

2/21/6/0/1/11

CONSTITUTIONAL ASSEMBLY

Theme Committee 6.4

SECURITY APPARATUS

15 May, 1995 (20th meeting)

Room G26

DOCUMENTATION

Entire document embargoed until 17:00, 15 May 1995

**CONSTITUTIONAL ASSEMBLY
TWENTIETH MEETING
THEME COMMITTEE 6.4
SECURITY APPARATUS
MONDAY, 15 MAY 1995**

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

Date: 15 May 1995
Time: 14:00-17:00
Venue: Room G26

AGENDA

1. **Opening and welcome**
 2. **Minutes of the previous meeting**
 - 2.1 Minutes of the nineteenth meeting, 19 April 1995 (pg 1-5)
 3. **Matters arising**
 4. **Finalisation of report: Policing & police services in the Constitution (pg 6-28)**
 - 4.1 Executive control: procedure in the appointment of a national commissioner (see block 4, pg 24)
 - 4.2 Rights of members of the Police Service in relation to the state: Should this be included in the Constitution? (see block 14, pg 28)
 - 4.3 Minimum force: Should this be included in the Constitution? (block 15, pg 28)
 5. **Party submissions on defence**
 6. **Constitutional Public Meetings and Public Hearings**
 7. **Work programme (pg 29-31)**
 8. **Intelligence workshop: planning**
 9. **Closure**
-

**H EBRAHIM
EXECUTIVE DIRECTOR**

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

CONSTITUTIONAL ASSEMBLY

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

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

WEDNESDAY, 19 APRIL 1995

PRESENT

Schreiner J (Chairperson)

Alant TG	Appelgryn MS
Bloem D	Breytenbach WN
Dyani MMZ	Ebrahim EI
Ellis MJ	Gogotya NJ
Mabudafhasi J	Makana S
Marais JA	Mti LM
Phillips IM	Yengeni T

Apologies: Malan, TJ; Motshabi, C; Mtintso, TE; Waugh JCN

A Cachalia; K McKenzie and A Seegers were in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 09:15 and welcomed the members. On behalf of the Committee the Chairperson extended condolences to Mr Breytenbach for the recent bereavement in his family.

2 MINUTES OF PREVIOUS MEETINGS

2.1 Minutes of the eighteenth meeting, 3 April 1995
The minutes were adopted.

3 MATTERS ARISING

3.1 Defence workshop
It was agreed that the workshop should be postponed until 8 May

1995 as many members had returned to their constituencies to assist in the registration drive for local government elections.

It was agreed that members of the Joint Standing Committee on Defence and the National Assembly and Senate Portfolio Committees on Defence should be invited to the workshop.

4 DISCUSSION ON CONSTITUTIONAL PROVISIONS RELATING TO POLICE

4.1 African National Congress submission

Mr Mti spoke to the ANC submission (on page 1 of submissions volume 9).

The ANC highlighted that they were no longer insisting on a separate Ombudsperson and Service Commission for the police. This represented a departure from their earlier submission.

4.2 Police report

The police report contained in the documentation for the meeting was adopted after the following discussion and changes:

4.2.1 Naming of security apparatus

It was agreed that the security apparatus would not be named in the Constitution.

4.2.2 Preface to the Chapter on security apparatus

It was agreed that there should be one chapter dealing with security apparatus with a brief preface dealing with common matters and separate sections dealing with police, defence and intelligence.

4.2.3 Powers and functions of the Police Service

It was agreed that option one referred to in the report should follow the formulation contained in section 215 of the interim Constitution.

In drawing up draft constitutional provisions the technical advisors would incorporate additions from the DP submission into the formulation of option one, should there be any.

It was agreed that the report should indicate which parties supported which options.

4.2.4 Executive control

It was agreed that the technical advisors would draft two formulations under the agreement as follows:

1. The President shall appoint a National Commissioner.
2. The President-in-Cabinet shall appoint a national Commissioner.

A footnote to this would explain the different approaches which emphasise the President's prerogative to appoint the Commissioner in consultation with Cabinet or after consultation with Cabinet or the relevant member of the Executive.

The ANC stated that it believed that the President should consult with Cabinet/the relevant member of the Executive on the appointment of the Commissioner.

The NP stated that the President-in-Cabinet should appoint the Commissioner.

4.2.5 Structures

It was agreed that the DP would look into the contentions as set out in Option 1 and see if their position could be accommodated within the agreement.

The DP would contact the technical advisors in this regard.

4.2.6 Civilian control

Additional clarity was required on the exact content of the IFP's submission in order to clarify if this was in fact a point of contention.

With the absence of the IFP in the Constitutional Assembly it was agreed that the IFP position would remain as recorded with an indication that the Commissioner being a civilian is a minority view.

4.2.7 Labour relations and human rights

There were no changes to the report.

4.2.8 Border policing

There were no changes to the report.

4.2.9 Parliamentary oversight

It was noted that the draft constitutional provisions of the first report on accountability and control had used the word 'supervision' in place of 'oversight'.

It was agreed that the word 'oversight' should be used as

'supervision' implied the day to day supervision of the police and this task would be performed by senior officers within the service while parliament would 'oversee' the work of the service.

4.2.10 Public Order Policing

There were no changes to the report.

4.2.11 Crime intelligence

There were no changes to the report.

4.2.12 Community Policing

There were no changes to the report.

4.2.13 Rights of members of the Police Service in relation to the State

There were no changes to the report.

4.2.14 Minimum Force

There were no changes to the report.

4.2.15 Discrimination

It was agreed that the technical advisors should draft a discrimination clause for consideration by the Constitutional Committee even though it may be included in the Bill of Rights and not the chapters on security apparatus.

4.2.16 Code of Conduct

It was agreed that the report should have an additional section on the code of conduct.

It was agreed that the technical advisors would draft alternate formulations as follows:

1. The Constitution shall provide for the establishment of a code of conduct to be defined in law.
2. The Constitution should provide for the establishment of a code of conduct but should make specific mention of the use of minimum force and the disobeying of an illegal order.

In outlining these options it was noted that it may not be desirable to elevate some sections of the code of conduct above others by placing them within the Constitution but that in the past laws and regulations had not prevented abuses by the security apparatus and it was perhaps necessary to include

certain sections in the Constitution. A further consideration was the nature of the Constitution as a document defining principles and excluding detail.

It was agreed that further discussion should take place within parties on this matter.

4.3 Submissions from individuals and organisations

It was noted that submissions from organisations and individuals were contained in submissions volume 9.

It was agreed that parties should study these submissions and highlight any further areas for debate which arise from them. These should be submitted to the secretariat by 21 April 1995.

The NP had been through the submissions and had no further areas of debate to add.

5 PRESENTATION BY TECHNICAL ADVISORS ON DEFENCE

It was agreed that this presentation would take the form of a briefing document which would be circulated to members prior to the Defence Workshop scheduled for 8 May 1995.

6 ANY OTHER BUSINESS

6.1 Draft Constitutional provisions of Theme Committee 6.4's first report

It was agreed that the draft provisions should be incorporated into the defence, intelligence and police reports. As such the report as it stands would not be tabled again before the Constitutional Committee.

6.2 Format of reports

It was agreed that the drafting of the reports on police, defence and intelligence would take the form of summaries of political party submissions, points of agreement, points of contention, points needing further clarity, final drafts of sections not to be returned to by the Committee and preliminary drafts of sections that may be affected by further work of the Committee.

7 CLOSURE

The meeting rose at 11:30.

DRAFT

Theme Committee 6.4

**Specialised structures of government:
Security Apparatus**

"Policing and the police service in the Constitution"

Second report to the Constitutional Committee

PART ONE

PARTICULARS OF MATERIAL PROCESSED BY THE THEME COMMITTEE

1 SUBMISSIONS RECEIVED

The following submissions have been received by the Subtheme Committee:

1.1. Political parties

- * African Christian Democratic Party
- * African National Congress
- * Democratic Party
- * Inkatha Freedom Party
- * National Party

1.2 Government Institutions

- * Ministry of Police Services, Western Cape
- * Ministry of Safety and Security
- * South African Police Service

1.3. Organisations of civil society

- * Community Peace Foundation, University of the Western Cape
- * Centre for the Study of Violence and Reconciliation
- * Institute of Criminology, University of Cape Town
- * Ligstryders
- * Military Research Group
- * Police and Prisons Civil Rights Union (POPCRU)
- * Public Servants Association (PSA)
- * Transvaal Women's Agricultural Union, Piet Retief Branch
- * South African Police Union (SAPU)
- * South African National Civics Organisation (SANCO) Anti Crime Commission

1.4. Individuals

- | | |
|---------------------------|------------------------|
| * F Abrahamsohn | * M Kriel |
| * D Aquisto | * FE Kunene |
| * Gen H de V du Toit, RAU | * PN Larsen |
| * S Egbert | * RM London-Thurgood |
| * AT Evans | * T Lugalo |
| * N Fumba | * L N Mkuzangwe |
| * HP Gorringer | * V Nkosi |
| * M Green | * I Pretorious |
| * R Greenberg | * S Ravenscroft |
| * KD Hart | * FD Skhosana |
| * AG Hawarden | * Prof Ben Smit, Unisa |
| * AW Heffer | * N Smith |
| * K Hlekane | * R Solomon |
| * M Jagger | * J Stemmet |
| * JMC Joubert | * E Stones |

- * JS Swart
- * D Verster
- * J Wilkinson
- * ZM Thuluzubone
- * Trautmann

Deliberations have focused on submissions from political parties and participants in the seminar on Police. The submissions received from the public so far have tended to be broad and short.

2 SEMINARS ORGANISED BY THE COMMITTEE

A seminar on Policing, police service and the constitution was held on 20 March 1995.

PART TWO

Note:

This Report refers to the police service as either a national police service or provincial police services as is relevant, and does not name the service(s). It is now proposed that the Constitution should not name the security apparatuses. This is a shift from the Report on Accountability and Control of the Security Apparatuses.

1 PREFACE TO THE SECTION OF CONSTITUTION DEALING WITH SECURITY APPARATUSES.

1.1 ANC

The Preamble should state that security is an all encompassing and holistic concept that enables people to live in peace and harmony, enjoy equal access to resources as well as transform and develop their lives.

The objective 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 socio-economic development and protection of the environment.

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

Contention:

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.

Draft:

Security is an all encompassing and holistic concept that enables people to live in peace and harmony, enjoy equal access to resources as well as transform and develop their lives.

The objective 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 socio-economic development and protection of the environment.

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

2 SUPREMACY OF THE CONSTITUTION

2.1 ANC

The Constitution as the Supreme law must be binding on the security apparatus. The role of the Police is to adhere to and protect the Constitution.

2.2 IFP

Members of the SAPS will make an oath or affirmation to protect and serve the Constitution. The SAPS shall enforce the law and shall act only as authorised by the law and in terms of the Constitution.

Members of the SAPS shall not be delegated powers which in any way exceed the Constitution.

Agreement:

- 1. The Constitution is the supreme law in South Africa**
- 2. The Constitution must be explicitly binding on the security apparatus**
- 3. The Constitution should prohibit the Police from acting on their own and bypassing Parliament and the Executive.**
- 4. The Constitution should state that the Executive cannot use the Police to violate the Constitution.**

Draft:

The constitution should address these principles in relation to all of the security apparatuses in the Preface to the section dealing with the Security Apparatuses:

Final responsibility for national security rests with the President, the Executive and Parliament which have the security apparatuses as instruments in that protection of security.

Security apparatuses cannot act on their own but rather under the guidance of and with the functions defined by Parliament and the Executive.

3 POWERS AND FUNCTIONS OF THE POLICE SERVICE

3.1 ACDP

The prime task of the police force should be the maintenance of internal law and order and to prevent crime.

3.2 ANC

The function of the Police Service shall be the prevention of crime, investigation of any offence or alleged offence, the maintenance of the rule of law and protection of the safety and security of the citizens through community policing.

The duties of the National Commissioner should be those contained in the interim Constitution.

The establishment of police substructures at local level shall be the responsibility of the relevant provincial government official, probably the MEC.

3.3 DP

All police officers should be vested with the same basic powers as peace officers and all police officers should have jurisdiction throughout South Africa.

At national level police should be tasked with maintenance of criminal records, the office of serious economic offences, drug trafficking countermeasures, a rapid deployment force to deal with terrorism and insurrection, enforcement of international agreements, Inspector General, funding formula.

At provincial level police should be tasked with highway patrol, detective branch, forensic services, enforcement of national and provincial laws, carrying out court orders, establishing police stations and lock ups.

At local level the police should be tasked with traffic services, visible policing, crime prevention, community policing, community liaison forums.

3.4 IFP

Members of the (national) SAPS will be responsible for all aspects of enforcement of national legislation with the exception of frame-work legislation.

The SAPS will be responsible for:

- a) the investigation and prevention of organised crime which requires investigation in terms of national legislation.
- b) international police liaison
- c) central support for the keeping of national data, criminal records and statistics
- d) assistance to provincial training establishments to service the provincial services
- e) assistance with forensic laboratory services
- f) the establishment of a special task force or high risk operations related to crimes of a national nature.
- g) such functions related to border, import and export control as may be assigned to the service by the law.
- h) national protection services

- i) provision of technical support services and logistical technology in support of provincial police services.

Agreement:

Functions of police service shall be the prevention of crime, investigation of any offence or alleged offence, the maintenance of the rule of law and protection of the safety and security of the citizens and the community.

Contention:

1. Powers of national police service -

Option 1 - powers of national police service should be national residual powers with provincial powers being specified in the constitution (following s215 of the interim Constitution);

Option 2 - powers of provincial police forces being residual powers with national powers being constitutionally specified.

Note:

These two options run through the entire report as contentions. The report refers to them as Option 1 and Option 2, and tries to identify areas of agreement and contention within each of the Options, while continuing to note the contention between the Options.

2. Specific national and provincial tasks -

Option 1 - as from the interim Constitution with elaborations from the DP

Option 2 - as from IFP

Agreement in Option 1:

Tasks of National Commissioner as in Interim Constitution

4 EXECUTIVE CONTROL

4.1 ANC

Final responsibility for national security rests with the President, the Executive and Parliament.

Security institutions cannot act on their own but rather under the guidance of and with the functions defined by Parliament and the Executive.

The President shall appoint the National Commissioner after consultation with the relevant Minister.

Agreement:

Police service as one of security apparatuses used by President, Parliament and Executive in performance of their task of ensuring safety and security for citizens.

Draft:

Covered in draft of preface to security section and functions of police service (see above).

Agreement:

The President shall appoint a National Commissioner in consultation with the relevant Minister

Draft:

The President shall appoint a National Commissioner in consultation with the relevant member of the Executive or the President shall appoint a National Commissioner.

5 STRUCTURE

5.1 ANC

There should be one national police service in the country with structures devolved to the Provinces.

5.2 DP

The Police Service should be structured on national, provincial and local government levels. There should be one police structure dedicated to upholding one body of law. Emphasis should change from over-centralisation to devolution to local communities.

Provision should be made for one level of police to perform services on an agency basis for another level. The Police Act should provide for the integration of existing police services to accommodate this structure and s221(3) of the Constitution amended accordingly.

Provision should be made in the Constitution for the President to "federalize" all police officers under national command during declared states of emergency, war or national disaster.

5.3 IFP

There shall be established and regulated by an Act of Parliament (national) a SAPS.

Provinces shall be competent to adopt legislation to establish and regulate Provincial Police Services, Public Order Forces, Metropolitan or Municipal Police Services.

Policing will primarily be the responsibility of Provinces in all areas which are not specifically devolved to the national government. The Constitution (national) shall list the areas of competence of the National police with emphasis on responsibility for specialised

functions. Framework legislation defining standards, entry requirements and training requirements may be set by Parliament.

Policing shall primarily be within the residual competence of the Province. Provinces shall have their own separate and distinct police services which they shall be responsible to structure, organise and administer in terms of provincial law. All powers will accrue to the Province unless specifically stated in terms of the principle of subsidiarity.

National framework legislation related to policing shall leave all administrative activity to the provinces, and should be sufficiently general to require or allow implementing legislative action by the Provinces. Such framework legislation will relate to maintenance of standards, entry requirements and other aspects such as training and reporting procedures.

5.4 NP

The SAPS must be one national service with different clearly defined responsibilities, functions and competencies at national, provincial and local level.

Contention:

Option 1 - There should be one police service structured on national, provincial and local level

Option 2 - There shall be a national police service and provinces shall be competent to establish and regulate provincial police services, public order forces, metropolitan or municipal police services.

Contention within Option 1:

1. There should be one police service dedicated to upholding one body of law and integration of all existing police services at all levels must be facilitated by the amendment of S221(3) of Constitution.

2. Establishing of municipal/metropolitan police and any other substructures at local level shall be the responsibility of the relevant provincial government official, probably the MEC as in S221 (3)

Agreement within Option 1:

In event of states of emergency, war or national disaster President shall have power to place all police officers directly under national command.

6 CIVILIAN CONTROL

6.1 ANC

The National Commissioner shall appoint the Provincial Commissioners

after consultation with the relevant MEC. The MEC shall have responsibility to monitor effective policing in Provinces, together with the Provincial Commissioner, and to see to the establishment of appropriate structures for community policing, and oversee the work of Provincial Commissioner. The constitution must provide for an executive structure consisting of the Minister and the relevant MECs.

6.2 **DP**

The day to day management of the police at all levels should vest with a Commissioner, who should report to the member of the Executive in charge of police services. Metropolitan Commissioners would be responsible to Provincial Commissioners for standards, efficiency and discipline as provided for in the Police Act.

6.3 **IFP**

There shall be a civilian Commissioner of the SAPS.

Contention:

Civilian or professional career nature of National Commissioner

7 LABOUR RELATIONS AND HUMAN RIGHTS

7.1 **ANC**

Members of the Police Service shall have their rights subject to the limitation clause (s33).

Details of labour regulations will be covered in regulations and law. The Constitution should state that the classification of the Police Service as an essential service should be dealt with in the Police Act.

Compulsory collective bargaining, dispute resolution and arbitration should be provided for in law. Those provisions should curtail the rights of members of the Police Service to strike.

7.2 **IFP**

The right to strike may be limited by relevant legislation.

Members of the Police Services may join unions and are entitled to collective bargaining.

Compulsory labour dispute mechanisms will be defined by law.

Agreement:

Rights of members of the police service(s) subject to limitations clause as in S33, with legislation defining compulsory dispute resolution and arbitration procedures.

8 BORDER POLICING

8.1 ANC

Border patrols should be the responsibility of the police, except under certain conditions such as a state of war. Details of this can be dealt with in law.

Agreement:

Border policing should be included in national powers and functions.

9 PARLIAMENTARY OVERSIGHT

9.1 ANC

There shall be a multi-party oversight committee.

9.2 IFP

Parliamentary committees on policing shall be representative of all political parties to oversee all aspects relating to the Service. For this purpose they may hold hearings, investigations, take evidence and subpoena witnesses.

They shall have the power to authorise the submission of the budgets of the service prior to its inclusion into the national budget.

A joint Committee shall have oversight over the SAPS and advise the Minister on policy formulation and strategy.

Parliamentary committees shall make recommendations on legislation and regulations relating to the service, interdepartmental co-operation, rationalisation, demarcation of line functions and investigate complaints made against the service.

Parliamentary Committees will be empowered to refer allegations against the service to the Human Rights Commission.

They will submit a report annually to the President and Minister on the activities of the Committee.

They will have foresight of all activities of the SAPS.

Agreement:

The Constitution should provide for oversight by a multi-party parliamentary Committee. The functioning of the Committee to be defined in Rules of Parliament or if necessary in legislation.

10 PUBLIC ORDER POLICING

10.1 ANC

No details should be in the Constitution. This is a national competency and there may be a need for the establishment of a rapid response unit which could only be activated by the national Minister or national Commissioner.

10.2 IFP

There should be another Force located between the Military and the Police. This would be an institution responsible for supporting the Police when there is a breakdown of civil order, they would be available in times of war to assist the Defence Force and in times of natural disaster.

Under normal circumstances they would fall under the control of a civilian ministry at a provincial level and in times of war of a state of emergency to a national minister.

Standards for entry should be higher than for Police officers working at a community level, and careful training and selection requirements should be imposed.

This force should take over the paramilitary responsibilities that the Police Force presently have. Their role should carefully limited by the Constitution to make sure that their functions do not overlap with those of the Police or Military. The Police would then be a totally civilian police force which used the minimum amount of force.

Final accountability would rest with a Ministry such as the Ministry of the Interior. This force would be resourced and funded from provincial budgets and deployment determined by the National Minister. Their actual use on a day to day basis would be the responsibility of the provincial MEC.

This force would allow for the civilian Police to be totally removed from the political realm, and it would take over some of the duties presently performed by the Internal Stability Division.

Agreement:

Option 1 - Public order policing is national function/competency. This should be addressed in the section dealing with powers and functions of police service.

Contention:

Constitution should provide for a separate paramilitary force to be concerned with public order policing.

11 CRIME INTELLIGENCE

11.1 ANC

The Constitution should define the relationship between civilian, military and crime intelligence services under the auspices of a co-ordinating structure.

Agreement:

The police service can only collect crime intelligence in relation to its executive function in relation to alleged crime. Access to necessary intelligence will be facilitated through participation in intelligence co-ordination structure under the member of the executive responsible for intelligence.

12 COMMUNITY POLICING

12.1 ANC

The principle of community policing must be defined in the Constitution as a guiding principle of the police. The details of structure must be defined in law.

12.2 IFP

Community forums will guide policing at national, provincial and local level.

Agreement:

The police service shall be guided in all areas of police work by the concept of community policing.

13 OMBUD STRUCTURES

13.1 IFP

There shall be national and provincial Police Services Public Protectors.

Contention:

No proposal for ombud structure in relation to police from other parties.

14 RIGHTS OF MEMBERS OF THE POLICE SERVICE IN RELATION TO THE STATE

14.1 IFP

Members of the Police Service may hold membership of political parties but may not hold office in such parties or act in any manner which is prejudicial.

There shall be Police Service Commissions at both national and provincial level.

A member of the Police Service shall be obliged to disobey any unlawful command.

Agreement:

Members of the security apparatuses should be obliged to obey all lawful commands and disobey any unlawful commands.

Draft:

Members of the security apparatuses should be obliged to obey all lawful commands and disobey any unlawful commands.

15 MINIMUM FORCE

15.1 IFP

Members of the police service will be obliged at all times to use minimum force in the execution of their duties.

Agreement:

Members of the police service will be obliged at all times to use minimum force in the execution of their duties.

Draft:

Members of the police service will be obliged at all times to use minimum force in the execution of their duties.

16 DISCRIMINATION

16.1 IFP

No member of the SAPS may be discriminated against on the basis of gender, race and conviction.

Agreement:

No member of the security apparatuses may be discriminated against on the basis of gender, race, sexual preference or conviction.

Draft:

No member of the security apparatuses may be discriminated against on the basis of gender, race, sexual preference or conviction.

17 CODE OF CONDUCT

Agreement:

The Constitution should provide for the establishment of a code of conduct to be defined in law.

REPORT ON POLICE - THEME COMMITTEE 6.4
SUMMARY: AREAS OF AGREEMENT AND CONTENTION
Annexure A

Constitutional issue	Agreement	Contention	Further clarity/comments
<p>1. Preface to the section of the Constitution dealing with security apparatus</p>	<p>Security is an all encompassing and holistic concept that enables people to live in peace and harmony, enjoy equal access to resources as well as transform and develop their lives.</p> <p>The objective 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 socio-economic development and protection of the environment.</p> <p>Threats to security shall not be interpreted as being limited to external military aggression but shall include poverty, social injustice, socio-economic deprivation, abuse of human rights and destruction of the environment.</p>	<p>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. (ANC)</p>	

Constitutional issue	Agreement	Contention	Further clarity/comments
2. Supremacy of the Constitution	<p>The Constitution should provide that final responsibility for national security rests with the President, the Executive and Parliament which have the security apparatus as instruments in that protection of security.</p> <p>Security apparatus cannot act on their own but rather under the guidance of and with the functions defined by Parliament and the Executive.</p>		
3.a Powers and functions of the Police Service	<p>Functions of the Police Service shall be the prevention of crime, investigation of any offence, the maintenance of the rule of law and protection of the safety and security of the citizens and the community.</p>	<p>Powers of the national police service:</p> <p>Option one: Powers of the national police service should be national residual powers with provincial powers being specified in the Constitution. (ANC, DP, NP)</p> <p>Option two: Powers of provincial police forces being residual powers with national powers being constitutionally specified. (IFP)</p>	<p><i>Note: These two options run through the entire report as contentions. The report identifies agreement and contention within them while continuing to note the contention between the options.</i></p>

Constitutional issue	Agreement	Contention	Further clarity/comments
<p>3.b Powers and functions of the police service: specific national and provincial tasks</p>		<p>Option one: At national level police should be tasked with maintenance of criminal records, the Office of Serious Economic Offences, drug trafficking countermeasures, a rapid deployment force to deal with terrorism and insurrection, enforcement of international agreements, Inspector General, funding formula.</p> <p>At provincial level police should be tasked with highway patrol, detective branch, forensic services, enforcement of national and provincial laws, carrying out court orders, establishing police stations and lock ups.</p> <p>At local level police should be tasked with traffic services, visible policing, crime prevention, community policing, community liaison forums. (ANC, DP, NP)</p> <p>Option two: The SAPS will be responsible for:</p> <p>a) the investigation and prevention of organised crime which requires investigation in terms of national legislation.</p> <p>b) international police liaison</p>	

Constitutional issue	Agreement	Contention	Further clarity/comments
		c) central support for keeping national data, criminal records and statistics d) assistance to provincial training establishments to service the provincial services e) assistance with forensic laboratory services f) a special task force or high risk operations related to crimes of a national nature. g) functions related to border, import and export control as assigned by law. h) national protection services i) technical support services and logistical technology in support of provincial police services. (IFP)	
4. Executive Control	The President shall appoint a National Commissioner		Should the Constitution specify whether the President must appoint the national Commissioner in-Cabinet or in consultation with the relevant member of the Executive?

Constitutional issue	Agreement	Contention	Further clarity/comments
<p>5. Structures</p>	<p>Agreement within Option one: In event of states of emergency, war or national disaster the President shall have the power to place all police officers directly under national command.</p>	<p>Option one: There should be one police service structured on national, provincial and local level. (ANC, DP, NP)</p> <p>Option two: There shall be a national police service and provinces shall be competent to establish and regulate provincial police services, public order forces, metropolitan or municipal police services. (IFP)</p> <p>Contention within option one:</p> <p>1. There should be one police service dedicated to upholding one body of law and integration of all existing police services at all levels must be facilitated by the amendment of S221(3) of Constitution. (DP)</p> <p>2. Establishing of municipal/metropolitan police and any other substructures at local level shall be the responsibility of the relevant provincial government official, probably the MEC as in S221 (3) (ANC, NP)</p>	

Constitutional issue	Agreement	Contention	Further clarity/comments
6. Civilian control		Civilian (IFP) or professional career nature of the National Commissioner (ANC, DP, NP).	
7. Labour relations and human rights	The Constitution should provide that the rights of members of the police service are subject to a limitations clause (s33), with legislation defining compulsory dispute resolution and arbitration procedures.		
8. Border policing	The Constitution should provide for border policing to be included in national powers and functions.		
9. Parliamentary oversight	The Constitution should provide for oversight by a multi-party parliamentary committee. The functioning of the Committee to be defined in the Rules of Parliament or in legislation.		

Constitutional issue	Agreement	Contention	Further clarity/comments
10. Public order policing		<p>Option one: Public order policing is a national function/competency. This should be addressed in the section dealing with powers and functions of the police service. (ANC, DP, NP)</p> <p>Option two: Constitution should provide for a separate paramilitary force to be concerned with public order policing. (IFP)</p>	
11. Crime intelligence	<p>The Constitution should provide that the police service can only collect crime intelligence in relation to its executive function in relation to alleged crime. Access to necessary intelligence will be facilitated through participation in intelligence co-ordination structures under the member of the executive responsible for intelligence.</p>		
12. Community policing	<p>The Constitution should provide that the police service shall be guided in all areas of police work by the concept of community policing.</p>		

Constitutional issue	Agreement	Contention	Further clarity/comments
13. Ombud structures		There shall be national and provincial Police Services Public Protectors (IFP)	
14. Rights of members of the Police Service in relation to the state	The Constitution should provide that members of the security apparatus should be obliged to obey all lawful commands and disobey any unlawful commands.		Should the obligation to obey all lawful commands and disobey any unlawful commands be included in the Constitution or the code of conduct?
15. Minimum force	The Constitution should provide that members of the police service will be obliged at all times to use minimum force in the execution of their duties.		Should the use of minimum force be included in the Constitution or the code of conduct?
16. Discrimination	No member of the SAPS can be discriminated against on the basis of gender, race, sexual preference or conviction.		
17. Code of conduct	The Constitution should provide for a code of conduct governing members of the police service		Should some elements of the code of conduct also be included in the Constitution?

Subtheme Committee 4 of Theme Committee 6

**DRAFT WORK PROGRAMME
(this is subject to change)**

As at 9 May 1995

Date	Event	Time	Venue
Monday 15 May	Theme Committee 6.4 * Finalisation of report on Police * Party submissions on Defence	14:00-17:00	G26
Tuesday 16 May			
Wednesday 17 May			
Thursday 18 May	Management Committee Party caucuses	08:00-10:00 10:15-13:00	V16
Friday 19 May			
Saturday 20 May			
Sunday 21 May			
Monday 22 May	Theme Committee 6.4 * Party submissions on defence * Consideration of submissions from organisations and individuals on defence * Consideration of draft constitutional text on police and policing	09:00-12:30	G26
Tuesday 23 May			
Wednesday 24 May			
Thursday 25 May	Management Committee Party caucuses	08:00-10:00 10:15-13:00	V16
Friday 26 May			
Saturday 27 May	Public Participation Event		
Sunday 28 May			
Monday 29 May	Theme Committee 6.4 * Tabling of report on defence	14:00-17:00	
Tuesday 30 May			
Wednesday 31 May			
Thursday 1 June	Management Committee Party caucuses	08:00-10:00 10:15-13:00	V16
Friday 2 June	Conference on national machinery and advancement of women		

Saturday 3 June	Conference on national machinery and advancement of women Public hearing - labour Constitutional Public Meetings - Kimberely, Thohoyandou		
Sunday 4 June			
Monday 5 June	Theme Committee 6.4 - Workshop on Intelligence	09:00-13:00	G26
Tuesday 6 June			
Wednesday 7 June			
Thursday 8 June	Management Committee Party Caucuses	08:00-10:00 10:15-13:00	V16
Friday 9 June			
Saturday 10 June	Constitutional Public Meetings: Lusikisiki and Mafikeng		
Sunday 11 June			
Monday 12 June	Theme Committee 6.4 Party submissions on intelligence	14:00-17:00	
Tuesday 13 June			
Wednesday 14 June			
Thursday 15 June	Management Committee Party caucuses	08:00-10:00 10:15-13:00	
Friday 16 June			
Saturday 17 June	Constitutional Public Meetings: Carnavon, Ellisras		
Sunday 18 June			
Monday 19 June	Theme Committee 6.4 - Finalisation of report on intelligence	09:00-12:30	G26
Tuesday 20 June			
Wednesday 21 June	Theme Committee 6.4 - finalisation of outstanding issues	09:00-13:00	G26
Thursday 22 June	Management Committee Party caucuses	08:00-10:00 10:15-13:00	V16
Friday 23 June	Theme Committee 6.4 - finalisation of outstanding issues	09:00-13:00	G26
Saturday 24 June	Constitutional Public Meetings - George; Maokeng		

Sunday 25 June			
Monday 26 June	Management Committee	12:00-13:00	V16
	Theme Committee 6.4 - finalisation of outstanding issues	14:00-17:00	G26
	Constitutional Committee	18:00-22:00	OAC
Tuesday 27 June			
Wednesday 28 June	Theme Committee 6.4 - finalisation of outstanding issues	09:00-13:00	G26
Thursday 29 June	Management Committee	08:00-10:00	V16
	Party caucuses	10:15-13:00	
Friday 30 June	Constitutional Assembly	09:00-16:00	AC