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**CHAPTER ON THE SECURITY SERVICES PREPARED BY THE  
TECHNICAL ADVISERS AND THE CA LAW ADVISERS**

**ANC SUBMISSIONS**

Statement of principle

Since there is a need

- that national security should be based on the resolve of all South Africans, as individuals and as a nation, to live as equals and in peace and harmony, to be free from fear and want, and to seek a better life;
- that national security should be pursued in strict compliance with this Constitution, the law and all applicable international conventions and norms, "~~and subject to the authority of the democratically elected Parliament~~ <sup>of the EXEC.</sup> and ~~duly constituted executive~~".

The following provisions are enacted to govern national security and the security services of the Republic, and these provisions shall be interpreted and understood in the spirit of this Statement of Principle.

**SECURITY SERVICES**

**Composition and structuring of security services**

1. (1) The security services of the Republic consist of a single defence force, *the police service* and such intelligence services as may be established in terms of this Constitution.
- (2) The security services shall be structured and regulated by national law.
- (3) The security services and its members shall act and train its members to act in accordance with and within the confines of this Constitution and the law, including the norms of international customary law and treaties binding on the Republic and no member shall obey a manifestly illegal order.
- (4) The security services shall discharge their powers and functions in the national interest. It shall, therefor, be unlawful for the security services or its members to perform their duties or functions so as to further or prejudice party political interests.
- (5) The security services shall be broadly representative of the South African people.

CONSTITUTION OF SA IS AMENDED



(6) ~~Appropriate mechanisms and procedures for the resolution of labour disputes and for the accommodation of the specific needs of the security services may be established.~~

*shall*

*Releaser  
Clause 20  
(p 17 of doc)*

## DEFENCE

### Section 2 - 6

No changes save that: the Constitution needs to explicitly prohibit the establishment, maintenance or instigation of armed forces/militias operating parallel to the security services as defined. Such a provision is contained in section 224(3) of the interim Constitution and, if anything, the gaps in the existing formulation should be remedied.

Strictly section 3 is unnecessary. Unless special functions are to be constitutionally allocated to the parliamentary committee which is not the case there is no need to include this clause and indeed such a clause would weaken the status of other parliamentary committees. The same applies to the specific reference to the appointment of a Minister having portfolio responsibility.

## POLICE

Section 7: redrafted as follows:

*& prov level*

7(1) *There shall be one national police service structured to function at national and provincial levels as set out in national legislation.*

7(2) *National legislation shall set out the powers and functions of the police service and shall enable the police service to discharge its responsibilities effectively.*

7(3) *The objective of the police service shall be to prevent and investigate crime, to maintain public order and to protect and secure the safety and security of the Republic and its inhabitants, including the protection of their lives and property.*

### Section 8

[This section is not necessary and is self evident. Such a section only serves to undermine the multi-party committee system as a whole.]

### Section 9

9(1) *The President shall appoint and may dismiss the National Commissioner who shall exercise command of the police service in*



*accordance with the directions of the member of the Cabinet responsible for police.*

- 9(2) *The National Commissioner shall appoint provincial commissioners for each province and may dismiss such commissioners in accordance with the national law.*
- 9(3) *Subject to the directions of the national commissioner, the provincial commissioner shall be responsible for such policing functions in the province as prescribed by national law.*
- 9(4) *The provincial government shall be responsible for the monitoring and oversight of the conduct and efficiency of the police service and may establish such mechanisms as are necessary to accomplish this function.*
- 9(5) *Provincial government shall be responsible for and may establish mechanisms in regard to the promotion of police community relations at a local level.*
- 9(6) *A civilian secretariat functioning under the direction and control of the member of the Cabinet responsible for police, shall exercise such powers and functions in connection with police as may be entrusted to it by law or that member of Cabinet.*

#### Section 10 and 11 of draft report

Delete - Note: Section 7(2) incorporates the current section 11. The current section 11 is unacceptable in that it appears to suggest autonomous powers for provincial commissioners. This suggestion is strengthened by the formulation of the draft section 7(2) which suggests that the police service shall function at a provincial level under the exclusive direction of provincial governments. The ANC has clearly set its face against autonomous provincial police forces because of the history of, and abuse by autonomous regional police service in South Africa and elsewhere. The ANC argues that the establishment and functioning of a single police service is a national function. It is mainly a monitoring and oversight function which ought to be devolved to provincial levels.

#### INTELLIGENCE

**Section 12 - 17** : delete and replace with:

- 12(1) *The President may establish an intelligence service or services apart from those in the Defence Force and Police Services.*



- 12(2) *The President may himself/ herself assume political responsibility for the control and direction of the intelligence service or designate a member of his/ her Cabinet to be responsible therefor.*
- 12(3) *The President shall appoint the Head of the Intelligence Service or services.*
13. *The objectives, powers and functions of any intelligence service or services established in terms of section 12(1) shall be set out and regulated by national law which shall make provision for:*
- 13(1) *the co-ordination of the intelligence services and, where they exist, the intelligence divisions of the Defence Force and the Police Service*
- 13(2) *a parliamentary oversight committee which shall have oversight over the budget of the Intelligence Services.*
- 13(3) *civilian inspector or inspectors appointed by the President with the approval of two-thirds of the members of the National Assembly to monitor the activities of the Intelligence Service.*

Section 18 - 20

Section 18 - 20 should be deleted. They are now covered by the reformulated sections 1(3) and 1(4) and 1(6)