaries of Provinces having been redrawn to reincorporate the homelands, have in effect been applying this Act. The eleven Police Forces are being integrated into one, and therefore it has been practically impossible to apply different legislation.

A. Establishment of Force, Powers and Duties

It is Parliament, by means of the Act, which establishes the Police Force. The President has the authority to designate the Commissioner of the Police and any other commissioned officers. The President may cancel the commission of any officer. The Commissioner is in charge of appointment of members of the Force, their discipline and dismissal. In order to maintain discipline, Standing Orders have been established by the Commissioner. The Commissioner is in overall charge of the Force and he may delegate his authority.

The functions of the Police are defined in the Act as follows:

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

The powers and duties of members of the Force include the competence:

- to serve any summons, warrant or other process
- to appear for the State in any criminal case in any inferior court
- to search with any warrant any person, premises, vehicle or craft, with specific provision that a woman may only be searched by another woman;

- to set up barriers on public roads to undertake searches and
- seize from an arrested person any article.

These powers are defined in other legislation such as the Criminal Procedure Act, and the Internal Security Act, be discussed *infra*.

In times of war or emergency, the President may authorise the employment of the Police Force in the defence of the country. In those situations, the Police Force will fall under the command and control of the permanent defence force.

Members of the Force are entitled to exercise their labour rights and two major unions have been formed. These are the South African Police Union and the Police and Prisons Civil Rights Union ("POPCRU"). Serious altercations have recently occurred between members of the POPCRU and other Police personnel. Dissatisfied with working conditions and alleging racism by white Police officers, POPCRU went on strike and took white colleagues hostage. The newly appointed National Commissioner, General Fivaz, has warned that strikes, criminal actions and lack of discipline in the Police Force will not be tolerated.

B. Discipline

Any contravention of the Act or failure to comply with an order is a criminal offence punishable by a fine or imprisonment. In case of an alleged infraction the Commissioner has to appoint a prosecuting officer and trial officers. These are usually members of the Police Force. Appeals can be lodged with a disciplinary officer, who holds a law degree and who is appointed by the Minister. However, the disciplinary officer may delegate his authority to another officer, not necessarily a person holding a law degree. Where a member of the Force has been convicted by a court of a criminal offence, she or he may be charged with misconduct, and the criminal trial record may be admissible as evidence. At any hearing a member of the Force is entitled to legal representation. The Act sets out the procedure to be adopted for hearings and authorises the trial officer to subpoena and hear the witnesses.

The Commissioner is entitled to suspend any member of the Force for conduct which is prejudicial to the Force, pending a trial, or after conviction for misconduct or another offence. Usually, members of the Force are only suspended when they are convicted by a court or found to be criminally responsible for a death after a judicial enquiry. The Police Force, until now, has been very reluctant to suspend members of the Force, even where very serious allegations were made against its members. The attitude of the former Commissioner of Police had been that if he had to suspend every member of the Force against whom allegations were made, the Force would have been seriously depleted. However, this attitude seems to be changing; recently Police personnel against whom allegations of torture were made had been suspended, pending the investigation and a criminal trial.

When members of the Force are found guilty of serious misconduct, they may be reduced in rank or dismissed from the Force if the Commissioner is of the opinion that she or he is unfit to remain on the Force. Where the person is imprisoned or sentenced to death, she or he is discharged. An appeal may be filed with the Minister against any decision of the Commission to discharge. Where a member of the Force strikes, the Commissioner may summarily dismiss such a member from the Force.

The disciplinary procedures of the South African Police are totally inadequate, especially as investigations are conducted by a division of the Police Force. Such investigations are often inadequate and senior officers are known to have intervened to prevent investigations from proceeding. Furthermore, the disciplinary hearings are conducted by members of the Force. It is inconceivable that a junior ranking officer will disbelieve his senior. Therefore, biased decisions are often the result. When complaints of misconduct are lodged by members of the public, investigations take an unreasonably long time, and the complainant is not notified of the results of the disciplinary hearings. Disciplinary hearings have also been used as a form of punishment for members of the Force who have spoken out against criminal activities by members of the Force.

C. Interference with Members of the Force

Section 27 of the Act stipulates that any person who assaults any member of the Force or who obstructs him or her in the performance of his or her duties, shall be guilty of an offence. While this provision may seem innocuous and designed to ensure that the Police are able to perform their duties unhindered, it has been used for various purposes, including disguising criminal activities. Often when a suspect, who has been beaten or tortured to extract a confession, files a criminal charge, she or he is charged with assaulting an officer, resisting arrest, and obstructing a Police officer in the performance of his duties. These charges are used to justify the use of force. In the past, the courts have readily accepted the word of the Police against the accused, unless the accused had legal representation. When a person intervenes to prevent the Police from assaulting another, she or he is arrested on similar charges. Once the person is convicted of these charges, his or her complaint against the Police is not investigated. Therefore, the Police officer is never held accountable for the assault or torture.

D. Limitations of Actions

Special provisions in the Act require that if any person intends to file a civil claim against the Police, notice of such claims must be given within five months of the date of occurrence and summons must be issued within six months. This is contained in Section 32 of the Act. Many individuals, not knowing of the existence of this provision, have been unable to successfully file civil claims against the Police. The courts have interpreted this provision to be peremptory, thus removing their discretion, except in cases where the complainant was detained incommunicado, without access to a lawyer. This section has caused enormous injustice and will come under scrutiny based on provisions in the Bill of Rights. In South African law, the normal period of prescription for civil liability is three years. The Police, therefore, have an unfair advantage.

In terms of Section 32b of the Act, members of the Force are not personally liable for injuries caused to persons being conveyed in a

vehicle of the state, due to negligence on the part of such members of the Force.

E. Prohibition on Political Activities

Members of the Police Force are prohibited from joining or taking part in the activities of a political party. However, they are not precluded from attending political meetings or from participating in elections. The provision was inserted in 1992, at a time when South Africa was well on the way to democracy. The need for an independent Police Force, not aligned to any political party, is of paramount importance. However, the Government will have to justify such restrictions. The limitations clause of the Constitution, requires that such restrictions be reasonable and justifiable in an open and democratic society that is based on freedom and equality; the Government must also demonstrate a necessity for this limitation.

IV. THE CRIMINAL PROCEDURE ACT NO. 51 OF 1977

While the Criminal Procedure Act ("CPA") relates to arrest, detention and prosecution of a person suspected of a criminal offence, it also provides the Police with a number of rights.

A. Powers of Search and Seizure

The Police are empowered to seize certain articles that they believe to be concerned with the commission of an offence or may be evidence of the commission of an offence. Such seizure has to take place, except under certain circumstances, pursuant to a warrant issued by a magistrate or judge. The exceptional circumstances include: seizure during an arrest or when an officer believes that the article may be disposed of in the ensuing delay while obtaining a search warrant.

Wide powers are granted to the Police to obtain a search warrant from a magistrate or judge to enter and search premises in instances where the Police believe that the internal security of the state is endangered. No objective evidence is required, and the mere word of the Police officer under oath is sufficient. The Police have powers to

enter a premise without a warrant to arrest a person suspected of having committed an offence, and they are entitled to obtain entry by force if necessary.

B. Powers of Arrest

The CPA stipulates the offences for which, or the circumstances under which, a Police officer may arrest a person without a warrant. The offences include: treason, murder, bestiality, sodomy, robbery, assault when a dangerous wound is inflicted, arson, theft, or fraud. For almost any offence, except most petty crimes, a person may be arrested without a warrant. The Police may arrest a person pursuant to a warrant issued by a judge or magistrate. However, if a person is wrongfully arrested on the basis of the warrant, the Police officer effecting the arrest is exempt from liability. Private persons are obliged to assist the Police in effecting an arrest if they are called upon to do so, or else they may be convicted of an offence and fined.

C. Use of Force

The CPA, in Section 49, authorizes the Police to use force in effecting an arrest. Where a person being arrested is suspected of having committed which is termed a Schedule 1 offence, the Police officer effecting the arrest is entitled to use lethal force against him or her. The CPA states: "The killing shall be deemed to be justifiable homicide." The offences for which the Police may use lethal force include: murder, treason, sodomy, bestiality, public violence, kidnapping, child-stealing, assault when a dangerous wound is inflicted, breaking and entering, theft, fraud, forgery, escaping from custody, or any conspiracy or attempts to commit any of these offences. The power to use lethal force has been the most contentious and has provided an effective shield to Police officers against prosecution in both criminal or civil actions for deaths caused by them. This is the most popular justification advanced by members of the Police for deaths of suspects in custody. Appalling cases involving theft of items of insignificant value by children who were shot dead by the Police have not been uncommon. This justification has often been accepted by the courts during judicial enquires to determine criminal

responsibility for the death of a suspect. In very few instances have the courts laid criminal responsibility at the feet of the Police. When criminal charges are brought against an officer responsible for the killing, the evidence provided by fellow officers is often inadequate to convict and results in an acquittal.

D. Procedure after Arrest

The Police are entitled to hold a suspect for a period of forty-eight hours before producing him/her before a court. The CPA provides that if the forty-eight hours expires on a day on which the court does not sit, then the person will be brought to court on the next day on which that court sits. What that means is that if a person is arrested on a Wednesday evening, as the forty-eight hours expires on Friday evening, the person will be brought to court on the following Monday. By this time, the person would have spent more than twice the forty-eight hours in custody. In small towns, where the court sits only periodically, on certain days of the week, the suspect may spend an entire week in custody before being brought to court. This practice has changed, mostly in the urban areas. The accused can insist on being taken to court immediately after arrest to apply for release on bail. The Constitution stipulates that the accused has a right to bail and the onus is on the Police to show why the accused should not be released on bail.

In the past, this forty-eight-hour period was the most critical for accused persons, as they were denied access to a legal representative. It was during this period that the Police tried to extract confessions from the accused. It often happened that a person detained as a suspect for four days would be released without being charged, after the Police realised that the person arrested was unable to provide them with any information.

The practice of the courts in the past has been to place the onus on the accused to show that she or he will appear for trial if released on bail. It was the word of the investigating officer that was of paramount importance to the court. In most cases, when the officer opposed the release on bail, he would scribe a note on the Police docket and the

prosecutor would follow these instructions. The magistrate would refuse bail without a question. The Police often did this when they were unable to extract a confession within the forty-eight hours, or where the accused was severely injured and they wanted to ensure that she or he recovered before being released on bail.

E. Witness Protection

The CPA, in Section 184 and 185, provides for the detention of a witness who is about to abscond or who fears for his or her safety. The detention under section 184 is done upon application by the Attorney General. The information that the witness is about to abscond, is evading the service of a summons to testify, or that the witness is in danger of being harmed, is provided by the Police. This section has been used by the Police to take into custody witnesses who are reluctant to give evidence, or in many cases witnesses who are coerced to give evidence. The witnesses who are held until the completion of the criminal trial often spend months in custody. In those instances when the witness finally appears at the trial and informs the court that she or he has no knowledge of the offence or does not know the accused, the witness was often charged as an accomplice and was forced to spend more time in custody while the trial proceeded. Under the CPA, no person, except an official of the State, may have access to a witness who is taken into custody, without the authorisation of the Attorney General. This provides ample opportunity for the Police to coerce and even torture the witness to provide evidence wanted.

V. THE INTERNAL SECURITY ACT

This was the legislation most feared by political opponents of the apartheid government. It was under this legislation that the Police had draconian powers of arrest and detention. Section 29 of this Act was the most notorious; it provided the Police with immense powers to arrest and detain. A person could be detained indefinitely under this Section before it was repealed in 1993. However, this Act still authorises the Police to close down places where prohibited gatherings are to be held. Persons gathered can be dispersed and if they refuse to

heed a verbal request, they can be dispersed by the use of force, including weapons. Section 49 requires that if weapons are to be used, the Police must use the ones least likely to cause injury, before resorting to firearms. Firearms may be used where the persons attending the gathering have killed or seriously injured another, or where a person has caused serious damage or attempts to cause serious damage to property.

This Act also provides the Police with the power to arrest any person who contributes to a riot or public violence or whose arrest will quell a riot. Such a person may be held for forty-eight hours and thereafter released, unless a warrant for his or her arrest has been obtained from a magistrate. However, the detention cannot exceed a period of fourteen days from the time of arrest.

VI. THE POLICE BILL

The Minister of Safety and Security has established a Technical Committee to draft a new Police Act. The Committee has produced a Draft Bill which has been circulated to members of the Police Force, Police unions and NGOs for comment. The aim is to transform the Police Force by providing for mechanisms which will provide for greater accountability and transparency and for a service-oriented profession. The Bill provides for participation of communities in the work of the Police and in making the Police accountable to the community. While the Bill retains large portions of the current Police Act, especially concerning disciplinary proceedings, the structures it intends to create are a marked improvement.

The President, by Proclamation (27 January, 1995), provided for a restructuring of the Police Force and the appointment of a new National Commissioner. The Proclamation speeds up the process of rationalisation and integration of the various Police Forces. It repeals the entire Police Act of 1958, while incorporating various sections. This prevents a legal vacuum existing and enables the Police Force to continue operating. Provisions relating to the Police of the former homelands have been repealed in their entirety. This Proclamation is

seen as a temporary measure until a new Police Act is passed by Parliament later this year

A. Structure and Power

The Bill provides for the Police service to be structured on four levels: national; provincial; sub-provincial; and local and for the incorporation of the Police Forces of all the homelands and the South African Police into a single service. Provision is made for the offices of a National Commissioner and Provincial Commissioners.

The powers which the Police have possessed under the Police Act have largely been retained in the Bill. Questions have been raised regarding their powers of search and seizure without a warrant: whether these violate the Bill of Rights.

B. Evaluation of the Service

The Bill provides for the establishment at the national level of a National Inspector and Performance Auditing component. The National Inspector will undertake an overall evaluation of the Police Service and ensure that it maintains impartiality, accountability, transparency, and efficiency. The Performance Auditing component is charged with the task of evaluating the economy, efficiency and cost-effectiveness of the Police Service. While the Bill does not stipulate that civilians may be recruited as members of these bodies, the involvement of civilians will provide for transparency and accountability in an independent body, not one composed entirely of the service itself.

C. National Public Order Police Unit and Special Task Force

The Bill creates a special unit, termed the "National Public Order Police Unit," which may be deployed by the President, in consultation with the Cabinet, anywhere in the country. With the power to deploy the unit in the hands of the President, one wonders whether this is not merely passing control over the notorious Riot Squad, or what is

presently known as the Internal Stability Unit instead of transforming it.

The Bill also provides for the creation of a special task force, but does not stipulate the form or purpose of this unit. Concern has been raised that this provision may allow for the creation of secret units within the Police service, as existed in the past.

D. National Policing Foundation and National Training Board

The creation of a National Policing Foundation is an innovation that has been welcomed by NGOs. The Bill provides for public nominations to the Foundation as well as for civilian involvement in research and policy determination independent of the Police service.

Similarly, the National Training Board will consist of representatives of tertiary institutions, NGOs, and members of the Police service. The Board will develop educational and training curricula. In order to transform the Police service, there is a need for education that will instill a human rights culture into members of the service. There is a need for retraining of members of the Force to get rid of the "cop culture" of abuse, assault, torture and the preference of members to be loyal to each other rather than to strive for justice and righteousness.

E. Community Involvement

Community Police Boards, at national and provincial levels, are to be established. The purpose will be to empower the community to contribute to the manner in which Police services are provided. The Boards determine policing standards and identify community priorities. This provides direct involvement of communities at national and provincial levels in the work of the Police and is an innovation that will enhance the credibility of the Police.

The Bill also provides for the establishment of Community-Police Forums at each station. Again, this is intended to directly involve the local communities with the Police which serve them. The Forums will

be able to monitor the effectiveness and efficiency of the service, to advise on local policy priorities and evaluate the service that is received. The Forums are also able to make recommendations regarding the transfer of officers in charge of the local stations.

The Boards and Forums are established in an advisory capacity, and concerns have been raised regarding the lack of enforcement powers available to these bodies. The Bill does not specify how the Boards and Forums will ensure that their recommendations will be implemented, especially in areas where members of the Force are opposed to the transformation process. Improving the role and functions of these community-Police structures will not only enhance transparency and accountability, but it will also increase the credibility of the Force, which is sorely lacking.

F. Independent Complaints Directorate

When complaints are lodged against members of the Police, investigations are conducted by members of the Internal Investigations Unit. This presents a totally unsatisfactory process, as the Unit is not independent. It is known that it does not investigate complaints thoroughly, resulting in the Police officer against whom a complaint is lodged not being prosecuted or being acquitted by the court.

The creation of the Independent Complaints Directorate is, therefore, a beneficial development. The Bill gives effect to Section 222 of the Constitution, which requires the establishment of an independent complaint mechanism. The Directorate is empowered to investigate complaints of serious criminal offences, serious misconduct and any act which seriously jeopardizes the Police Force. The Bill also provides for the appointment of civilians to the Directorate, which will enhance its independence and ensure fairness of its proceedings.

Criticism levelled against these provisions of the Bill includes lack of clarity regarding the offences which the Directorate will investigate. Also, the Directorate is accountable to the Minister of Safety and

Security instead of the Minister of Justice, and the appointment of civilians is left in the hands of the Minister.

VII. COVERT ACTIVITIES

The apartheid Government created numerous covert agencies to deal with its opponents. These agencies usually had access to unlimited funds, undertook the most dastardly deeds on behalf of the Government and lacked accountability. Some of them were located within the Police Force, others in the defence force and yet others in the National Intelligence Service. Their existence and activities were unveiled during the Harms and Goldstone Commissions.

Evidence was presented to the Harms Commission of the existence of a squad within the Police Force known as C1 or the Vlakplaas Squad. This squad undertook raids into neighbouring countries to attack members of the liberation movements. They were also involved in the killing of political activists within the country. The Civil Co-operation Bureau, part of the defence force, was also uncovered during these hearings. The bureau had unlimited funds and operated legitimate businesses as fronts for their activities. Their criminal activities extended far beyond the South African borders, and included weapons trading. While Judge Harms accepted that the Bureau existed and was involved in unlawful activities, he, in his short-sightedness, refused to accept that the Vlakplaas squad ever existed. It was only after the Goldstone Commission uncovered the existence of what is referred to as the "Third Force" (who were members of the Force involved in fomenting black on black violence to derail the negotiations process) that the role of members of the Vlakplaas in criminal activities became known. The former commander of the Vlakplaas is presently awaiting trial on 108 charges, including murder, fraud, and abduction.

The Goldstone Commission, also uncovered the existence of the Directorate of Civil Co-operation ("DCC"), a covert unit which consisted almost entirely of members of the disbanded Civil Co-operation Bureau. Allegations against the DCC were that they were supplying weapons to Inkatha warlords in Kwa Zulu/Natal for

purposes of attacking members of the African National Congress. The DCC was hurriedly disbanded after these allegations were published by the media. Former members of the Civil Co-operation Bureau demanded large amounts of severance pay from the Government or threatened to reveal information in their possession. The demands were met by the apartheid Government.

The full extent of the involvement of the security forces and intelligence agencies in covert activities has yet to be revealed. The Government is hoping to obtain further disclosure through the Truth Commission, which is to be established later this year.

In order to exercise control over intelligence agencies, Deputy-President De Klerk has been appointed the person in charge of the National Intelligence Agency. A director, who is accountable to De Klerk, has also been appointed to head the Agency. Furthermore, a committee consisting of the heads of different parts of the security forces has been formed for better co-ordination and information sharing. A parliamentary committee on defence, headed by Tony Yengeni of the ANC, had been established to oversee the intelligence agencies that now form part of the defence force. Although the activities of these agencies, within and without South Africa, will continue, there is now greater political accountability.

VIII. CONCLUSION

The culture within the Police Force of lack of accountability, and disdain for law and order, will take a long time to eradicate. They newly appointed National Commissioner has already begun transforming the Police and recently indicated that the Force will be demilitarised. His first act was the dropping of the word "General" from his title. While the promulgation of the Proclamation was the beginning of the process of transformation, the enactment of the new Police Act will take the process far further. The redrafting of other laws to bring them into conformity with the fundamental rights guaranteed in the Constitution will provide additional checks on the power and authority of the Police. The establishment of the various structures to protect human rights and monitor abuse will act to ensure

implementation of the rights contained in the Constitution. Ratification by the Government of South Africa of the various human rights treaties and the adoption of internationally accepted codes of conduct, will aid the process of transformation. While the process may be a long and arduous one, there has been a beginning.

