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**CONSTITUTIONAL ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**DRAFT REPORT OF DISCUSSIONS  
17 AUGUST 1995**

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## **CONSTITUTIONAL ASSEMBLY**

### **DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE HELD ON 17 AUGUST 1995**

#### **PART I**

#### **1 CHAPTER ON INDEPENDENT INSTITUTIONS**

- 1.1 Mr Powell spoke to the document entitled, "Research Department Survey on Foreign Constitutions" contained in the documentation for the meeting.
- 1.2 The ANC stated that the chapter deals with two conceptually different institutions, institutions that are part of government and institutions that have a greater degree of independence from government.
- 1.3 It was agreed that this would be addressed in the light of section 21 dealing with general provisions pertaining to all the independent institutions.
- 1.4 The DP reserved their view on the chapter and all changes affected by the meeting, due to the extension of principle to all of these institutions.
- 1.5 Outstanding issues on the independent institutions were considered and the following was agreed to:

#### **2 INDEPENDENT INSTITUTIONS : AUDITOR GENERAL**

- 2.1 **Establishment and functions**  
It was agreed that sections 1(2) -1(5) were adequately covered by the provisions of the general section (section 21) and could be deleted from the section dealing with the Auditor General.
- 2.2 **Powers and functions**  
No changes were made to this section of the draft.
- 2.3 **Reports**  
It was agreed that this section should be replaced with the formulations contained in footnote 9.



**2.4 Appointments, qualifications, tenure and dismissal**

2.4.1 It was agreed that the section 1, dealing with the appointments procedure for the Auditor General would be held in abeyance until it had been considered by the Constitutional Assembly.

2.4.2 It was agreed that sections 5 and 6 dealing with suspension and dismissal should be held in abeyance until the section dealing with appointments had been finalised.

**3 INDEPENDENT INSTITUTIONS: CENTRAL BANK**

3.1 It was agreed that the provisions on the Central Bank would remain as they were and would not form part of the general provisions.

3.2 The DP asked why it was that the phrase "subject only to a national law" had been used in section 10(1) when in other instances the phrase used was "subject only to the Constitution and the law" and suggested that there should be continuity of language.

**4 INDEPENDENT INSTITUTIONS: PUBLIC ADMINISTRATION COMMISSION**

4.1 The ANC noted that there was a distinction between the Public Administration Commission which was an organ of government and other monitoring organisations.

4.2 It was agreed that section 12(4) was amended to read, "the function of the Public Administration Commission shall be to promote the values and principles of public administration set out in chapter ... as prescribed by law."

**5 INDEPENDENT INSTITUTIONS: ELECTORAL COMMISSION**

It was agreed that this would be held in abeyance until it had been considered by the Constitutional Committee.

**6 INDEPENDENT INSTITUTIONS: PUBLIC PROTECTOR**

Outstanding issues within the seventh draft text on the Public Protector dated 6 August 1995 were discussed and the following agreed to:

**6.1 Establishment and Functions**

6.1.1 It was agreed that sections 15(2)-(4) would move to section



21, that sections 16(1) and (2) would move to section 22 and that sections 16(5) and (6) would move to section 23.

6.1.2 The NP reserved its position on section 15(3)/(5).

**7 INDEPENDENT INSTITUTIONS: HUMAN RIGHTS COMMISSION**

7.1 It was agreed that sections 2-5 would be contained in section 21

**8 INDEPENDENT INSTITUTIONS: GENERAL PROVISIONS**

8.1 It was agreed that section 21 would remain unaltered.

8.2 It was agreed that the sections 22 and 23 would be debated in the Constitutional Assembly.



## **CONSTITUTIONAL ASSEMBLY**

### **DRAFT REPORT OF THE CONSTITUTIONAL COMMITTEE SUBCOMMITTEE HELD ON 17 AUGUST 1995**

#### **PART II**

#### **NATIONAL ASSEMBLY**

Outstanding issues within the third draft chapter on the National Assembly were considered and the following agreed to:

**1 Parliament**

No changes were made to this section of the draft.

**2 Composition of the National Assembly**

No changes were made to this section of the draft.

**3 National Elections**

It was agreed that this issue would be held in abeyance until the debate on the electoral system had been held in the Constitutional Assembly.

**4 Duration of the National Assembly**

**4.1** It was agreed that this issue would be held in abeyance until section 20 under the chapter on the National Executive had been discussed.

**4.2** It was agreed that section 5(3) would remain as it is.

**4.3** It was agreed that the Technical Advisers should make a recommendation regarding the status of parliament in the event of an election result not being certified by the Electoral Commission.

**5 Speaker and Deputy Speaker**

No changes were made to this section of the draft.

**6 Qualifications of members of National Assembly**

**6.1** It was agreed that the technical advisors and law advisors should



develop a new formulation for 7(c) along the lines of the formulation in footnote 19 and taking into consideration the differing interpretations of the word "pardon".

- 6.2 It was suggested that e(iii) be deleted as receipt of a pension did not constitute an "office of profit"

This issue was not finalised.

- 6.3 It was agreed that section 7(3) should read:

***The disqualification imposed by this section on a person who served a prison sentence of more than 12 months shall lapse ... years after completion of the sentence.***

It was agreed that the period which should lapse after the completion of sentence should be held in abeyance.

Two views were expressed on this matter namely:

- i) That the period of time should be related to the sentence served.
- ii) That once a prison sentence has been served the individual has paid their debt to society and should not be punished any further.

- 6.4 **Vacation of seats**

It was agreed that this issue would be held in abeyance until a debate could be held on it, possibly in the Constitutional Assembly.

- 6.5 **Filling of vacancies**

No changes were made to this section of the draft.

- 6.6 **Oaths of affirmation by members**

No changes were made to this section of the draft.

- 6.7 **Sittings and recess periods**

No changes were made to this section of the draft.

- 6.8 **Quorum**



The DP requested that this issue be revisited and that a quorum is stipulated for decision making. It was agreed that this be included under the section entitled "decisions".

#### 6.9 Decisions

It was agreed that 30% of all members should be present when a decision is taken and 50% should be present when a Bill is passed. 51% of those present would carry the decision or Bill.

It was agreed that the technical advisors and law advisors would table a further formulation before the Committee.

#### 6.10 State President's rights in the NA

The DP suggested the word "attend" replace the word "sit". It was agreed that this proposed amendment would be considered by the drafters.

#### 6.11 Internal autonomy

No changes were made to this section of the draft.

#### 6.12 Parliamentary privilege

No changes were made to this section of the draft.

#### 6.13 Sections 17-20 dealing with Bills

No changes were made to these sections of the draft.

#### 6.14 Assent to Bills

It was agreed that a more elaborate provision should be drafted for further discussion in the Sub-Committee and that clarity on the present system would assist in further discussion.

#### 6.15 Safekeeping of and public access to Acts of Parliament

It was noted that there was an error in the section 22(1) which should read:

***All Bills duly signed by the State President shall immediately after their promulgation as Acts of Parliament be entrusted to the Constitutional Court/ Appellate Division for safe keeping.***



