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**SUBMISSIONS**

***SUBTHEME COMMITTEE 4***  
***THEME COMMITTEE 6***

***SECURITY APPARATUS***

***14 February 1995***

# SUBMISSIONS TO THEME COMMITTEE SIX

## SUBTHEME COMMITTEE 4 VOLUME 5

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**SUBJECT MATTER: FURTHER PRELIMINARY SUBMISSION BY THE ANC ON  
MATTER OF POLICE**

**DATE : 8 FEBRUARY 1995**

**COMPILED :ANC SUBTHEME 4 OF THEME 6**

**STUDY GROUP**

**I INTRODUCTION : In line with the submission we have made thus far we would like to make these brief points in addition to the already made submission. The following points would be confined to accountability and the supremacy of the Constitution .Issues raised in the earlier submission would be more relevant as we take the debate further.**

**We maintain that the Constitution should only contain the fundamental principles and details be covered in either the regulation and the New Police Act, (except where necessary to avoid ambiguity.**

**A supremacy of the Constitution and Bill of Rights must remain supreme to the Police Service and must be bound by that supremacy. It is the responsibility of all the citizens to uphold the Constitution.**

**The Police Service have a vital role to play in this regard.**

**Only the declaration of state of emergency or war should lead to regulated suspension of human rights.**

**2. THE PUBLIC SERVICE COMMISSION**

**It is our considered view that the police service ,Intelligence Community and the Defence should not fall under the jurisdiction of the Public Service Commission but rather under a Security Commission**

**B. ACCOUNTABILITY AND CONTROL**

**Various mechanisms are proposed for control and accountability . Among these the following could be mentioned.**

**1. Parliamentary Portfolio committee on Safety and Security which shall be multiparty on a proportional representation basis.**

**2, Police Ombudsman to deal with complaints, labour related disputed etc.**

**3. Community - police Forums must be established.**

**Their role , function , structure and funding must be stated clearly to avoid any confusion.**

**4. Civilian Control . The introduction of civilian wing within the police service as part of the process of demilitarisation of the force . Again clear lines of command and control will have to be finalised.**

5. Appointment of Civilian with the operation arm of the service,
6. A change of the military ranking in the police force as part of demilitarisation process.
7. Clear code of Conduct for those who join the force

### **C. STRUCTURE**

Based on our belief that South Africa shall be one united/unitary state we would submit that there shall be , one police service for the country with powers , function and personnel decentralised to Provinces. The Minister of Safety and Security shall be accountable to both the Cabinet and Parliament for all police-related matters.

The President shall appoint the National Commissioner and the National Commissioner in turn shall appoint a Provincial Commissioner in consultation with Provincial M.E.C. for Safety and Security.

The National Commissioner shall in the first instance be accountable to the Minister of Safety and Security . Powers and function of both the Provincial MEC and Provincial Commissioner must be well spelt out taking into consideration clear lines of command of a united state/country.

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DEMOCRATIC PARTY

SUBMISSION TO SUB-THEME COMMITTEE 4 OF THEME COMMITTEE SIX

POLICE SERVICES

1. Introduction

1.1 There is much in this submission which is peripheral to what should be written into the Constitution regarding the police services. Many of the changes to the police structure which the Democratic Party proposes will involve changes to the Police Act and/or the Criminal Procedure Act. However, it is important to note that the policing structure should be made possible in terms of the Constitution, whatever other changes to statutory law these may involve.

1.2 The principles articulated in the DP's first submission on the supremacy of the Constitution and accountability of the security forces apply to the police services.

2. Structure

2.1 The Democratic Party believes that police services could be structured on national, provincial and local government levels. We believe that the emphasis of policing should change from an over-centralized service to one which is devolved to local communities throughout the country. This is partly dictated by variations in need flowing from geographic and demographic factors, but more particularly because it ensures community involvement and control as well as accountability to the community on the part of the police concerned.

2.2 At the same time, we are guided by the principle that there should be one police structure dedicated to upholding one body of law, even if there are different police services specializing in different aspects, or serving different communities. For this reason, we believe that all police officers should be vested with the same basic powers as peace officers, and that all police officers should have jurisdiction throughout South Africa. (The example of Canada is instructive : while there are metropolitan police officers and Mounties - who are federal officers - all metropolitan police officers are "honorary" Mounties, and vice versa.)

2.3 For this reason, the DP is committed to the establishment and maintenance of uniform standards of policing at all levels. This should be effected by way of a Police Act, which inter alia would lay down minimum standards of training in order to qualify for appointment as a police officer, procedures for suspension or dismissal in the event of breaches of discipline, and an enforceable Code of Conduct for all police officers, at whatever level. Such legislation should in addition consolidate the various current provisions currently relating to the different powers and status of different categories of police officers and peace officers. The Act should also make provision for the appointment of a Police Ombudsperson or for a Police Review Board, whose duties

will include investigation into breaches of the Code by members of the police services at all levels. Such an Ombudsperson or Review Board might be structured on national, provincial or local government level, but procedures ought to be established for the cooperation between these officers/institutions at the various levels as, for example, are provided for in the Public Protector Act. Finally, the Act should make provision for the establishment of community liaison forums, ensuring that the community are able to control the police serving their community.

2.4 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. 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, as provided for in the Police Act.

### 3. Division of Tasks

3.1 Without detracting from the generality of the jurisdiction of police officers at all levels, we believe that police at different levels of government ought to be given specific responsibilities and functions, including the following:

- (a) At national level: the maintenance of criminal records  
the office of serious economic offences  
drug trafficking countermeasures and detection  
a rapid deployment force to deal with terrorism and insurrection  
the enforcement of international agreements (eg Interpol)  
the office of the inspector general  
establishing and maintaining the funding formula (with the FFC)
- (b) At provincial level: highway patrol  
the detective branch  
forensic services  
enforcement of national and provincial laws  
the carrying out of court orders  
the establishment of police stations and lock-ups
- (c) At local level: traffic services  
visible policing – ie patrolling  
crime prevention  
community policing (eg family disputes)  
the establishment of community liaison forums

3.2 Provision should be made for one level of the police to perform services on an agency basis for another, either as a transitional measure or because of convenience. The Police Act should provide for the integration of existing police forces to accommodate this structure, and sec 221 (3) of the interim Constitution correspondingly amended.

3.3 Provision should also be made, in the Constitution, for the President to "federalize"

all police officers under national command during declared states of war, national disaster, or emergency.

#### 4. Funding

4.1 The Democratic Party believes that every inhabitant of South Africa should enjoy government services of equal quality no matter where he or she happens to reside. This applies particularly to policing.

4.2 The DP believes that each province and each local authority should have the power to raise its own taxes. However, the most efficient tax-collector will continue to be the central government. From the revenues raised, each province and each local authority will be entitled to that proportion of the revenue to enable it to discharge its responsibilities in terms of the Constitution, in terms of statutory law, or in terms of services it is offering on an agency basis.

4.3 The Financial and Fiscal Commission should, in the case of policing, investigate the reasonable cost of policing services carried out by each level of government, once these have been agreed upon and established. Federal taxes should then be allocated to provinces and local authorities in terms of a funding formula which takes the "unit cost" of policing, population size and density and geographic factors into consideration. Individual provinces and local authorities would not have the power to employ funds allocated for policing for any other purpose, but would be allowed to expend funds within the respective Police Vote in ways acceptable to the legislature (and therefore voting public) at the level of government concerned. At least initially, the Financial and Fiscal Commission might allocate a portion of revenues destined for policing services to a capital expenditure equalization programme designed so that all police services throughout South Africa have substantially the same capital equipment (police stations, patrol vehicles etc) on a per capita basis, bearing in mind geographic and demographic realities.

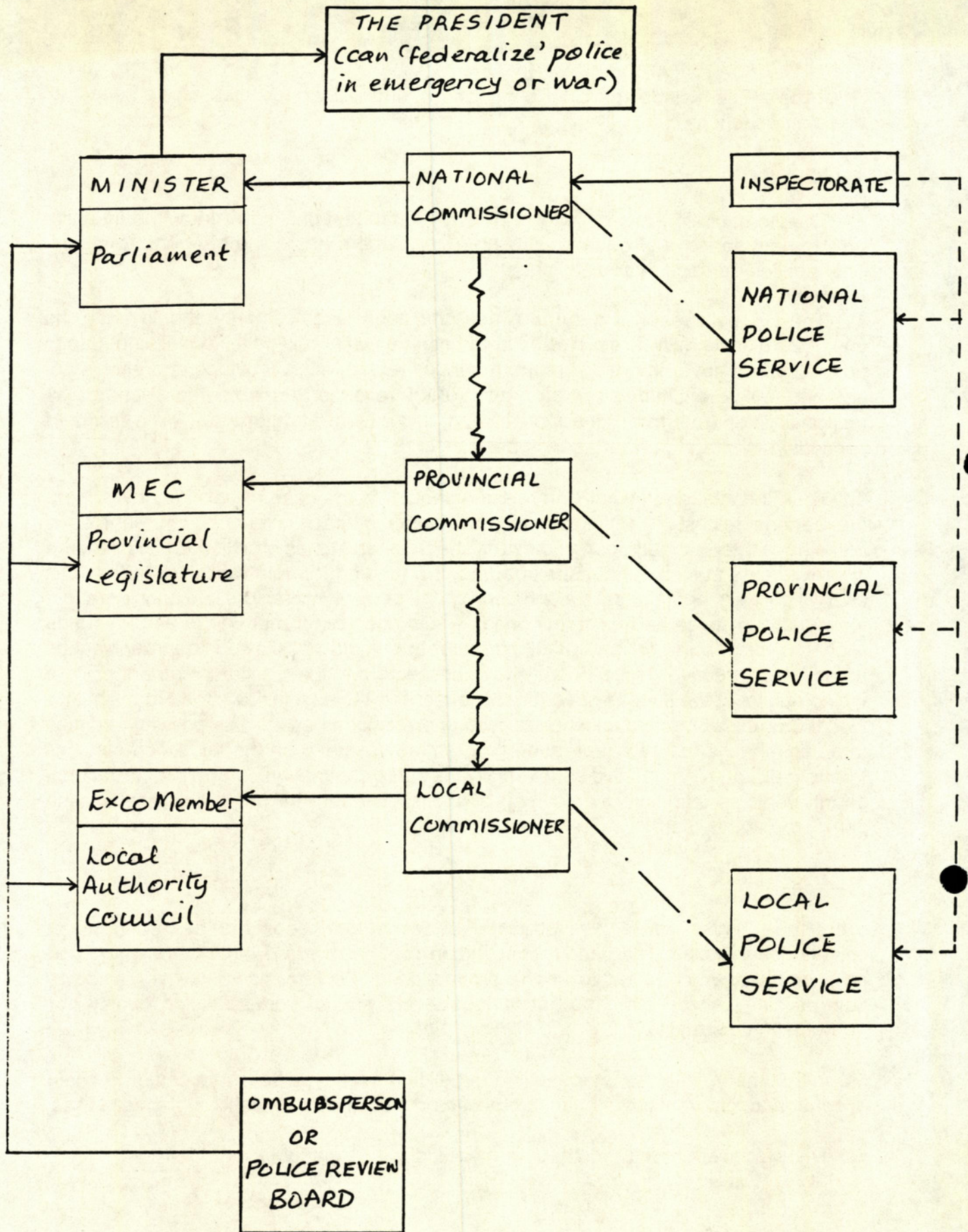
#### 5. Conclusion.

5.1 This submission, as was stressed at the outset, does not deal with major constitutional issues. The interim constitution contains the basic structure which can be augmented and adapted to what is proposed in the submission. However, it shows how policing can be structured at various levels without compromising quality nor perpetuating inequalities.

5.2 In summary, what we propose is one policing service, different forces; one chain of command, different tasks; one source of funds, different applications of those funds.

5.3 The proposed structure is set out graphically in Appendix A.

APPENDIX A



- > = reports to
- - - - -> = inspects
- . - . -> = commands
- ~ ~ ~ ~ ~> = ensures compliance with Police Act and Code of Conduct.





2 February 1995

**NATIONAL DEFENCE FORCE: SUBMISSION FROM PAC TO THEME  
COMMITTEE 6**

1. The supreme law, the constitution, should only contain fundamental principles that structure and constrain the Defence Force. A Defence force by its nature cannot be entirely regulated by Constitutional provisions. The legislature should make the necessary laws and regulations in the spirit of the constitution and through the power it exercises over the Minister of Defence.
2. The Defence Force should not fall under the Public Service Commission because of its peculiar nature and functions.
3. PAC holds it to be crucial that the Defence Force should be under civilian control through a constitutional provision.
4. Members of the Defence Force should be bound by the constitution, equally. No regard to anything except citizenship should be taken into account in the Defence Force eligibility and the exercise of rights and privileges.
5. All the agencies of the Defence Force shall be viewed by the constitution as constituting a single unit with the SANDF and shall therefore exercise no autonomy of whatever semblance.
6. The Defence Force should be made to be thoroughly conversant with the internal and foreign policies of the government.
7. The Defence Force members shall unconditionally execute the 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.
8. Arms production should fall out of the duties and functions of the Defence Force.
9. Parliamentary Select Committee on Defence should be allowed an important role in defence matters. Nothing should take place without its consent.