

**Inkatha Freedom Party**  
**Iqembu lenkatha Yenkululeko**

**THEME COMMITTEE No. 6**  
**(SUBCOMMITTEE 4 ON SECURITY)**

**FIRST REPORT ON**  
**SUPREMACY OF THE CONSTITUTION**  
**ACCOUNTABILITY AND CONTROL OF THE SECURITY FORCES**  
**AND CONDUCT IN THE NATIONAL INTEREST'**

SUPREMACY OF THE CONSTITUTION:

- I The security agencies (SANDF, Police, Prisons and Intelligence Services) must operate within the constitution , including the bill of rights.
  - 2 . Any suspension of some human rights will only be regulated by means of a declaration of a state of emergency or war which will bind both the SAPS and SANDF.
  3. The constitution must indicate that the operations and policy formulations of the SANDF, Police, Prisons and Intelligence Services must reflect the national interest and be consistent with the letter and the spirit of the constitution.
  4. All members of the SANDF, Police, Prison and Intelligence Services shall make a solemn affirmation or oath to uphold and defend the constitution.
- . . The following constitutional qualifications and limitations are necessary:
- a. The SAPS must operate only to ensure the prevention and the investigation of crimes rather than on the basis of a broad definition of “ national interest”.
  - b. The SANDF, Police, Prison and Intelligence Service should be specifically excluded from any involvement in political activity.

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The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

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- c. Members of these services may hold membership of political parties but may not hold office in them.
- d. Members of these services shall have the right to disobey a clearly unlawful order.
- e. The law may provide for special sanction for desertion of duty, mutiny and treason. With respect to the Defence Force, special differentiation may be allowed between peace and a declared state of war.
- f. The law may provide measures to limit the right to strike setting out compulsory dispute resolution mechanisms. The law could draw a differentiation between members of the civilian services and members of the SANDF in limiting the right to strike.
- g. There should be gender equality in all of the services including the SANDF.
- h. There shall be an internal ombudsman appointed in each service charged with the task of addressing internal conflicts and disputes related to the human rights of members of the services.

## PARLIAMENTARY OVERSIGHT

- I. Parliamentary committees representative of all political parties, on defence, intelligence, policing and correctional services shall have special functions to oversee all aspects related to these agencies. For this purpose they may hold hearings, investigations, take evidence and subpoena witnesses

- 2, Parliamentary committees shall also have the power to authorise the submission of the budgets of the services prior to their inclusion into the national budget.
- 3 . Joint committees drawn from both the National Assembly and the Senate shall have oversight over both defence and intelligence services.
4. Parliamentary committees shall consider and make recommendations on all legislation relating to the services and related matters and initiate legislation connection with such a service.
- 5 . Parliamentary committees will be empowered to review and make recommendations on regulations pertaining to services, interdepartmental co-operation, rationalisation, demarcation of line functions and investigate complaints made against the service.
- 6 . Parliamentary committees will be empowered to refer any alleged violation of human rights committed by a service to the Human Rights Commission.
7. Parliamentary committees shall submit to the President and the minister concerned, within two months of the opening of parliament, a report on the activities of the committee.

## STATE OF EMERGENCY

- I. The Head of Government may declare an emergency in the Republic or in determined areas thereof
2. The Declaration of Emergency shall provide a general indication of tile " of emergency and shall indicate in general terms which powers and resources of the Government, the Provinces and the local governments, or of the citizenry the Head of Government intends to employ to respond to the emergency, how such powers and resources are expected to be employed and for how long, and other measures and actions the Government intends to undertake.

3. Within twenty four hours the Head of State shall summon Parliament to a Joint session to ratify the Declaration of Emergency. Parliament may modify the Declaration of Emergency.
4. If the emergency is such that Parliament may not be summoned into session, the Declaration of Emergency shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration of Emergency shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the Speaker of the National Assembly in this order.
5. The Head of Government shall modify the Declaration of Emergency to provide additional information, to detail the information previously provided and to report on the actions undertaken to respond to the emergency.
6. Parliament or the Constitutional Court may terminate or modify the terms of the Declaration of Emergency at any time.
7. The Head of State may require that Parliament or the Constitutional Court meets behind closed doors to discuss any matter related to the emergency, and that the contents of the Declaration of Emergency be kept secret.
8. Any action taken during a situation of emergency shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognised and guaranteed in the constitution.
9. The declaration of emergency shall employ the defence force only when and to extent that the police forces are not sufficient to respond to the emergency.
- I 0 Provinces shall have right to declare State of Emergency and shall have the right to lift State of Emergency.

## DECLARATION OF WAR

- I South African troops may be employed in possible combat situations outside the country only on the basis of a declaration of war of hostility, the latter including so called peace-keeping exercises.

2. The constitution must state that South Africa shall strive to respect and maintain all its international law obligations, and shall reject the use of war or international violence as means to resolve international conflicts.
3. The Head of State in consultation with the Head of Government may declare war or the status of international hostility. The Declaration of war or hostility shall provide a general indication of the size of military and logistical resources to be employed and effects of the declaration on the Government of the Republic, the Provinces and the citizenry. The declaration must indicate for how long the status of war or hostility is expected to last and the measures which the Government is undertaking to try to solve by diplomatic means the underlying international crisis,
4. Within twenty four hours the Head of State shall summon Parliament to a joint session to ratify the Declaration of war or hostility. Parliament may modify the Declaration of war or ratify the Declaration of hostility. If the situation is such that Parliament may not be summoned into session, the Declaration shall be submitted to the Constitutional Court for approval. Should this not be possible the Declaration shall be submitted for approval to the President of the Constitutional Court or the President of the Senate or the President of the National Assembly in this order.
5. Parliament may terminate or modify the terms of the Declaration of war or hostility at any time. The President may require that Parliament meets behind closed doors to discuss any matter related to war, and that the contents of the Declaration of war or hostility be kept secret.
6. Any government's action taken within the Republic during a situation of war shall respect to the fullest extent possible under the circumstances the rights and liberties of the citizens of the State recognized and guaranteed in the constitution.

## MONOPOLY OF FORCE

- I. The State shall not suppress the citizens' right to bear arms, but may limit it in special cases and circumstances.

2. Provincial constitutions may regulate matters such as police reserve and neighbourhood watches, to supplement police action.
3. Provincial legislation should regulate community protection formations.

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## FREEDOM OF INFORMATION

- I. The right to access all government information and private data bank's information shall be recognized in the constitution, with customary qualifications and exclusions, subject to judicial review which can take place in camera when necessary.
2. Intelligence information may not be classified as secret information without a showing of their sensitiveness with respect to national security.