

## **PRELIMINARY SUBMISSION FROM THE ANC.**

The ANC makes the following PRELIMINARY submission on matters of Defence relevant to the proposed Constitution.

It is accepted that the Constitution should only contain fundamentals and principles details of which would be provided in legislation.

Most of the principles and Provisions in the Interim Constitution of the RSA, 1993 should be retained. However others will have to be revisited and debated to establish whether they should be retained or not while new ones will have to be included.

### I. Supremacy of the Constitution.

Both the Constitution and the Bill of Rights must remain supreme and the Defence Force must be bound by that supremacy. Only the declaration of emergency or war should lead to some regulated suspension of human rights.

### 2. Section 212 (8) - The Public Service Commission.

The uniformed members of the Defence Force should not fall under the jurisdiction of the Public Service Commission as their conditions and requirements of service are unlike those of other servants. A Security Apparatus Service Commission to cater for the Police, Intelligence, Correctional Services and Defence apparatus should be formed.

### 3. Section 225. Civilian Control.

The Defence Force shall be under civilian control with a Minister of Defence appointed by the President.

The President shall also appoint a Secretary for Defence whose responsibility shall be inter alia to assist in the formulation of defence policies and designation and overseeing of programmes for the Defence Force.

Such Programmes will include education on democracy for all members covering such areas as the provisions of the Constitution, international law on armed conflict and respect for human rights.

#### 4. Ombudsperson.

Parliament shall appoint an independent military ombudsperson to investigate complaints against the SANDF by soldiers and members of the public.

#### 5. Equality and Human Rights.

- (a). The Defence Force shall respect the rights and dignity of its members, subject to the normal constraints of military discipline as provided for in the Defence Act.
- (b). The Defence Force shall ensure that the composition of its leadership and rank and file reflect the racial, ethnic and gender composition of South Africa. The Defence Force shall not discriminate against any of its members on the grounds of race, ethnicity, sexual preference, religion or gender,
- (c). The Ministry/Secretary of Defence shall design and oversee an equal opportunity programme within the SANDF and shall report annually to parliament on the implementation of this programme.

#### 6. Foreign Relations.

- (a). SANDF in keeping with the foreign policies of SA and shall respect the sovereignty and territorial integrity of states and
- (b). shall not interfere in the domestic affairs of states.
- (c). SANDF denounces war, violence, threats of force for resolution of conflict and shall endeavour to adhere to the use of peaceful means for the resolution of inter-state conflict and the promotion of human rights.
- (d). SANDF shall support international and regional treaties and initiatives regarding arms control, disarmament as well as confidence and security building measures and peace making and peace keeping.

## 7. Definition of Security.

- (a), National security policy shall seek to protect and promote the security of both the state and its citizens.
- (b). National security policy shall seek to promote the military, social, economic and political dimensions of security.
- (c). Threats to security shall not be interpreted as being limited to external military aggressin but shall include poverty, social injustice, economic deprivation, abuse of human rights and destruction of the environment and
- (d). the objectives 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 economic development and protection of the environment.

## 8. Military Intelligence.

There will be a Military Intelligence Division, which will gather, correlate, evaluate and use foreign military intelligence relating to national strategic intelligence to NICOC, operating only in an overt manner; will gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when deployed by the Cabinet or President internal to South Africa, to institute counter-intelligence measures with the SANDF.

## 9. Arms Industry

Constitution to clearly stipulate on conditions of production, procurement, and of arms.