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CONSTITUTIONAL ASSEMBLY

Theme Committee 6.4

SECURITY APPARATUS

3 April, 1995 (18th meeting)

Room G26

DOCUMENTATION

**CONSTITUTIONAL ASSEMBLY
SEVENTEENTH MEETING
SUBTHEME COMMITTEE 4
THEME COMMITTEE 6
SECURITY APPARATUS
MONDAY, 3 APRIL 1995**

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

Date : 3 April 1995

Time : 09:00 - 12:30

Venue : Room G26

AGENDA

1. Opening and welcome
2. Minutes of the previous meeting
 - 2.1 Minutes of the seventeenth meeting, 27 March 1995 (page 1-6)
3. Matters arising
4. Discussion on constitutional provisions relating to police
 - 4.1 Party submissions
5. Any other business
6. Closure

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

CONSTITUTIONAL ASSEMBLY

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

**SPECIALISED STRUCTURES OF GOVERNMENT
SECURITY APPARATUS**

MONDAY, 27 MARCH 1995

PRESENT

Schreiner, J (Chairperson)

Alant, T G	Bloem, D
Dyani, M M Z	Ebrahim, E I
Makana, S	Mashimbye, J N
Motshabi, C	Mpahlwa, M M B
Mti, L M	Mtintso, T E
Neerahoo, H M	Nogumla, R
Phillips, I M	Powell, P
Scott, M I	Selke, J
Sisulu, L	

Cachalia, A; Seegers, A: technical advisors

Apologies: Marais, J A; van Eck, J; Waugh, J C N

K McKenzie was in attendance.

1 OPENING AND WELCOME

Ms Schreiner opened the meeting at 14:45 and welcomed the members.

2 MINUTES OF PREVIOUS MEETINGS

2.1 Minutes of the sixteenth meeting, 14 March 1995

The minutes were adopted subject to the following change to item 3.1.1: "The NP stated that the code of conduct should be contained in regulations/legislation."

3 MATTERS ARISING

There were no matters arising from the minutes.

4 DISCUSSION ON CONSTITUTIONAL PROVISIONS RELATING TO POLICE

4.1 Inkatha Freedom Party submission

Members of the Committee sought clarity from the IFP on the status of their submission in the light of the footnote on page one of the document.

The IFP pointed out that this footnote appeared on all of their documents and that they had always believed that international mediation should precede the CA process. The footnote represented the IFP's right to register their protest at making the submission prior to international mediation.

It was agreed that the issues raised by the footnote could not be resolved in the Committee.

Mr Powell spoke to the IFP's submission (Second Report: Policing, contained in document package 8).

The following was highlighted in discussion:

4.1.1 National and Provincial Police Services

The IFP submission envisaged a situation in which there were both national and provincial police services.

The submission allowed for an asymmetrical relationship to develop in which provinces could opt not to establish provincial police services.

4.1.2 Chain of command and control

The IFP stated that at a national level there will be a national minister and a national commissioner subject to political control by Parliament and a civilian Ministry. At provincial level, if the province has a constitution, the relationship between a provincial minister and provincial commissioner, would be set out.

This relates to the notion of a split judiciary, which falls into the ambit of the work of Theme Committee 5.

The IFP stated that the issue of command and control fell within the ambit of legislation and that the national Constitution should limit its control of policing to very clearly defined powers given to the national police service.

4.1.3 Powers of a national commissioner of the SAPS to give an

order to a member of a Provincial Police Service

The IFP stated that these powers would only apply within the competence of national legislation or framework legislation. Control over provincial policing fell within the competence of the provincial legislature and would rest with the Minister at a Provincial level and the Provincial Commissioner.

4.1.4 Crimes of a national nature

The investigation of criminal matters would be included in national legislation. If the murder took place in a Province it would be investigated by the Police at this level. The investigation would be subject to the Constitution and the laws of that particular Province.

4.1.5 Allegiance of members of the Provincial Police Services

Clarity was sought regarding who members of the Provincial SAPS would owe their allegiance to in the event of a dispute between the Province and the Republic.

The IFP stated that it was clear in the framework set down in the Constitutional principles that the national Constitution has precedence over provincial Constitutions.

Hence Police officers at a provincial level would swear their allegiance to the people that they serve and they would be bound by the Constitution of their province and by the national Constitution and its provisions. Members of the Provincial Police Service would have a different competence from members of the SAPS.

4.1.6 Interim Constitution

Clarity was sought on how the IFP submission departed from section 214 of the Interim Constitution.

The IFP stated that its proposals went further than the Interim Constitution in that they saw provincial policing as emanating from a provincial Constitution and from provincial legislation which relates to the establishment and entire structure of the Provincial Police Service. This would differ from a national Police Service that had Provincial structures.

Mr Cachalia stated that a similar situation existed in Canada where a Province is able to rent the services of the federal Canadian Police. Some Provinces enter into relations with the national police to have policing conducted by them some provinces elected to have their own provincial police services.

In this scenario it would be possible to have both a national and provincial police force deployed in one province simultaneously.

4.1.7 Framework legislation relating to standards

The IFP explained that 'Maintenance of standards', mentioned in point 6 referred to the establishment of minimum standards.

4.1.8 Relative sizes of national and provincial Police Services

The IFP stated that the size of the services would relate exclusively to legislation. The IFPs understood that there would be a small highly trained and professional police service that deals with matters that do not easily lend themselves to provincial policing. This was an attempt to bring policing closer to the people so that common crimes would relate to provincial and metropolitan competence.

4.1.9 Relationship between the Provincial and Metropolitan Police Services

The IFP stated that powers were devolved right the way down to Metropolitan level.

This should be reflected in the Provincial constitution, not necessarily the national Constitution.

The current constitutional provisions leave a wide ambit for metropolitan policing which the IFP would like to see retained and strengthened.

4.1.10 Jurisdiction of metropolitan police

Clarity was sought from the IFP as to whether they saw the metropolitan force as having general jurisdiction or a limited jurisdiction as set in section 221 (3) (b) of the present Constitution.

The IFP stated that the jurisdiction of the metropolitan police service would emanate from the powers given to them by the provincial Constitution and legislation emanating from the provincial legislature.

4.1.11 Financing for Provincial Police Services

The IFP stated that the costs of a Provincial Police Service would be borne by the Province. Provinces which did not have the necessary resources would voluntarily contract with the national policing agency or their services.

4.1.12 Civilian Commissioner

The Police Service should be a civilian not a military structure. The IFP would like the management of the Police Service and especially the post of Commissioner to be filled by a civilian and not a military or paramilitary figure like a General.

4.1.13 Parliamentary Committees

Parliamentary Committees should have a 'preview' of the budget before it is submitted. They should have some ability to make recommendations and suggestions and recall a Minister on a budget which they believe to be inappropriate.

The IFP agreed that parliamentary committees would submit a report to the Speaker (not to the President and Minister as stated in the submission).

5 ANY OTHER BUSINESS

5.1 Work programme

It was agreed that the following amendments be made to the Committee's work programme:

5.1.1 Meeting of 3 April 1995

The meeting would consider final party submissions on Police in order that the report could be finalised.

Parties would refer to the report from the workshop in this regard.

Parties should send their submissions to the secretariat on Friday 31 March 1995 or bring copies of the submission to the meeting.

5.1.2 Meeting of 19 April 1995

The Committee would consider a presentation by the technical advisors outlining a list of issues to be considered by the Committee on the Constitutional provisions relating to Defence.

5.1.3 Meeting of 21 April 1995

The Committee would consider a presentation by the Defence Secretariat and the SANDF.

5.2 Workshop on Defence

It was agreed that parties should draw up proposals concerning speakers and topics for discussion at the workshop.

A grouping consisting of one representative per party would meet to discuss these proposals and it would report back to the Committee.

6 CLOSURE

The meeting rose at 17:00.