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**CONSTITUTIONAL ASSEMBLY**

**Theme Committee Six**

**SPECIALISED STRUCTURES OF  
GOVERNMENT**

**Subtheme Committee 4  
Security Apparatus**

**27 February, 1995**

**Room G26, National Assembly Wing**

**DOCUMENTATION**



**CONSTITUTIONAL ASSEMBLY  
THIRTEENTH MEETING  
SUBTHEME COMMITTEE 4  
THEME COMMITTEE 6  
SECURITY APPARATUS  
MONDAY, 27 FEBRUARY 1995**

Please note that the following meeting of the above Committee will be held as indicated below.

Date : 27 February 1995

Time : 19:00 - 21:30  
(preceded by a meeting of the full Theme Committee from 18:00 - 19:00 in E249)

Venue : Room G26, National Assembly wing

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**AGENDA**

1. Opening and welcome
2. Minutes of the previous meeting
  - 2.1 Minutes of the twelfth meeting, 20 February 1995 (attached)
3. Matters arising
4. Accountability and control of the security forces:
  - 4.1 Finalisation of first report (attached together with table setting out points of agreement and contention)
5. Location of Correctional Services (see attached memorandum from the Executive Director)
6. Submissions
  - 6.1 Institute for Defence Policy (see attached letter)
7. Public Participation programme (see attached memorandum from the Executive Director)
8. Work programme (draft work programme to be distributed in the meeting)



9. Any other business

10. Closure

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Enquiries: Katharine McKenzie (Tel 24 5031 or 403-2174)



# MINUTES



**CONSTITUTIONAL ASSEMBLY**

**MINUTES OF THE TWELFTH MEETING OF SUBTHEME COMMITTEE 4,  
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT  
SECURITY APPARATUS**

**MONDAY, 20 FEBRUARY 1995**

**PRESENT**

**Schreiner, J (Chairperson)**

Alant, T G	Ebrahim, E I
Fihla, N B	Groenewald, P J
Mabudahasi, J	Makana, S
Mpahlwa, M B	Mti, L M
Powell, P	Selke, J
Van Eck, J	Yengeni, T

Seegers, A : Technical expert

Apologies: Malan, T J; Neerahoo, H M

K McKenzie was in attendance.

**1 OPENING AND WELCOME**

Ms Schreiner opened the meeting at 09:45 and welcomed the members.

**2 MINUTES OF PREVIOUS MEETINGS**

**2.1 Minutes of the tenth meeting, 14 February 1995**  
The minutes were adopted.

**2.2 Minutes of the eleventh meeting, 16 February 1995**  
The minutes were adopted.

**3 MATTERS ARISING**

**3.1 Location of Correctional Services**  
Mr Powell spoke to the IFP memorandum on Correctional Services



(Annexure "A").

It was agreed that the CA administration should be asked to convene a joint meeting between the Committee and Theme Committee 5 in order to discuss Correctional Services.

It was agreed that meetings with Subtheme Committees 6.3 and 6.4 should also be convened in order to look at the location of Correctional Services within the Public Service and the role of the Ombud in relation to Security Apparatus.

#### 4 SUPREMACY OF THE CONSTITUTION AND ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES

The meeting considered the draft report contained in the documentation of the 12th meeting.

##### 4.1 Declaration of state of state of emergency (item 2)

It was agreed that the "formulation for agreement" should read: ***The Constitution should provide for Presidential power to declare a State of Emergency, and to regulate suspension of human rights in that context, and right of Parliament to review/overturn such decision.***

It was agreed that the "Point of contention" should read:

1. ***Powers of provinces to deploy police in provincial state of emergency due to disagreement on provincial competency re police.***
2. ***Provinces should have the right to review the declaration of a state of emergency in that province.***

##### 4.2 Declaration of a state of national defence/war (item 3)

The National Party submission should read "Constitution should provide for definition of state of national defence" (delete the word "separate").

It was agreed that the "Formulation for agreement" should be amended to read: ***The Constitution should provide for Presidential power to declare a state of national defence/war, subject to Parliamentary confirmation.***

##### 4.3 Definition of action in the national interest (item 4)

The IFP submission (third) should read "Action of the security apparatus should be oriented to the implementation and execution of statutory, constitutional and international law." (delete remainder of paragraph).

The NP submission was amended to read "SANDF must perform its



task in the national interest by providing for the defence of the Republic and ensuring the protection of inhabitants of the Republic."

It was agreed that the "Formulation for agreement should read":

**1. The Constitution should provide that the Defence Force's primary function is to defend the territorial integrity of the SA.**

**2. The Constitution should provide that action of the security apparatus should be oriented to the implementation and execution of statutory, constitutional and relevant international conventions and law.**

**3. The Constitution should provide for the definition of national interest as the interests of the citizenry and the interests of the state.**

4.4 Further preparation of report

It was agreed that a representative from each of the parties should meet in order to finalise the report.

5 ANY OTHER BUSINESS

There was no other business.

6 CLOSURE

The meeting rose at 11:00.



'A'

# Memorandum

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P.O. Box 15 ♦ Capetown ♦ 8000 ♦ 021-403 3304 ♦ 403 3004 (f)

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**To:** Ms J. Schreiner : The Chairperson  
Sub-theme Committee 4 (Theme 6)

**From:** Senator Philip Powell : Inkatha Freedom Party

**Date:** 20 February 1995

**Subject:** *Location of Prison Administration in State  
Architecture : Constitutional Implications*

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The debate concerning the location of Prison / Correctional Services within the architecture of the State has important implications of both a constitutional and administrative nature for the future of South Africa. The Inkatha Freedom Party concurs with other parties concerning the urgent need for the demilitarisation of the Department of the Correctional Services and the location of the function within the civil agencies of the state. The current association with the security apparatus and the para-military nature of the Service has its origins in the distortions which occurred in the state's architecture during the abnormal era of security force control over many civilian functions of state in the 1970's and 80's. The IFP believes that the process of normalisation of South African society associated with democratisation necessitates a clear association between the Judicial process and the Prisons / correctional process.

The location of the Correctional Services element of the constitutional writing process within the ambit of Theme Committee Six, sub-committee 4, arose from a realisation that the Interim Constitution failed to address this area and a desire to see this issue adequately addressed. Submissions by amongst others the African National Congress arguing for the relocation of this area of consultation to Theme Committee 5 responsible for the Judiciary and Legal System focus on the administrative relationship between the executive and the judiciary in the functions of state. The IFP contends that the area of correctional services can be characterised in terms of three broad areas which relate to the work of Theme Committee Six, sub-committee 1



and 4 as well as Theme Committee 5. These are :

(A) *Administrative (Sub-theme 1) :*

1. The demilitarisation of the correctional services of the state presupposes a return of this administrative function to the "conventional" domain of the public service. Movement away from a militarised form of administration which emphasises para-military organisational models and a close relationship with the security agencies will inevitably mean that the Department moves substantially closer to the larger civil service with its non-military organisational model and structure. This would suggest that following normalisation, the Service would take its place alongside the majority of civil service departments and would therefore fall within the field of Sub-theme Committee 1 dealing with the Public Service.
2. The IFP believes that Sub-theme 1 should investigate the constitutional requirements for the transformation of the Correctional Services into a civilian, civil service department. The ANC have however argued that the Correctional Services are characterised by certain unique aspects which necessitate the establishment of a separate Ombuds and Service Commission which are in essence to those proposed by all parties for the Security Apparatus. This would suggest that the Correctional Services is a civil service department of a "special type" and that the Constitution should go further than normal provisions relating to the civil service.

B. *Security (Sub-theme 4)*

1. The IFP furthermore recognises that the Correctional Services forms part of the coercive mechanisms of the state and as such is characterised by certain unique characteristics which are similar to those of the Security Apparatus (Defence, Police and Intelligence). These relate to restrictions on the fundamental rights of individuals employed in the service and citizens undergoing imprisonment. These curtailed rights relate to the right to strike, labour dispute mechanisms, restrictions on political activity and requirement for a unique Ombuds office related to the service. Additional factors which relate to the security apparatus arise from the acknowledged need for an element of para-military type discipline which detract from some of the rights of employees.



2. This suggests that Sub-theme 4 can make a contribution to the preparation for this area of debate in the Constitutional Assembly during its examination of similar conditions within the Security Apparatus.

*C. Judiciary (Theme Committee 5)*

1. The IFP concurs that the relationship between the Judiciary and the Administration within the context of Correctional Services needs to be clearly addressed in the constitution and that this falls within the ambit of Theme Committee 5.
2. This does not however preclude an examination of those elements which the IFP believes fall within the ambit of Theme Committee 6.

*Conclusion :*

1. The IFP believes that Sub-theme committee 4 should take evidence on elements of Correctional Services which relate to the Security Apparatus and refer aspects relating to the normalisation of the department within the broader structures of the civil service to Sub-theme 1.
2. The IFP believes that Theme Committee 5 should examine the important aspects relating to the relationship between the administrative and judicial functions within the context of Correctional Services.
3. The complex relationship between institutions of state in relation to Correctional Services necessitates an examination of the multi-dimensional constitutional issues within the context of the three committees. The problems related to such an examination relate to the problems of the CA process in the wider sense and should not detract from the thorough taking of submissions. The IFP therefore believes that it is premature for Sub-theme 4 to pass on exclusive responsibility for this important area. It should therefore be dealt with concurrently.



# REPORT



**THEME COMMITTEE 6  
SUB THEME 4**

**SPECIALISED STRUCTURES OF GOVERNMENT  
SECURITY APPARATUS**

**REPORT ON CONSTITUTIONAL ACCOUNTABILITY AND  
CONTROL OF SECURITY APPARATUSES  
(BLOCK ONE AND TWO)**

**"Supremacy of the Constitution and accountability and control  
of the Security Forces"**

**24 February 1995**



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## **PART ONE**

### **1 MATERIAL PROCESSED BY THE THEME COMMITTEE**

#### **1.1 Submissions received**

The following submissions have been received by the Subtheme Committee:

##### **1.1.1 Political parties**

- \* African National Congress
- \* Democratic Party
- \* Freedom Front
- \* Inkatha Freedom Party
- \* National Party
- \* Pan Africanist Congress

##### **1.1.2 Organisations of civil society**

- \* Conscientious Objector Support Group
- \* International Committee of the Red Cross
- \* Military Research Group
- \* SANDF/ Ministry of Defence

##### **1.1.3 Individuals**

- \* Faull, J
- \* Hamelberg, M
- \* Links, B
- \* Mc Moran, J A

Deliberations have focused on submissions from political parties. The submissions received from the public so far have tended to be broad and short. The Committee is being proactive regarding submissions for the rest of the work of the Subtheme which focuses in detail on Police, Defence and Intelligence, and perhaps correctional services. We intend to hold provincially based public hearings at some stage in our work programme.

#### **1.2 Seminars organised by the Committee**

Information seminars, which also form part of proactive approach to submissions have covered:

- \* Correctional Services and their location in the Constitution;
- \* Control and accountability of the Intelligence Services, Defence Force and Police;
- \* There are plans for information seminars on policing and the constitution.
- \* These will be followed by seminars dealing with Defence and Intelligence in respective blocks.



The information seminar on Correctional Services generated debate on its location within the Constitution making process. This is addressed in the paragraph entitled "Where should security apparatus be located within the Constitution".

## **PART TWO**

### **EXPLANATORY NOTE:**

- I. Current titles of Ministries have not been used as this is not conventionally a constitutionally defined matter. Names of the forces/services have been used as this should be defined in the Constitution.
- II. No submissions relating to prisons/correctional services have been included pending the outcome of a decision regarding the appropriate Theme Committee in which this issue should be dealt with.
- III. The term "security apparatus" is used throughout to avoid wordiness due to service and force and agency all being stated.

### **WHAT GOES INTO A CONSTITUTION ON SECURITY APPARATUSES?**

#### ***Agreement:***

***Constitution should cover long standing principles. However it may be necessary to flesh out these principles because South Africa is a new democracy with a particularly troubled security apparatus history.***

### **WHERE SHOULD SECURITY APPARATUS BE LOCATED WITHIN THE CONSTITUTION?**

#### ***Agreement:***

***Various possible places, which are not necessarily mutually exclusive - Preamble, Bill of Rights, Powers of the State President, separate chapters dealing with each of security apparatuses, or one chapter dealing with all of them. No finality at this stage, will be an ongoing thread of discussion in work of Sub Theme 4.***

#### ***Further clarity:***

***That correctional services is not part of security apparatus and should be dealt with under Theme 5 in relation to judiciary and legal system.***

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## **1. SUPREMACY OF THE CONSTITUTION**

**ANC:** Both the Constitution and the Bills of Rights are supreme and South African National Defence Force (SANDF) and South African Police Service (SAPS) must be bound by that supremacy.



- ANC: The intelligence structures shall operate on the basis of constitutional sovereignty. Their work shall be in defence of the constitution and not in defence of the government of the day.
- IFP: Security apparatus must operate within the Constitution and Bill of Rights.
- DP: Constitution shall be supreme law, with which all Executive action and legislative measures should have to conform. Constitution should describe the architecture of government and relationships which exist between various levels and different institutions of government. Constitution should lay down powers, duties, responsibilities and entitlements of levels and institutions of government, procedures for adhering to these and avenues to resolve disputes which may arise between various levels or institutions of government.
- NP: Constitution should be supreme law of Republic, binding on all legislative, executive and judicial organs of government. The security apparatus should not be used, nor should they demand, to defend or protect the Constitution.
- PAC: Constitution is supreme law but cannot on its own regulate Defence Force.

**Agreement:**

1. *Constitution is the supreme law in South Africa.*
2. *The Constitution must be binding on Security Apparatus.*
3. *The Constitution should prohibit Security Apparatus acting on their own and bypass Parliament and the Executive.*
4. *The Constitution should state that the Executive cannot use the Security Apparatus to violate the Constitution.*

**2. DECLARATION OF STATE OF EMERGENCY**

- ANC: Only declaration of State of emergency or State of War should lead to some regulated suspension of human rights.
- IFP: Any suspension of some human rights will only be regulated through declaration of a state of Emergency or of War which will bind both SAPS and SANDF.
- NP: President must be empowered to suspend certain fundamental rights in state of war/emergency, in terms of criteria laid down in Bill of Rights.
- DP: Constitutional limitations of power of executive(s) to deploy security apparatuses in the form inter alia, of limiting power of executive(s) to declare state of war or emergency, requiring executive(s) to report to legislature(s) and/or for legislature(s) to endorse action taken by executive(s) by resolution, and requiring legislature(s) be convened within



a defined period after deployment of forces by executive.

- NP: Provision must be made for crisis or interim Parliament of reduced number which could, in time of crisis through natural disaster or war and at a time when the President has been incapacitated declare immediate state of emergency or state of national defence/war subject to ratification by full parliament within 14 days.
- IFP: Head of Government may declare an emergency in Republic or in determined areas thereof.
- IFP: Declaration of Emergency shall provide a general indication of type of emergency and shall indicate in general terms which powers and resources of Government, the Provinces and local governments, or of citizenry the Head of Government intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and action the Government intends to undertake.
- IFP: Within twenty four hours the Head of state shall summon Parliament to a joint session to ratify the Declaration of Emergency. Parliament may modify the Declaration of Emergency.
- IFP: If the emergency is such that Parliament may not be summoned into session, the declaration shall be submitted to the Constitutional Court for approval. Should this not be possible, the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court, the President of the Senate or the Speaker of the National Assembly, in this order.
- IFP: The Head of Government shall modify the Declaration of the Emergency to provide additional information, to detail information previously provided and to report on the action undertaken to respond to the emergency.
- IFP: Parliament or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time.
- IFP: The Head of State may require that Parliament or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.
- IFP: Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in the constitution.
- IFP: The declaration of emergency shall employ the defence force only when and to the extent that the police services are not sufficient to respond to



the emergency.

IFP: Provinces shall have the right to declare State of Emergency and shall have the right to lift State of Emergency. This shall include right to deploy police in provincial State of Emergency

**Agreement:**

1. ***The Constitution should provide for Presidential power to declare a State of Emergency, and to regulate suspension of human rights in that context, and right of Parliament to review/overturn such decisions.***
2. ***The Constitution should provide for the Judicial right to overturn decisions to declare a state of emergency if procedure has not been followed correctly.***

**Contention:**

1. ***The powers of provinces to deploy police in provincial state of emergency.***
2. ***The right of Provinces to review or overturn the declaration of a state of emergency.***

**Further clarity:**

1. ***Length of time allowed to lapse before convening of Parliament.***
2. ***Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.***

**3. DECLARATION OF STATE OF NATIONAL DEFENCE/WAR**

ANC: Only declaration of State of emergency or State of War should lead to some regulated suspension of human rights.

IFP: Any suspension of some human rights will only be regulated through declaration of a state of Emergency or of War which will bind both SAPS and SANDF.

IFP: South African troops may be employed in possible combat situations outside the country only on the basis of a declaration of war in hostility, the latter including so called peace-keeping exercises.

IFP: The constitution must state that South Africa shall strive to respect and maintain all its international law obligations, and shall reject the use of war or international violence as means to resolve international conflicts.

IFP: The Head of State in consultation with the Head of Government may declare war or the status of international hostility. The Declaration of War or hostility shall provide a general indication of the type of military and logistical resources to be employed and effects of the declaration on the Government of the Republic, the Provinces and the citizenry. The declaration must indicate for how long the status of war or hostility is



expected to last and the measures which the Government in undertaking to try to solve by diplomatic means the underlying international crisis.

- IFP: Within twenty four hours the Head of State shall summon Parliament to a joint session to ratify the Declaration of war or hostility. Parliament may modify the Declaration of War or hostility. If the situation is such that Parliament may not be summoned into session, the Declaration shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration shall be submitted for approval to the President of the constitutional Court or the President of the Senate or the Speaker of the National Assembly in that order.
- IFP: Parliament may terminate or modify the terms of the Declaration of War or Hostility at any time. The President may require that Parliament meets behind closed doors to discuss any matter related to war and that the contents of the Declaration of War or Hostility are kept secret.
- IFP: Any government's action taken within the Republic during a situation of war shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in the constitution.
- DP: Constitutional limitations of power of executive(s) to deploy security apparatuses in the form inter alia, of limiting power of executive(s) to declare state of war or emergency, requiring executive(s) to report to legislature(s) and/or for legislature(s) to endorse action taken by executive(s) by resolution, and requiring legislature(s) be convened within a defined period after deployment of forces by executive.
- NP: Constitution should provide for definition of state of national defence. Separate provision for declaration by President of state of war or national defence, subject to ratification by Parliament within seven days, and that such state of war/national defence may only be declared upon attack originating from outside the borders of Republic of South Africa
- NP: President must be empowered to suspend certain fundamental rights in state of war/emergency, in terms of criteria laid down in Bill of Rights.
- NP: Provision must be made for crisis or interim Parliament of reduced number which could, in time of crisis through natural disaster or war and at a time when the President has been incapacitated declare immediate state of emergency or state of national defence/war subject to ratification by full parliament within 14 days.
- NP: President should be able with the approval of Parliament to declare a state of national defence/war. The President must inform Parliament of reasons for the deployment of SANDF where such deployment relates to the defence of Republic, compliance with international obligations or the



maintenance of internal law and order. Parliament should have the power to terminate any such deployment.

FF: Parliament must be accountable as to committing or not committing the Defence component to war in and outside the borders of the Republic.

**Agreement:**

***The Constitution should provide for Presidential power to declare a state of national defence/war, subject to Parliamentary confirmation.***

**Further clarity:**

1. ***Time period allowed for the review of such a decision by Parliament.***
2. ***Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.***

**4. DEFINITION OF ACTION IN NATIONAL INTEREST AND NATIONAL SECURITY**

ANC: National security policy shall seek to protect and promote the security of both the state and its citizens, through promotion of military, social, economic and political dimensions of security.

ANC: Threats to security shall not be interpreted as being limited to external military aggression but shall include poverty, social injustice, economic deprivation, abuse of human rights and destruction of the environment.

ANC: The objectives of national security policy shall therefore go beyond achieving an absence of war and physical violence to include the consolidation of democracy, respect for human rights, social justice, sustainable economic development and protection of the environment.

IFP: Constitution must state that operations and policy formulations of security apparatuses must reflect the national interest and be consistent with the letter and spirit of the constitution.

IFP: SAPS must operate only to ensure prevention and investigation of crimes rather than act on the basis of the broad "national interest".

IFP: Action of the security apparatus should be oriented to the implementation and execution of statutory, constitutional and international law.

NP: SANDF must perform its task in the national interest by providing for the defence of Republic and ensuring the protection of inhabitants of Republic.

FF: Defence component must not be given any function pertaining to police duties and the Police component not given any function pertaining to military duties.



**Agreement:**

- 1. *The Constitution should provide that the Defence Force's primary function is to defend the territorial integrity of SA.***
- 2. *The Constitution should provide that action of the security apparatus should be orientated to the implementation and execution of statutory, constitutional and relevant international conventions and law on armed conflict.***

**Contention:**

- 1. *The Constitution should define national interest and national security policy in broad non-militarist terms focusing on the quality of life of citizens in economic, political, social and environmental terms.***
- 2. *The Constitution should provide for the definition of national interest as the interests of the citizenry and the interests of the state.***

**5. PARLIAMENTARY OVERSIGHT**

ANC: There must be parliamentary oversight of security apparatuses.

IFP: Parliamentary committees, representative of all political parties, on defence, intelligence and police shall have special functions to oversee all aspects related to these apparatuses. They may hold hearings, investigations, take evidence and subpoena witnesses.

IFP: Parliamentary committees shall have the power to make recommendations about the submission of budgets of the security apparatuses prior to the inclusion into the national budget.

IFP: Joint committees drawn from both the National Assembly and the Senate shall have oversight over both defence and intelligence apparatuses.

IFP: Parliamentary committees shall consider and make recommendations on all legislation relating to the security apparatuses and related matters and initiate legislation in connection with the relevant security apparatus.

IFP: Parliamentary committees will be empowered to review and make recommendations on regulations pertaining to the security apparatuses, inter-departmental cooperation, rationalisation, demarcation of line functions, and investigate complaints made against the apparatus.

IFP: Parliamentary committees will be empowered to refer any alleged violations of human rights committed by a security apparatus to the Human Rights Commission.

IFP: Parliamentary committees shall submit to the President and Parliament, a report on the activities of the committee, within two months of the opening of Parliament.



DP: Constitution should draw clear distinction between command and control. Legislature should control security apparatuses.

DP: There must be oversight and prior sight of executive action or proposed action by an appropriate multi-party committee or committees of legislature, meeting if necessary in camera. Issue of secrecy is warranted because in balance between national security and effective parliamentary control. Committee(s) should have power to sub poena witnesses, including responsible members of executive, take evidence and call for papers, and should present reports to legislature at regular intervals.

**a. Police**

ANC: There must be a portfolio committee with multi-party representation on proportional basis to oversee police.

**b. Defence**

NP: Constitution should provide for establishment of Multi Party Joint Parliamentary Committee on Defence, with powers inter alia, to deal with defence related bills and monitor, investigate, inquire into and make recommendations relating to any aspect to the Department of Defence. Committee should have power to convene itself as a commission of inquiry into any matter related to Department of defence. Membership of the committee should be as inclusive as possible. Further regulation of the committee should occur in terms of rules and orders of Parliament.

NP: Parliament must annually approve defence budget.

PAC: Parliamentary Select Committee should be allowed an important role in defence matters.

ANC: Defence review necessary in order to ensure that Parliament received sufficient information to make informed choices and avoid merely rubber-stamping decisions.

IFP: Parliamentary oversight through joint Intelligence/Defence Committee which would enjoy relationship of trust and cooperation with executive, without compromising the principle of the separation of powers.

**c. Intelligence.**

ANC: There shall be a Joint Standing Multi-party Parliamentary Oversight Committee. The total number of the committee, its powers and functions shall be determined in recognition of the unique role of the committee and will be governed by legislation. The Committee provides the cornerstone of public accountability of Intelligence.

NP: Provide for the establishment of a multi-party joint standing committee of Parliament on intelligence which could meet in camera and should oversee



all intelligence activities, budgets etc.

**Agreement:**

***The Constitution should provide for oversight by multi-party Joint Oversight Committees for Defence and Intelligence***

**Further clarity:**

1. ***The Constitution must enable the Legislature to have multi party Oversight Committees to control the security apparatus. Such Committees must be empowered to deal with legislation relating to security apparatus and related matters, make recommendations prior to submission of budgets, investigations, hear evidence, subpoena witnesses, convene themselves as a Commission of Inquiry.***
2. ***Parliamentary oversight before, during and after Executive action.***
3. ***Number and nature of oversight committees, need for both Portfolio and Joint Oversight Committees in relation to defence and intelligence.***

**6. EXECUTIVE CONTROL**

DP: In line with clear distinction between command and control, executive should command security apparatuses.

DP: Parliament must have right to sufficient information, including regular report by the executive to the legislature, parliamentary questions, mechanism of control over expenditure via select committees of finance and public accounts and the approval or variation of security apparatus budgets by Parliament after public debate.

**a. Police**

ANC: The President shall appoint the National Commissioner of the SAPS, who shall in turn appoint a Provincial Commissioner for each province in consultation with the Provincial MEC responsible for police.

ANC: The National Commissioner shall be accountable in the first instance to the Minister responsible for police. Powers and functions of both the Provincial MEC and Provincial Commissioner must be spelt out including clear lines of command that reflect the unitary nature of the South African state.

IFP: The Commissioner of the SAPS will be responsible for the implementation of national legislation.

IFP: The Commissioner of a Provincial Police Service will be responsible for the implementation of provincial legislation and the administration of police functions at provincial level.

DP: Day to day management of police at all levels should vest with a



commissioner who should report to the member of the executive in charge of police services. At the same time metropolitan commissioners would be responsible to provincial commissioners who in turn would be responsible to the national commissioner for the standards, efficiency and discipline of the force in question.

NP: President must charge a Minister and appoint a National Commissioner who are responsible for SAPS. National Commissioner must have executive command of SAPS subject to the competence of Provincial Commissioners.

NP: Premier of province shall charge a member of Executive Council for performance of provinces police service and such member must have certain specific powers of control.

#### **b. Defence**

NP: President shall be Commander-in-Chief of SANDF.

NP: President shall appoint Chief of SANDF, who shall exercise military executive control subject to directions of Minister responsible for Defence, and during a state of national defence/war, of the President..

NP: No Deputy Minister should be part of executive chain of command between either President and Chief of SANDF or Minister and Chief of SANDF. No person such as a Secretary for Defence shall be appointed in executive command chain above Chief of SANDF

IFP: The President will be the Commander in Chief of the SANDF and will appoint the Chief of the SANDF and A Secretary of the Department of Defence.

FF: The State President should be the Commander-in-Chief with command and control restricted to the final approval of the overall policy of the defence of the state.

FF: The Commander of the Defence component must be accountable to the State President for all functions laid down in the Sect for the defence component.

FF: The Defence component is commanded by the State President through the Commander of the Defence component and controlled by the State President through the Minister of Defence to the Commander and/or Chiefs of Staff of the Defence component.

#### **c. Intelligence**

ANC: The State President has ultimate control over the intelligence structures.



He/she provides national leadership of intelligence and is responsible for the effective intelligence system. In exercising this responsibility, the President draws on the executive support of a political functionary (Minister/Deputy Minister/Secretary of State). Together they exert ministerial control over intelligence. They are in turn accountable to Parliament for intelligence.

ANC: Operational control and management of the intelligence structures will be exercised by the Co-ordinator of NICOC and the Director's General of the various structures.

**d. Declaration of State of Emergency and State of War**

See section 2 and 3 above.

**Agreement:**

- 1. The Constitution should provide that the security apparatus are accountable to an appropriate member of the Executive.**
- 2. The Constitution should provide that each arm of the security apparatus is accountable to a member of the Executive at the appropriate level of competence.**
- 3. The Constitution should provide that the State President is the Commander-in-Chief of the Defence Force.**
- 4. The Constitution should provide that the State President appoint the Chief of the SANDF, the Directors General of the National Intelligence Agency and SA Secret Service and the National Commissioner of the SAPS.**

**Contention:**

**National and Provincial competencies**

**Further clarity**

- 1. Constitutional provisions relating to powers of Provincial MECs and Provincial Commissioners of Police and Heads of Defence.**
- 2. The extent to which the Executive and Parliament interact in confirming the appointments of the Chief of the Defence Force, the Director General of the National Intelligence Agency, SA Secret Service and the National Commissioner of the Police.**

**7. CIVILIAN CONTROL OF MINISTRY**

DP: Civilian control of security apparatuses. This should mean that political control should be firmly located with a member of executive who should be accountable to legislature for activities of each force. The constitution should provide for mechanisms for the legislature to censure this member.

IFP: The principle of civilian control of the security related departments will be upheld and civilian control by the executive over the forces to achieve



accountability should be ensured.

**a. Police**

ANC: Police shall be under civilian control with Minister appointed by the President. Minister shall report annually to Parliament and be accountable to Cabinet and Parliament for all police related matters.

ANC: The Ministry concerned with police should be staffed largely by civilians

**b. Defence**

ANC: Defence Force shall be under civilian control with Minister appointed by the President. Minister shall report annually to Parliament and be accountable to Cabinet and Parliament for all defence related matters.

ANC: Ministry concerned with defence shall have Secretary for Defence whose responsibility should be inter alia to assist in formulation of defence policies and designation and overseeing of programmes of Defence Force.

NP: The Minister responsible for Defence must be accountable to Parliament for the SANDF.

PAC: Defence Force should be under civilian control through constitutional provision. Accepts need for Secretary for Defence.

FF: The Secretary for Defence must be accountable to the Minister for all functions laid down in the Act for the Secretariat.

FF: The Minister responsible for Defence must be accountable for formulating, approval and execution of the defence policy of the state.

**c. Intelligence**

ANC: The State President has ultimate control over the intelligence structures. He/she provides national leadership of intelligence and is responsible for the effective intelligence system. In exercising this responsibility, the President draws on the executive support of a political functionary (Minister/Deputy Minister/Secretary of State). Together they exert ministerial control over intelligence. They are in turn accountable to Parliament for intelligence.

PAC: Security structures should be under civilian control.

**Agreement:**

1. *The Constitution must provide definitions for clear lines of political accountability, command and operational accountability.*
2. *The Constitution must provide for civilian control of the Ministries responsible for Defence and Police.*



**Further clarity:**

1. **Concept of civilian control, as it is not clear if an ex-soldier or police officer in civilian position is civilian control.**
2. **Chain of command and its relationship to civilian control.**

**8. JUDICIAL AND LEGAL CONTROL**

ANC: Privacy of the individual is inviolable. Intrusions by the intelligence structures will be permissible only with the authority of a judge.

NP: SANDF should conform to international law on armed conflict which is binding on South Africa.

DP: Legislative control should include a legislative framework which lays down powers and functions of security apparatuses and imposes limitations on their powers. Constitution must establish definite relationships between executive deployment of security apparatuses and legislative control or review of this deployment.

**Agreement:**

***The Consitution should state that the security apparatus should act within the law, Bill of Rights, Constitution and relevant international law on armed conflict.***

**9. OMBUD STRUCTURES**

ANC: Parliament shall appoint an independent Ombuspersion for each Security Apparatus to deal with complaints, labour related disputes etc.

ANC: Each intelligence structure will have an Inspector General, independent from the service/agency.

IFP: There shall be an internal ombudsperson appointed for each apparatus charged with the task of addressing internal conflicts and disputes related to the human rights of members of the security apparatuses.

DP: Police Act should make provision for Police Ombudsperson or for Police Review Board whose duties include investigation into breaches of Code by members of the police service at all levels. Such Ombudsperson or Review Board might be structured on national, provincial or local levels.

DP: Institution of military Ombudsperson or defence commissioner who has right to investigate alleged violations of Code of Conduct and report his/her findings directly to Parliament.

NP: Do not support separate office of Ombudsperson as scope of Human Rights Commission and Public Protector cover the need.

ANC: There must be relevant Inspectors General for each security apparatus.



**Contention:**

***The Constitution should provide for an Ombudsperson, or similar structure, for each of the Security Apparatus.***

**Further Clarity:**

***Role of the Ombudsperson or similar structure, in each arm of the Security Apparatus and relationship to the Public Protector and Human Rights Commission.***

**DEMILITARISATION**

ANC: There should be a civilian wing of the SAPS as part of the demilitarisation of the SAPS. Clear lines of command and control must be stipulated.

ANC: There should be a change away from military ranking in the SAPS as part of the demilitarisation process.

**10. RIGHTS OF SECURITY APPARATUS MEMBERS IN RELATION TO THE STATE**

**a. Military discipline and human rights**

ANC: SANDF shall respect the rights and dignity of its members, subject to normal constraints of military discipline as provided for in Defence Act.

**b. Anti- discrimination policy**

ANC: SANDF shall ensure that composition of leadership and rank and file reflect racial, ethnic and gender composition of South Africa. SANDF shall not discriminate against any of its members on grounds of race, ethnicity, sexual preference, religion or gender.

ANC: Ministry responsible for defence and Secretary for Defence shall design and oversee equal opportunities programme within SANDF and shall report annually to parliament on the implementation of this programme.

IFP: There shall be gender equality in all of the security apparatuses including the SANDF.

NP: Principles of international humanitarian law and in particular the basic values of freedom and equality shall apply to all members of the security forces. Within the security forces no discrimination on any grounds will be allowed. To extent that justifiable differentiation, as opposed to discrimination is allowed by international humanitarian law principles, members shall be deployed in ways which best suit their ability.

PAC: Members of the Defence Force should be bound by the constitution equally. No regard to anything except citizenship should be taken into account in eligibility for defence Force and exercise of rights and



privileges.

**c. Employment and working conditions**

ANC: There must be a Security Service Commission, separate from Public Service Commission, to see to the conditions of service, promotions, salary scales, working conditions etc of members of the SANDF, SAPS and Intelligence Services.

ANC: Members of the intelligence structures will not fall under the jurisdiction of the Public Service Commission.

IFP: There shall be a separate Security Apparatus Service Commission to facilitate the effective functioning of the security apparatuses.

NP: Separate Security Apparatuses Commission should be established to perform the same functions as Public Service Commission, with the same competencies as Public Service Commission. All employees of security apparatuses would fall under this Commission, not only those "in uniform".

PAC: Defence force should not fall under Public Service Commission because of peculiar nature and functions.

IFP: The law may provide measures to restrict the right to strike, setting out compulsory dispute resolution mechanisms. The law could draw a differentiation between members of the civilian apparatuses and members of the SANDF in limiting the right to strike.

NP: Members of security apparatuses should not have right to strike and to assemble and demonstrate. Provision should obviously be made elsewhere for effective dispute resolution mechanisms.

**d. Code of Conduct**

ANC: There should be a Code of Conduct for all who join the security services.

ANC: Members of the intelligence structures will be bound by an oath of secrecy and allegiance to the constitution.

DP: Constitution must contain a justiciable Bill of Rights, supplemented by Code of Conduct for security apparatuses which would be contained in appropriate legislation. Code of conduct should establish rights and entitlements of members of security apparatuses as well as limitations of their ordinary civil rights while serving. Constitution should provide for enactment of such a Code.

DP: Enforceable Code of Conduct for all police officers at whatever level.

IFP: All members of security apparatuses shall make solemn affirmation or



oath to uphold and defend the constitution.

IFP: Members of the security apparatuses shall have the right to disobey a clearly unlawful order.

NP: Members of SANDF must be entitled to refuse to execute any order where such execution would constitute an offence or would breach international law on armed conflict which is binding on South Africa.

PAC: Defence Force members shall unconditionally execute constitutional and legal commands of the Defence Force, but shall reserve the right of refusing to execute immoral, amoral and unlawful commands from an officer of the Defence Force.

PAC: Absolute loyalty to the constitution in public affairs should be required of the personnel serving in the security structures. Such loyalty should also be steadfastly inculcated.

IFP: The law may provide for special sanction for desertion of duty, mutiny, and treason. With respect of the SANDF, special differentiation may be allowed between times of peace and a declared state of war.

**e. Political rights of members of security apparatuses**

IFP: Members of the security apparatuses may hold membership of political parties, but may not hold office in them.

PAC: The possibility of individual members of the security structures taking out membership of political parties, thus putting themselves in a situation of also having to carry out political party decisions and obligations is problematic, despite the PAC's embrace of the principle of unfettered exercise of political rights by all individual South Africans.

**Agreement:**

- 1. The Constitution should curtail the rights of members of the security apparatus to strike. The Constitution should provide for alternative compulsory mediation and arbitration procedures.**
- 2. The Constitution should provide that members of the Defence Force should be constitutionally obliged to disobey an unlawful order.**

**Contention:**

**The Constitution should provide for Security Apparatus Service Commissions. Members of the security apparatus should not fall under the Public Service Commission.**

**Further clarity:**

- 1. Status of members of the security apparatus regarding membership of political parties, holding of office, standing for election.**



**2. Further discussion needs to take place with Theme 6.1 on the exact nature of the relationship of the Security Apparatus Service Commission and the Public Service Commission.**

**11. POLITICAL NEUTRALITY OF SECURITY APPARATUSES**

ANC: Education of members of security apparatuses shall equip members to uphold the constitution by covering the Constitution, international law on armed conflict and human rights.

PAC: Defence Force should be educated to be conversant with constitution, law, international law on armed conflict and human rights.

ANC: National intelligence agencies/services are national structures and shall therefore be politically non-partisan.

IFP: The SANDF, SAPS and Intelligence apparatuses should be specifically excluded from any involvement in political activity.

NP: No party-political activity should be allowed on premises occupied by or under the control of the security apparatuses. Regular members of the security apparatuses should not be allowed to stand for election to public office.

NP: The SANDF must refrain from furthering or prejudicing any party political interest.

NP: Intelligence structures must be politically non-partisan. No intelligence agency may carry out operations or activities that undermine, promote or influence South African political party or organisation.

**Agreement:**

- 1. *The Constitution should provide that members of security apparatus should be educated to be conversant with the law, Constitution, international law and Conventions on armed conflict and human rights.***
- 2. *The security apparatus constitute non-partisan professional bodies; the security apparatus themselves cannot participate in partisan political activity, and cannot allow partisan political activity within themselves.***

**12. CONTROL OF INTELLIGENCE FUNCTIONS**

ANC: There will be a Military Intelligence Division of the SANDF, which will gather, correlate, evaluate and use foreign military intelligence relating to national strategic intelligence to the National Intelligence Co-ordinating Committee, operating only in an overt manner; will gather, correlate, evaluate and use domestic military intelligence excluding covert



collection, except when deployed by the Cabinet or President internal to South Africa; to institute counter-intelligence measures within the SANDF.

ANC: Police intelligence should be restricted to crime intelligence by constitutional provision. Oversight of crime intelligence must be constitutionally situated firmly under the Parliamentary Intelligence Oversight Committee, along with Military Intelligence, and Civilian Domestic and Foreign Intelligence.

NP: The mission, structure etc of various intelligence agencies should be contained in ordinary legislation.

PAC: In executing the work of national security and safety, all the state security structures have to work in concert. That is, there should be a mechanism designed to prevent individual structures pursuing conflicting strategies that may inadvertently harm, neutralise or render one or more structures ineffective.

**This will be debated further in the 'block' dealing with Intelligence**

### **13. CONTROL OF ARMS INDUSTRY:**

ANC: Constitution must clearly stipulate conditions of production, procurement and of arms trade.

DP: Parliament must have right to information about arms production, arms procurement and arms sales.

PAC: Arms production should fall outside of duties and functions of Defence Force.

*Further clarity:*

*How the Special Defence Account would be seen in future. Once the Cameron Commission has reported proposals relating to arms procurement to be considered. This will be debated in the block on Defence.*

### **14. COMMUNITY POLICING:**

ANC: The philosophy of community policing should be constitutionally entrenched. The role, function, structure and funding of Community Police Forums must be established.

*Further clarity:*

*Funding of community policing as determined by allocation of national and provincial powers. This will be debated further in the 'block' on Police.*



## 15. STRUCTURE OF SECURITY APPARATUSES:

### a. Police

ANC: There shall be one police service, SAPS, for the country, with powers, functions and personnel decentralised to the Provinces.

DP: There should be one police structures dedicated to upholding on body of law, even is there are different police services specialising in different aspects or serving different communities. All police officers should have jurisdiction throughout South Africa.

NP: Police service must be structured at both national and provincial level and clear division of responsibilities must be made between National and Provincial levels of policing. Division of responsibilities should be entrenched in constitution. Those aspects relating to "normal" policing must fall within the legislative competence of the various provinces.

### b. Defence

ANC: There shall be only one national defence force, the SANDF.

PAC: All agencies of defence Force shall be viewed by constitution as constituting single unit within SANDF and shall therefore exercise no autonomy.

FF: To alleviate the task of the SAPS and SANDF regarding the security of other state property and other aspects such as ceremonial duties also not directly related to their functions, it is suggested that a third component be established along the lines of the National Republican Guard of Portugal. The policy relating to such a component should be written into the constitution.

FF: Certain control, specified by an Act of the part-time forces, such as the Commando's and Citizen Force, should be allocated to the provinces.

#### *Contention:*

1. *Provincial competency in relation to police services*
2. *Allocation of any powers in relation to the SANDF to Provincial legislature.*

## 16. MONOPOLY OF FORCE:

IFP: The State shall not suppress the citizens right to bear arms, but may limit it in special cases and circumstances.

IFP: Provincial constitutions may regulate matters such as police reserve and neighbourhood watches to supplement police action.

IFP: Provincial legislation should regulate community protection formations.



**Agreement:**

***Constitution should enshrine individuals right to self defence.***

**Contention:**

***The Constitution should enshrine the right to bear arms.***

**17. ACCESS TO INFORMATION:**

IFP: The right to access all government information and private data bank's information shall be recognised in the constitution, with customary qualifications and exclusions, subject to judicial review which can take place in camera when necessary.

IFP: Intelligence information may not be classified as secret information without showing of their sensitiveness with respect to national security.

NP: The final Fundamental Rights should provide for the right to access to all information held by the state or any of its organs at any level of government in so far as such information is required for the exercise or protection of any fundamental rights.

**18. HELD OVER FOR LATER BLOCK DISCUSSIONS**

IFP: Defence is competence of national government and armed forces are not under authority of provinces. Regimental structure to be maintained whereby regiments can be drawn from communities and mobilised in times of war.

**Paramilitary force**

IFP: Constitution should provide for paramilitary force between defence force and police service. Would be responsible for supporting police when breakdown of civil order and available in times of war to support defence force. Under normal circumstances would fall under control of civilian ministry at provincial level and in times of war and state of emergency to a national minister. Role should be carefully limited by constitution to make sure functions do not overlap with defence force or police. Police would then be totally civilian force which uses minimum force. Final accountability would rest with a Ministry such as Ministry of Interior. Paramilitary force would be resourced and funded from provincial budgets and deployment determined by National Minister. Use on a day to day basis would be responsibility of provincial MEC. Jurisdiction of police would be determined by nature of legal system.

**Contention:**

***The need for, nature of and location of paramilitary force.***



**SUMMARY**  
**DRAFT REPORT THEME COMMITTEE 6.4**  
**AREAS OF AGREEMENT AND CONTENTION**  
 24 February 1995

Constitutional issue	Agreement	Contention	Further clarity
<b>What goes into a Constitution on security apparatus</b>	The Constitution should cover long standing principles. However it may be necessary to flesh out these principles because SA is a new democracy with a particularly troubled history with regard to security apparatus.		
<b>Where should security apparatus be located within the Constitution</b>	There are various possible places, which are not necessarily mutually exclusive - Preamble, Bill of Rights, Powers of the State President, separate chapters dealing with each of the security services, or one chapter dealing with all of them. No finality at this stage, will be an ongoing thread of discussion in work of Subtheme.		<b>That Correctional Services is not part of security apparatus and should be dealt with under Theme 5 in relation to judiciary and legal systems.</b>



Constitutional issue	Agreement	Contention	Further clarity
<p><b>1. Supremacy of the Constitution</b></p>	<p>1. The Constitution is the supreme law in South Africa.  2. The Constitution must be binding on the Security Apparatus.  3. The Constitution should prohibit the Security Apparatus from acting on their own and bypassing Parliament and the Executive.  4. The Constitution should state that the Executive cannot use the Security Apparatus to violate the Constitution.</p>		



Constitutional issue	Agreement	Contention	Further clarity
<p><b>2. Declaration of a state of emergency</b></p>	<p>1. The Constitution should provide for Presidential power to declare a State of Emergency, and to regulate suspension of human rights in that context, and right of Parliament to review/ overturn such decisions.</p> <p>2. The Constitution should provide for the Judicial right to overturn decisions to declare a state of emergency if procedure has not been followed correctly.</p>	<p>1. The powers of Provinces to deploy police in a provincial state of emergency</p> <p>2. The right of Provinces to review or overturn the declaration of a state of emergency in that Province.</p>	<p>1. Length of time allowed to lapse before convening of Parliament.</p> <p>2. Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.</p>
<p><b>3. Declaration of a state of national defence/war</b></p>	<p>The Constitution should provide for Presidential power to declare a state of national defence/war, subject to Parliamentary confirmation.</p>		<p>1. Time period allowed for the review of such a decision by Parliament.</p> <p>2. Deployment of the Defence Force within South Africa and relationship between Police and Defence Force within this deployment.</p>



Constitutional issue	Agreement	Contention	Further clarity
<p><b>4. Definition of action in the national interest and national security</b></p>	<p>1. The Constitution should provide that the Defence Force's primary function is to defend the territorial integrity of SA.</p> <p>2. The Constitution should provide that action of the security apparatus should be orientated to the implementation and execution of statutory, constitutional and relevant international conventions and law on armed conflict.</p>	<p>1. The Constitution should define national interest and national security policy in broad non-militarist terms focusing on the quality of life of citizens in economic, political, social and environmental terms.</p> <p>2. The Constitution should provide for the definition of national interest as the interests of the citizenry and the interests of the state.</p>	



Constitutional issue	Agreement	Contention	Further clarity
<p><b>5. Parliamentary oversight</b></p>	<p>The constitution should provide for oversight by multi party Joint Oversight Committees for defence and intelligence.</p>		<ol style="list-style-type: none"> <li>1. The Constitution must enable the Legislature to have multi party Oversight Committees to control the security apparatus. Such Committees must be empowered to deal with legislation relating to security apparatus and related matters, make recommendations prior to submission of budgets, investigations, hear evidence, subpoena witnesses, convene themselves as a Commission of Inquiry.</li> <li>2. Parliamentary oversight before, during and after Executive action.</li> <li>3. Number and nature of oversight committees, need for both Portfolio and Joint Oversight Committees in relation to defence and intelligence.</li> </ol>



Constitutional issue	Agreement	Contention	Further clarity
<p><b>6. Executive control</b></p>	<p>1. The Constitution should provide that the security apparatus are accountable to an appropriate member of the Executive.</p> <p>2. The Constitution should provide that each arm of the security apparatus is accountable to a member of the Executive at the appropriate level of competence.</p> <p>3. The Constitution should provide that the State President is the Commander-in-Chief of the Defence Force.</p> <p>4. The Constitution should provide that the State President appoint the Chief of the SANDF, the Directors General of the National Intelligence Agency and SA Secret Service and the National Commissioner of the SAPS.</p>	<p>National and Provincial competencies.</p>	<p>1. Constitutional provisions relating to powers of Provincial MECs and Provincial Commissioners of Police and Heads of Defence.</p> <p>2. The extent to which the Executive and Parliament interact in confirming the appointments of the Chief of the Defence Force, the Director General of the National Intelligence Agency, SA Secret Service and the National Commissioner of the Police.</p>



Constitutional issue	Agreement	Contention	Further clarity
<b>7. Civilian control of the Ministry</b>	<p>1. The Constitution must provide definitions for clear lines of political accountability, command and operational accountability.</p> <p>2. The Constitution must provide for civilian control of the Ministries responsible for Defence and Police.</p>		<p>1. Concept of civilian control, as it is not clear if an ex-soldier or police officer in civilian position is civilian control.</p> <p>2. Chain of command and its relationship to civilian control.</p>
<b>8. Judicial and legal control</b>	<p>The Constitution should state that the security apparatus should act within the law, Bill of Rights, Constitution and relevant international law and conventions on armed conflict.</p>		
<b>9. Ombud structures</b>		<p>The Constitution should provide for an Ombudsperson, or similar structure, for each of the Security Apparatus.</p>	<p>Role of the Ombudsperson or similar structure, in each arm of the Security Apparatus and relationship to the Public Protector and Human Rights Commission.</p>



Constitutional issue	Agreement	Contention	Further clarity
<p><b>10. Rights of members of the security apparatus in relation to the state</b></p>	<p>1. The Constitution should curtail the rights of members of the security apparatus to strike. The Constitution should provide for alternative compulsory mediation and arbitration procedures.</p> <p>2. The Constitution should provide that members of the Defence Force should be constitutionally obliged to disobey an unlawful order.</p>	<p>The Constitution should provide for Security Apparatus Service Commissions. Members of the security apparatus should not fall under the Public Service Commission.</p>	<p>1. Status of members of the security apparatus regarding membership of political parties, holding of office, standing for election.</p> <p>2. Further discussion needs to take place with Theme 6.1 on the exact nature of the relationship of the Security Apparatus Service Commission and the Public Service Commission.</p>



Constitutional issue	Agreement	Contention	Further clarity
<b>11. Political neutrality of security apparatus</b>	<p>1. The Constitution should provide that members of security apparatus should be educated to be conversant with the law, Constitution, international law and Conventions on armed conflict and human rights.</p> <p>2. The security apparatus constitute non-partisan professional bodies; the security apparatus themselves cannot participate in partisan political activity, and cannot allow partisan political activity within themselves.</p>		
<b>12. Control of intelligence functions</b>			<b>To be debated in the block on Intelligence</b>
<b>13. Control of arms industry</b>			<b>How the Special Defence Account would be seen in future. Once the Cameron Commission has reported proposals relating to arms procurement to be considered. This will be debated in the block on Defence.</b>



<b>Constitutional issue</b>	<b>Agreement</b>	<b>Contention</b>	<b>Further clarity</b>
<b>14. Community policing</b>			Funding of community policing as determined by allocation of national and provincial powers. This will be debated in the block on Police.
<b>15. Structure of security apparatus</b>		1. Provincial competency in relation to police services. 2. Allocation of any powers in relation to the SANDF to Provincial legislature.	
<b>16. Monopoly of force</b>	The Constitution should enshrine individual's right to self defence.	The Constitution should enshrine the right to bear arms.	
<b>17. Access to Information</b>			To be debated in the blocks on Police, Intelligence and Defence.



## **MEMORANDA & CORRESPONDENCE**

- \* **Memo: Executive Director - Location of Correctional Services**
- \* **Letter: Institute for Defence Policy**
- \* **Memo: Executive Director**



# CONSTITUTIONAL ASSEMBLY

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PO Box 15  
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REPUBLIC OF SOUTH AFRICA

REF NO:

## MEMORANDUM

Date : 22 FEBRUARY 1995

To : ALL THEME COMMITTEES AND CHAIPERSONS.

From : HASSEN EBRAHIM  
EXECUTIVE DIRECTOR

Subject : COMMITMENTS FOR:

1: CONSTITUTIONAL PUBLIC MEETINGS ON  
SATURDAY 25 FEBRUARY 1995 IN NORTHERN  
TRANSVAAL, EASTERN TRANVAAL, EASTERN  
CAPE, NORTH WEST AND ORANGE FREE STATE.  
(see attached programme)

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Please be advised that we are holding four Constitutional Public Meetings on the 11th March 1995. You will be informed of the provinces and exact venues during the course of next week. You will also be informed of the rest of the programme of CPM's during the course of the week of the 27th of February 1995.

Kindly inform Theme Committee members that we require the attendance of 2 representatives from each Theme Committee at each event.

Further, inform members of your Theme Committee to make recommendations regarding issues to be raised at these meetings by no later lunch time on Tuesday 28th February 1995. Details of attendance and issues to be raised should be communicated through managing secretaries to the Community Liaison Department.

The Party Whips have also been informed of the above.



# PROGRAMME : CPMs : 25 FEBRUARY 1995

## 1. NORTHERN TRANSVAAL

- Venue : Namakgale
- Time : 09:00
- Motivation for venue :

- Rural population the primary target market
- Biggest available hall, that is situated within Namakgale
- Availability of "Phosfate" and "Palapnune" Clubs
- Already consulted with "Commisioner of Constitutional Affairs" that is situated in Namakgale
- Accomodation for 1200 persons is available

## 2. EASTERN CAPE

- Venue : Graaff Reinette Town Hall
- Time : 09:00
- Motivation for venue :

- Close to rural communities
- School hall within the Township does not serve the purpose of the meeting
- Good co-operation between TLC and other CBOs and NGOs
- Wide consultation has already taken place
- All facilities available
- Transport easy to arrange (has already been arranged)

## 3. NORTH WEST

- Venue : Klerksdorp; Markotter Staduim
- Time : 14:00
- Motivation for venue :

- Rural population the primary target market
- Transport easy to arrange
- Very close (walking distance) to Jouberton and other rural communities
- No halls and other equipment available in the vicinity

## 4. FREE STATE

- Venue : Bloemfontein; Vista University
- Time : 10:00



- Motivation for venue :
- No suitable hall within Mangaung
- Arena at University makes provision for +-4000 persons
- Transport easy to arrange (close to surrounding rural communities)

#### 5. EASTERN TRANSVAAL

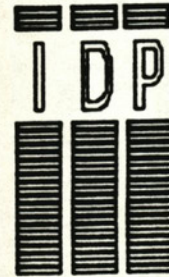
- Venue : White River; Drum Rock Hotel
- Time : 10:30
- Motivation for venue :
- Central venue to rural communities
- Bigg hall available (not other available)
- Transport easy to arrange
- Invitations to all organisations (CBOs and NGOs) already out



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**Institute for Defence Policy**

Ms Jenny Schreiner  
Chairperson of Subtheme Committee 4. Theme Committee 6

Date 20 February 1995

Fax: 021-403-2070

Dear Ms Schreiner,

**SUBMISSION TO SUBTHEME COMMITTEE 4 OF THEME COMMITTEE 6**

Thank you for the opportunity to have organised and presented the seminar on the Security Forces and the Constitution in Cape Town on 14 and 15 February 1995 to the members of your Subtheme Committee. I was, however, subsequently surprised to read, in the minutes of your committee meeting of 7 February 1995, that our workshop was 'to take the form of an IDP submission to the Subtheme Committee'. We were, unfortunately, not informed that this would be the purpose or the format. Rather what we attempted to do was to provide a balanced perspective covering, much more broadly, a number of issues and to incorporate as representative a line up of speakers and stakeholders as was possible at such short notice. We were admittedly, not completely aware of the extent of progress that your committee had made on a number of related issues. This being said, we are now in a position perhaps to better meet the intention as detailed in the minutes of 7 February 1995.

In a number of private conversations during our seminar you requested a specific and focused input (i.e. content as opposed to principle and motivation) detailing those provisions that should be considered for inclusion in a Final Constitution which emanated from the seminar. As a result we have and are consulting widely with a number of academics and non-political experts and have compiled a consolidated submission which, in our opinion, reflects comprehensively on all those provisions which should/could be included in a final constitution regarding the armed forces, the police service, the intelligence agencies and (to a lesser extent) correctional services.

At present we feel it inappropriate to canvass political opinion on the submission for obvious reasons but we have taken careful note of submissions that have thus far been made by the various political parties as reflected in Documentation Packages 2 (dated 31 January 1995), 4 (dated 7 February 1995) and 5 (dated 14 February 1995). We also carefully read and noted the contents of a number of minutes of the meetings of Subtheme Committee 4 in particular those of 1, 7, 8 and 9 February 1995. We are of the opinion that our submission reflects a synthesis of these various submissions but that the content thereof goes beyond many of the issues discussed in an attempt to provide substantive detail. As is often the case, the 'devil lies in the detail'.

I therefore request, at the earliest convenience of your committee, the opportunity to present this submission. I estimate that this should not require no more than 30 to 40 minutes. I will have to fly down to Cape Town for this purpose and therefore request some advance warning.

I would prefer the opportunity for an oral presentation since the contents of the submission are drafted as clauses for inclusion in a final constitution without any explanatory notes.

I would appreciate your early response to this request.

Yours sincerely,

**DR. JAKKIE CILLIERS  
EXECUTIVE DIRECTOR**



# CONSTITUTIONAL ASSEMBLY

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REPUBLIC OF SOUTH AFRICA

REF NO:

23 February 1995

**To the Chairpersons - Theme Committee Five**

cc Chairperson: Subtheme Committee 6.4 (Jenny Schreiner)

**Re: Joint meeting with Sub-Theme Committee Four of Theme Committee Six**

I refer to the letter dated 15 February 1995 from the Chairperson of Subtheme Committee 4 sent to your Theme Committee on the issue of Correctional Services.

The Directorate has sent a memorandum to all Theme Committee Chairpersons to submit a brief report all the constitutional issues which require Joint Theme Committee meetings. In this regard, the Management Committee is keen to see a joint Theme Committee meeting taking place between Subtheme 6.4 and Theme Committee 5 on the issue of where best the matter of Correctional Services should be located.

Could we therefore urge Theme Committee Five to at its earliest convenience arrange a meeting with Subtheme 4 through the Secretariat with the view to putting a proposal before the Management Committee on the best way to proceed work on the matter of Correctional Services.

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**HASSEN EBRAHIM  
EXECUTIVE DIRECTOR**

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