

ANC SUBMISSION ON MATTERS PERTAINING TO INTELLIGENCE IN RESPECT OF THE CONSTITUTIONAL MAKING PROCESS.

(FOR THEME 6 SUBTHEME 4)

1. INTRODUCTION:

This is an initial submission outlining the constitutional principles relating to intelligence that need to be addressed. The constitution should be limited to matters of principle and the operational and structural details of the matters should be dealt with in legislation. The ANC will be making further more focused submissions in regard to intelligence later in the constitution making process.

It is proposed that the new constitution envisaged for the country should contain provisions regulating the sphere of intelligence work inclusive of the role, culture, methodology and structures of intelligence work.

The purpose of this document is to provide an input into such issues which could serve as a basis for further formulation by the Theme Committee.

2. ISSUES TO BE COVERED:

The constitution must make provision for the following issues:

2.1 A NEW NATIONAL SECURITY DOCTRINE

South Africa shall adopt a national security doctrine which shall encompass the basic principles and core values associated with and essential to quality of life, freedom, justice, prosperity and development. At the core of this doctrine lies the collective effort of the people of this country to achieve sustainable levels of human security for all so that people could live in the sanctuary of peace, free from fear and free from want.

National security is understood as an integrated concept that binds together the political, military, societal, economic and environmental spheres and whose objectives shall be to achieve sustainable levels of peace, stability, development and progress for all citizens of South Africa.

Further, the national security doctrine: shall underpin South Africa's commitment to resolving internal and external conflict primarily through non-violent means; shall underline that national, social and individual security shall be sought primarily through efforts to meet the social, political, economic and cultural needs of the citizenry; and shall commit South Africa to the pursuance of peaceful and co-operative relations with neighbouring states in order to promote regional security, stability and development.

2.2 THE PURPOSE, MISSION AND FUNCTIONS OF NATIONAL INTELLIGENCE:

The primary mission of national intelligence is to gather, collate, evaluate information and disseminate intelligence that pertains to the security of the state and its citizenry. In this respect intelligence should enhance national security, protect and promote the interests of the state and the well-being of its citizens.

The national intelligence functions shall include those of counter-intelligence, foreign intelligence, domestic intelligence, inclusive of crime intelligence and military intelligence.

National intelligence is a function and responsibility of central government and shall not be delegated to provincial governments.

2.3 STRUCTURES OF NATIONAL INTELLIGENCE:

The national intelligence structures of South Africa shall consist of the following:

a civilian intelligence organisation that shall be responsible for the conduct of domestic intelligence and the co-ordination and fulfilment of the national counterintelligence responsibilities. The mission of the domestic intelligence service shall be to conduct security intelligence within the borders of South Africa in order to protect the constitution. Its overall aim shall be to ensure the security and stability of the State and the safety and well-being of its citizens.

a civilian intelligence organisation that shall be responsible for the conduct of foreign intelligence. The mission of the foreign intelligence service shall be to conduct intelligence in relation to external threats, opportunities and other issues that may affect the Republic of South Africa, with the aim of promoting the national security and the interests of the country and its citizens.

the appropriate structure within the South African Police Service that is responsible for the co-ordination and conduct of crime intelligence;

the department within the South African National Defence Force which is responsible for the conduct of military intelligence.

2.4 CO-ORDINATION OF NATIONAL INTELLIGENCE STRUCTURES.

The national security system of South Africa shall make provision for the establishment of a well-functioning co-ordinating mechanism essential to co-ordinate the flow of information, priorities, activities, policies, resources, interpretation and other matters pertaining to the functioning of national intelligence.

The scope, degree and functions of the intelligence co-ordinating mechanism shall be determined by the provisions of the National Strategic Intelligence Act, 1995.

The intelligence co-ordinating mechanism shall be chaired by a person known as the Co-ordinator of Intelligence who shall be appointed by and accountable to the President in respect of all functions of the co-ordinating mechanism as provided for in the National

Strategic Intelligence Act, 1995.

2.5 PRINCIPLES GUIDING INTELLIGENCE WORK

The functions of intelligence in order to enhance national security in South Africa shall be government by the following..

The national intelligence structures are national structures and shall therefore be politically non-partisan. No intelligence service/structure or organisation shall be allowed to carry out any operations or activities that are intended to undermine, promote or influence any legal South African political party or organisation at the expense of another by means of any acts or by means of disinformation.

The mission, function and activities of the intelligence structures shall be regulated by the provisions of the National Strategic Intelligence Act, Intelligence Services Act and the Committee of Members of Parliament on and Inspectors-General of Intelligence Act. Intelligence work shall derive its authority from the legal framework provided for by these Acts and shall be subordinate to the measures of accountability and parliamentary control so provided. The establishment of such measures should be entrenched in the constitution.

The Intelligence structures shall at all times in the pursuance of their work attempt to reflect a reasonable balance between secrecy and transparency. Intelligence shall be reconciled with fundamental civil liberties, ethical norms and the democratic values of South African societies as enunciated in the Constitution. The functioning of the intelligence services in this regard shall be regulated through the courts.

The intelligence structures shall introduce a system of declassification in order to enhance the principle of public accountability and openness.

The intelligence structures and its members shall be governed by a code of conduct that regulates their performance. Such a code of conduct shall be based on universally accepted democratic principles and inclusive of accepted intelligence principles, norms and practices.

The intelligence structures shall operate on the basis of constitutional sovereignty. Their work shall be in defence of the constitution and not defence of the government of the day.