

VOLKSTAAT COUNCIL

FIRST SUBMISSION TO THE CONSTITUTIONAL COMMITTEE OF THE CONSTITUTIONAL ASSEMBLY

28 FEBRUARY 1995

(Hierdie voorlegging is ook in Afrikaans beskikbaar)
VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 1

DEMOCRACY

A. PRINCIPLES

1. A democratic system of government is accepted for both South Africa and the Volkstaat.
2. Democracy relates not only to participation by the individual in the state, but also to the participation of communities, constituent states and participating states in the state as a whole.
3. The division of state authority between various state organs and territorial units is in accordance with the principle of democracy encountered in federal constitutions.
4. The division and control of power are important principles in any democracy.
5. Democracy does not necessarily mean that every individual entitled to vote must exercise his vote in the same area or for the same person.
6. The majoritarian principle applied in a multinational state may in certain instances amount to a violation of the principle of democracy.
7. In a multinational state the principle of democracy must also be respected within a specific national context.
8. Although the recognition of individual human rights is a characteristic of a democracy, it does not necessarily guarantee a democratic state in a multinational society.
9. Within a democratic context, the principle of asymmetry implies that different territorial units or government organs need not necessarily enjoy the same governmental authority.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

In this Constitution democracy is realised through universal suffrage for adult citizens, the recognition of individual rights, the division of power between different organs of state and territorial units and the recognition of the self-determination of different peoples.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 1

THE NATURE OF THE STATE

A. PRINCIPLES

1. The Republic of South Africa is a democracy that finds expression in the Republican form of government.
2. The nature of the state as a multinational society is reflected in federated territorial units, within which the right to self-determination of those peoples who desire it may be realised.
3. The recognition of fundamental rights, the right to self-determination of peoples, and the separation of powers between different organs of state and territorial units constitute essential elements of the state.
4. The principle of the equality of all peoples and the corollary that one group of people should not be subject to another, is recognised.
5. The multiplicity of languages and cultures and the accompanying individual needs of the peoples of South Africa in fields such as education must be reflected in the Constitution of the country.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

This Constitution reflects the diversity of the population of the Republic of South Africa and recognises the diversity of peoples, their cultures and languages, and their right to equality in individual and group context within a federal system of government.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE I

A SINGLE SOVEREIGN STATE

The Volkstaat Council accepts the following principles:

1. The Republic of South Africa is a single, federated national state comprising different constituent states.
2. The sovereignty of the state is vested in its different peoples.
3. There are different peoples in the Republic of South Africa each with an inalienable claim to the right of self-determination which implies that these peoples also enjoy sovereignty to determine their own future.
4. The right of self-determination of peoples is a fundamental, juridically inalienable right which cannot be negated.
5. The Constitution may contain no provisions which violate the fundamental right of self-determination of peoples.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 1

CONSTITUTIONAL SUPREMACY

1. It is recommended that section 4 of the Interim Constitution be retained.
 - 4(1) This Constitution shall be the supreme law of the Republic and any law or act inconsistent with its provisions shall, unless otherwise provided expressly or by necessary implication in this Constitution, be of no force and effect to the extent of the inconsistency.
 - 4(2) This Constitution shall bind all legislative, executive and judicial organs of state at all levels of government.
2. The following principle should, however, be accepted as a fundamental principle and be added to article 4. 'Me article should CONSEQUENTLY read as follows:

4(3) This Constitution derives its binding force from the consent of the different peoples and nations of South Africa and is binding in so far as it reflects the will and desires of such different peoples and nations.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 2

SEPARATION OF POWERS

A. PRINCIPLES

1. Separation of powers between the Legislative, Executive and Judicial organs of state at all levels of government is regarded as a basic principle of the Constitution (see Constitutional Principle VI).
2. In the South African context, the separation of powers must be understood to mean that power must be divided between the national government, constituent states and even third-tier governments to bring democracy as close as possible to the people and to ensure that justice is done to the multiplicity of peoples in South Africa.
3. In a multinational state, the separation of powers means that power must be separated not only on the horizontal level, but also vertically. The executive, legislative and judicial authority in the various territories or constituent states is also separated and control is exercised over the powers of the national government and vice versa.
4. As is shown by South Africa's constitutional history, the acceptance of the principle of separation does not necessarily mean that both the legislative and executive branches of government are directly elected by the electorate. The executive can also be indirectly elected by the legislature.
5. The acceptance of the principle of the separation of powers must allow any constituent state that may so choose, to have its executive elected directly by the electorate of that state.
6. The separation of powers also demands control through the incorporation of checks and balances in the state administration so that neither the executive authority nor the legislative authority holds unbridled power. (See Constitutional Principle VI.) Mutual control ensures that the democratic will of the electorate will triumph.
7. In the South African context, the separation of powers should also mean that every organ of state involved in the appointment of persons should reflect the diversity of the South

African citizenry and political parties. For example, the judicial authority should not be appointed by a body consisting solely of members of the majority party, or predominantly reflecting any single population group.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

This principle cannot be reflected in a single statutory provision but should rather form the golden thread running through the entire constitution and state structure.

VOLKSTAATRAAD

SUBMISSION TO THEME COMMITTEE 3

THE NATURE OF LOCAL GOVERNMENT

A. PRINCIPLES

The institution of local government is referred to in Constitutional Principles XVI, XVH, XX, XXIV-XXVIII and, read in context, also Principle XXXIV of the Interim Constitution. In this light the following formulations are submitted:

1. On the principle that democracy arises at grass-roots level and that organs of state are merely representative of such people, local government may be regarded as the *fons et origo* of all state power.
2. Local governments consequently constitute the foundations of self-determination from which powers and capacities are passed to the constituent states and eventually to the national government. Local government is the structure of state which most closely affects the individual.
3. Communities develop on the basis of voluntary association between the members within a certain territory.
4. Communities sharing a language, culture and interests with the need to nurture, protect and develop their culture, language and education must be accepted as the basis for local government.
5. Communities are formed to satisfy their inhabitants' basic need to live together in peace and security and to ensure the provision of the basic needs of a modern society in the form of services.

6. To achieve the above goals, individuals in certain areas have invested in property in respect of which they are prepared to pay taxes for the right to live in free association with one another and to finance services in such areas.
7. Local governments must therefore enjoy the right to levy taxes and be permitted, if they so desire, to control matters of a cultural or social nature as well as health and education.
8. On the local government level, cultural matters will fall under the control of cultural or citizens' councils established for individual communities. In accordance with the individual needs of each community, such councils may be granted appropriate powers and capacities to serve the community concerned.
9. Local government need not be dealt with uniformly throughout the entire country, but, in accordance with the principles of democracy and the self-determination of freely associated communities, must allow such communities to realise their individual characters through citizens' councils.
10. All legislative powers in respect of the institution, delimitation and empowerment of local governments vest in the governments of the constituent states.

B. PROPOSALS FOR CONSTITUTIONAL WORDING

- 1(i) Legislative powers relating to the institution, delimitation and empowerment of local governments are conferred on the constituent state governments.
- 1 (ii) Constituent state legislatures may confer various powers and capacities on local governments and prescribe certain structures depending on demographic, economic, physical and environmental conditions, cultural cohesion and other factors which justify or necessitate such a distinction.
- 1 (iii) Constituent state legislatures may not deny or limit the powers and capacities of a local government which is economically or otherwise in a position to exercise such powers and capacities.
- 2(i) Constituent states are obliged to recognise a community which requests to be recognised as a community entitled to a local government of its own for the provision of services and/or to a citizens' council for the management of its cultural affairs.
- 2(ii) In accordance with the principles of democracy, self-determination of peoples and the right to free association, any group sharing language, culture and interests enjoys the right to form a community of its own with its own local government and/or its own citizens' council.

- 2(iii) The area of jurisdiction of such a local government is determined where seventy-five per cent of all land owners liable to pay taxes in a specific area support such a request.
- 2(iv) This support may be established either through a referendum or by means of a written, signed petition.

- 3(i) Local governments are autonomous and are entitled to manage their own affairs save where their actions conflict with an Act of Parliament or with this Constitution.
- 3(ii) Neither the parliament nor the government of a constituent state may interfere with the powers, activities and structure of a local government to such an extent that the underlying status, aim and character of local government is affected.

- 4(i) Constituent states may by legislation and subject to the provisions of par 1 above, institute local governments for the inhabitants of demarcated areas.
- 4(ii) In establishing local governments, constituent states must bear in mind that communities sharing language and culture should serve as the basis for the delimitation of the area of a local government or a citizens' council.
- 4(iii) The legislation of constituent states which affects the status, powers, activities or boundaries of local governments is adopted only in accordance with the wishes of the community which shall be determined by means of a referendum among all land owners liable to pay taxes by means of written petitions from such persons, or by of petitions from interested persons or institutions of existing local governments.
- 4(iv) No legislation as intended in par 3(iii) above, will be regarded as having been adopted where written objection has been received from a majority of land owners liable to pay taxes and other parties liable to taxation, whose voting power is determined by the amount of tax for which they are liable in relation to the total liability for tax in the area of a local authority affected by such legislation.

- S(i) Where communities are too small or where it would be uneconomical for a local government to set up and manage the services required, communities may by concluding valid agreements, create umbrella bodies for the provision of services.
- S(ii) Constituent states may accord agreements referred to in par S(i) above, legislative legal effect if so requested by the communities concerned.

(Powers, composition and election are dealt with later.)

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 5

THE RELATIONSHIP BETWEEN DIFFERENT LEVELS OF THE COURTS AND A UNITARY OR DIFFERENTIATED COURT SYSTEM

Regarding the present Constitution, Act 200 of 1993, certain guidelines and principles have already been established which may determine the direction in which this Theme Committee will move.

A. PRINCIPLES

1. Constitutional Principle V reads:

The legal system shall ensure the equality of all before the law and an equitable legal process. Equality before the law includes laws, programmes or activities that have as their object the relief of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.

2. Constitutional Principle VI provides:

There shall be a separation of powers between the legislature, executive and judiciary with appropriate checks and balances to ensure accountability, responsiveness and openness.

3. Constitutional Principle VH provides:

The judiciary shall be appropriately qualified, independent and impartial and shall have the power and jurisdiction to safeguard and enforce the Constitution and all fundamental rights.

4. Chapter 7 (sections 96-109) deals in greater detail with the functioning of the courts, including the appointment and dismissal of judicial officers and the institution of both the Lower and Superior Courts and of the Constitutional Court.

5. The submissions under Blocks 1 and 2 refer to:

- a. The relationship between the different levels of court.
- b. A single or differentiated legal system.
- c. The Constitutional Court.
- d. Other court structures.

6. It is consequently necessary to sketch a broader picture and to establish formulae and formulations before constitutional concretisation can be considered.

B. GENERAL

1. A system of government that advocates, as its point of departure, a democratic dispensation with decentralised power aimed at bringing transparent decisionmaking and action as close as possible to the subject, must embody a legal system that speaks in the same idiom.
2. In a federated South Africa, the courts must adapt to such a system and not be modelled on centralised power.
3. Arising from the above, courts should function as courts of constituent states with additional national or federal courts to deal with appropriate matters - in other words, a differentiated court system.
4. Each constituent state should consequently have its own lower courts as well as a Supreme Court of its own.
5. A constituent state is entitled to its own Appeal Court, but a number of constituent states may establish a joint Appeal Court should they so wish.
6. AB courts in a constituent state function in terms of legislation enacted by the constituent state enjoying legislative capacity over the territory concerned.
7. Judicial officers in constituent state courts are appointed by the government of the constituent state or by a body nominated by that government.
8. Currently applicable common law norms governing jurisdiction continue to apply to the determination of the jurisdiction of specific courts.
9. Constituent state courts enjoy jurisdiction over all persons domiciled in their constituent state and over all causes of action, both and civil, arising within such constituent state.
10. The jurisdiction of constituent state courts over specific matters is in accordance with the relevant constituent state's legislative and executive competence and includes all administrative and constitutional matters falling under the constituent state administration.

C. THE LOWER COURTS OF CONSTITUENT STATES

1. Lower courts may be divided into various divisions based on expediency or fields of specialisation, eg.

Small Claims Courts

Courts for Traditional Law

Criminal Courts

Civil Courts

2. Within the limits of their statutory powers, lower courts enjoy jurisdiction over all cases arising from the legislation of the constituent state within which they operate, and from all central legislation applicable in the constituent state concerned.
3. In cases over which the lower court exercises jurisdiction, there shall be an automatic right of appeal from such lower court to the Supreme Court of the constituent state concerned.
4. Where the lower courts' jurisdiction arises from the application of national government legislation, a party may, with the leave of the lower court of the constituent state, appeal to the National Supreme Court.

D. THE SUPREME COURT OF A CONSTITUENT STATE

1. The Supreme Court of a constituent state operates within the framework of the principles set out in 'B' above.
2. The Supreme Court enjoys inherent jurisdiction and may operate as a Circuit Court within the constituent state.
3. The Supreme Court arranges its own activities in accordance with regulations promulgated by the constituent state in consultation with the Judge-President and Chief Justice of the constituent state's Appeal Court.
4. The Supreme Court operates as a court of first instance and as a court of appeal for cases arising in the lower courts of the constituent state.
5. The Supreme Court may establish specialist divisions to hear family cases, cases involving arbitration or trade marks, commercial cases, criminal cases, or any other cases which it considers appropriate or desirable.

6. The Supreme Court enjoys jurisdiction to hear constitutional matters but may refer a specific question effecting the powers of the national government, to the Constitutional Court for adjudication.
7. The Supreme Court enjoys powers of review in respect of the decisions or proceedings of any lower court or any tribunal, council or official performing judicial, quasi-judicial or administrative functions within the constituent state.

E. THE APPEAL COURT OF THE SUPREME COURT OF A CONSTITUENT STATE

1. Every constituent state that so elects may establish its own Appeal Court subject to the proviso that a number of constituent states may elect to institute a joint Appeal Court.
2. The Appeal Court is the court of last instance in all civil, criminal and constitutional issues relating to matters falling within its geographic area of jurisdiction, but must, in constitutional issues effecting the powers of central government, refer the case to the Constitutional Court for determination.

F. THE NATIONAL SUPREME COURT OF THE REPUBLIC OF SOUTH AFRICA

1. A National Supreme Court is established by the national government and judicial officers are appointed by a body authorised by the central government to make such appointments.
2. The seat of this court may be at any centre in a constituent state identified for that purpose.
3. The National Supreme Court may institute speciality divisions to deal with issues of national taxation, national water issues, admiralty issues, aviation issues or any other matter the necessity or desirability of which has been identified.
4. As court of first instance, this court will enjoy jurisdiction in all criminal and civil matters over which the national government enjoys legislative and executive competence.
5. This court is the only court to entertain jurisdiction over disputes between the various constituent states, or disputes in which government organs of the various constituent

states litigate against one another, as well as over all administrative and constitutional matters directly related to the powers of national legislative and executive organs.

6. The National Supreme Court also serves as court of appeal in cases in which leave to appeal to this court has been granted by lower courts in the various constituent states.
7. The National Supreme Court enjoys powers of review over all judicial or quasijudicial administrative actions, decisions and proceedings resulting from acts by or on behalf of the national legislative or executive authority.

G. THE APPELLATE DIVISION OF THE NATIONAL SUPREME COURT

1. This division is established by the national government and judges are nominated by persons authorised by the national government.
2. The court serves as court of appeal for all cases in which appeal from the National Supreme Court are noted.
3. In all constitutional issues falling within the competence of this court and stemming from the powers of the National Supreme Court, a further right of appeal to the Constitutional Court will lie with the consent of this court or of the said Constitutional Court.

H. THE CONSTITUTIONAL COURT

1. The Constitutional Court is established and functions in terms of the Constitution of the Republic of South Africa.
2. Any further legislation necessary for the proper functioning of the court or its composition, is the responsibility of the national government. The body responsible for the nomination of judges to this court must be representative of the composition of the population.
3. The Constitutional Court serves as court of last instance in any constitutional matter or dispute over fundamental rights heard by any other court.
4. Such appeal is based on leave granted by the Appeal Courts of the constituent states or the National Court of Appeal, or at the request of the Constitutional Court.
5. The Constitutional Court also has the power to deliver judgment on any question referred to it by any Supreme Court or Appeal Court of a constituent state or by the National Appeal Court.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 6

PUBLIC SERVICE

(Hierdie dokument is ook in Afrikaans beskikbaar)

A. PRINCIPLES

1. There must be a national public service which executes the executive powers of the national government.
2. The various constituent states each has its own federated public service for the execution of their individual executive powers.
3. Local governments have executive organs of their own.
4. The national public service must be impartial in the exercise of its functions and may advantage no individual.

B. PROPOSALS FOR CONSTITUTIONAL WORDING

1. There shall be a public service for the Republic, structured in terms of a law to provide an effective public administration.
2. The public service shall -
 - (a) be non-partisan, career-orientated and function in accordance with fair and equitable principles;
 - (b) promote an efficient public administration;
 - (c) serve all members of the public in an unbiased and impartial manner;
 - (d) be regulated by laws dealing specifically with such service, and in particular with its structure, functioning and terms and conditions of service;
 - (e) loyally execute the policies of the government of the day in the performance of its administrative functions; and

- (f) be organised in departments and other organisational components, and the head of such department or organisational component shall be responsible for the efficient management and administration of his or her department or organisational component.
3. Employment in the public service shall be accessible to all South African citizens who comply with the requirements determined or prescribed by or under any law governing employment in such service.
 4. In making any appointment or filling any post in the public service, the qualifications, level of training, merit, efficiency and suitability of the persons who qualify for the appointment, promotion or transfer concerned, and such conditions as may be determined or prescribed by or under any law, shall be taken into account.
 5. Section 4 shall not preclude measures to promote the objectives set out in section 2.
 6. Provision shall be made by law for a pension for a member of the public service by means of a pension fund or funds established by law. Members of the public service who are required by law to be members of a pension fund, shall be entitled to a fair representation on the body which manages the applicable fund.
 7. (a) In the event of changes to the law governing pension funds which prejudice a member of a fund, the real value of the accrued benefits of such member of a fund, and his or her beneficiary, as represented by the fund's actuarial liability towards the member or his or her beneficiary, shall be maintained.

(b) The retirement age applicable to a public servant by law as at 1 October 1993, shall not be changed without his or her consent.
 8. The national public service is bound by the chapter of fundamental rights embodied in this Constitution
 9. In the execution of its functions the national public service is responsible to parliament and in service of the public.
 10. The national public service is subject to the provisions of the Constitution and the law of the Republic and to the jurisdiction of the National Supreme Court.
 11. The minister of a department in the national public service is responsible for the proper and regular administration and functioning of the department concerned and is, in addition to his political responsibility to parliament, also civilly and criminally responsible for maladministration within his department of which he was aware, or of which he should reasonably have been aware.

- 12(i) The various constituent states have the power to establish public services of their own by law.
- 12(ii) The public services of the different constituent states must perform their duties impartially and professionally, may advantage no individual and are bound by the chapter of fundamental rights embodied in this Constitution.
- 12(iii) The provisions of paragraph 2 apply *mutatis mutandis* to the public service of a constituent state and such states may adopt no legislation incompatible with this paragraph.

VOLKSTAAT COUNCIL
SUBMISSION TO THEME COMMITTEE 6

THE APPOINTMENT OF FINANCIAL AND FISCAL
COMMISSIONS

A. Principles

- 1. The purpose of such a commission is to establish an expert, unbiased body to furnish fiscal advice to the national and constituent states seeking it.
- 2. Such a commission may also advise on financial transfers which may prove necessary to enable poor and economically dependent constituent states to survive financially. In this regard, compare, for example, Gauteng and Northern Transvaal.
- 3. Constituent states may appoint their own commissions and these commissions may liaise and coordinate with the National Commission. Should they prefer, the constituent states may join the National Commission without appointing commissions of their own.

B. PROPOSAL FOR CONSTITUTIONAL WORDING

- 1. A Financial and Fiscal Commission is hereby established.
- 2. The objects and functions of this commission will be to appraise itself of all financial and fiscal information relevant to the national government and to those constituent states who requested and authorised the commission to do so and local governments within their borders and, on the basis of such information, to render advice and make recommendations to the relative legislative authorities in terms of the constitution regarding the financial and

fiscal requirements of the national and relevant constituent states and local governments including:

- a. financial and fiscal policies;
 - b. equitable redistribution of revenue collected at national level;
 - C. taxes, levies, imposts and surcharges;
 - d. loans; and
 - e. all such matters assigned to the commission by the national government or the participating constituent states.
3. The Commission shall consist of:
- a. a chairperson and deputy chairperson appointed by the President in consultation with the cabinet;
 - b. a person designated by each participating constituent state by reason of his or her expertise in economics, public finance, public administration, taxation, management or accountancy.
4. Any constituent state will be entitled and authorised to appoint a Financial and Fiscal Commission on *mutas mutandis* the same basis. Such a commission will co-operate and co-ordinate fiscal management.

VOLKSTAAT COUNCIL

SUBMISSION TO THEME COMMITTEE 6

SECURITY FORM

A. PRINCIPL.ES

1. There shall be a national defence force and a national police force.
2. The national defence force shall be responsible for the maintenance of the external security and sovereignty of the Republic.
- 3(i) The national police force shall be responsible for the maintenance of internal law, order and security within the Republic.
- 3(ii) the national police force is primarily responsible for the maintenance of law and order directly affecting the executive and legislative powers of the national government; the preservation, processing and analysis of fingerprints; the maintenance of criminal records

and statistics; the maintenance of a forensic laboratory; and the provision of expert evidence to the police forces of constituent states.

- 3(iii) The national police force is responsible for the provision of assistance to the police forces of the constituent states to prevent the evasion of crime, and to limit threats to law and order on an inter-state level.
- 4(i) Every constituent state is entitled to a police force of its own headed by a commissioner appointed by the government of the constituent state. Such a force shall be responsible for the maintenance of law, order and security within such constituent state.
- 4(ii) The police force of each constituent state is responsible for the prevention of crime, investigation of crime, and the maintenance of the security of the constituent state which affect the legislative and executive powers of the constituent state or which flow from such powers.
- 4(iii) The police forces of the constituent states are responsible for the provision of assistance to the national police force in the prevention of the evasion of crime on the national level.
5. Each constituent state is entitled to establish by legislation, civil protection units and neighbourhood protection units which in cases of emergency may provide support for the national defence force, the national police force, and @ police forces or emergency services of the constituent states.

B. PROPOSAL FOR CONSTITUTIONAL WORDING (Including constitutional supremacy and responsibility)

1. The national defence force, the national police force and the various police forces, civil protection units and neighbourhood protection units of the constituent states function subject to the provisions of this Constitution and the respective constitutions of their own constituent states.
2. The national defence force, national police force and the various police forces, civil protection units and neighbourhood protection units of the constituent states, together with the respective responsible ministers of these organs, may not abolish or temporarily or permanently suspend, or in any way reduce the legal force of this Constitution or the constitutions of the various constituent states.
3. Any member of the national defence force, national police force or the various police forces, civil protection units or neighbourhood protection units of the constituent states, and the ve responsible ministers of these organs, who acts unlawfully in terms of this Constitution, the constitutions of the respective constituent states, any other law or the law of the land, shall be subject to the

normal civil and criminal jurisdiction of the national courts or of the courts of the constituent states, as the case may be.

4. In the event of a valid state of emergency or war proclaimed or declared in terms of this Constitution, the validity of the actions of any individual in the national defence force, the national police force or the various police forces, civil protection units or neighbourhood protection units of the constituent states, together with the respective responsible ministers of such organs, shall be judged in terms of any valid proclaimed emergency measures or the common law principles of self defence or state of emergency, as the case may be.
5. No state of emergency shall suspend the jurisdiction of the courts to decide on the validity of the state of emergency or of any acts performed in terms thereof.
6. The preceding provisions in no way detract from the political responsibility of any responsible minister towards the national parliament or the legislative assemblies of any of the constituent states.
- 7(i) The preceding provisions in no way detract from the -power of the defence force to act outside of the state or against other states in times of war or armed conflict.
- 7(ii) In its actions outside of the state or against other states the national defence force and any responsible minister shall be bound by the principles of public international law binding on the Republic of South Africa.