

CHAPTER 11

SECURITY SERVICES

Governing principles

198. The following principles govern national security in the Republic:
- (a) National security must reflect the resolve of 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) The resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally or internationally, except as provided for in terms of the Constitution or national legislation.
 - (c) National security must be pursued in compliance with the law, including international law.
 - (d) National security is subject to the authority of Parliament and the national executive.

Establishment, structuring and conduct of security services

199. (1) The security services of the Republic consist of a single defence force, a single 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.
- (3) Other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation.
- (4) The security services must be structured and regulated by national legislation.
- (5) 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.
- (6) No member of any security service may obey a manifestly illegal order.
- (7) Neither the security services, nor any of their members, may, in the performance of their functions—
- (a) prejudice a political party interest that is legitimate in terms of the Constitution; or
 - (b) further, in a partisan manner, any interest of a political party.

- (8) To give effect to the principles of transparency and accountability, multi-party parliamentary committees must have oversight of all security services in a manner determined by national legislation or the rules and orders of Parliament.

Defence

Defence force

200. (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 Constitution and the principles of international law regulating the use of force.

Political responsibility

201. (1) A member of the Cabinet must be responsible for defence.
(2) Only the President, as head of the national executive, may authorise the employment of the defence force—
(a) in co-operation with the police service;
(b) in defence of the Republic; or
(c) in fulfilment of an international obligation.
(3) When the defence force is employed for any purpose mentioned in subsection (2), the President must inform Parliament, promptly and in appropriate detail, of—
(a) the reasons for the employment of the defence force;
(b) any place where the force is being employed;
(c) the number of people involved; and
(d) the period for which the force is expected to be employed.
(4) If Parliament does not sit during the first seven days after the defence force is employed as envisaged in subsection (2), the President must provide the information required in subsection (3) to the appropriate oversight committee.

Command of defence force

202. (1) The President as head of the national executive is Commander-in-Chief of the defence force, and must appoint the Military Command of the defence force.

- (2) Command of the defence force must be exercised in accordance with the directions of the Cabinet member responsible for defence, under the authority of the President.

State of national defence

203. (1) The President as head of the national executive may declare a state of national defence, and must inform Parliament promptly and in appropriate detail of—
 - (a) the reasons for the declaration;
 - (b) any place where the defence force is being employed; and
 - (c) the number of people involved.
- (2) If Parliament is not sitting when a state of national defence is declared, the President must summon Parliament to an extraordinary sitting within seven days of the declaration.
- (3) A declaration of a state of national defence lapses unless it is approved by Parliament within seven days of the declaration.

Defence civilian secretariat

204. A civilian secretariat for defence must be established by national legislation to function under the direction of the Cabinet member responsible for defence.

Police

Police service

205. (1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government.
- (2) National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.
- (3) The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.

Political responsibility

206. (1) A member of the Cabinet must be responsible for policing and must determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the provinces as determined by the provincial executives.
- (2) The national policing policy may make provision for different policies in respect of different provinces after taking into account the policing needs and priorities of these provinces.
- (3) Each province is entitled—
- (a) to monitor police conduct;
 - (b) to oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
 - (c) to promote good relations between the police and the community;
 - (d) to assess the effectiveness of visible policing; and
 - (e) to liaise with the Cabinet member responsible for policing with respect to crime and policing in the province.
- (4) A provincial executive is responsible for policing functions—
- (a) vested in it by this Chapter;
 - (b) assigned to it in terms of national legislation; and
 - (c) allocated to it in the national policing policy.
- (5) In order to perform the functions set out in subsection (3), a province—
- (a) may investigate, or appoint a commission of inquiry into, any complaints of police inefficiency or a breakdown in relations between the police and any community; and
 - (b) must make recommendations to the Cabinet member responsible for policing.
- (6) On receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province.
- (7) National legislation must provide a framework for the establishment, powers, functions and control of municipal police services.
- (8) A committee composed of the Cabinet member and the members of the Executive Councils responsible for policing must be established to ensure effective co-ordination of the police service and effective co-operation among the spheres of government.

- (9) A provincial legislature may require the provincial commissioner of the province to appear before it or any of its committees to answer questions.

Control of police service

207. (1) The President as head of the national executive must appoint a woman or a man as the 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 national policing policy and the directions of the Cabinet member responsible for policing.
- (3) The National Commissioner, with the concurrence of the provincial executive, must appoint a woman or a man as the provincial commissioner for that province, but if the National Commissioner and the provincial executive are unable to agree on the appointment, the Cabinet member responsible for policing must mediate between the parties.
- (4) The provincial commissioners are responsible for policing in their respective provinces—
- (a) as prescribed by national legislation; and
 - (b) subject to the power of the National Commissioner to exercise control over and manage the police service in terms of subsection (2).
- (5) The provincial commissioner must report to the provincial legislature annually on policing in the province, and must send a copy of the report to the National Commissioner.
- (6) If the provincial commissioner has lost the confidence of the provincial executive, that executive may institute appropriate proceedings for the removal or transfer of, or disciplinary action against, that commissioner, in accordance with national legislation.

Police civilian secretariat

208. 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.

Intelligence

Establishment and control of intelligence services

209. (1) Any intelligence service, other than any intelligence division of the defence force or police service, may be established only by the President, as head of the national executive, and only in terms of national legislation.
- (2) The President as head of the national executive 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

210. National legislation must regulate the objects, powers and functions of the intelligence services, including any intelligence division of the defence force or police service, and must provide for—
- (a) the co-ordination of all intelligence services; and
 - (b) civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members.