



Mr PA Phala, MP
Dr KMN Gigaba, MP
Joint Chairpersons
Joint Standing Committee on Defence

Per email: nmaxhegwana@parliament.gov.za

Dear Chairpersons,

NON-COMPLIANCE BY THE MINISTER OF DEFENCE WITH SECTION 19(2) OF THE DEFENCE ACT, 2002, AND DERELICTION OF DUTY TO EXERCISE CIVILIAN OVERSIGHT OVER THE DEFENCE FORCE

1. The Helen Suzman Foundation (HSF) promotes constitutional democracy, rule of law and human rights. Our late patron, Ms Suzman, believed in using the processes and procedures available in the Parliamentary system to challenge injustice during Apartheid. We write to the Joint Standing Committee on Defence (JSCD) to raise legitimate concerns, which we believe fall within the oversight mandate of the Committee.

2. HSF noted that on 12 February 2026, the President announced that he had directed the Minister of Police and the SANDF to develop a tactical plan on where our security forces should be deployed in the Western Cape and Gauteng to deal with gang violence and illegal mining. The President informed the nation during SONA that "As is required by the Constitution I will inform the National Assembly and the National

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Council of Provinces regarding the timing and place of deployment of our soldiers and what it will cost".

3. HSF has further noted that on 11 March 2026, the President informed Parliament in accordance with sections 201(2) and (3) of the Constitution of the employment of the SANDF for service in co-operation with the SAPS.

4. With the dawn of democracy in South Africa deliberate steps were taken to ensure that there would be civilian oversight over the defence force. The Constitution provides that the President as the head of the national executive is Commander-in-Chief of the defence force and must appoint the Military Command. The Constitution further provides that 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 (Section 202 of the Constitution). The Constitution also gives Parliament an oversight role exercised through its Committees in both Houses. The Defence Act establishes a civilian secretariat and provides for the appointment and powers of a Secretary of Defence.

5. Section 19 of the Defence Act, 2002 (Act No 42 of 2002), deals with the employment of the SANDF in cooperation with the SAPS. Once the SANDF is employed in accordance with section 201(2)(a) of the Constitution then there must be compliance with the provisions of section 19. The Minister of Defence must comply with sections 19(2) and 19(3)(c)(i) which provide as follows:

“(2) If the employment of the Defence Force in co-operation with the South African Police Service is authorised as contemplated in subsection (1), the Minister must give notice of such employment by notice in the *Gazette* within 24 hours of the commencement of such employment and, upon such employment being discontinued, within 24 hours of such discontinuation give notice of the discontinuation by notice in the *Gazette*.

...

(3) Service in co-operation with the South African National Police Service –

- (c) must be performed in accordance with –
 - (i) a code of conduct and operational procedures approved by the Minister".

6. Section 19(2) is an important safeguard incorporated into the Act to ensure civilian oversight over the Defence Force not only by the role players outlined above but by the public in general. It is meant to inform the public, through publication in the Government Gazette, that there will be an employment in co-operation with the SAPS, to avoid a situation where employments of this nature were abused during Apartheid under a veil of secrecy. If we trace the history of section 19(2) it is worth noting that it was a provision incorporated into the Defence Act of 1957 (Act No 44 of 1957) in 1992 as part of the process of dismantling the Apartheid regime and building towards a defence force that falls under civilian oversight. (See section 4(6) of the Defence Act of 1957 added by section 2(h) of Act 132 of 1992).

7. In the matter of *Khosa and Others v Minister of Defence and Others* [2020] ZAGPPHC 147, the Court confirmed in no uncertain terms that section 19 of the Defence Act is applicable when the Defence Force is employed by the President under section 201(2)(a) of the Constitution. (At par 106) The Court also confirmed the need to comply with the provisions of section 19(2) [notice in the Gazette] and 19(3) [code of conduct and operational procedures]. (At par 107)

8. As at the date of signature of this letter, there has been no notice given by the Minister of Defence under section 19(2) of the Defence Act. HSF calls on the JSCD to use its powers to hold the Minister of Defence accountable for her failure to adhere to the provisions of the Defence Act. Non-compliance with the legislative prescript in this instance amounts to a dereliction of duty on the part of the Minister and a failure to exercise civilian control over the Defence Force. If non-compliance with the legal framework is not addressed it paves the way for a situation in future where employments could again happen without any prior notice.

9. In the *Khosa* case, the Court ordered the publication of the Code of Conduct that the Minister of Defence is obliged to approve. HSF would welcome the publication of the Code of Conduct for this employment as it is in the public's interest to be aware of



the content of the Code during the year long employment. But, even if the Code is not made public, HSF calls on the JSCD to use its powers to call upon the Minister to provide proof that there has been compliance with section 19(3)(c)(i) of the Defence Act and to interrogate the content thereof.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Naseema Fakir', written over a faint circular watermark or stamp.

Naseema Fakir

Executive Director

Helen Suzman Foundation