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**CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 6.2**

**FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES**

**SUBMISSIONS**

**VOLUME 6**



**SUB-THEME COMMITTEE 2**

**OF**

**THEME COMMITTEE 6**

**SUBMISSIONS**

**INDEX**

1.	<b>ACDP</b> African Christian Democratic Party (AG., RB., PE)	p1-2
2	<b>ANC</b> African National Congress (CB., AG)	p3-4
3	<b>DP</b> Democratic Party (AG., RB)	p5-7
4.	<b>FF</b> Freedom Front (RB., AG., PE)	p8-9
5.	<b>IFP</b> Inkatha Freedom Party (FFC., PE)	p10-13
6.	<b>NP</b> National Party (AG)	p14
7.	<b>PAC</b> PanAfrican Congress (Finance, RB., AG., FFC)	p15-17



# AFRICAN CHRISTIAN DEMOCRATIC PARTY SUBMISSION

## THEME COMMITTEE 6 / SUB-COMMITTEE 2 FINANCIAL INSTITUTIONS & PUBLIC ENTERPRISES

### A BIBLICAL BACKGROUND

It is a principle that holds true that because all material things were given to Man in stewardship, it is a responsibility that must be discharged with utmost diligence and faithfulness.

Important aspects of this foundational principle are the prompt settling of accounts, the avoidance of debt and suretyships, the principle of saving and the importance of industry in obtaining and maintaining that which was entrusted.

Linking up with foundational principles, accountability, especially for the local and provincial governments, are paramount.

### SPECIAL STRUCTURES OF GOVERNMENT

#### 1. The Auditor General

It is of key importance that the incumbent of this office be seen to be qualified and independent. It is, therefore, submitted that the following aspects as provided for in the interim constitution, be endorsed:

Due regard must be had to financial and fiscal expertise and the individual must have specialised knowledge in auditing, state finances and public administration. It is also suggested that hands-on experience, rather than 'ivory tower' academic background should be preferred. The terms and conditions of service must be clearly stipulated in an Act of Parliament and must be incapable of arbitrary alteration to the detriment of the official.

Security of tenure is a necessity and the period of approximately seven years without eligibility for re-appointment is suggested, subject to the option being left open for resignation from the position. The grounds for removal from the office should be carefully stipulated and strictly enforced - the discretion left to the president is a cause for concern. If a taint is proven beyond doubt on the fitness and properness of the official, it would be to the detriment of the whole institution to have him remain.



Of equal importance is the qualification that the auditor general must not perform any remunerative work outside of his or her official duties and must definitely be as removed from party-political influences as can be insured.

The functions of the official should rightly be dealt with in a separate legal instrument as circumstances change and amendments might need to be made that would detract from the basic immutability of a constitution.

2. The Reserve Bank

The basic objects, powers and functions that this institution is to be clothed with, as contained in the interim constitution, cannot be faulted. The Bank must be independent from party-political influences and have autonomy to direct the implementation of a fiscal policy as determined by elected representatives.

It is submitted that Banks and similar institutions should resort under the central bank who will regulate their functioning to ensure their conformity with the broadly laid down monetary policies of the legislature. In this regard, the measures and controls in the Banks Act will serve as a useful guideline in implementing and monitoring this function. In the interests of transparency, it is suggested that the workings of the central bank be made more understandable to the general public to instil in them an economic esteem and an interest in promoting the objectives stated in the interim constitution as being the reason for existence of this body.

3. Public Enterprise

Regarding Public Enterprise, it is submitted that a free market economy should be assisted by, and not dominated and overshadowed, by unwieldy Public bodies. It should be set as a goal, to have an efficient and effective small elite group of civil servants, who work towards maximum productivity and the lines of control between the enterprises as such and the administrative arm of government should be clearly defined.

The main reason for the existence of semi-state enterprises, should be the provision of bulk services across a broad spectrum. We should, however, move away from and actively act against the formation of monopolies. It is suggested that all of these bodies be provided a mechanism of teaching and educating in their specific fields of activity, where practical. This is to be done in order to equip individuals and private organisations with the essential knowledge and requirements to lead to the privatisation of the services industry in this country.



## AFRICAN NATIONAL CONGRESS

### Submission to Constitutional Assembly Theme Committee 6 Sub-Committee 2: Financial Institutions and Public Enterprises

This submission deals with the Central Bank, Auditor General and constitutional provisions relating to the national revenue fund, budget and procurement, special pensions etc. Other submissions have (and will) deal with the Finance and Fiscal Commission and Public Enterprises.

#### *The Central Bank*

The text of Sections 195 - 197 of the Interim Constitution were the product of considerable negotiation at Kempton Park and comply with the requirements of constitutional principle XXIX.

The ANC is fully committed to a Central Bank free from partisan interference and operating in the broad national interest. This does not mean, however, that the Central Bank should be isolated from broader society, nor does it detract from the need for a degree of coordination between the fiscal and monetary authorities. Sections 195 - 197 of the Interim Constitution allow for both of the above requirements to be met.

Given the broad support these Sections enjoy, the ANC proposes incorporating them into the Final Constitution unchanged.

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.

#### *The Auditor General*

The ANC is firmly of the view that an independent and impartial Auditor General is essential to the maintenance of good financial management in the public sector. We are generally happy with the provisions on the Auditor General in Sections 191 - 194 of the Interim Constitution and propose that they be incorporated into the Final Constitution with the following small amendments only:

\* Delete the words "Unless the new constitutional text provides otherwise" from Section 191 (4).

\* Section 193 (2) should provide for the Auditor General to have the right to audit the accounts and financial statements of persons in the employment of bodies to whom public funds have been entrusted: the present text could be interpreted as imposing a duty on it to do so.

\* Sections 193 (3) to 193 (8) should be deleted and replaced by a clause indicating that the powers and functions of the office of Auditor General will be covered by an Act of Parliament. [Matters of detail such as those covered in these Sections would, in our view, be better dealt with in legislation than in the Constitution.].

\* The relationship of the Auditor General to the Parliamentary Committee on Public Accounts should be specified in the Constitution.



*Other Provisions.*

We do not believe that the Final Constitution needs to deal with the kinds of issues dealt with in Sections 189 and 190 of the Interim Constitution. These matters should be dealt with in legislation.





22 February 1995

Democratic Party Submission to Sub-Theme Committee Two of Theme Committee Six

A. Auditor-General

The Democratic Party proposes the following amendments to Sections 191 to 194 of the 1993 Constitution. Some of these "proposals" are included to indicate support for points raised by others.

1. Section 191(2)  
The President should fill a vacancy within eight months.
2. Section 191(4)  
Delete "Unless the new constitutional text provides otherwise".
3. Section 191(5)  
Change terminology to "most senior officer present" from "highest ranking member".
4. Section 191(9)  
Removal should be subject to some two-thirds majority as with appointment.
5. Section 192(1)  
Persons appointed under s 194(1) should also be independent and impartial.
6. Section 192(2)  
Delete and substitute:  
"The Auditor-General and the persons appointed under section 194(1) shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to Parliament or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to Parliament or any committee thereof in respect of anything said, produced or submitted in good faith in the performance of any duty or the exercise of any power imposed or conferred upon him or her in terms of this Act or any other law."



7. Section 193(2)  
The Auditor-General should be required to audit the accounts and financial statements of all enterprises owned or controlled by any level of government.
8. Section 193(3)  
Provincial and local governments should also be entitled to request performance audits.
9. Section 193(6)  
All persons involved with entities which are subject to audit by the Auditor General should be obliged to supply any information or explanation reasonably required by the Auditor-General and persons appointed under section 194(1) in the exercise and performance of their powers and functions.
10. Section 193(7)  
Delete and substitute:
  - a) The Auditor-General shall report on the accounts examined by him or her and submit such report to the controlling body or accounting officer concerned and to the legislature under whose jurisdiction such body or accounting officer falls.
  - b) Such reports or a report by the Auditor-General or on any other matter shall be submitted to the appropriate legislature within seven days after receipt thereof by such controlling body or accounting officer.
  - c) The Auditor-General shall report unresolved problems at local government level to the appropriate provincial government and unresolved problems at provincial level to Parliament.
11. New Section 193(9)  
"The Auditor-General shall in respect of regulatory audits report whether accounts and financial statements represent a true and fair reflection of the finances of the entity being audited."
12. New Section 193(10)  
The Auditor General shall report on any entity which does not have its accounts ready for audit within twelve months of the end of its financial year or such shorter period as may be prescribed by law.
13. Section 194(1)  
"Such persons" should include private audit firms if it does not already do so.
14. Section 194(3)  
In the second line, after "money" insert "which shall be".



3.

B. South African Reserve Bank

1. Section 197

Add: "Provided that such Act shall not derogate from the primary objectives and independence of the South African Reserve Bank as provided for in section 196."

2. New Section 197(2)

The South African Reserve Bank 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 South African Reserve Bank.

C. Conclusion

1. Objective

The objective of these amendments is to ensure that the Auditor-General and the South African Reserve Bank are independent, impartial and accountable.

2. Drafting

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.

*Ken ...*



**THEME COMMITTEE 6  
SUB-THEME COMMITTEE 2**

The FF have the following viewpoints on the matters that follow:

- 1. The Reserve Bank
  - a. The Reserve Bank should be independent.
  - b. Control over the Reserve Bank by politicians has proved to be harmful in the not so distant past.
  - c. Control by politicians in the future, with so many election promises to be met can only spell disaster for the economy.
  - d. A few reasons why politicians should not have control over the Reserve Bank are the following:
    - i. Few politicians have a thorough understanding of economics. ~~With very few exceptions they are economic illiterates.~~
    - ii. Those in control of finance are not necessarily appointed because of their knowledge of the economy but are often political appointments.
    - iii. Politicians' planning horizons are much shorter than what is good for sound long term financial planning. They may want to reap immediate benefits for selfish political gain. Long term consequences of their decisions do not always receive the attention it deserves.
    - iv. Control over the Reserve Bank means control over the printing press of money which is the surest way of fuelling inflation.
  - e. Although the Reserve Bank should be independent there is an unescapable link between monetary and fiscal policies. Monetary and fiscal policies should complement each other. Decisions affecting each other should be reached only after due consultation between the two authorities. Proper provision for this liaison should be made. It is the only way in which the Reserve Bank can fulfill its duties of protecting the value of the Rand and keeping the money supply in check. On the other hand it will allow the government to play its role as an important agent of change in the economy in a responsible way. Decisions will be taken on sound economic principles and not only according to what is politically expedient.
- 2. The Auditor-General
  - a. The Auditor-General should be totally independent



- b. At present the Auditor-General finds it difficult to handle all the work. Because of this each province should have its own Auditor-General that should be in a better position to determine priorities in his province and devote his attention to where needed most.
- c. The provinces' Auditor-Generals should form a body, the National Council of Auditor-Generals, under the chairmanship of a national Auditor-General.
- d. Appointments of Auditor-Generals should be made by the tax payers and not by the government.

### 3. Public Enterprises

Although public enterprises have own laws governing them provision should be made in the Constitution that should hold them under certain circumstances accountable to Parliament. Those circumstances can be one or more of the following:

- a. Where increases in rates they charge are higher than the inflation rate.
- b. Where salaries and wages become disproportionate to previous figures.
- c. Where labour unrest is a regular feature.
- d. Abnormal losses are incurred.
- e. Where the continued existence of the enterprise becomes a point of debate.
- f. Where abuse of funds may be a possibility







# INKATHA

Inkatha Freedom Party

Iqembu leNkatha Yenkululeko

30 JAN 1988

551

**THEME COMMITTEE No. 6  
SUBCOMMITTEE ON  
FISCAL INSTITUTIONS & PUBLIC ENTERPRISE**

**FIRST REPORT ON THE  
FINANCIAL AND FISCAL COMMISSION  
AND FISCAL INSTITUTIONS AND PUBLIC ENTERPRISE<sup>1</sup>**

**I. FISCAL AND FINANCIAL COMMISSION**

The precise scope, nature, powers and functions of the Fiscal and Financial Commission [FFC] provided for in Constitutional Principle No. XXVII will be defined only once the Fiscal and Financial Relations between first and second tiers of government have been decided upon. In fact, both the purposes and the work load of the FFC will need to reflect also the allocation of taxing powers, taxing bases and the characteristics of the chosen system of revenue collection. Therefore the preliminary positions expressed in this document will need to be reassessed upon completion of the last report on Fiscal and Financial Relation of the Theme Committee. No. 3.

**COMPOSITION AND FUNCTIONING OF THE COMMISSION**

1. The Commission shall consist of:
  - a) two members nominated by each of the Provincial Cabinets, and appointed by the President (Head of State).
  - b) two members nominated and appointed by the Head of Government.
2. At least one of the members chosen by each of the Provinces or by the national Government shall be an expert in economics, public finance, public administration, taxation, or management.
3. Members should be South African citizens.
4. Members may not hold other public office.

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<sup>1</sup>. The IFP makes this submission under protest, for the Constitutional Committee should withhold consideration of the matters covered in this report and further development of work program so as to allow international mediation to take place.



5. Members may only be removed from office by the President upon recommendation by the authority which originally designated them.
6. All vacancies shall be filled with the same appointment procedures.
7. Members shall serve for a five year non-renewable term.
8. The Commission shall be operational within 120 days from the commencement of the new constitution.
9. The Commission shall elect a chairman and deputy chairman, and shall recommend to Parliament the full or part-time nature of the employment and the remuneration structure of its members.
10. The Commission shall be independent from the Public Service Commission

## **II. FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISE**

Neither "financial institutions" or "public enterprises" are referred to in Schedule 4 of the interim Constitution. The constitutional relevancies and the far reaching economic roles of financial institutions and public enterprises are to be determined within the broader parameters of the Economic Constitution which is the object of the third report of Theme Committee No. 1. The broad parameters of the IFP proposals for an Economic Constitution are dealt with at page 53 *et seq.* of the IFP Preliminary Submission to the Constitutional Assembly, to which reference is made.

### **FINANCIAL INSTITUTIONS**

1. Commercial banks, building societies, insurance companies, mutual funds, pension funds and all other financial institutions shall be privately owned and controlled.
2. The law may regulate financial institutions to protect consumers, investors and third parties and to ensure transparency, but shall not interfere with the organizational and operational autonomy of these institutions.
3. Licensing requirement shall not be used to limit free-market competition or to discriminate on political basis
4. Anti-trust and appropriate competitions legislation will apply to these institutions as it will apply to all commercial concerns operating in the national economy.
5. Within the parameters of national framework legislation, Provinces shall be competent to legislate on, license and regulate full service-banking and other financial institutions on a provincial basis.



## **PUBLIC ENTERPRISE**

1. The constitution shall set clear and justiciable limits for the establishment and operation of enterprises under the direct or indirect control of government
2. No enterprise shall therefor be acquired or conducted by the government or its instrumentalities either as a monopoly or as a free competition enterprise, and no service shall be provided to the public by the government unless so authorized by a law demonstrating a public need and the inadequacy of the private sector to satisfy such need with comparable efficiency and reliability. When these requirements no longer exist the enterprise or the service shall be privatized.
3. A Privatization Commission shall be established to transfer to the private sector the enterprises which are under the control of any government in conflict with the foregoing provisions of the constitution. The Commission shall consist of nine highly qualified and independent experts in economics, finance and business administration, three appointed by the President, four by Parliament and two by major business associations.
  - 3.1 The Privatization Commission shall develop a privatization plan to be submitted to Parliament for approval. The Commission shall adjust the implementation of the privatization plan so as to best cope with changing economic circumstances, seeking the approval of Parliament when necessary.
  - 3.2 The privatization effort shall be balanced, shall maximize economic efficiency, shall support economic growth and shall not neglect the need to provide for a distribution of ownership which also accommodates members of disadvantaged communities. The phases and the time frame of this effort shall be set in the privatization plan.
  - 3.3 The Government shall implement the privatization plan. The Privatization Commission shall monitor the implementation of the privatization plan so as to ensure that the privatization effort is completed in the absence of corruption, inefficiency, personal gains and governmental waste. Every six months the Commission will issue a report to Parliament.
  - 3.4 The Privatization Commission shall operate for seven years unless it resolves to dissolve itself prior to such date or is extended in office by resolution of Parliament.
4. Other areas of constitutional application which are necessary for the maximization of private and free enterprise as applies to the public enterprise debate include :
  - a. Private property rights.
    - a.1 Private property shall be guaranteed and protected. Limitations on the use and enjoyment of private property may be imposed so as to satisfy social, environmental and collective needs.



- a.2 The right to convey one's own property by contract or inheritance shall be protected subject to the reasonable exercise of the power of taxation.
- b. Limitations on the power of government to interfere in economic affairs
- c. The constitutional recognition of right to free economic initiative.
- c.1 The right to free economic initiative and enterprise shall be recognized, protected and encouraged by the National and the Provincial Governments. The National Government shall assist the Provinces to assist small businesses and shall provide other incentives to encourage access to economic opportunities.
- c.2 Within the limits set forth by the law to protect the public interest, each enterprise shall be free to choose and organize the means of the production as it best sees fit.
- d. Contractual autonomy.
- d.1 Within the limits set forth by the law to protect the public interest, the National Government shall assist the Provinces to recognize and protect the right of individuals to self-regulate and organize their interests in economic and other matters by means of legally enforceable contracts and by establishing legal entities to carry out their purposes and objectives.
- e. Permits and licensing requirements (limitations thereof).
- e.1 The Republic shall not subject human conduct to unreasonable or unnecessary licensing and permitting requirements.
- e.2 Permits and licenses shall be issued on the basis of objective and reasonable standards and criteria.





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**National Party**  
**Nasionale Party**

21 February 1995

Mr Nkateko Nyoka  
Managing Secretary  
Theme Committee 6  
Regiss House  
CAPE TOWN

Dear Mr Nyoka

**THE CONSTITUTIONAL PROVISSION FOR THE AUDITOR-  
GENERAL IN THE NEW CONSTITUTION**

The National Party supports the principles set out in a memorandum submitted by the Office of the Auditor-General on "*The Position of the Auditor-General and his or her Office in the Constitution*" dated the 25th January 1995.

The National Party approach is similar to that adopted by the Audit Commission at its meeting held on the 16th February 1995.

Yours faithfully

**DR F P JACOBSZ MP**  
for and on behalf of **THE NATIONAL PARTY**



7 FEBRUARY 1995

**THEME COMMITTEE SIX: SUBMISSION OF THE PAC**

**FINANCE**

**GENERAL FINANCIAL AFFAIRS**

**NATIONAL REVENUE FUND**

- (i) In keeping with constitutional practice in this regard, all revenues raised or received by the national government are paid into a National Revenue Fund.
- (ii) Appropriations from the said fund shall be made by Parliament (in accordance with the Constitution or any applicable Act of Parliament and subject to charges imposed thereby).
- (iii) No money shall be withdrawn from this fund, except under appropriation of an Act of Parliament in accordance with the Constitution.

**ANNUAL BUDGET**

The annual budget is an important event in the financial affairs and fiscal administration of the country in that it determined how the national revenue will be spent.

The priorities of state expenditure (both current and capital) must be reflected in the budget, and estimates of revenue as well as expenditure for the financial year must be spelt out.

**PROCUREMENT ADMINISTRATION**

- i) The procurement of goods and services for any level of government should take place in an open and even-handed manner.
- (ii) There must, therefore, be a transparent process (regulated by an Act of Parliament) a tender system which is fair, public and competitive is to be created through the appointment of independent and impartial tender boards. The tender boards must on request give reasons for their decisions to interested parties.

The boards must operate independently and impartially.



## **GUARANTEE BY NATIONAL GOVERNMENT**

- (i) The national government may not guarantee unless the guarantee itself complies with the norms and conditions for such guarantee prescribed by an Act of Parliament, after recommendations in this regard by the Financial and Fiscal Commission (established in terms of the Constitution).

## **SPECIAL PENSIONS**

- (i) Provision must be made for pensions to be paid to the those who played their part in the liberation struggle, including those who served in the liberation armies of the struggle, the aim of which was a free and democratic South Africa/Azania.
- (ii) In order to ensure that elected representatives receive special scrutiny, the Receiver of Revenue must in terms of the Constitution assess the income tax returns of all representatives at all levels of government. The object of this provision is to ensure that the representatives of the people remain above suspicion as far as their duty to pay taxes is concerned).

## **THE AUDITOR GENERAL**

It is imperative that the auditor-general be independent and impartial.

- (i) An Act of Parliament must assign privileges and immunities to the Auditor-General and his or her staff for the purposes of ensuring the independent and impartial exercise and performance of their powers and functions (listed in the Constitution.)
- (ii) Any organ of state member thereof or person is prohibited from interfering with these functionaries.
- (iii) Furthermore, organs of state are obliged to accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the exercise and performance of these powers and functions.

## **APPOINTMENT OF AN AUDITOR GENERAL**

- (i) The President appoints an Auditor-General after such person has been nominated by a parliamentary committee for that. Such nomination must be approved by a resolution adopted (without debate) by a majority of at least two thirds of the members present and voting of the House(s) of Parliament at a joint meeting provided that another person must be nominated if any nomination is not thus approved.
- (ii) The auditor-general may be removed from office by the President only on the grounds of misconduct, incapacity or incompetence determined by a joint



Parliamentary committee (constituted in the manner describe above).

- (iii) The conditions of service and remuneration of the Auditor-General must be prescribed by an Act of Parliament and cannot be altered during his term of office.
- (iv) In order, to further ensure the independence and impartiality of the office, the Auditor-General may not perform remunerative work outside his or her official duties and may not hold any office in any political party or organisation.
- (v) A citizen who is appointed to the position of Auditor-General must be fit and proper person to hold such office and is appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

### **SOUTH AFRICAN RESERVE BANK**

- (i) The Reserve Bank as a central bank is empowered to decide on the monetary policy for SA and in this regard it may intervene in the money markets (to, inter alia, fix interest rates) to achieve its primary objectives of protecting the internal and external value of the national currency in the interest of balanced and sustainable economic growth in the country.)
- (ii) The Reserve Bank must act independently in pursuing its objectives, subject only to the Act of Parliament defining its primary objectives and provided that there must be regular consultation between the Reserve Bank and the Minister for national finance matters.

### **POWERS AND FUNCTIONS**

Its powers and functions are tense customarily exercised and performed by central bank and these powers or functions are determined by the Act of Parliament and are exercised performed subject to conditions which are prescribed by or under the Act.

### **FINANCIAL AND FISCAL COMMISSION**

#### **OBJECTS AND FUNCTIONS**

The Financial and Fiscal Commission is a powerful and influential Commission in that it is required to make recommendations (to the relevant legislatures) with regard to the financial and fiscal requirements of the national, provincial and local levels (based upon the relevant information in this regard), including:

- financial and fiscal policies
- equitable and fiscal allocations to the national, provincial and local governments from revenue collected at national level,
- any other matter assigned to the Commission by the Constitution or any other law.