

ANC CONSTITUTIONAL PROPOSALS ON DEFENCE.

1. SUPREMACY OF THE CONSTITUTION.

This issue is covered by the ANC Police Submission, which proposes a preface to the Security Section of the Constitution. This proposal is stated in the Police Report, under Point 1 Draft and under Point 2 Draft. The Draft of Agreement 2 should specify after the term security apparatuses, "namely the national defence force, the police service and the intelligence services".

In addition, the following overarching principles relating to the security services should be included in the constitution:

The constitution should prescribe that the security services should:

1. not discriminate on the grounds of sex, race, sexual preference, religion or belief;
2. reflect the composition of South African society;
3. be non-partisan as institutions and not allow partisan political activity in the services as such;
4. reflect at all times a reasonable balance between democratic transparency and secrecy;
5. be guided by an approach to the resolution of conflict, whether internal or external, primarily by non-aggressive means.

The members of security services should:

1. be obliged to carry out lawful orders and disobey unlawful orders;
2. be educated to a reasonable level in relevant international law and conventions, human rights and applicable law.

2. EXECUTIVE POWERS.

- 2.1. The President shall be the Commander-in-Chief.
- 2.2. The President shall appoint the Chief of the national defence force, who shall perform his/her functions subject to the directions of a Minister of defence and during a state of war, of the President. The Ministry of Defence shall be under civilian control.
- 2.3. The President shall appoint a civilian secretary for defence, whose powers and relationship with the Chief of the national defence force shall be stipulated in a Defence Act.
- 2.4. The President shall have powers to declare a state of national defence or war subject to parliamentary confirmation.
- 2.5. The President as Commander-in-chief shall have the power to employ the national defence force for specified functions as defined by law.

- 2.6. The Parliament, and when not in session, the Oversight Committee, should be informed by the President if the national defence force is deployed in defence of the country, in support of the Police or in compliance with any international obligations. Parliament may review such deployment.

3. ROLES, DUTIES AND RIGHTS OF THE NATIONAL DEFENCE FORCE.

- 3.1 There shall be one defence force structured in terms of the law. Such a defence force shall be defensive in character.
- 3.2 The primary duty of the national defence force shall be to defend the citizens and the territorial integrity and sovereignty of South Africa.
- 3.3 The national defence force shall respect the rights and dignity of its members subject to normal constraints of military discipline as provided for in the defence act.
- 3.4 The national defence force shall respect the territorial integrity and sovereignty of states and shall not interfere in the domestic affairs of states.
- 3.5 The national defence force shall comply with international, constitutional and other laws, treaties and conventions.
- 3.6 Members of the defence force shall be educated in international law and conventions and in human rights, the South African Constitution and Bill of Rights.
- 3.7 Members of the defence force shall not hold office in political parties.
- 3.8 Members of the national defence force shall be obliged to obey lawful orders and disobey unlawful orders.
- 3.9 The constitution should state that provisions for alternate compulsory bargaining, dispute resolution, mediation and arbitration procedures should be defined in law. Those provisions should curtail the right of members of the national defence force to strike.
- 3.10 Members of the national defence force shall have their rights as defined in the Bill of Human rights, subject to the limitation clause, as in clause 33(a) of the Interim Constitution.

4. PARLIAMENTARY OVERSIGHT.

4. 1. There shall be one multi-party oversight committee of Parliament on defence to exercise oversight control over the defence force. Such a committee shall initiate and deal with legislation relating to the defence force and must be able to make recommendations on budgets, budget functioning, organisation, armaments, policy, morale and state of

preparedness of the national defence force and to perform such other functions relating to parliamentary supervision as may be prescribed by law.

5. OMBUD.

- 5.1. There shall be a military ombud function to deal with complaints of members of the defence force and the public against the national defence force. Details of this and the relationship to the public protector and human rights commission should be contained in relevant legislation.