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**CONSTITUTIONAL ASSEMBLY
SEVENTH MEETING
SUBTHEME COMMITTEE 4
THEME COMMITTEE 6
SECURITY APPARATUS
TUESDAY, 7 FEBRUARY 1995**

Please note that a meeting of the above Committee will be held as indicated below. It will be preceded by a meeting of Theme Committee 6 in E249 at 14:00.

Date : 7 February 1995
Time : 14:30
Venue : Room G26, National Assembly wing

AGENDA

1. Opening and welcome
2. Seminar: Prof D van Zyl Smit, Professor and Dean of Law at the University of Cape Town

(Prof van Zyl Smit will address the Committee on the location of security forces within the Consitution. He will focus specifically on the location of Correctional Services within the Constitution)
3. Minutes of the previous meeting (page 1 - 6)
4. Matters arising
 - 4.1 Workshop on security apparatus (page 7 - 11)
5. Supremacy of the Constitution and accountability and control of the security forces
 - 5.1 Party submissions
 - 5.2 Discussion
6. Any other business
7. Closure

Enquiries: Katharine McKenzie (Tel 403-2174)

CONSTITUTIONAL ASSEMBLY

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

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

WEDNESDAY, 1 FEBRUARY 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Dyani, Z D
Ebrahim, E I	Fihla, B N
Gogotya, N J	Khoza, T
Malumise, M	Mti, L M
Mtintso, T	Phillips, I
Powell, P	Selfe, J
Sisulu, L	Van Eck, J
Yengeni, T S	

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting and welcomed members.

2 ADOPTION OF AGENDA

The agenda was adopted.

3 MINUTES OF THE PREVIOUS MEETING

The minutes were adopted subject to the following changes:

- 3.1 J van Eck's name be added to the list of members present
- 3.2 The following items be added to item 5 - Public Participation Events:

5.6 The Constitutional Assembly should link up with Provincial legislatures as well as structures and organisations in provinces in carrying out Public Participation Events.

5.7 The Communication Department of the CA Administration should assist in popularising the Public Participation Programme.

4 MATTERS ARISING

4.1 Meeting schedule

The Chairperson reported that Prof D van Zyl Smit would address the Subtheme Committee on Tuesday 7 February at 14:30.

4.2 Workshop on security apparatus

The Chairperson reported that the Institute for Defence Policy had agreed to move the dates of the workshop forward and it would be held as soon as possible.

5 DISCUSSION : WHAT SHOULD A CONSTITUTION COVER WITH REGARD TO SECURITY APPARATUS

5.1 ANC

The ANC outlined its preliminary position as follows:

The Constitution should cover principles, however it may be necessary to flesh out these principles because South Africa is a new democracy. These basic principles should not be too general but should contain sufficient detail.

5.2 IFP

The IFP explained that it holds a similar perspective. Principles should be spelt out in slightly more detail when it comes to the security apparatus because of South Africa's history. The legacy of control over the security apparatus makes it advisable for the Constitution to be fairly specific.

5.3 NP

The NP agreed with the sentiments expressed.

5.4 PAC

The PAC agreed with the sentiments expressed.

6 DISCUSSION : WHERE SHOULD SECURITY APPARATUS BE LOCATED WITHIN THE CONSTITUTION

6.1 It was agreed that there are four possible places in the

Constitution where security apparatus could be dealt with: the Preamble, the Bill of Rights, separate chapters dealing with each of the Security Services or one Chapter dealing with all of the Security Services.

- 6.2 It was agreed that there was no finality in this matter and that the architecture of the Constitution would be reflected upon as the debate proceeded in the Subtheme Committee.

7 **DISCUSSION : PRINCIPLES OF ACCOUNTABILITY AND CONTROL OF THE DEFENCE FORCE**

7.1 **ANC**

The ANC spoke to its preliminary submission ("A" in Documentation package 2)

The following items were highlighted for clarification:

7.1.1 **Parliamentary oversight**

The ANC stated that the Constitution should make provision for Parliamentary control through a standing committee. Details of this should be contained in legislation. The issue of whether control should be exercised before, during or after military actions needs to be clarified.

The IFP highlighted the fact that its submission made detailed recommendations to be contained in the Constitution regarding Parliamentary oversight. ("B" in documentation package 2)

The ANC highlighted the need for a defence review in order to ensure that Parliament received sufficient information to make informed choices and avoid merely rubber-stamping decisions. This had implications beyond the work of Theme Committee 6.

The ANC amended their submission by replacing section 4 'Ombudsperson' with section 4 'Oversight': Parliament shall ensure oversight of the Defence Force including Parliamentary oversight, an independent military ombudsperson to investigate complaints against the SANDF by soldiers and members of the public, and an Inspector General for the military.

7.1.2 Civilian control

It was noted that the definition of civilian control was not clear, for example a Secretary of Defence or Minister of Defence could be General who had stepped out of uniform for the purpose of assuming a civilian post.

The concept of civilian control needs further definition.

7.1.3 Arms industry

It was noted that there was no clarity on how the Special Defence account would be seen in the future.

It was noted that one of the tasks of the Cameron Commission, presently sitting, is to develop proposals regarding the arms industry. It was agreed that once this Commission had completed its brief its findings should be studied by the Subtheme Committee.

It was agreed that the work programme of the Subtheme Committee should include provision for discussion on the arms industry and arms procurement in March or April once the Commission tabled its findings.

7.1.4 No contentious points were raised. Greater clarity on some issues was still needed and further debate would still take place in subsequent meetings of the Subtheme Committee.

7.2 IFP

The IFP spoke to its submission ("B" in document package 2)

In discussion the following was highlighted for clarification:

7.2.1 Parliamentary oversight

Parliamentary oversight committees should be able to subpoena witnesses.

There was no firm position within the IFP regarding the extent of parliamentary oversight but the prevailing opinion is that parliament should have oversight before the state takes action. Parliamentary oversight is thus proposed as a joint Intelligence/ Defence Committee which would enjoy a relationship of trust with the Executive.

The IFP would support a clause in the Constitution which limited the power of the Defence Force to non-aggressive actions.

7.2.2 State of emergency

The IFP outlined its position : Provinces cannot deploy the Defence Force in a state of emergency but policing is a provincial area of competence. At all times the Defence Force is subsidiary to the South African Police Services.

Provinces should have the competency to declare a state of emergency in their own province. This would not interfere with the competence of the President to declare a national state of emergency.

When the President declares a state of emergency in a particular province there should be some mechanism of review in that province against a unilateral declaration of a state of emergency.

7.2.3 Monopoly of force - citizens right bear arms

The IFP maintains that the Constitution should contain a right to self defence. By implication the Constitution should not suppress the right of citizens to bear arms.

7.2.4 Monopoly of Force - Provinces

The IFP clarified items 2 and 3 stating that defence is the competence of the national level of government and that the armed forces are not under the authority of the provinces. However, as is the case at present, the regimental structure should be maintained whereby regiments are drawn from communities and can be mobilised in a time of war.

7.2.5

Points of contention were: Joint Defence/Intelligence Parliamentary Oversight; Deployment of police in provincially declared states of emergency due to lack of agreement on national/provincial competence regarding the police. While there is agreement on the right to self defence, there is disagreement on enshrining the right to bear arms in the Constitution.

7.3 It was agreed that further discussion would take place when all parties had made their submissions.

8 ANY OTHER BUSINESS

8.1 Principles of accountability and control of correctional services

This discussion was held over to the next meeting of the Subtheme Committee.

8.2 Outstanding Submissions

It was agreed that outstanding party submissions should be available by midday on Monday 6 February to allow for distribution and reading by the meeting of 7 February 1995. It was agreed that the Subtheme would proceed with debate on the basis of submissions by the majority of parties due to the deadlines for block reports.

8.3 Executive Summaries of submissions

It was agreed that the Secretariat would summarise submissions for the time being. Should the Subtheme Committee be flooded with submissions this decision would be revisited.

As far as possible parties and organisations making submissions would be encouraged to attach an executive summary.

The Chairperson would take up with the Core Group the need for administrative support and a researcher, as motivated for in the work programme drawn up in 1994.

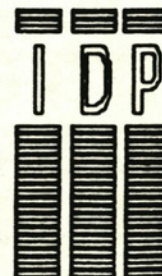
9 CLOSURE

The meeting rose at 16:20.

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Institute for Defence Policy

File ref: 400/3
Date: 5 February 1995
Attention: Ms Jenny Schreiner, Chairperson of Sub-Committee 4 of Theme Committee 6 of the Constitutional Assembly
Organisation: Parliament, PO Box 15, Cape Town, 8000
Fax no: 021-403-2070

Dear Ms. Schreiner,

Attached to this letter please find a copy of the draft programme for our seminar on the Security Forces and the Constitution, 14-15 February 1995 in Cape Town, as discussed with you last week for your attention, as well as some related logistical guidelines. Due to the extremely limited time remaining, we need to finalize the administrative arrangements as soon as possible.

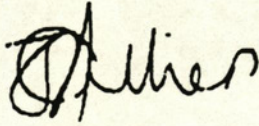
As discussed we require assistance from the Constitutional Assembly (CA) on a number of issues, all of which are listed below:

1. Arrangement of the venue (Old Assembly Chamber) complete with white board and pens as well as an overhead projector and screen. We require access to this venue during the morning of 14 February 1995.
2. All arrangements and a request that the CA carry the costs of the following:
 - Tea and coffee at the conference venue at: 13h30 and 15h20 on Tuesday 14 February 1995; 08h30, 10h10, 14h40 (including cold drinks) and 17h00 on Wednesday 15 February 1995
 - Lunch at 12h30 to 13h30 on 15 February 1995. Please note that we would prefer no alcoholic beverages to be served during this occasion.
3. We also require five return (economy class) tickets Johannesburg/Cape Town for the following academics: Ms. Melanie Lue, Prof. Tertius Geldenhuys, Mr. Mark Shaw, Mr. Christo Botha and Prof. Deon Fourie. Due to the limited time available we would prefer it if these persons make their own arrangements and that they then be reimbursed upon proof of payment thereafter. The Institute for Defence Policy will carry the costs for Dr. Jakkie Cilliers, Mr. Tsepe Motumi and Ms. Sylvia Briggs. We will request that the Department of Defence carry the costs of Mr. Hlongwane and Brig. Peet de Klerk, Safety and Security that of Mr. Etienne Marias and NIA or SASS that of their representative.
4. We plan to accommodate all speakers at the Dorpshuis hotel due to its convenient location. This would imply bed and breakfast for one night for 12 persons, plus supper on the evening of the 14th February. We will make a block booking to this effect on Monday.
5. We will provide transport to and from the airport in Cape Town.
6. We have offered to pay all non-government speakers and speakers not on contract to the government a honorarium of R500 (in the case of a main paper) or R300 (in the case of a response). We would also appreciate reimbursement of these costs if at all possible.

6. Finally, we also require reproduction facilities on 14 and 15 February 1995 to reproduce the various papers. We estimate that we would require to make about 7 000 copies on the basis of having 50 copies of each paper available.

I would appreciate it if you could indicate what support would be forthcoming as a matter of urgency for us to finalize our arrangements. Please contact our Ms. Sylvia Briggs in this regard.

Yours sincerely,



DR. J. K. CILLIERS
EXECUTIVE DIRECTOR

SEMINAR: THE SECURITY FORCES AND THE CONSTITUTION

An open seminar hosted by the Institute for Defence Policy (IDP)

For: Sub-Committee no 4 of Theme Committee no 6 of the Constitutional Assembly

Participants: Members of Sub-Committee 4, press, public.

Date: Tuesday afternoon 14th and whole day of Wednesday 15th February 1995

Venue: Old Assembly Chamber, Parliament, Cape Town.

Format: Short, focused papers with responses and time for discussion on each subject.

Logistics:

- Speakers from beyond the Western Cape fly in the morning (14th) and depart after the conference (but not during), i.e. earliest evening of Wednesday 15th Feb. Due to the limited time available participants will be requested to make their own flight arrangements (economy class). IDP (Ms. Sylvia Briggs) must be informed about these arrangements so as to arrange for transport to and from the airport.
- Reimbursement/arrangements for reimbursement will occur at the conference against provision of proof of expenditure (back page of ticket). Please understand that only return economy class tickets will be refunded and no other expenses such as traveling costs to airport, etc..
- Transport to and from Cape Town airport will be arranged by IDP.
- Participants from the National Assembly and persons presenting papers are requested to attend all the sessions over the day and a half.
- Hotel accommodation for speakers will be arranged at the Dorpshuis hotel which is within walking distance from parliament. IDP will arrange for the payment of bed & breakfast costs as well as supper in the hotel on the evening of 14th February. All other costs are for the personal account of the speaker.
- We will try to arrange that speakers who are advisors/consultants to the National Assembly be paid by that body. Other speakers will be paid a honorarium of R500 (in the case of main papers) or R300 (in the case of respondents), provided a typed, written copy of their paper is handed to Ms. Sylvia Briggs of IDP in Cape Town before the start of the conference for reproduction.
- Where possible advance copies of papers must also be faxed to IDP at (011) 805-1874

DRAFT PROGRAMME

Item	Start	Time	Description	Person	Remarks
Day One: Afternoon of Tuesday 14 February 1995					
1.1	14h00	10'	Welcome & administration	Chairperson: Mr. Tsepe Motumi, Researcher, IDP	
1.2	14h10	10'	Introductory remarks	Dr. J.K. Cilliers, Director, IDP	
1.3	14h20	30'	The purpose of a constitution iro control of the Security Forces	Prof. Deon Fourie, Political Sciences, UNISA	Done. Tel: 012-429 - 6006 Fax: 012-4293400
1.4	14h50	30'	Discussion	All	
1.5	15h20	20'	Tea/coffee		
1.6	15h40	40'	The SA Interim Constitution and the Security Forces	Prof. Annette Seegers, UCT	Alt. Prof. W. Breytenb. St. Univ
1.7	16h20	30'	Discussion	All	
1.8	16h50	30'	International Comparative Perspectives	Mr. F. Hlongwane, Advisor to the Minister of Defence	Done: Tel: 0837003228 Fax: 012-3470118 Requires no travel or accom arrangements. Only prgm.
1.9	17h20	30'	Discussion	All	
1.10	17h50	10'	Closing remarks: Day One	Chairperson	

Day Two: Whole Day Wednesday 15 February 1995

2.1	09h00	10'	Introduction	Chairperson: Rear-Admiral Bennett, Western Cape Representative, IDP	Chris (rt.), Cape Done.
2.2	09h10	40'	Civilian Control of the Military and the Challenge for the Future	Dr. Jakkie Cilliers, Director, IDP	Done.
2.3	09h50	20'	Response	Mr. Christo Botha, Senior Lecturer in Constitutional and Public International Law, UNISA	Done. Tel: 012-4298509 Fax: 012-4293321
2.4	10h10	20'	Tea/coffee		
2.5	10h30	20'	View from the Defence Secretariate	Brig. Peet de Klerk	Tel: 012-428 - 4129
2.6	10h50	40'	Discussion	All	
2.7	11h30	40'	Intelligence Services	Mr. Mark Shaw, CPS	Done. Tel: 402-4308
2.8	12h10	20'	Response	Prof. Tertius Geldenhuys, Criminal Law, UNISA	Done. Tel: 012-429 - 8350
2.9	12h30	60'	Lunch		
2.10	13h30	10'	Introductory remarks	Chairperson: Mr. Gerd Linska, Hanns Seidel Foundation	Done.
2.11	13h40	20'	View from NIA/SASS	Official from either NIA or SASS	Moe Shaik, or Billy Masetla, Chris Thirion
2.12	14h00	40'	Discussion	All	
2.13	14h40	20'	Refreshments		
2.14	15h00	40'	The Police	Mnr. Azhar Cachalia, Member of the Interim Advisory Team of the Minister of Safety and Security	Done: Tel: 403-2765. Fax: 403-1764
2.15	15h40	20'	Response	Ms. Melanie Lue, Policing Research Project	Tel: 403-5650
2.16	16h00	20'	View from the Min of Safety & Security	Mr. E. Marais	Tel: 012-45 - 7426
2.17	16h20	40'	Discussion	All	
2.18	17h00	20'	Tea/coffee		
2.19	17h20	30'	Correctional Services	Prof. Dirk van Zyl Smit, Dean of Law, UCT	Tel: 021-650 - 2705 Fax: 021-650 - 3776
2.20	17h50	20'	Discussion	All	
2.21	18h10	10'	Closing Remarks	Ms. Jenny Schreiner	Tel: 021-403 - 2542 Fax: 021-403 - 2070