



CONSTITUTIONAL ASSEMBLY

[2/4/6/4/3/1]
No. 26

MEMORANDUM

To: TC6.2 Members
From: Pat Fahrenfort
Date: 1 August 1995
Subject: SARB Meeting

Attached are documents and details for a meeting to discuss the South African Reserve Bank as indicated below:

Venue: Room V475, Old Assembly

Time: 14h00

Date: 3 August 1995

- i) SARB draft text and legal opinion (p1-6)
- ii) Schematic summary of submissions as compiled by the Secretariat (p7-16)
- iii) SARB report as compiled by Mr C Rustomjee (p17-31)

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THE NEW CONSTITUTION

2. SOUTH AFRICAN RESERVE BANK²⁷

Establishment

1. (1) There shall be a South African Reserve Bank²⁸
which shall be the central bank of the Republic. The Reserve Bank shall be regulated by law.²⁹
- (2) The South African Reserve Bank shall be independent, impartial and subject only to this Constitution and the law.³⁰

Primary objective

2. The primary objective of the South African Reserve Bank is to protect the internal and external value of the currency of the Republic in the interest of balanced and sustainable economic growth in the

²⁷Prepared on basis of Report from Theme Committee 6.2 as at 9 May 1995. The following formulations should be read with the annexed legal opinion.

²⁸It is suggested that the indirect way in which section 195 of the Interim Constitution secures the establishment of a Reserve Bank be replaced by a direct constitutional requirement that "there shall be a South African Reserve Bank".

²⁹The requirement in section 195 that the SARB be regulated "by an Act of Parliament" is too specific and may eventually give rise to legal uncertainty, for instance whether the Bank could be bound by subordinate forms of legislation or ministerial directives issued under an Act of Parliament. It is suggested that "Act of Parliament" be replaced by the broader term "law". As the Reserve Bank will fall within Parliament's exclusive sphere of legislative competence there is no danger that the Bank can be regulated otherwise than by or under an Act of Parliament.

³⁰This provision is suggested for inclusion in the text in order to comply with CPXXIX which requires the Constitution to provide for an "independent" and "impartial" Reserve Bank. The formulation used in section 196(2) of the Interim Constitution was not followed as this formulation does not satisfy CPXXIX. It does not refer to "impartiality" at all and further restricts the Bank's independent exercise of powers only to cases where it pursues its primary objective. Furthermore, the statement in section 196(2) that the Bank shall be subject only to "the Act of Parliament referred to in section 197" is constitutionally untenable. The SARB like all other institutions, including the Constitutional Court, is subject to the Constitutional and the law of the land.

Republic.³¹

Powers and functions

3. (1) The powers and functions of the South African Reserve Bank shall be as prescribed by law. They shall be at least similar to those powers and functions customarily discharged by central banks.³²
- (2) There shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial affairs on the discharge by the Bank of its powers and functions.³³

³¹The provision is similar to section 196(1) except for the insertion after "currency" of the words "of the Republic".

³²Reformulation of section 197 of the Interim Constitution. The phrase in section 197 referring to the conditions upon which the Bank may exercise its powers, falls away in view of the proposed section 1(2) above.

³³This provision is based on the proviso to section 196(2).

ANNEXURE

LEGAL OPINION : INDEPENDENCE AND IMPARTIALITY OF SOUTH AFRICAN RESERVE BANK

1.

We were requested by the Constitutional Committee to provide an opinion on the constitutionality of certain proposed adjustments to the draft on the S A Reserve Bank discussed by the Committee on 12 May 1995.

2.

The first proposal relates to clause 3(2) which reads as follows:

"There shall be regular consultation between the South African Reserve Bank and the Minister responsible for national financial affairs on the discharge by the Bank of its powers and functions."

3.

The suggestion by one of the parties was that this clause be changed in order that "consultation", as used in the clause, bears the meaning "in consultation with" and not the weaker "after consultation with".

4.

It is generally accepted that "in consultation with" means "with the concurrence of". This was also the accepted position in the Kempton Park process in relation to a number of constitutional provisions in which this expression was used. Eventually section 233(3) was inserted in the Interim Constitution to make it clear that where a functionary is required by the Constitution to take a decision in consultation with another functionary, the decision shall require the concurrence of the second functionary.

5.

Clause 3(2) deals with consultation between the Bank and the Finance Minister on the discharge by the Bank of its powers and functions. The adjustment of the clause as suggested would in our opinion have the effect that the SARB would be unable to exercise its powers and functions otherwise than with the concurrence of the Minister. It must be noted that the provision will affect all powers and functions of the Bank and not only those, for instance, which pertain to its primary objective. The result would be that no decision by the Bank on whatever matter within its competence would be capable of being implemented without the Minister's sanction.

6.

This raises the important question whether such a provision would be consistent with CP XXIX. This Principle reads as follows:

"The independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector shall be provided for and safeguarded by the Constitution in the interest of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service".

7.

It is common cause that this Constitutional Principle requires the inclusion in the new constitutional text of provisions providing for and safeguarding the independence of, inter alia, the SARB. It also indicates the context in which the independence of the Bank should be safeguarded in the new text, viz "in the interest of the maintenance of effective public finance and administration".

8.

In our view a provision which precludes the Bank from exercising any of its powers and functions otherwise than with the concurrence (approval) of the Minister of Finance would effectively neutralise its independence and would be inconsistent with CP XXIX.

9.

However, during the discussion of this matter in the Constitutional Committee it was explained that the proposal was not intended to relate to the "operational independence" of the Bank, but to what was called "goal independence". In other words, the Bank should be free to exercise its powers and functions without ministerial intervention but within broad policy objectives or guidelines determined by the Bank "in consultation with" the Minister.

10.

As stated in par. 7 above CP XXIX requires constitutional safeguarding of the SARB's independence for a particular purpose, viz "in the interest of the maintenance of effective public finance and administration." In our view these words circumscribe the degree of "independence" intended here. We do not understand the Principle to require the Bank's independence to extend beyond the stated interest. Independence is not used in the Principle in the absolute sense, i.e. that the Bank should be free to operate in virtual isolation of the executive structures of government.

11.

Effective public finance and administration would in fact require the Bank to exercise its powers and functions with due regard to the realities of the day, including the policies of the government of the day. Intensive interaction between the Bank and the government, especially on ~~broad~~ policy guidelines to be applied by the Bank, would seem to us to be a natural prerequisite for effective public finance and administration. In our view a constitutional provision which would vest in the Minister a right to be party to the determination of ~~broad~~ policy frameworks relating to the bank's exercise of its powers and functions, would not detract from the Bank's independence as contemplated in CP XXIX.

12.

Whether or not the new constitutional text should contain such a provision is a purely political matter on which we express no opinion. However, in order to assist the process we have drafted the following provision for purposes of debate. It should be read as an addition to the present clause 3(2):

"The Bank shall discharge its powers and functions with due regard to a policy framework determined in the interest of the maintenance of effective public finance and administration by the Bank in consultation with the said Minister."

13.

The second proposal relates to clause 3(1) of the draft. Here one of the parties proposed that the clause be adjusted by inserting in the clause the words underlined below:

"The powers and functions of the South African Reserve Bank shall be as prescribed by law. Such a law shall not derogate from the independence and primary objective of the Bank. They shall be at least similar to those powers and functions customarily discharged by central banks."

14.

In our view the insertion of the words underlined is not really necessary as the law (statute) referred to in clause 3(1) will in any event have to be consistent with clauses 1(2) and 2 of the draft which provide for the independence and primary objective of the Bank, respectively. If the law in question deviates from these, or any other, constitutional provisions it will be invalid to the extent it so deviates. In fact this is what supremacy of the Constitution is all about. Laws must be consistent with the Constitution and if they are not they are null and void. The underlined words are superfluous and their inclusion in the draft is not supported.

**CA Law Advisors
15 May 1995**

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> <p>1. Notion of independence should be construed widely to include not only independence from government but also other powerful interest groups (SACP).</p> <p>2. The SARB shall, in pursuit of its primary objectives, exercise its powers and perform its functions independently, subject to an act of parliament: Provided that the "decisions from either the SARB or Minister, affecting either authority should be reached only after due consultation between the two authorities"</p>		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> <p>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).</p> <p>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).</p> <p>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</p>		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> <p>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).</p> <p>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>	<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:</p> <p>(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</p> <p>(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> <p>1. Constitution should provide specified limits on the bank's direct financing of government (IFP);</p> <p>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?
8		Powers and Functions		<p>Purchase of government securities.</p> <p>Two views:</p> <p>1. The constitution should contain a clause preventing the imposition of an obligation on the SARB to purchase govt securities (IFP);</p> <p>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?

No	CP	Issue	Consensus	Contention	Remarks
9		Powers and Functions		<p>Structure of the SARB</p> <p>Two views:</p> <p>1. Structure of the SARB, as a means of guaranteeing the SARB's independence, should be determined by the constitution and not legislation (IFP); and</p> <p>2. Structure of SARB should be dealt with in legislation (ANC, IFP and FF)</p>	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> <p>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.</p> <p>2. The issue of term of office of members of the SARB board should be dealt with in legislation.</p>	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> <p>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).</p> <p>2. The constitution should not describe the Executive of the SARB as this a matter for legislation and ancillary regulations.</p>	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></p> <p>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)).</p> <p>(2) CP : NCA</p> <p>(3) SACP: NCA</p>
<p><u>Section 196(1):-</u></p> <p>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";</p> <p>(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".</p> <p>(3) SACP</p> <p>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></p> <p>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</p> <p>AQ:- Independence should include not only independence from government but also from other powerful interest groups.</p>
<p><u>Section 196(2) (Continued)</u></p> <p>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".</p> <p>(2) SACP</p> <p>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><u>Section 197:-</u></p> <p>The powers and functions of the SARB shall be those customarily exercised and performed by Central Banks.</p>	A	NCA	<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"...</p> <p>"... 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 <u>the SARB and other Central Banks</u>" [supported by NP]</p>	NCA
<p>Section 197:- (continued)</p> <p>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>	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".	NCA	<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"</p> <p>"...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>	NCA

SARB	ACDP	PAC	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Section 197:-</u></p> <p>The powers and functions of the SARB shall be those customarily exercised and performed by Central Banks</p>	<p>A</p>	<p>AQ:- "... it may intervene in the money markets (to inter alia fix interest rates) to achieve its primary objectives "</p>	<p>(1) SACP</p> <p>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".</p> <p>"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>Section 197:- (continued)</p> <p>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>NCA</p>	<p>A</p>	<p>NCA</p>

SARB	ANC	NP	IFP	DP	FF
<p><u>Proposed new Section 197(2)</u></p> <p>(Proposed by the DP).</p> <p>(Reporting & Accountability)</p> <p>Also includes comments & references from other submissions, with regard to reporting & consultation requirements to Parliament</p>	NCA	NCA	<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".</p> <p>"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>	NCA

SARB	PAC	ACDP	COMMENTS FROM OTHER SUBMISSIONS
<p><u>Proposed new Section 197(2)</u></p> <p>(Proposed by the DP).</p> <p>(Reporting & Accountability)</p> <p>Also includes comments & references from other submissions, with regard to reporting & consultation requirements to Parliament</p>	NCA	NCA	<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".</p> <p>(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></p> <p>(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></p> <p>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";</p> <p>"The section, together with Section 196, recognises the need for autonomy of the central bank</p>	
<p><u>Section 196(1):-</u></p> <p>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></p> <p>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".</p> <p>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></p> <p>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, interms 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></p> <p>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></p> <p>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></p> <p>1. The Bank to be independent from party political interference</p>	NCA	A	<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".</p> <p>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>2. <u>New Section:-</u></p> <p>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>3. <u>New Section:-</u></p> <p>Proposed by the IFP</p>			
<p>4. <u>Bank Structures</u></p>			

SARB	ANC	NP	IFP	DP	FF
<p><u>Other Issues Arising:-</u></p> <p><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></p> <p>5. <u>Appointment & Representation:-</u></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. <u>Term:-</u></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. <u>Executive:-</u></p>				
<p>8. <u>Comments on drafting:-</u></p>				

SARB	SACOB	TRANSNET	COSAB
<p><u>General Comments</u></p> <p>(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>