

2/4/6/6/1/15

CONSTITUTIONAL ASSEMBLY

Theme Committee 6.4

SECURITY APPARATUS

15 June, 1995 (25th meeting)

14:00

Room G26

DOCUMENTATION

**CONSTITUTIONAL ASSEMBLY
25th MEETING
THEME COMMITTEE 6.4
SECURITY APPARATUS
THURSDAY, 15 June 1995**

Please note that a meeting of the above Committee will be held as indicated below:

Date: 15 June 1995

Time: 14:00

Venue: G26

AGENDA

1. **Opening and welcome**
2. **Minutes of the previous meeting**
 - 2.1 Minutes of the twenty fourth meeting, 12 June 1995 (pg 1-4)
3. **Matters arising**
4. **Deliberations on Intelligence**
 - 4.1 **Tabling of report - intelligence and the Constitution (pg 5-7)**
 - 4.2 **Party submissions**
5. **Work programme**
6. **Any other business**
7. **Closure**

**H EBRAHIM
EXECUTIVE DIRECTOR**

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CONSTITUTIONAL ASSEMBLY

**MINUTES OF THE TWENTY FOURTH MEETING OF SUBTHEME COMMITTEE 4,
THEME COMMITTEE 6**

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

MONDAY, 12 JUNE 1995

PRESENT

Schreiner J (Chairperson)

Alant TG	Bloem D
Breytenbach WN	Ebrahim EI
Jordaan JA	Makana S
Marais JA	Mpahlwa MB
Mti LM	Mtintso TE
Selfe J	Sisulu L
Waugh JCN	

Apologies: Appelgryn MS; Breytenbach WN; Ellis M; Mabudafhasi J; Mashimbye JN; Motshabi C; Van Eck J

K McKenzie; N Nyoka and A Seegers were in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 14:15 and welcomed the members.

2 MINUTES OF THE PREVIOUS MEETING

2.1 Minutes of the twenty third meeting, 5 June 1995
The minutes were adopted.

3 MATTERS ARISING

There were no matters arising.

4 PARTY SUBMISSIONS ON INTELLIGENCE

This item was held over to the next meeting of the Committee, scheduled for Thursday, 15 June 1995 at 14:00.

5 OUTSTANDING ITEMS FROM THE POLICE TEXT

5.1 Structure of the Police Service

The NP stated that they supported option one, as set out on page 8 of the documentation for the meeting.

The ANC supported option one.

The DP supported option three.

5.2 Powers of the police service

5.2.1 National Party

The NP stated that the SAPS should have all the powers contained in any or all of the articles in Chapter 14 of the interim Constitution, namely articles 214 - 223.

Broad uniform guidelines and norms and standards for policing at all levels should be laid down by an Act of Parliament.

When a member of the Executive Council determines the powers and functions of a local policing service s/he shall do so in consultation with the relevant local authority and always subject to the uniform guidelines and norms referred to.

5.2.2 Democratic Party

The DP stated that the powers of the police service should be contained in national framework legislation.

5.2.3 African National Congress

The ANC stated that the powers of the police service did not need to be set out in the Constitution.

It was noted that there was a point of contention as to whether powers of the police service were set out in the Constitution or detailed in legislation.

5.3 Executive Control

5.3.1 National Party

The NP stated that the President in consultation with the Cabinet shall appoint a National Commissioner and the National Commissioner in consultation with the relevant member of the Executive Council concerned shall appoint the Provincial Commissioners.

5.3.2 Democratic Party

The DP stated that, in line with their original submission, the Commissioner of the Police at each of the different levels of government, shall be appointed by the Executive at each level. Provision should be made for provincial and metropolitan Commissioners to be appointed in the same manner as the national Commissioner.

5.3.3 African National Congress

The ANC stated that the President shall appoint the national Commissioner, the details of this should be dealt with in legislation. The ANC did not believe that the President needed to consult the parliamentary committee before making this appointment.

5.4 Parliamentary oversight

It was agreed that there was no specific constitutional requirement for an oversight committee for the police service but that the section of the Constitution dealing with parliamentary committees should define this Committee as having an oversight function.

It was agreed that this and 'executive control' fell within the brief of Theme Committee 2, but that if Theme Committee 2 did not address this adequately the Committee would revisit this.

It was agreed that this would be highlighted by way of a footnote.

6 ANY OTHER BUSINESS

6.1 Assessment of intelligence workshop

It was agreed that the workshop had been useful in setting out the key questions in relation to the constitution and intelligence, but that it would have been useful to have received written papers.

It was agreed that documentation from SASS and NIA should be tabled setting out their views as to what should be included in the Constitution with specific reference to the appointment of heads of

SASS and NIA and parliamentary oversight.

It was agreed that the Chairperson and secretariat would produce a report on the intelligence workshop.

6.2 Draft work programme

It was agreed that the Committee would meet on Thursday 15 June 1995.

As there was no certainty as to which days had been allocated to the National Assembly/Senate and the Constitutional Assembly the work programme would be finalised on 15 June 1995.

It was agreed that following the meeting of 15 June 1995 a composite draft of police, defence and intelligence should be tabled before the Committee.

7 CLOSURE

The meeting rose at 14:50.

CONSTITUTIONAL ASSEMBLY
WORKSHOP REPORT : INTELLIGENCE
THEME COMMITTEE 6.4
SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS
MONDAY, 5 JUNE 1995

INTELLIGENCE AND THE CONSTITUTION

Mr M Shaw, Mr M Shaik and Prof Fink Haysom addressed the Committee.

They highlighted the following:

Mr M Shaw

1. Intelligence should be provided for in the Constitution for the following reasons:
 - South Africa is in a unique position with regard to its intelligence agencies as they are in the process of being reformed and amalgamated.
 - The changing nature of intelligence.
 - There is a new thrust in intelligence agencies around the world with greater openness being displayed.
 - Intelligence has strategic importance as it had been at the forefront of the struggle both for and against apartheid.
2. The Constitution should therefore make provision for the following with regard to intelligence:
 - The different functions of each wing of the intelligence services.
 - The mandate of the intelligence services.

Prof N Haysom

1. The management and mandate of the intelligence services should not be detailed in the Constitution. In Australia and Canada this was contained in

statute.

Placing intelligence in the Constitution is clumsy and makes management and change difficult to effect. However if there is no specific provision made for intelligence in the Constitution this does not mean that the intelligence services are not directly implicated within the Constitution via the Bill of Rights and provisions dealing with the Public Service.

2. There was a need to allow parliament the latitude to exercise good governance by legislating freely with regard to intelligence.

Mr M Shaik

1. Intelligence should be provided for in the Constitution for the following reasons:
 - The people of South Africa need to be protected from intelligence agencies who perform a function which can be very intrusive.
 - Intelligence is very much a part of good governance and should not be hidden.
 - Intelligence is a national function which cannot be accrued to provinces and the Constitution needs to speak on this issue.
2. The Constitution should make the following provisions for intelligence within a minimalist framework:
 - Coordination
 - The non-partisan nature of the intelligence services.
 - Executive, parliamentary and civilian control.
 - A code of conduct for members of the intelligence agencies
 - It should state briefly the mission, purpose and function of intelligence.
 - The demarcation of intelligence agencies should be outlined, without detail, in the Constitution.

Discussion

In discussion the following was highlighted:

1. **Procedure for appointing the head of the National Intelligence Agency and South African Secret Service**

Prof Haysom agreed that the Constitution should make provision for the appointment procedures for these posts.

Mr Shaik stated that the President should nominate candidates for appointment and this should be ratified by the parliamentary committee.

2. **Intelligence agencies and constitutions**

Mr Shaw noted that intelligence agencies historically had been set up when Constitutions were already in place. Intelligence agencies formed in the cold war era had been legislated for but had not been placed in Constitutions. In addition intelligence agencies were secret and changed rapidly, and were therefore not Constitutionalised.

3. **Security Apparatus Service Commission**

At present members of civilian intelligence agencies do not fall under the Public Service Commission for reasons of confidentiality, and as many of the activities of the intelligence services were based on a distance being created between the member and the service. Members of the civilian intelligence agencies were excluded by the provisions of the Public Service Act but the civilian agencies are highly audited departments with internal auditing divisions, which most departments do not have.

Representatives of the civilian intelligence services who were present at the workshop, submitted that they wanted a separate services commission for members of the intelligence agencies.

It was noted that it was inappropriate to have members of the security apparatus governed by the Public Service Commission, as they did not have the same rights as the rest of the Public Service.

4. **Parliamentary Oversight Committee**

At present there is overlap between the defence and intelligence oversight committees with regard to military intelligence. At present Military Intelligence is answerable to the Select Committee on Intelligence through the Ministry of Defence. It was noted that while the National Strategic Intelligence Act encompasses Military Intelligence, there was room for bureaucratic manoeuvre on the part of the Defence Force. It was preferable that the intelligence services account to the Deputy Minister of Intelligence rather than the Minister of Defence.