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THE SECURITY AGENCIES AND THE SOUTH AFRICAN CONSTITUTION

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Occasional Paper No 3 - March 1996

INTRODUCTION

If all goes according to plan, South Africans should have the Constitution they have been waiting for since 1990, by 9 May this year. Despite this, some hard bargaining still lies ahead in some areas, particularly those relating to provincial power (or lack thereof). The Constitution is the essence of the emerging South African democracy. It will provide the framework for all other legislation, for interaction between citizens and the government, and for South Africa's relations with its neighbours and the international community. It will undoubtedly be the single most important document that will emerge from the transformation process in the country.

Yet, the first working draft of the final Constitution that was released for public discussion on 22 November 1995, was in some ways disappointing. It has tended to reinforce the opinion of sceptics that the big noise about public participation is meant to hide the extent to which any constitution-making process is based on bilateral negotiations between political parties. In fact, there can be little doubt that the requirement for national consensus, inclusivity and transparency has led South African politicians to design a very cumbersome process. Such is the nature of democracy and the requirement of the transition. However, recent progress within the myriad of committees which form part of the Constitutional Assembly in Cape Town provides a clear indication that the final Constitution will emerge as a much more balanced and comprehensive document than had been suggested by the earlier working draft.

The Institute for Defence Policy has made several submissions to the negotiating parties since 1993, initially to the various committees of the Transitional Executive Council and the TEC itself, and more recently to the present Constitutional Assembly. The themes addressed in these submissions have differed in character and content, but have generally drawn from a research project launched by the IDP in 1993 on the revision of defence and related legislation, and undertaken with the assistance of the Hanns Seidel Foundation, the United States Institute of Peace and the Dutch and Canadian embassies in South Africa. It has been gratifying to note that the content and spirit of certain sections as proposed by IDP and other contributors are reflected in the present Interim Constitution, as well as in some of the latest drafts of the final Constitution. Some concerns remain, however.

The purpose of this paper is to provide a basic yardstick with which the final Constitution can be measured, specifically regarding those clauses affecting the security agencies. As such, it discusses in turn the content of the draft Bill of Rights, particularly those clauses regarding a state of emergency, the relationship between the President, the Minister of Defence and the defence force, the inclusion of the defence, police and intelligence agencies within a single chapter (Chapter 13), municipal, metropolitan and provincial policing powers and some general aspects. The chapter on the security services as contained in the working draft of the new Constitution, dated 22 November 1995 (Chapter 13), is appended to this paper.

THE SECURITY AGENCIES AND THE BILL OF RIGHTS

The proposed Bill of Rights (Chapter 2) of the South African Constitution is lengthy, comprising some 32 sections, ranging from being very brief, such as Section 9 which simply

states that "*[e]veryone has inherent dignity and the right to have their dignity respected and protected*", to Section 36 which deals with states of emergency and which is expected to be in excess of 800 words. This complexity may in itself present some problems, but the comments that follow are interpretative rather than specific and relate generally to Sections 35 (Limitation of Rights), 36 (States of Emergency), 37 (Enforcement of Rights), 38 (Application) and 39 (Interpretation of Bill of Rights). These sections govern the interpretation of the rest of the Bill of Rights, for example by providing guidance to a court expected to pass judgement on the extent to which the right to assemble, demonstrate and petition (Section 16) applies to serving members of the South African National Defence Force.

With regard to the above example, the implementation of the Bill of Rights should in reality limit the rights of serving members of the defence force, police and correctional services/prisons, as well as those of national intelligence agencies to strike, to assemble and demonstrate. In 1995 the assistance of the medical services of the SANDF was requested to solve the crisis that erupted when the staff at Baragwanath hospital went on strike. A similar but more recent example is the assistance requested in combating the malaria epidemic in the northern part of the country. One can imagine the magnitude of the crisis that could possibly confront the Government at the time of such an event, if these soldiers were to strike in an attempt to demand an improvement in their conditions of service. In order to be equitable and in 'exchange' for the limitation of these rights, disputes within these departments that involve those issues which generally lead to strikes, assembly and demonstrations, should therefore, by law, be referred for compulsory arbitration. The limitation of these rights could be achieved through normal legislation and provisions contained in employment contracts between employees and these departments. Without such limitation, the State will repeatedly be forced to invoke the general limitation clause (Section 35) in order to press for appropriate limitations of these rights of its members should the occasion arise to necessitate such a step.

In the same vein it is important not to allow party-political campaigning or recruitment on premises controlled or occupied by the defence force, police services, national intelligence agencies or correctional services. Nor should full-time employees of the departments of defence, policing and correctional services, or national intelligence agencies be allowed to stand for public office, including standing for parliamentary election, or to hold office in any political party (Section 18). In a country such as Germany, serving military officers are allowed to participate in active politics at the local level, but have to take unpaid leave for the duration of their elected term of office at national level, and may only return to the military fold upon completion of this term. Internationally, this is regarded as an exception and is perhaps not an appropriate rule in an emerging democracy such as South Africa. Once again, such limitations would probably not require constitutional entrenchment, but it is important to be aware of the extent to which some basic rights have to be limited in the case of the security agencies.

Finally, and possibly the most contentious point, the Constitution should provide for citizens to be liable for military conscription under justifiable circumstances and as provided for by law. However, provision should be made for the right to conscientious objection and for alternative service. There is no guarantee that a voluntary part-time military service system will be able to provide the required numbers of soldiers when the threat of hostility becomes imminent or in times of war. It would therefore be unwise for the writers of the Constitution to deny the State the right to conscription when unforeseen circumstances may require a larger defence force. The inclusion of this provision would not imply that the State has any intention of invoking such a right except under extreme circumstances. Given the time required for adequate military preparation, the State must have the ability to institute military service in good time to counter the build-up of any threat, however remote such a threat may appear at the present time. At present, it would appear as if conscription would be unconstitutional in terms of the proposed Bill of Rights, except during a state of emergency, at which stage it would be too late to allow for timely and adequate preparation.

STATES OF EMERGENCY AND NATIONAL DEFENCE

A peculiarity of the working draft of the Constitution is that it does not allow for a separate state of national defence (or war), but only for a state of emergency which includes provision

for defence against armed attack. The updated draft of the Bill of Rights released by the Constitutional Assembly on 26 February 1996 differs only slightly in this respect, and states in Section 36(1) that "*[a] state of emergency may be declared only in terms of an Act of Parliament and only when - (a) the life of the nation is threatened by war, invasion, [general] insurrection, disorder, [national] disaster, or other public emergency; and (b) the declaration is necessary to restore peace or order*."[1] Collapsing two ultimately different situations (emergency and war/imminent war) under a single, all-encompassing 'state of emergency' may prove to be problematic. For example, it is unclear if a state of emergency has to be declared for the country as a whole or if it could be declared for a specific area of country. A flood in the Tugela basin is clearly a local and not a national emergency, similar to an insurgent threat into Mpumalanga. Secondly, the Bill of Rights is specific in stating that a declaration of a state of emergency would not *"... permit or authorise ... any derogation ... from ...* " virtually the rest of the provisions contained in the Bill of Rights.[2] The extent of limitations on executive and even legislative powers undoubtedly derives from the extensive human rights abuses which occurred in South Africa during the period 1976 to 1990 under the various states of emergency. Our past should not, however, lead to an over-reaction which would render effective disaster relief and a response to armed attack unconstitutional. Finally, in the case of a state of emergency no provision is made for any role to be played by either the provincial premiers or for the proposed Council of Provinces (the previous Senate), apart from the general provision that such a declaration must occur through an Act of Parliament.[3]

There is a number of additional reasons why it may be advisable to differentiate between a state of national defence and a state of emergency. One of these is the requirement for an altered chain of command over the defence force and police services during an emergency and during war/imminent war. In brief, during states of national defence the President should assume his role as commander-in-chief of the armed forces,[4] with sufficient executive power to gather the necessary national resources to restore peace and national territorial integrity. In performing these duties he would, of course, act in consultation with his Cabinet.

Another problem could arise in the case of an unexpected massive natural or man made disaster which does not allow enough time for Parliament to meet and declare a state of emergency in accordance with Section 36 of the working draft of the Constitution. The President (and not Parliament) should have the power to declare a prospective state of emergency for a period of not more than 21 days for any affected part or for the whole of the Republic of South Africa to enable effective remedial action during and/or after such a calamity. Such a declaration by the President could occur after consultation with the relevant provincial premier(s) of those provinces within which the state of emergency would apply, if possible. The present draft does not provide for such consultation, nor for such powers to be invoked by the President.

Such a declaration of a state of emergency by the President should only be made when the security of the Republic or a part thereof is threatened by general or large scale insurrection or disorder, or at a time of natural disaster, when the declaration of a state of emergency is necessary to restore peace, order and/or to provide emergency relief or aid. This being said, the National Assembly should have the right to review and terminate such a decision with immediate effect, or extend such a decision for a period of up to three months, or for consecutive periods of up to three months respectively. Any such review, termination or extension should be granted by a resolution of the National Assembly that is adopted by at least two-thirds of all its members. Consideration should also be given specifically to involve both houses of Parliament in such a decision. (Some of these provisions are contained in the working draft, with the exclusion of the right of the President immediately to proclaim a state of emergency should expeditious action be required, and a specific role for the Council of Provinces.)

The President should also have the power to declare a prospective state of national defence and to regulate the suspension of sections of the Bill of Rights within that context (see below) for a period of not more than 21 days. Such a declaration by the President should only be made when the security of the Republic or a part thereof is threatened by war or invasion, or is already under attack, and where the declaration of a state of national defence is necessary to defend the country and thereby restore peace or order. The declaration of a state of

national defence should obviously apply to the country as a whole and not only to a portion thereof. The National Assembly should have the right to review and terminate such a decision with immediate effect, or extend it for a specified time, but ideally not longer than six months at a time. Any such review, termination or extension should be granted by a resolution of the National Assembly that is adopted by at least two-thirds of all its members. Once more, consideration should be given to involve both houses of Parliament in such a decision.

At present the working draft of the Constitution is specific in terms of those clauses in the Bill of Rights that may not be affected by any declaration of a state of emergency (Section 36(4)). The situation during a state of national defence may require far more draconian measures. The State may, for example, find it onerous to allow strike action at such a time. Rather than list those sections in the Bill of Rights which may (or may not) be affected during any state of national defence, as the Bill of Rights does in the case of a state of emergency, it may be more appropriate to allow the President to list and subsequently publish the applicable emergency measures, powers or regulations, including details regarding those sections within the Bill of Rights or elements thereof that are suspended, in the Government Gazette. These are surely far-reaching proposals, but should be judged against the seriousness of the situation - the survival of the State as an independent and coherent entity.

Nonetheless, any superior court should be competent to inquire into the validity of the declaration of a state of emergency, its extension, actions taken, and regulations enacted under such a declaration (already included in section 36(6) of the working draft). However, only the Constitutional Court should be competent to inquire into the validity of the declaration of a state of national defence, its extension, or actions taken, and regulations enacted under such a declaration (not included at present).

Finally, the present provision that Parliament may not authorise the creation of retrospective crimes or the imposition of retrospective penalties, nor indemnify the State or anyone acting under state authority for unlawful acts committed during a state of emergency, should also apply during a state of national defence (Section 36(4)).

Another related matter with regard to a state of emergency and national defence is the requirement to provide for a reduced quorum should Parliament be severely disrupted by, for example, a natural or man-made disaster. This reduced Parliament should, under specified circumstances, be empowered to act as legislative body in times of national crisis. The powers of such a 'crisis Parliament' should be explicitly defined, as well as the role of the President in convening such a legislature. Should provision not be made that would enable Parliament to deal effectively with such a disastrous event, the country may find itself in a state of limbo when a crisis of this nature develops or occurs. One simply has to imagine the effect of a massive bomb detonated in Parliament to understand the requirement for such a provision.

THE PRESIDENT, MINISTER OF DEFENCE AND THE NATIONAL DEFENCE FORCE

From discussions held with members of Parliament, as well as the available documentation of the Constitutional Assembly, it would appear as if the relationship between the chief of the defence force, the Minister of Defence and the President is a theme for long debate and discussion. Such a relationship should be clear and unambiguous, therefore as unembellished as possible, and should reflect the unique status of the armed forces. The formulation which is contained in the working draft (see the appendix), for example, does not distinguish between the different conditions prevailing during a state of emergency, national defence or peace.

It is not without reason that the military is referred to as the 'sword of the State', for it serves as the final arbiter when all other measures have failed. During a state of national defence, the Chief of the defence force should therefore exercise his or her military executive command, subject to directions given by the President acting in consultation with Cabinet. During a state of national defence all police services at national and provincial level should also fall under the executive command of the National Commissioner and this could be reflected in normal legislation. This implies that the Minister of Defence should direct the

Chief of the defence force on all occasions, except during a state of national defence.

It follows that the Chief of the defence force should exercise military executive command over the armed forces, subject to the directions of the Minister of Defence during peace and a state of emergency, and during a state of national defence, those of the President. The Chief of the defence force, furthermore, acts at all times as the military advisor to the President, the Minister of Defence and the Cabinet.

THE MILITARY, POLICE AND INTELLIGENCE AGENCIES ARE DIFFERENT FROM ONE ANOTHER

A peculiar characteristic of the working draft is the decision to aggregate all the security agencies into a single, very brief chapter (Chapter 13, Security Services, which is divided into an introductory section, followed by a section each on defence, police and intelligence - see the appendix). Contrary to efforts to demilitarise and civilianise the police, the chapter tries to identify common principles which govern organisations patently different from one another. In this process the term 'national security' is used as an undefined abstract concept. *"National security must reflect the resolve of all South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life*." Furthermore, *"[n]ational security must be pursued in compliance with the law, including international law*", and "*[n]ational security is subject to the authority of Parliament and the Executive*." Apart from implying some unspecified definition of 'national security', these clauses reflect a poor command of the English language and reflect common tenets applicable to all branches of the executive and not exclusively to these institutions. In a similar manner, this is also reflected in the clause stating that "*[t]he security services must be structured and regulated by national legislation*." There are other clauses that are equally inconsequential, such as Section 176(1) which states that "*[t]he defence force must be structured and managed as a disciplined military force*." One can only assume that the inclusion of such a rhetorical statement is pandering to those that argue in favour of the 'retention of standards'.

It would clearly be less convoluted to divide Chapter 13 of the present draft into separate chapters, one each for the defence force, police services, intelligence agencies and possibly also for the correctional services. The sentiments expressed in the introductory general statements quoted in the previous paragraph could be moved to the first chapter of the Constitution, or to the Bill of Rights. In short, the defence force should exercise its powers and perform its functions in the collective and individual interests of all citizens and inhabitants of South Africa, as expressed by the Government, and as defined by the Constitution and the law. It should do so in a manner which reflects the externally effective neutrality of the armed forces. Neither the defence force nor any of its members should be constitutionally allowed to perform their functions with the aim of promoting sectional interests.

With regard to this, Chapter 13 (on the Security Services) does reflect a laudable attempt to follow a minimalist approach to the Constitution, for example by restricting the constitutional function of the defence force and the police service to the primary function of these organisations and thereby making a clear distinction between the primary purposes reflected in the Constitution and secondary roles which should be defined by regular legislation.[5] This effort, however, is in stark contrast to the detailed content of many other chapters and sections in the Constitution and therefore slightly incongruous.

Interestingly enough, the Constitutional Assembly could clearly not define the purpose of the intelligence services - a telling admission which begs the question whether an organisation without a clear purpose has a right to existence.[6]

Furthermore, the possible legal establishment of a paramilitary force, if required, that is separate from either the police or the defence force, for a function such as border security or public order should not be negated in the final Constitution as is the case in terms of Section 175(1) of the working draft.

In conclusion, police, defence, intelligence and correctional services should each be dealt with in separate chapters and not amalgamated into a single chapter with different sections.

The ethos of the defence and intelligence communities, for example, differs fundamentally, as well as the nature of the police service and the defence force - at least in the application of force and the use of violence. As formulated in the existing Chapter 13, the 'Governing Principles' do not apply to all these services without specifically providing separate definitions of 'national security' as it affects each organisation.

MUNICIPAL, METROPOLITAN AND PROVINCIAL POLICING POWERS

An important factor regarding the legislative competencies, powers and functions of local government (Chapter 10) is that no provision is made for any role for local government regarding municipal and metropolitan policing in the section listing the legislative competencies, powers and functions of this level of government (section 168). This oversight makes light of the recent white paper on metropolitan police published by the Gauteng legislature, as well as similar initiatives by various other provinces and local authorities. The absence of any specified role for local authorities in policing matters is emphasised by the provision in section 180(1) that "*[t]he national police service must be structured to function at national and provincial level, as set out in national legislation*." This implies that there will be no police structures or responsibilities at local level, and any initiative regarding metropolitan and/or municipal policing may therefore be unconstitutional.

A related problem regards the competencies of provincial governments which are *"... responsible for monitoring and oversight over the conduct and efficiency of the police service and for cultivating good relations between the police and the rest of the community ...",* while they are given no powers or control over resources to perform these functions. Some balance between responsibility and the allocation of resources is clearly required at this level.

Finally, the present formulation of Section 180(3) which reads that "*[t]he objects of the police service are to prevent and investigate crime, to maintain public order, and to protect and secure the Republic, its inhabitants and their property*", needs some attention. The duty to protect and secure the Republic is surely a function of the defence force.

In summary and drawing from the project on crime and policing currently run by the IDP, local government structures should be empowered to *"... establish metropolitan and municipal police services in accordance with national and provincial legislation to perform the functions of crime prevention, the policing of municipal by-laws and traffic regulations*." In these areas, local and metropolitan authorities could make an important contribution to the fight against crime. Similarly, the Constitution should possibly be more explicit regarding the role of provinces in this area. One proposal would be to state directly that the police service should be structured at national, provincial and metropolitan/local levels and should function under both the direction of the national government and the various provincial governments.

GENERAL ISSUES AND OMISSIONS REGARDING THE SECURITY AGENCIES

Interestingly, the working draft of the Constitution does not provide for the establishment of an independent grievance mechanism to investigate complaints against the police service by members of the public and police officers themselves. Nor does the working draft provide for the office of an independent military Ombudsperson to investigate complaints by soldiers and members of the public against the defence force. It furthermore does not stipulate that Parliament should provide for an oversight committee of parliamentary and independent complaint mechanisms to address the conditions and rights of staff of the department of correctional services/prisons, as well as those of prisoners. It would appear that the idea is to establish these institutions through regular legislation.

Control and oversight of the intelligence structures is a difficult issue. As a minimum measure the Constitution could provide for the conduct of persons employed in this service to be governed by a code of conduct based on universally accepted democratic principles, i.e. norms and practices commonly found in a democratic, liberal society.

Although national intelligence is a function and responsibility of central government, the responsibility for crime intelligence should, through an Act of Parliament, be allowed to be

devolved to provincial police commissioners. Such devolution should not affect the national responsibility of the National Commissioner of Police for crime intelligence.

On a political level, the national intelligence structures should be non-partisan and should not promote or influence the activities of any political party. It should at all times attempt to reflect a reasonable balance between secrecy and transparency in the pursuance of its tasks. The conduct of the intelligence function should be reconciled with fundamental civil liberties, ethical norms and the democratic values contained in the Constitution and universally accepted.

With regard to the defence force, it may be appropriate to entrench the tenet that the defence force should consist of a balanced component of both regular force and part time and/or reserve forces in the Constitution. The existence of part-time or reserve forces, whose members are primarily part of civil society and secondarily members of the defence force, is an important element of democratic civil-military relations. Part-time forces effectively tie the armed forces into civil society.

The working draft of the Constitution, as a whole, does not make any reference to imprisonment, either in Chapter 6 (Courts and Administration of Justice) or in Chapter 13 (Security Services). It may be advisable to include a general provision based on the principle that while incarceration itself is a severe form of punishment, imprisonment should aim at the humane treatment and rehabilitation of offenders in accordance with the broader interests of society.

CONCLUSION

It is impossible to overstate the importance of a document such as the Constitution, or the role and place of the security agencies in such a document. While the debate on national defence has exited from the centre-stage of public attention to the fringes of the day-to-day political discourse, this should not lead to an underestimation of the importance of these institutions, their role in providing security for all other national and international activities and the potential they possess to disrupt society in an extreme manner.

Broadly, the concerns most often expressed by commentators are that South Africans are so intent on designing a 'perfect' Constitution that will somehow set a 'new international standard in democratic Constitutions', that the end result could merely reflect a 'wish list' rather than a set of enforceable basic tenets. This has been clearly evident in the debate regarding the inclusion of second, third and even fourth generation rights in the Bill of Rights (Chapter 2).

The second dominant issue is of a more technical nature, and questions the ideal amount of detail to be included in the final Constitution. The present Interim Constitution contains, for obvious reasons, a large amount of detail on the transition in South Africa which, for reasons of distrust and practicality has been included and which ordinarily would have been part of regular legislation. Similarly, the working draft of the new Constitution which has been released on 22 November 1995 clearly contains too much detail in certain respects (such as section 34 relating to the rights of arrested, detained and accused persons) and very sparse details regarding other aspects (such as section 176 relating to the defence force). It is therefore indeed a strange lopsided creature. Apart from this, the working draft merely reflects the absence of consensus between the political parties on virtually every important aspect ranging from language to the right to life. Clearly the final Constitution has to adopt a more consistent approach in terms of the amount of detail that is included. It is therefore encouraging that the working drafts emanating from the Constitutional Assembly, subsequent to the release of the 22 November 1995 working draft (such as the later versions of the Bill of Rights), indicate a greater degree of balance. Time will tell if the inclusive approach adopted in South Africa has resulted in an equitable and sound Constitution.

ENDNOTES

1. Subsection (a) is to be redrafted by the Technical Refinement Team but without apparently changing the essence.
2. Parliament may not include the Council of Provinces/Senate. See section 40 of the working draft.

3. Sections 8, 9. 10. 11(3). 12, 14, 22(1), 22(2), 22(3). 27(1)(d, e and f), 33, 34(1)(a, b and c), 34(2)(d), 34(3), 34(4), 35 and 38.
4. Section 77(2) reads as follows: "*The President is the Head of state, Head of the national executive and Commander-in-Chief of the defence force. ..."*
5. In the case of the military such secondary roles could refer to: compliance with international obligations of the Republic; the preservation of life, health and property; the provision or maintenance of essential services; the maintenance of law and order in the Republic in co-operation with the South African police service, under circumstances provided for in a law and where the police service is unable to maintain law and order on its own; and in support of any state department for the purpose of socio-economic upliftment.
6. In a previous submission the IDP proposed that the primary mission of national intelligence should be to gather, collate and evaluate information and disseminate intelligence that pertains to the security of the state and its citizenry. In this respect, intelligence should enhance national security, protect and promote the interests of the state and the well-being of its citizens in accordance with the Constitution. The functions of the national intelligence agencies should be the protection of national security and, in particular, protection against threats of espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. It should also be the function of the national intelligence agencies to safeguard the economic well-being of the Republic of South Africa against threats posed by actions or intentions of persons outside the Republic. This last clause was included to counter industrial espionage activities of foreign governments and companies.

APPENDIX

EXTRACT FROM THE WORKING DRAFT OF THE NEW CONSTITUTION, dated 22 November 1995

CHAPTER 13 SECURITY SERVICES

Governing principles

174. The following principles govern the national security in the Republic:
(a)National security must reflect the resolve of all South Africans, as individuals and as a nation, to live as equals, to live in peace and harmony, to be free from fear and want, and to seek a better life.
(b)National security must be pursued in compliance with the law, including international law.
(c)National security is subject to the authority of Parliament and the Executive.

Establishment, structuring and conduct of security services

175. (1) The security services of the Republic consist of a single defence force, a police service and any intelligence services established in terms of the Constitution.

(2)The defence force is the only lawful military force in the Republic. Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.

(3)The security services must be structured and regulated by national legislation.

(4)The security services must act, and must teach and require their members to act, in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic.

(5)No member of any security force may obey a manifestly illegal order.

(6)The security services must exercise their powers and perform their functions in the national

interest; neither the security services nor any of their members may perform their functions in a manner that furthers, or prejudices, the interests of any political party.

Defence

Defence force

176. (1) The defence force must be structured and managed as a disciplined military force.
(2)The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people, in accordance with the principles of international law regulating the use of force.

Political responsibility

177. (1) A member of the Cabinet must be responsible for defence.
(2) multi-party committee of Parliament must have oversight over all defence matters.

Command of defence force

178. (1) The President must appoint a woman or a man as Chief of the defence force, to command the defence force.
(2)The Chief of the defence force must exercise command in accordance with the directions of the Cabinet member responsible for defence.

Defence civilian secretariat.

179.A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence, and to administer any matters entrusted to it by that Cabinet member or national legislation.

Police

Police service

180. (1) The national police service must be structured to function at national and provincial levels, as set out in national legislation.
(2)National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively.
(3)The objects of the police service are to prevent and investigate crime, to maintain public order, and to protect and secure the Republic, its inhabitants and their property.

Political responsibility and accountability

181. (1) A member of the Cabinet must be responsible for policing.
(2)A multi-party committee of Parliament must have oversight over all police matters.

Control of police service

182.(1) The President must appoint a woman or a man as National Commissioner of the police service, to control and manage the police service.
(2)The National Commissioner must exercise control over and manage the police service in accordance with the directions of the Cabinet member responsible for policing.

(3)The National Commissioner must appoint a woman or a man as provincial commissioner for each province, in accordance with national legislation.

(4)The National Commissioner may direct the provincial commissioners, who are each responsible for policing in their province, as prescribed by national legislation.

(5)Each provincial government is responsible for monitoring and oversight over the conduct and efficiency of the police service and for cultivating good relations between the police and the rest of the community in its province.

Police civilian secretariat

183.A civilian secretariat for the police service must be established by national legislation to function under the direction of the Cabinet member responsible for policing, and to exercise any powers and functions entrusted to it by that Cabinet member or national legislation.

Intelligence

Establishment and control of intelligence services

184. (1) The President may establish an intelligence service or services.
(2)The President must appoint a woman or a man as head of each intelligence service established in terms of subsection (1), and must either assume political responsibility for the

control and direction of any of those services, or designate a member of the Cabinet to assume that responsibility.

Powers, functions and monitoring

185.National legislation must establish and regulate the objects, powers and functions of the intelligence services established in terms of section 184(1) and must provide for -

(a)a multi-party committee of Parliament to have oversight over the budgets of those services;

(b)civilian monitoring of the activities of those services by an inspector appointed by the President with the approval of the National Assembly by a resolution adopted by at least two thirds of its members; and

(c)co-ordination of all intelligence services, including any intelligence divisions of the defence force and the police service.