

THEME COMMITTEE SIX
(*SUB-COMMITTEE FOUR: SECURITY APPARATUS*)

SECOND REPORT: POLICING

(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 programme so as to allow international mediation to take place.)

Constitutional Framework

- (i) There shall be established and regulated by an Act of Parliament (National) a South African Police Service;
 - (ii) Provinces shall be competent *inter alia* to adopt legislation to establish and regulate :
 - a. Provincial Police Services
 - b. Public Order Forces
 - C. Metropolitan or Municipal Police Services.
1. Members of the (national) South African Police Service be responsible for all aspects of enforcement of national legislation with the exception of frame-work legislation.
 2. Policing will primarily be the responsibility of Provinces in all areas which are not specifically devolved to the national government. The Constitution (national) shall list the areas of competence of the National Police with emphasis on responsibility for specialised functions. Framework legislation defining standards, entry requirements and training requirements may be set by parliament;

The SAPS will be responsible for the following areas :

- a. the investigation and prevention of organised crime which requires investigation in terms of national legislation.
 - b. international police liaison.
 - C. central support for the keeping of national data, criminal records and statistics.
 - d. assistance to provincial training establishments to service the provincial services.
 - e. assistance with forensic laboratory services.
 - f. the establishment of a special task force for high risk operations related to crimes of a national nature.
 - g. such functions related to border, import and export control as may be assigned to the service by the law.
 - h. national protection services.
 - i. provision of technical support services and logistical technology in support of provincial police services.
3. Policing shall be within the residual competence of the Provincial. Provinces shall have their own separate and distinct police services which they shall be responsible to structure, organise and administer in terms of provincial law. All powers will accrue to the Province unless specifically stated in terms of the principle of subsidiarity.
 4. Members of the SAPS will make an oath or affirmation to protect and serve the Constitution.
 5. The SAPS shall enforce the law and shall act only as authorised by the law and in terms of the constitution.
 6. National framework legislation related to policing shall leave all administrative activity to the provinces, and should be sufficiently general to require or allow implementing legislative action by the provinces. Such framework legislation will relate to maintenance of standards, entry requirements and other aspects such as training and reporting procedures.

7. There shall be National and Provincial Police Services Public Protectors.
8. There shall be Police Service Commissions at both national and provincial levels.
9. Community forums will guide policing at national, provincial and local level.
10. There shall be a civilian Commissioner of the SAPS.

Control and Oversight of the South African Police Services :

1. Parliamentary committees on policing shall be representative of all political parties to oversee all aspects related to the service. 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 service prior to its inclusion into the national budget.
3. A Joint committee drawn from both the National Assembly and the Senate shall have oversight over the SAPS and advise the Minister on policy formulation and strategy.
4. Parliamentary committees shall initiate and consider and make recommendations on all legislation relating to the service and related matters with such a service.
5. Parliamentary committees will be empowered to review and make recommendations on regulations pertaining to the service, inter-departmental 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 the service to the Human Rights Commission.
7. Parliamentary committees shall submit to the President and the minister concerned once a year, a report on the activities of the committee.
8. Parliamentary committees shall have oversight including foresight of all activities of the SAPS.

Duties and Obligations of members of the SAPS :

1. Members of the police services will be obliged at all times to use minimum force in the execution of their duties.
2. Members of the police service may hold membership of political parties but may not hold office in such parties or act in any manner which is prejudicial to the exercising political rights.
3. Members of the Police services will be bound by a code of conduct which defines their duties and obligations towards the citizenry.
4. A member of the Police Service shall be obliged to disobey any unlawful command.
5. Members of the Police Services may not be delegated powers which in any manner exceed the Constitution.
6. The right to strike may be limited by relevant legislation.
7. Members of the Police Services may join unions and are entitled to collective bargaining.
8. Compulsory labour dispute resolution mechanisms shall be defined by the law.
9. No member of the Police Service may be discriminated against on the basis of gender, race or conviction.