

Inkatha Freedom Party

June 27, 1995

THEME COMMITTEE NO. 6, SUBCOMMITTEE 4 - SECURITY APPARATUS

In reviewing the bound documentation produced by the Constitutional Assembly, I have noted that the enclosed submissions which the IFP tabled before suspending its participation in the constitution-making process do not seem to appear in the record.

Please, ensure that the enclosed document is part of the record and is accordingly distributed.

Senator P. Powell

THEME COMMITTEE No. 6
(*SUB COMMITTEE 4 - SECURITY APPARATUS*)

THIRD REPORT ON PROVISIONS RELATING TO THE DEFENCE FORCE IN THE
CONSTITUTION ¹

Constitutional Framework:

1. There shall be established and regulated by an Act of Parliament, adopted by a two thirds majority, a South African Defence Force.
2. Provinces shall be competent *inter alia* to adopt legislation to establish and regulate :
 - a. Reserve Voluntary Forces within the province.
 - b. Reserve Area Protection Forces within the province.
3. The Defence Force may be divided in subdivisions under different commands.

¹ . The IFP makes this submission under protest, for the Constitutional Committee should with hold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

4. The supreme command of the Defence Force shall vest in an executive body chaired by the President which shall consist of an equal number of members of civil society and of the Defence Force.
5. Citizens shall not be compelled to perform compulsory military service.
6. The Defence Force must operate within the constitution, including the Bill of Rights.
7. The constitution must bind the Defence Force to defending the territorial integrity of the RSA against external aggression and the protection of South African citizens and property abroad.
8. The constitution shall bind the Defence Force to the implementation and execution of statutory, constitutional and relevant international conventions and law on armed conflict.
9. The Defence Force shall be excluded from any involvement in political activity.
10. Parliament shall appoint an Ombudsman for the Defence Force.
11. There shall be a civilian secretariat for defence which shall ensure civilian control over the defence force.
12. Parliament shall establish a Security Forces Commission.

Parliamentary Oversight:

1. National Assembly and Senate parliamentary defence committees shall be representative of all political parties and 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 defence committees shall also have the power to authorise the submission of the budgets of the Defence Force prior to its inclusion into the national budget.
3. A Joint Standing Committee drawn from both the National Assembly and the Senate shall have oversight over defence affairs.

4. Parliamentary defence committees shall consider and make recommendations on all legislation relating to the services and related matters and initiate legislation connected with such a service.
5. Parliamentary committees will be empowered to review and make recommendations on regulations pertaining to services, inter-departmental cooperation, rationalisation, demarcation of line functions and investigate complaints made against the Defence Force.
6. Parliamentary committees will be empowered to refer any alleged violation of human rights committed by the Defence Force to the Human Rights Commission.
7. Parliamentary committees shall submit to the Speaker or the President of the Senate a report on the activities of the committee within two months of the opening of parliament.

Declaration of a National State of Defence

1. South African troops may be employed in possible combat situations outside the country only on the basis of a declaration of a National State of Defence or hostility, the latter including so called peace-keeping exercises or in the protection of South African citizens or property abroad.
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 a national State of Defence or the status of international hostility. The declaration of a State of Defence or hostility shall provide a general indication of the type 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 war or hostility. Parliament may modify the declaration of a State of Defence or 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 Speaker of the National Assembly in this order.

5. Parliament may terminate or modify the terms of the declaration of a national State of Defence 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 national defence 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.

Relationships between levels of command and control:

National :

1. The Defence Force shall be a voluntary professional body recruited without discrimination on the basis race, gender or religious conviction.
2. The national parliament may introduce framework legislation regarding the establishment and organisation of provincial voluntary defence structures.
3. Regular units of the Navy and Air force shall fall within national competence.

Provincial :

1. Defence Force units present in a province shall consist of the following:
 - a. Units and formations of the National Defence Force. (Regular forces)
 - b. Voluntary Reserve units and formations. (Regiments).
 - c. Area-bound Voluntary Reserve formations. (Area Protection Units)
2. Regular Units of the Defence Force shall be stationed or deployed in a province with the consent of the Premier.

3. Voluntary Reserve formations (Regiments) shall be based in provinces in divisional formations under the administrative command and control of a Provincial Military Committee chaired by the Premier and consisting of an equal number of members of civil society and of the Provincial Voluntary Reserve Forces.
4. A Voluntary Reserve forces board representative of all provincial structures will advise the Secretary of Defence on matters relating to voluntary reserve forces.
5. Subject to the declaration of a State of National Defence, command and control of such Provincial Voluntary Reserve Forces shall be exercised by the executive body chaired by the President of the Republic.
 - a. The Voluntary Reserve Forces of a province may only be deployed in another province with the permission of the legislature of that province.
 - b. Training of Voluntary Reserve Forces within the framework of divisional structures shall be financed and provided for by the National Defence Force.
 - c. Voluntary Reserve Forces shall be equipped by the National Defence Force.
 - d. Standards and minimum requirements for the Voluntary Reserve Forces may be set by framework legislation.
 - e. Training exercises for national defence preparedness shall be funded by the national government.
6. Area-bound Area Protection Units shall be based in the province and shall not be deployed outside of their physical localities specified in their establishment under provincial law.
 - a. Area Protection Units shall be trained, equipped and financed by the province, assisted by the Defence Force in such areas of national defence preparedness as determined in consultation with the provincial executive command committee..
 - b. Subsequent to the declaration of a State of National Defence, the National Defence Committee may exercise command over Area Protection Units for purposes of defending the territorial integrity of the Republic of South Africa.

Duties and Obligations of Members of the Defence Force:

1. Members of the Defence Force 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.
2. Members of the Defence Force shall be bound by a code of conduct which defines their duties and responsibilities towards the citizenry.
3. A member of the Defence Force shall be obliged to disobey any manifestly unlawful command.
4. Members of the Defence Force may not be delegated powers which in any manner exceed the Constitution.
5. The right to strike may be denied by relevant legislation.
6. Members of the Defence Force may join unions and are entitled to collective bargaining.
7. Compulsory labour dispute resolution mechanisms shall be defined by the law.
8. No member of the Defence Force may be discriminated against on the basis of gender, race or religious conviction.

April 1995

THEME COMMITTEE No. 6
(*SUB COMMITTEE 4 - SECURITY APPARATUS*)

FOURTH REPORT ON PROVISIONS RELATING TO INTELLIGENCE
SERVICES IN THE CONSTITUTION ¹

¹ . The IFP makes this submission under protest, for the Constitutional Committee should with hold consideration of the matters covered in this report and further development of the work program so as to allow international mediation to take place.

Constitutional Framework:

1. There shall be established and regulated by an Act of Parliament adopted by a two thirds majority, an external and internal intelligence service.
2. The Intelligence Services shall be under civilian command and control and responsibility for them shall rest with a member of the executive appointed by the President.
3. The intelligence services must operate within the constitution, including the bill of rights.
4. The constitution shall bind the intelligence services to the implementation and execution of statutory and constitutional law.
5. The intelligence services shall be excluded from any involvement in political activity.
6. Members of the intelligence services shall not recruit informers paid from state funds within political parties unless this is linked to a specific criminal investigation and with the oversight of a competent panel of judges.
7. Any violation of the Bill of Rights by an intelligence service shall be subject to approval by a competent panel of judges.
8. There shall be established an Ombudsman for the intelligence services.
9. Covert military intelligence operations shall be limited to the monitoring of external military threats to the territorial integrity of the RSA.
10. Covert police intelligence activities shall be restricted to the investigation of criminal dockets.
11. Authority for the clandestine monitoring of individuals and search and seizure of private property shall be subject to approval by a panel of competent judges.

Parliamentary Oversight:

1. A Joint Standing Committee of the National Assembly and Senate on intelligence shall be representative of all political parties and shall reflect the composition of both houses in its make up.
2. The committee shall have special functions to oversee all aspects related to these agencies. For this purpose it may hold hearings, investigations, take evidence and subpoena witnesses.
3. The committee shall have oversight over all matters relating to intelligence activities.
4. The Joint Parliamentary Intelligence committee shall also have the power to authorise the submission of the budgets of the intelligence services prior to its inclusion into the national budget.
5. The Joint Parliamentary intelligence services committee shall consider and make recommendations on all legislation relating to the services and related matters and initiate legislation connection with such a service.
6. The Joint committee will be empowered to review and make recommendations on regulations pertaining to services, inter-departmental co-operation, rationalisation, demarcation of fine functions and investigate complaints made against the intelligence services.
7. The joint committee will be empowered to refer any alleged violation of human rights committed by the intelligence services to the Human Rights Commission.
8. The joint committee shall submit to the Speaker or the President of the Senate a report on the activities of the committee within two months of the opening of parliament,
9. Members of the committee shall be required to swear an oath of secrecy.
10. Intelligence information may not be classified as secret information without clearly demonstrating the sensitivity of such information with respect to national security.

Duties and Obligations of members of the Intelligence Services :

1. Members of the intelligence services 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.

2. Members of the intelligence services shall be bound by a code of conduct which defines their duties and responsibilities towards the citizenry.
3. A member of the intelligence services shall be obliged to disobey any unlawful command.
4. Members of the intelligence services may not be delegated powers which in any manner exceed the Constitution.
5. The right to strike may be denied by relevant legislation.
6. Members of the intelligence services may join unions and are entitled to collective bargaining.
7. Compulsory labour dispute resolution mechanisms to resolve labour disputes within the intelligence services shall be defined by law.
8. No member of the intelligence services may be discriminated against on the basis of gender, race or religious conviction.

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