

REPUBLIC OF SOUTH AFRICA

CONSTITUTIONAL ASSEMBLY

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 19 MAY 1995

APPENDIX

Printed by Mr Ismael Vast.

A. THEME COMMITTEE 6.1, FINAL REPORT ON PUBLIC SERVICE, AS AT 9 MAY 1995

1. INTRODUCTION

1.1 This report has been drawn up on the basis of the following:

1.1.1 Submissions received from Political Parties, Organisations of Civil Society and Individuals; and

1.1.2 Evidence taken by the Committee from various stakeholders.

Details of all submissions received are attached to this report under cover of a document entitled overview of submissions on Public Administration.

1.2 In the course of deliberations in the Committee, the Technical Committee prepared 13 reports for the Committee

2. MATERIAL PROCESSED BY THE COMMITTEE

The salient issues in regard to the Public Service which emerged from the material processed by the Committee are the following :

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- 2.1 The need for a constitutional provision on the Public Service;
- 2.2 The nature of the constitutional provision on the Public Service;
- 2.3 The definition of the Public Service;
- 2.4 Limited political appointments in the Public Service; and
- 2.5 Public Administration Commission.

3. AREAS OF AGREEMENT

3.1 CONSTITUTIONAL PROVISION ON THE PUBLIC SERVICE

Constitutional Principle XXX require the inclusion of a Public Service provision in the final text of the constitution.

All parties and submissions processed favour the inclusion of a clause in the final text on the constitution on the public service as the Public Service is seen as having an important role to play in the attainment of constitutional and other policy goals.

3.2 NATURE OF CONSTITUTIONAL PROVISION ON THE PUBLIC SERVICE

All parties agree that the Constitution should provide a minimalist, flexible framework of broad principles for a developmental public service and that the Public Service be regulated by way of legislation, rather than the Constitution.

The Constitution should provide a governing framework outlining the democratic assumptions on which the Public Service is based and establish a common set of basic values and principles applicable to all public sector institutions.

The following is a list of the key values and principles proposed:

- 3.2.1 impartiality and equity in relation to the provision of services;
- 3.2.2 efficiency and effectiveness in relation to developmental and constitutional objectives;
- 3.2.3 professional and ethical conduct on the part of public sector employees;

- 3.2.4 a broadly representative public sector linked to deracialisation, flatter hierarchies and best management practice;
- 3.2.5 accessibility of services and information to the public;
- 3.2.6 responsiveness to the needs of citizens and communities;
- 3.2.7 transparency and openness in government and administration;
- 3.2.8 objectivity and equity in relation to employment practices;
- 3.2.9 a developmental orientation;
- 3.2.10 democratic, structured public participation in public policy-making and management;
- 3.2.11 non-hierarchical, democratic and transparent in relation to the role of public employees in public management;
- 3.2.12 accountability to the structures of government and to the public;
- 3.2.13 career development orientation; and
- 3.2.14 loyalty in the execution of the lawful policies of the government of the day.

The following noteworthy views were expressed in regard to some of the above principles:

- **Accountability**

It was suggested that existing constitutional mechanisms for accountability are acceptable as far as they go, but that they are largely complaints-based mechanisms which deal with accountability for past actions. There is a strong need for proactive measures (before the fact/act) such as inspections etc.

- **Representivity**

The view appears to be that the concept of a broadly representative Public Service is acceptable and that mechanisms for attaining such representivity should not be referred to in the Constitution, but left to policy and legislation.

Representivity should be linked to the deracialisation and transformation of state institutions to ensure employment equity and effective service provision.

- **Policy-Making and Management**

It is the general view that structured public participation in public policy-making is highly desirable and that appropriate, workable consultative mechanisms should be designed and established.

The monitoring and evaluation of public policy implementation should be an essential feature of public administration and mechanisms should include internal arrangements in the Public Service, as well as appropriate oversight bodies/arrangements.

3.3 DEFINITION OF THE PUBLIC SERVICE

The notion of one Public Service for the whole of the Republic of South Africa was supported.

There is agreement that the public service definition should be wide enough to cover national, provincial and local tiers of government, parastatals and the security services as all these institutions are bound together by a set of fundamental values and principles applicable to the public service. These values and principles should be binding on all organs of state at all levels.

The above definition was agreed to subject to the following conditions:

3.3.1 that local authorities and parastatals (i.e. organisations funded partially or wholly by the State) will not be regulated by the same legislation governing personnel and management practices at national and provincial levels of government.

3.3.2 that the security services (police, prisons, defence, and departments such as

education) and others where necessary, be regulated and administered in terms of separate (i.e. "own") legislation.

3.4 LIMITED POLITICAL APPOINTMENTS IN THE PUBLIC SERVICE

All parties agree in principle on the need for a provision in the constitution allowing for limited political appointments in the public service. These appointment should take the following form:

3.4.1 appointment of ministerial advisors on contract and not in terms of legislation; and

3.4.2 appointment on contract by a Cabinet Minister of certain officials in the management echelons of the Public Service (i.e. Directors-General and other heads of departments/sections).

This approach was supported on the basis that it allows for lateral entry into the civil service and accordingly strengthen and improve management expertise and capacity in the Public Service, thereby creating space for the injection of fresh and novel ideas from outside the Public Service.

There was unanimity that limited political appointments within the sphere of the professional/career Public Service should not be along party political lines or ideological affiliations.

Whilst accepting the principle of limited political appointments, the DP and FF have expressed the view the issue of these appointments should be covered in legislation rather than the Constitution.

DP objects

*Willie Botha F.F position
V. Mhosa*

*Chairperson's summary: cases on principle & values
for governance of Pub Adm
cases we should not have
cost & unnecessary detail
different views on (2) & (3)
cases possible a of political appointments
provincial level included in (4)*

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3.5 PUBLIC ADMINISTRATION COMMISSION

3.5.1 Constitutional Provision on the Public Administration Commission

All parties agree that the final text of the constitution should contain a clause which provide for the establishment of an independent Public Administration Commission ("the Commission").

The Commission must be established along the lines of the office of the Auditor General and should be accountable, and report, to both parliament - through a parliamentary select committee - and provincial legislatures.

3.5.2 Structure of the Public Administration Commission

All the parties have agreed on the following structure for the Commission:

- (a) the Commission should consist of a Chairperson and eleven Commissioners. Of these eleven commissioners, there shall be one drawn from the nominations of each province.
- (b) the Chairperson and members of the Commission should be appointed by the President subject to approval by Parliament in accordance with a procedure prescribed by a national law. Such law shall make provision for each province to nominate one commissioner for the Commission;
- (c) Each Commissioner shall have the power to establish an office - details of which will be set out in legislation - in his or her Province;
- (d) The Premier of a Province may, subject to approval by the Provincial Legislature, appoint no more than two persons as

3.5.3 Appointment of Members of the Commission

The parties agree that members of the commission should be appointed by the President subject to confirmation by Parliament.

3.5.4 Role and function of the Commission

All the parties agree that the Commission should be an independent advisory body on policy matters. In addition to its advisory function, the Commission should be responsible for the inspection of personnel and management practices in departments as well as the implementation of policy and should report regularly to a relevant Parliamentary select committee and relevant Provincial Legislatures' select committees.

4. AREAS OF DISAGREEMENT

No areas of material disagreement were recorded.

5. CONCLUSION

This report has been endorsed unanimously by all the Parties. However, the FF accepted the report subject to the condition that:

"the FF be allowed to make further inputs on the issue, upon submission to the CA of its proposal on the Volkstaat Council".

6. OVERVIEW OF SUBMISSIONS RECEIVED AS AT 09 MAY 1995

PUBLIC ADMINISTRATION	
1. POLITICAL PARTIES	
African Christian Democratic Party	Public Service
African National Congress	Preliminary Submission on the Public Service
African National Congress	Public Administration

African National Congress	Public Administration
Democratic Party	Public Service and the Constitution
Freedom Front	Public Service and the Constitution
Inkatha Freedom Party	First Report on the Provincial and National Civil Service
National Party	Public Administration
National Party	Memorandum to Subtheme Committee 6.1
2. GOVERNMENT INSTITUTIONS	
Department of Education and Training	Political Appointments
Department of Education and Training	Policy on Affirmative Action
Department of Land Affairs	Public Administration and the Constitution
North West Premier : office of the Director General	Public Administration
North West Premier	Public Service
South African National Defence Force	Relationship between the Public Service Commission and the South African National Defence Force
3. ORGANISATIONS	
Africa Christian Action	Public Administration
Afrikaanse Handelsinstituut	Financial Institutions and Public Enterprises
Associated Magazines (Pty) Ltd	Public Service
Baptist Union of Southern Africa	Public Service
Civic Information Consultants	Public Administration
Confederation of Employers of Southern Africa	Matters of relevance regarding the new Constitution
Conservative Party of South Africa	Presentation of Constitutional Proposals

The Evangelical Fellowship of South Africa	The Constitution Making Process - Public Service
Graduate School of Public and Development Management	Transforming Public Sector Institutions in SA
Institute for advancement of human rights, democracy and individual right to mother tongue	Proposal on new Constitution
Institute for Defence Policy	Public Service
NAPTOSA	Public Service
Natal Public Sector Workers Union	Public Service
National Education Health and Allied Workers Union	Public Administration and the Constitution
Police and Prisons Civil Rights Union	Public Service
Public Servants Association of South Africa	Public Service
Public Servants Association of South Africa	Public Administration
Residents and Ratepayers Association	Local Government
South African Broadcasting Corporation	National Household Register of Names and Addresses
The South African Pharmacy Council	Pharmacy Amendment Bill '95
South African Democratic Teachers Union	Public Administration
Standard Bank	Public Administration
Town Council of Tzaneen	Public Administration and the Constitution
Tshidisanang M B Society	Language Broadcasting

University of Fort Hare - Dept of Political Science and Public Administration	Public Administration
University of Stellenbosch	The Purpose of a Constitution iro control over the security forces
University of the Western Cape - Dept. of Public Administration School of Government	Public Administration
University of Witwatersrand - Centre for Applied Legal Studies	Public Service Human Resource and Labour Relations Management
Volkstaat Council	Public Service
4. INDIVIDUALS	
"Signature"	Civil Service
Abrahams S	Public Administration
Alfred	Suggestions re : New Constitution
Bresler R	Request for clarity on the existing constitution
Chevalier C	Public Administration
Cloete JN	Recommendations about Provisions of the Constitution in relation to the Public Service
D N W M	Drafting of a New Constitution
Daddy R	Views for consideration - Public Administration
De Bruyn TA	Public Administration
Dimba MS	Public Administration
Dreyfus F	Public Administration and the Constitution
Driver-Jowitt JP	Public Administration
Drummond D	Public Administration
Easton HO	Public Administration
Evans S	Views on Ethical Principles
Ferreira H	Views on the Constitution for consideration

Ferreira IW	Public Administration
Galpin S	Constitutional Provision on Authorised Civic Officials
Gibson G	Public Administration
Greenberg R	Views on new Constitution
Hassim MH	Public Service
Hawardien AG	Public Service
Hellryd BAL	Civil Service
Hlekane K	Public Enterprise
Hoffenberg A	Role of Government and Public Officials
Hunter K	Public Service
Hurribance A	Public Service
JM	Matters affecting Civil Servants
Jacovides JC	Views on the Constitution
Jagger M	Views on the New Constitution
Jetupu J	Views on Transport
Jivananda S	Public Administration
Jivananda S	Public Service
Joubert Mr & Mrs	Public Administration
Jumna DD	Views on Local Government and the Group Areas Act
Kahanotivz C	Appointments to the Public Service in the Post-Apartheid South Africa
Katz J (Snr)	Democracy, Public Service, Accountability
Kekana MJ	Public Service
Kluever LR	Public Administration
Krishna B	Teachers - Retirement Age
Laleni T et al	Pensions

Jetupu J	Views on Transport
Longden-Thurgood RM	Views on the Constitution
Lowe WJ	Views on dismissal procedures
Maduma L	Views on the Constitution
Marago J	Comments and suggestions towards the new constitution
Mathias RGL	"Your-The People's Charter"
Mbotoli V	Views on the Constitution
McLean S	Views on the Constitution
Mkaba ME	Ideas on Imprisonment
Mkuzangwe LN	Public Administration
Mnisi BJ	Public Administration
Modisi EM	Public Administration
Mokgadi Mosidi E	Nursing and the Nursing Act
Mtiki ZE	Views on the Public Service
Mtshali AM	Public Service
Ngirane G	Public Administration
Nxumalo NM	Public Administration
Peer M	Public Service
Pottinger D	Subtheme Committee 6.1
Rabie D	Views on the Constitution
Ranchold M	Corruption and Democracy
Ravenscroft S	Role of Police
Richfield JM	Public Service
Sandi ND	Public Administration
Sargeant D	Lump sum benefits to civil servants
Sere M	Public Sector Units

Shepherd DF	Public Service
Sibanyoni A	Public Power, Strikes by Civil Servants and Judges and Magistrates
Simelane AM	Employment Criteria
Smith OJ	Accountability of Government Officials
Snowden SG	Public Service
Solomon R	Comments on the Public Sector
Steenkamp JAJ	Public Administration and the Public Sector
Stegen MH	Public Service
Stocks RK	Views on the New Constitution
Stones E	Public Administration
Stratten DB	Public Administration
Stuport DB	Public Administration
Swaine DH	Public Service
Swanepoel A	Public Service
Swart JS	Constitutional Principles
Taylor C	Views on Corruption, incompetence of elected officials and Autonomous Ombuds
Tongane ZJ	Public Administration
Van Eck E	Public Service
Veersamy VP	Labour Relations
Vosloo JM	Public Service and Elections
Yeadon ND	Views on how to avoid corruption of elected officials and civil servants
Young AC	Constitutional safeguards against abuse of public office

B. THEME COMMITTEE 6.2 REPORT ON THE RESERVE BANK, AS AT 9 MAY 1995

1. SCHEMATIC SUMMARY OF SUBMISSIONS AS AT 9 MAY 1995

No	CP	Issue	Consensus	Contention	Remarks
1	XXIX	Establishment of the South African Reserve Bank (SARB)/Central Bank.	Establishment of SARB/Central Bank to be regulated by an act of Parliament(ANC, NP, IFP, DP,FF and PAC) .	<p>1. Name of the Bank: Two views:</p> <p>1.1 Retention of SARB (ANC,NP, DP,FF and PAC).</p> <p>1.1 Rename the bank as Central Bank (IFP).</p>	Should the bank be called SARB or Central Bank?
2		Primary objectives of Bank.	The primary objectives of the bank shall be to protect the internal and external value of currency in the interest of balanced and sustainable economic growth(ANC,NP,DP, IFP,FF and PAC)	<p>A different view on the objectives for establishment of SARB:</p> <p>" The primary objectives of the bank shall be to protect the internal and external value of currency in the interest of reconstruction, development and a balanced, sustainable economic growth" (SACP)</p>	Constitutionalise

No	CP	Issue	Consensus	Contention	Remarks
3		Primary objectives of the SARB	<p>The SARB shall, in pursuit of its primary objectives, exercise its powers and perform its functions independently, subject to an act of parliament: <u>provided that there be regular consultation between the SARB and the minister responsible for national financial matters</u> (ANC, NP, IFP, DP, FF and PAC).</p> <p>Suggested Qualifications:</p> <ol style="list-style-type: none"> 1. Notion of independence should be construed widely to include not only independence from government but also other powerful interest groups (SACP). 2. The SARB shall, in pursuit of its primary objectives, exercise its powers and perform its functions independently, subject to an act of parliament: <u>Provided that the "decisions from either the SARB or Minister, affecting either authority should be reached only after due consultation between the two authorities"</u> (FF) 3. Regular consultation should 		Constitutionalise

No	CP	Issue	Consensus	Contention	Remarks
4		Powers and Functions	<p>The powers and functions of the SARB shall be those customarily exercised by central banks (ANC, NP, IFP, DP, FF, ACDP and PAC).</p> <p>Suggested Qualifications:</p> <ol style="list-style-type: none"> 1. "The powers and functions of SARB shall be those customarily exercised and performed by <u>SARB and other central banks</u>" (DP and NP). 2. "the bank shall have the powers regulating banking and credit and shall be independent within the parameters of law and within the scope of predetermined monetary and general economic policy frameworks, to use tools of monetary intervention in the public interest" (IFP). 3. "the powers and functions of SARB shall be those customarily exercised and performed by central banks as well as intervening in money markets (inter-alia to fix interest rates) to achieve its primary objectives" (PAC). 		Constitutionalise

No	CP	Issue	Consensus	Contention	Remarks
5		Powers and Functions	<p>The powers and functions of the SARB shall be determined by an act of Parliament and shall be exercised and performed subject to such conditions as may be prescribed by or under such act (ANC, NP, DP, FF, ACDP and PAC).</p> <p>Suggested qualification:</p> <p><u>"Provided that such act shall not derogate from the primary objectives and independence of the SARB" (DP).</u></p>	<p>Two views on the level of detail on the powers and function:</p> <ol style="list-style-type: none"> 1. The fundamental principles contained in s197 of interim constitution are generally acceptable and further details on powers and functions should be a matter for legislation(ANC, NP, DP, FF, ACDP and PAC). 2. To give content to the notion of independence of the bank, it is important that the bank's fundamental powers and functions should be specified in the constitution rather than left to the discretion of the majority in Parliament (IFP). 	<p>Should the SARB's powers and functions be specified in the constitution or should this be done by means of legislation?</p>

No.	CP	Issue	Consensus	Contention	Remarks
6		Powers and Functions	<p>1. SARB shall submit an annual report to Parliament and authorise senior officers to give evidence before a joint committee of both houses of Parliament on the policies and activities of the SARB (ANC, NP, DP, FF, ACDP and PAC).</p> <p>2. IFP agrees with principle of reporting and accountability, but has a different formulation: (a) The Governor shall submit a half yearly report to parliament on the monetary status of the Republic and on the status of the banking system of the country; and (b) Parliament shall have the power to review any activity of the bank and to hold hearings to investigate its policies. The bank shall hold regular consultations with ministers responsible for national and provincial matters.</p>		Should the Governor submit annual or half yearly reports to parliament?

No	CP	Issue	Consensus	Contention	Remarks
7		Powers and Functions		<p>Limitations on SARB's financing of Government.</p> <p>Two views:</p> <ol style="list-style-type: none"> 1. Constitution should provide specified limits on the bank's direct financing of government (IFP); 2. Limitations on SARB financing is unnecessary and not a matter for the Constitution (ANC and NP) 	<p>Should the constitution have a limitation clause on SARB's financing of government?</p>
8		Powers and Functions		<p>Purchase of government securities.</p> <p>Two views:</p> <ol style="list-style-type: none"> 1. The constitution should contain a clause preventing the imposition of an obligation on the SARB to purchase govt securities (IFP); 2. The purchase of govt securities is not a matter for the constitution and SARB is not obliged to purchase govt securities (ANC, NP and FF). 	<p>Should the constitution contain a clause prohibiting the imposition of an obligation on the SARB to purchase govt securities or is this an unnecessary embellishment?</p>

No	CP	Issue	Consensus	Contention	Remarks
9		Powers and Functions		<p>Structure of the SARB</p> <p>Two views:</p> <ol style="list-style-type: none">1. Structure of the SARB, as a means of guaranteeing the SARB's independence, should be determined by the constitution and not legislation (IFP); and2. Structure of SARB should be dealt with in legislation (ANC, IFP and FF)	Should the structure of the SARB be determined by the Constitution or legislation?

No	CP	Issue	Consensus	Contention	Remarks
10		Powers and Functions		<p>SARB: Appointment and Representation</p> <p>Two views:</p> <p>1. The Governor, the two deputy governors and 3 directors of the SARB shall be appointed by the President in consultation with Parliament or a select committee thereof. A further 10 directors of the SARB should be appointed by organised commerce, industry and labour (IFP).</p> <p>2. The Constitution should not contain the content of (1) above as suggested by the IFP. These are matters for legislation and regulation (ANC, NP, DP, FF).</p>	<p>a) Should the Constitution contain a clause empowering the President to appoint the Governor and his deputies and 3 directors?</p> <p>b) Should organised Commerce, Industry and Labour have a constitutional right to appoint directors onto the SARB's board ?</p> <p>c) Should appointment of persons to the SARB board be constitutionalised or not?</p>

No	CP	Issue	Consensus	Contention	Remarks
11		Powers and Functions		<p>Term of office of members of the SARB's board</p> <p>Two views:</p> <ol style="list-style-type: none">1. The constitution should contain a clause providing that all members of the SARB's board serve a five year term renewable on one or more occasions.2. The issue of term of office of members of the SARB board should be dealt with in legislation.	Should the tenure of office of members of the SARB board be constitutionalised or not?

No	CP	Issue	Consensus	Contention	Remarks
12		Powers and Functions		<p>The Executive of the SARB</p> <p>Two views:</p> <ol style="list-style-type: none">1. Constitutionally the Executive of the SARB should be made up of the governor, deputy governors and 3 directors appointed by organised commerce, industry and labour (IFP).2. The constitution should not describe the Executive of the SARB as this a matter for legislation and ancillary regulations.	Should the constitution contain a clause setting out the Executive of the SARB?

2. THEME COMMITTEE 6.2 REPORT ON THE SOUTH AFRICAN RESERVE BANK, 9 MAY 1995

KEY TO THE CODES IN THE REPORT

- A** Denotes that the party or institution has explicitly accepted in its written submission, the position as stated in the table, on the particular issue under discussion.
- AQ** Denotes that in its written submission, the party or institution appears to have accepted the position as stated, with some qualification or minor addition or deletion.
- NCA** Denotes that from the general tone of proceedings in Sub-Theme Committee discussions, the view of this technical expert is that the party or institution concerned appears to indicate that whilst having made no specific comment on a particular issue, there is a reasonable likelihood that the party or institution concerned accepts the position as stated.
- D** There appears to be disagreement on the issue as stated.

3. ANNEXURE B: SOUTH AFRICAN RESERVE BANK

SARB	ANC	NP	IFP	DP	FF
<p><u>Section 195:</u> The SARB, established and regulated by an Act of Parliament shall be the Central Bank</p>	A	NCA	AQ: "The SARB shall be reestablished as "The Central Bank of South Africa"	NCA	NCA
<p><u>Section 196(1):-</u> The primary objectives of the SARB shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic</p>	A	NCA	A	NCA	A
<p><u>Section 196(2)</u> The SARB shall, in pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its functions independently, subject only to an Act of Parliament, referred to in Section 197</p>	A	NCA	NCA	NCA	NCA

<p><u>Section 196(2) (Continued)</u> provided that there shall be regular consultation between the SARB and the Minister responsible for national financial matters</p>	<p>A</p>	<p>NCA</p>	<p>AQ (refer below)</p>	<p>NCA</p>	<p>A "Decisions affecting each other should be reached only after due consultation between the two authorities. Proper provision for this liaison should be made".</p>
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SARB	PAC	ACDP	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Section 195:</u> The SARB, established and regulated by an Act of Parliament shall be the Central Bank</p>	A	NCA	<p>(1) SACOB:- "The enabling Act of Parliament establishing and regulating the Bank shall not detract from the ... principles..." (mentioned in Section 196(1)). (2) CP : NCA (3) SACP: NCA</p>
<p><u>Section 196(1):</u> The primary objectives of the SARB shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic</p>	A	A	<p>(1) SACOB "SACOB strongly supports the principles contained in Section 196 of the Interim Constitution"; (2) COSAB:- " We support the retention of provisions based on Sections 196 and 197 of the Interim Constitution, setting out the primary objectives and the general nature of the powers and functions of the Bank, which powers and functions of the Bank, which powers and functions should continue to be determined by a separate Act of Parliament". (3) SACP D:- Too narrow:- "instead the primary objectives should be to manage the currency in the interests of reconstruction, development and a balanced, sustainable economic growth in the RSA".</p>
<p><u>Section 196(2)</u> The SARB shall, in pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its functions independently, subject only to an Act of Parliament, referred to in Section 197</p>	A	NCA	<p>(1) SACP AQ:- Independence should include not only independence from government but also from other powerful interest groups.</p>
<p><u>Section 196(2) (Continued)</u> provided that there shall be regular consultation between the SARB and the Minister responsible for national financial matters</p>	A	NCA	<p>(1) SACOB:- "SACOB endorses the proviso to Section 196(2) of the Interim Constitution that there should be regular consultation between the South African Reserve Bank and the Minister responsible for national financial matters"; "Any conflict between the Minister of Finance and the Governor of the Reserve Bank should be resolved by Parliament". (2) SACP AQ:- "We assume that "regular consultation" means "in consultation with" and NOT the weaker "after consultation with". This needs to be made clearer. The Ministry of Finance and the Reserve Bank need to work as a team".</p>

SARB	ANC	NP	IFP	DP	FF
<p>Section 197:- The powers and functions of the SARB shall be those customarily exercised and performed by Central Banks.</p>	<p>A</p>	<p>NCA</p>	<p>AQ:- "The Bank shall have the powers of regulating banking and credit and shall be independent within the parameters of the law and within the scope of predetermined monetary and general economic policy frameworks (as determined in conjunction with government), to use tools of monetary intervention in the public interest" ... " ... the Bank ... power to regulate banking ... and to undertake all other powers and functions customarily exercised by central banks"</p>	<p>Amend to read: "The powers and functions of the SARB shall be those customarily exercised and performed by the SARB and other Central Banks" [supported by NP]</p>	<p>NCA</p>
<p>Section 197:- (continued) which powers and functions shall be determined by an Act of Parliament and shall be exercised or performed subject to such conditions as may be prescribed by or under such Act.</p>	<p>A "We believe that the details of the operation of the Bank should, as at present, be governed by legislation, with the Constitution specifying general principles only".</p>	<p>NCA</p>	<p>D:- "In order to increase the independence of the Bank, its fundamental powers and functions should be specified in the Constitution rather than left to the discretion of the majority of Parliament" "...the Bank should enjoy "autonomy" which is the power to adopt the fundamental rules of its organisation and operation. It is debatable whether this scheme leaves any space for the legislative competence of Parliament, which in any case should be limited to giving the Central Bank additional or "secondary" goals with related powers, functions and resources, and should not prescribe how such powers and functions are to be organised".</p>	<p>AQ:- Add:- "provided that such Act shall not derogate from the primary objectives and independence of the SARB as provided for in Section 196".</p>	<p>NCA</p>

SARB	ACDP	PAC	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Section 197:-</u> The powers and functions of the SARB shall be those customarily exercised and performed by Central Banks</p>	A	<p>AQ:- "... it may intervene in the money markets (to inter alia fix interest rates) to achieve its primary objectives .</p>	<p>(1) SACD D:- "This assumes some universal agreement and practice in regard to the powers of Central Banks. This is simply not the case... For instance in many successful East Asian economies, the central bank has been a subordinate institution within government". We are trying to debunk the common belief that "all economically successful countries have absolutely independent central banks". "The new Constitution needs to ensure that... the degree of Reserve Bank independence is not so extreme that the possibilities of achieving a coherent, democratically-mandated reconstruction and development programme are undermined".</p>
<p><u>Section 197:- (continued)</u> which powers and functions shall be determined by an Act of Parliament and shall be exercised or performed subject to such conditions as may be prescribed by or under such Act.</p>	NCA	A	NCA

SARB	ANC	NP	IFP	DP	FF
<p><u>Proposed new Section 197(2)</u> (Proposed by the DP). (Reporting & Accountability) Also includes comments & references from other submissions, with regard to reporting & consultation requirements to Parliament</p>	<p>NCA</p>	<p>NCA</p>	<p>"The Governor shall submit a half-yearly report to Parliament on the monetary status of the Republic and on the status of the banking system of the country". "Parliament shall have the power to review any activity of the Bank and to hold hearings to investigate its policies. The Bank shall hold regular consultations with the Ministers responsible for national and provincial matters".</p>	<p>"The South African Reserve Bank shall submit an annual report to Parliament and authorise senior officers to give evidence before a joint commission of both houses of Parliament on the policies and activities of the South African Reserve Bank"</p>	<p>NCA</p>

SARB	PAC	ACDP	COMMENTS FROM OTHER SUBMISSIONS
<p>Proposed new Section 197(2) (Proposed by the DP). (Reporting & Accountability) Also includes comments & references from other submissions, with regard to reporting & consultation requirements to Parliament</p>	<p>NCA</p>	<p>NCA</p>	<p>(1) SACOB:- "SACOB recommends that in order to enhance the accountability of the Bank, provision could explicitly be made for appearance before the Joint Standing Committee on Finance". (2) COSAB:- "Transparency ... would enhance credibility. A suitable vehicle for this could be regular televised testimonies to a specific Parliamentary Committee (eg:- the Joint Standing Committee on Finance) in the form of a report-back, but not to account for or seek approval of actions".</p>

SARB	SARB GOVERNOR	SARB : HEAD LEGAL SERVICES - MEMORANDUM TO GOVERNOR
<p><u>General Comments</u> (From SARB Governors' submission to the Sub-Theme Committee; from SARB Head - Legal Services' Memorandum to SARB Governor)</p>	<p>(1) "A general statement about the independence of the Reserve Bank would be sufficient";</p> <p>(2) "The independence of the bank is provided for in Sections 195 - 197...";</p> <p>(3) (the independence of the bank) "... is the most encouraging factor to investment and the building of confidence in the future of the South African economy".</p>	<p>With regard to Sections 195 - 197:- "I would, with respect, advise against any drastic departure from the current wording of the said sections ... because in their present form they constitute, in my submission, a well-balanced arrangement of the relationship between the Government and its monetary policy agent. It is generally acknowledged that the relationship between the Government and the Central Bank is essentially one of mutual trust and consultation and close co-ordination of economic policy targets and measures. Such relationship, creating as it does the opportunity for the blending of socio-economic forethought and professional economics expertise runs the risk of being impaired if made subject to a plethora of prescriptive legislative provisions"</p>

SARB	SARB GOVERNOR	SARB : HEAD LEGAL SERVICES - MEMORANDUM TO GOVERNOR
<p><u>Section 195:</u> The SARB, established and regulated by an Act of Parliament shall be the Central Bank</p>	<p>"To date the Bank is accountable to Parliament through a special Act that spells out its role and functions". "The section, together with Section 196, recognises the need for autonomy of the central bank</p>	
<p><u>Section 196(1):-</u> The primary objectives of the SARB shall be to protect the internal and external value of the currency in the interest of balanced and sustainable economic growth in the Republic</p>		
<p><u>Section 196(2)</u> The SARB shall, in pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its functions independently, subject only to an Act of Parliament, referred to in Section 197</p>		<p>"The crucial problem of the exact nature and purview of the "independence" granted to the Bank in Section 196(2) of the Constitution ... still remains to be solved... Section 196(2) ... has not yet formed a subject for interpretation by a court of law". Assuming the definition of "independent" in the Concise Oxford Dictionary (8th Edition) is the true meaning intended by the legislator, the Bank "shall be entitled and is indeed obliged to act on its own authority and shall be free from control, whether by way of any directives, instructions or any other form of direct or indirect control, by any entity outside the Bank".</p>
<p><u>Section 196(2) (Continued)</u> provided that there shall be regular consultation between the SARB and the Minister responsible for national financial matters</p>	<p>"It is important to keep monetary policy out of the political system by allowing the Governor to effect such decisions without prior approval by the Minister of Finance".</p>	<p>"The circumscribed autonomy postulated above is, in accordance with the best-informed opinion currently prevailing in the relevant field, interim whereof a significant number of central banks, while closely collaborating with government in the form of macro-economic policy, are nevertheless required to autonomously pursue price stability through the application of the monetary expertise at their disposal".</p>

SARB	ANC	NP	IFP	DP	FF
<p><u>Other Issues Arising:</u></p> <p>1. The Bank to be independent from party political interference</p>	A	NCA	NCA	NCA	A
<p>2. <u>New Section:-</u> Proposed by the IFP</p>	DC1 Opposes IFP proposal	DC1 Opposes IFP proposal	DC1 There should be specified limits on the Bank's direct financing of government.		
<p>3. <u>New Section:-</u> Proposed by the IFP</p>	DC2 Opposes IFP proposal	DC2 Opposes IFP proposal	DC2 The Bank should not be obliged to purchase government securities.		DC2 Opposes IFP proposal
<p>4. <u>Bank's Structures</u></p>	DC3 opposes IFP proposal	DC3 opposes IFP proposal	DC3 " Since the final guarantees of independence of the Bank lie in the Bank's structures, this should be determined by the Constitution and not by an Act of Parliament" ..		DC3 opposes IFP proposal

SARB	PAC	ACDP	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Other Issues Arising:</u> 1. <u>The Bank to be independent from party political interference</u></p>	<p>NCA</p>	<p>A</p>	<p>(1) SACP AQ: "But this should be supported with mechanisms to ensure that the bank is accountable to the broad, democratically-mandated goals of Government (in this case the goals of reconstruction and development ... through ... legislation". A more representative Board of Governors, who are more in tune with the present social challenges: increasing transparency by ensuring greater answerability to Parliament.</p>
<p><u>2. New Section:-</u> Proposed by the IFP (& any related comments from other submissions)</p>			<p>1) CP "The SARB in a confederal system may under no circumstances finance any deficits of any of the participating states".</p>
<p><u>3. New Section:-</u> Proposed by the IFP</p>			
<p><u>4. Bank Structures</u></p>			

SARB	ANC	NP	IFP	DP	FF
<p><u>Other Issues Arising:-</u> <u>5. Appointment & Representation:-</u></p>	DC4 opposes IFP proposal	DC4 opposes IFP proposal	DC4: The Governor, the two deputy governors and 3 other Directors of the Central Bank shall be appointed by the President in consultation with Parliament or a select committee thereof. A further 10 directors of the Bank's board should be appointed by organised commerce, industry and labour.	DC4 opposes IFP proposal	DC4 opposes IFP proposal
<p><u>6. Term:-</u></p>	DC5 opposes IFP proposal	DC5 opposes IFP proposal	DC5: "All members of the Bank's board should serve for a 5-year term which may be renewed on one or more occasions"	DC5 opposes IFP proposal	DC5 opposes IFP proposal
<p><u>7. Executive:-</u></p>	DC6 opposes IFP proposal	DC6 opposes IFP proposal	DC6: "The Executive should be made up of the Governor, the two Deputy-Governors and three other Directors from those appointed by organised commerce, industry and labour"	DC6 opposes IFP proposal	DC6 opposes IFP proposal
<p><u>8. Comments on drafting:-</u></p>	"Given the broad support these sections enjoy, the ANC proposes incorporating them into the Final Constitution unchanged"			"While many of these proposals are couched in "quasi-legal" terminology, they are not intended to convey the final, precise wording required in the Constitution."	

SARB	PAC	SACP	ACDP	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Other Issues Arising:-</u> 5. Appointment & Representation:-</p>				<p>(1) <u>SACOB:-</u> "The Board should be more representative than at present. future appointments should enforce the independence, credibility and the professionalism expected of a Central Bank"; "Persons who are politically active should not be eligible for appointment and the Directors and Governors should not be political appointees in a more representative Board of Directors for the Reserve Bank".</p> <p>(2) <u>COSAB:-</u> Central Banks should not be made politically accountable by placing political appointees on their Boards or in Executive positions. Persons who are politically active should not be eligible for appointment. Competence, not population or interest group representivity to be the main criteria for appointments.</p> <p>(3) <u>SACP:-</u> The Board of Governors should be more representative and should be more in tune with the present social challenges.</p>
<p>6. Term:-</p>				<p>(1) <u>SACOB:-</u> "The terms of Directors are not necessarily tied to Parliamentary election terms"</p> <p>(2) <u>COSAB:-</u> Effective functioning would be served by increasing the terms of the four Governors to 8 years and the 4 Directors to 4 years.</p>
<p>7. Executive:-</p>				
<p>8. Comments on drafting:-</p>				

SARB	SACOB	TRANSNET	COSAB
<p><u>General Comments</u> (From COSAB, SACOB and TRANSNET submissions, on the SARB).</p>	<p>(1) "The Reserve Bank should be independent within the system, not of the system";</p> <p>(2) "While the provisions in the Interim Constitution are being supported, it is suggested that accountability and transparency be strengthened";</p> <p>(3) "SACOB ... believes it to be vitally important that the independence of the Bank should be clearly enshrined in the final Constitution";</p> <p>(4) "SACOB ... strongly supports the principles contained in Section 196 of the Interim Constitution";</p> <p>(5) "SACOB endorses the proviso to Section 196(2) of the Interim Constitution</p>	<p>"We agree with the existing status of the paragraphs in the Interim Constitution regarding the Reserve Bank and FFC. It is our recommendation that these paragraphs be included unchanged into the Final Constitution. It is of the utmost importance that the independent status of the Reserve Bank be acknowledged in the Final Constitution".</p>	<p>"We support the retention of provisions based on Sections 196 and 197 of the Interim Constitution, setting out the primary objectives and the general nature of the powers and functions of the Bank, which powers and functions should continue to be determined by a separate Act of Parliament".</p>

4. ANNEXURE C: OVERVIEW OF SUBMISSIONS AS AT 9 MAY 1995

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

POLITICAL PARTIES	ISSUE
Inkatha Freedom Party	Auditor General (AG) & Reserve Bank (RB) B
Freedom Front	AG & RB
Pan African Congress	AG, RB, Annual Budget, Procurement Administration, National Revenue Fund
ACDP	Financial Institutions & Public Enterprises
African National Congress	AG, RB, Public Enterprises, National Revenue Fund, Annual Budget, Procurement Administration and other matters related to Financial Institutions
Democratic Party	AG, RB, National Revenue Fund

ORGANISATIONS

ORGANISATION	ISSUE
South African Reserve Bank	Reserve Bank
Transnet	SA Reserve Bank
South African Chamber of Business	Financial Institutions & Public Enterprises
Council of South African Business	Auditor General, Reserve Bank, Financial & Fiscal Commission, National Revenue Fund, Public Enterprises
South African Communist Party	Economic & General Financial Affairs
Johannesburg Stock Exchange	Financial Services Board within the South African Financial Industry
Financial & Fiscal Commission	Financial & Fiscal Commission
Afrikanerbond	Financial Issues
Conservative Party	Financial Issues
Sonke Development Project	Financial Issues
Small Business Development Corporation	Financial Issues

INDIVIDUALS

(The following individuals' submissions were all finance related)

Anonymous	Komen E
Bruce IR	Lusenga DM
Clark PS (Mr)	Mabin HS
Daddy R	Mahe D
De Boer H	Mamkeli TM
De Jongh LB	Matzdorff R
De Kock AE	McGregor et al
Dickerson P	Mindel NW
Dimba MS	Mnguni V
Dr TB Kourie	Moloko KE
Dreyer M	Moodley I
Drummond D	Mtshali AM
Edgeworth H	Mtshali GM
Farr LS	Murphy A
Fischer W	Ntshweyese A
Fumba M	Pekeur JA
Goodall A (Mrs)	Pottinger Mr & Mrs
Hartman EE	Riggall L (Mr)
Hassim MH (Sgd)	Ryan HL (Mr)
Hlekane K (Sgd)	Schaimberg S
Hoffenberg A	Schmidt W
Hunter K	Sinovich A
Jagger M	Snowden SG
Kellerman JO	Sojica K
Kingon PJ	

ORGANISATION	ISSUE
Ministry of Public Enterprises	Financial Issues & Public Enterprises
Beauty without Cruelty	Financial Issues
People's Endeavour to reform Taxes NB.: no p46. Video of project with G Marcus	Financial Issues
Development Bank of South Africa	Financial Institutions & Public Enterprises
Homebased Business Association	SA Finance
Shareholder's Association	SA Finance
Office of the Auditor General	Auditor General
SBDC (Small Business Development Corporation)	Financial Institutions & Public Enterprises
African Christian Action	SA Finance
Volkstaat Council	SA Finance

