

2/4/6/4/6/17

THEME COMMITTEE	6.2
DATE OF MEETING	3/8/95
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CONTENT OF ENVELOPE	
1) PRINT-OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

✓

Theme Committee 6.2 - SARB Discussion
3 August 1995
Tape 1

*Mr Rabie
was not
a member
of 6.2.*

NOTES

0234:
Who is speaker? Is it Mr Rabie? (sounds like him)

1146:
Who is speaker?

1260:
Who is speaker? Mr Ken Andrew?

1732:
Who is speaker?

2066:
Is it Mr Francois Jakobs?

2374:
Who is lady speaker?

2423:
the draft has now ??? for us

2580:
Who is speakers? Is it Francois?

2716:
Who is speaker?

2751:
Who is lady speaker?

2881:
Who is speaker? Is it Mr Francois Jakobs?

3324:
Who is speaker? Is it Mr Grové?

3419:
Who is speaker?

3535:
Who is lady speaker? Ms Barbara???

3565:
Who is lady speaker Ms Gill???

3670:
who is speaker? Is it Mr Rabie?

3722:
Who is speaker? Is it Mr Grové?

3835:
you mean by ??? all its ???

3908:
Who is speaker???

4092:
who is speaker???

4151:
Who is speaker? Is it Mr Grové?

4213:
Who is speaker?

4524:
who is speaker?

4658:
Who is speaker?

4925:
Who is speaker?

5231:
Who is speaker? Is it Mr Francois Jakobs?

5563:
who is speaker?

6046:
Who is speaker?

6462:
Who is speaker?

7057:
Who is speaker?

Theme Committee 6.2 - SARB Discussion

3 August 1995

Tape 1

Chairperson ...our agenda this afternoon is the adoption of outstanding minutes and then we are dealing with the issue of the Reserve Bank and the minutes we have got to adopt are contained in this documentation number 24, which was handed out a long time ago, before Tuesday's meeting. Sorry? OK. I am just saying that the documentation which we have is in this pack number 24 and the first set of minutes that we have to adopt are the minutes of the meeting of Friday, 23rd June, pages 6 and 7. Are there any corrections to these minutes?

Unknown
Mr Rabie?

Only as we already addressed it on, I think it was on Tuesday, on page 5, that the committee recommends that the law advisers prepare a draft – it was not a draft, it was something else.

Chairperson Sorry, I think you're on the wrong minutes. I am doing the other one first, the 23rd June.

Unknown
Mr Rabie

Sorry, sorry, we must first...

Chairperson Sorry. Actually you are correct, we should do the 14th of June first, you are correct. The minutes of pages 3 to 5. We have already noted that it should be 4.2, it should be South African Reserve Bank not Reserver Bank and the thing there: "the committee recommended that the law advisers prepare an opinion for consideration." Are there any other corrections to this minute?

Unknown
Mr Rabie

No, not for us.

Chairperson

Could we adopt that minute? And then the next minute is the one on pages 6 and 7. Are there any corrections to that minute? OK. Both those minutes are adopted. Colleagues, we now have to deal with the question of the Reserve Bank and to introduce our discussion, and I think we also would need from the ANC side to make something of an opening statement. I have actually prepared a statement, which I will read out and then I can distribute it afterwards. I prepared it because I don't want what we are saying to be lost or garbled in any way. Basically...

(off mike interjections and laughter)

Well, certain persons who may be in this room at this moment, let's leave it at that. OK. All right. Colleagues, I think that we need to review the process we have been involved in and to be clear about the task which we face this afternoon. The mandate which was given to us by the Constitutional Committee was to explore the possibility of achieving greater consensus on the issue Constitutional Provisions relating to the Reserve Bank and to report to it, the Constitutional Committee, in that regard. We have received party submissions in the course of the discussion of which it became evident that there were certain points of contention. We have now, after receiving our mandate from the CC, gone through a process of expensive and indeed exhaustive exploration of the views of key practitioners and the literature on central banking. Those of us from the ANC who are serving on this Theme Committee, including myself, are unanimously of the view that the achievement of greater consensus lies in the direction of the text of the Interim Constitution. This is carefully crafted in a way which

captures important nuances and balances that simply are not adequately dealt with in the draft text presented to us by the law advisers. However, the instruction we have received from our principles, is that the outstanding matter of consultation and the role of the Reserve Bank and the governor in the determination of economic policy, requires further attention at another level in the Constitutional Assembly. We have nevertheless, from the ANC side, been mandated to explore together with our colleagues on this subcommittee what might be described as the consensus option and to report to the Constitutional Committee in this regard. If the committee agrees, I accordingly propose that we work this afternoon towards the production of a report of that nature. There are copies of this in case it is not immediately clear, but the thrust is that I had to explain what our mandate is. I think that our mandate is consistent, our mandate both as a committee, and our mandate as members of the ANC component on this committee.

??? Unknown

Mr Chairman, could you just explain to us then what has to be decided on at a higher level?

Chairperson

Basically, the submissions which have been made previously, we are not in any way authorised or mandated to alter. What we are mandated to do is to work together with the rest of the committee and to say where greater consensus lies. That's basically what it amounts to. Ken?

Mr Ken Andrew

Sorry you read that thing mercifully quickly. When you say a "higher level" are you meaning a higher level in the ANC or higher level in the CA process?

Chairperson

Another level at the CA and the CA process.

Mr Andrew

Well, I am a little bit confused. Maybe if we get into actually doing the work, it doesn't really matter whether I am confused or not because in the end presumably we will report matters as being matters of contention or matters of consensus as they arise, and obviously if we can find consensus, we find consensus.

Chairperson

No, I think we've said we've got a slightly different mandate and it is also the mandate which we are given by the CC. We have already reported to the CC and it has been referred back and the basic requirement which confronts us is to report to the CC what could be the outcome in terms of a greater consensus on this issue and I have already indicated the view of all of us here on the subcommittee from the ANC side is that the greater consensus lies in the direction of the text of the Interim Constitution. Whether that consensus approach is adopted at the CA level or not, is not for us to decide. That's what I am saying. So we could work on the text. The proposal more concretely would be that we would, if it is agreeable, look through the text of the Interim Constitution, we would discuss some views why the text of the Interim Constitution rather than the version which we are presented with by the law advisers is seen as the preferable direction of consensus, and we would look if there were any small proposals or amendments here or there that we would want to suggest as, if you like, what this committee would forward as the consensus option to be decided upon, whether it is taken up or not at another level. That would be the exercise if that is clear to everybody.

Unknown
Mr Rabie

I would love to hear this in Afrikaans.

Chairperson

Ekskuus tog, Willie, ek dink nie dat ek baie mooi... Te skaam om dit te doen. Miskien kan Francois dit vir jou vertaal, né.¹

??-Unknown

Dankie, as u so bereidwillig is om dit te praat, dan aanvaar ons dit so, meneer.²

Unknown
Mr Rabie

I am still confused or in the dark or somewhere around there, Mr Chairman. What I would like to know, what we received from our secretaries yesterday, the proposal or what you might call it, or the piece of document that we've got in front of us. Pages 1 and 2, and I think this must be now number 25. Is that correct? All right, let's make it 26. What is the status of this piece of paper? South African Reserve Bank 27, Friday 19th May 1995, No. 1...

Chairperson

OK. This is the documentation which has already been produced and tabled in the CC and this is here for us simply to refer to. What my statement has said is that in terms of defining the consensus option, we do not think that this text is as adequate as the text in the Interim Constitution. We can discuss the reasons for that but I think they have partly arisen from previous discussions in the Theme Committee. That is basically what we are saying, but this documentation is provided here because it was a convenient way of getting people the previous documentation which

¹ Excuse me, Willie, I don't think that I... Too shy to do it. Perhaps Francois can translate it for you.

² Thank you. If someone is so willing to speak (the language) then we accept it as such.

has been provided to us in this committee. Francois?

Jakobs
Mr Francois???

Mr Chairman, yes, could I just explore this a bit further. The documentation we have before us now goes back to the 19th May and all the rest of it, but since then, certain other things have happened as well. First of all, Cyrus did a very intensive investigation into the problem areas which we experienced in our discussion here. He brought forward, in my opinion, a very, very reasonable, well worked out report, which I think highlighted the areas where, as far as the minister was concerned, the government was concerned, there was consensus. Arising out of that, we had a further problem that we wanted to investigate and that was in regard to the question of consultation between the government of the Reserve Bank and the Minister of Finance, further information should be given to us to indicate what the nature of that is and how deep it goes and how the whole process of decision-making which flows out of that, works. After that we got Dr de Swardt, who came to us and gave us that information. Now, in the documentation before us, I can see no comprehensive summary of the points there that had already come out. When I look at this and I look at the things that we were talking about on the 19th May, we seem to have progressed, in my own mind, a long way beyond that and I don't understand why we have to come back today and look at this.

Unknown
Ms ???

I agree with that. I think we are also in agreement with that. I think the problem arose, if you look at the amended minutes... There are the minutes of 14th May in which the law advisers were asked to prepare a draft. We wanted an

opinion on the question of consultation. I think that is why the draft has now ??? for us. I think we recognise that it's a mistake and I think it's quite simple, we just go back and start looking at where we can reach consensus within terms of the Interim Constitution.

Chairperson

It is not quite a mistake. I mean basically what it is, is that you are quite right, you've described a process that we've gone through and that there is a whole amount of further reflection that is built in that. In the light of that further reflection this is where we left it before we went on the further reflection, if you like. Simply, this material is here for us now to reflect on it, but I think that all of us – and this is what my statement said from the ANC side, we actually feel that we need to move beyond this. But it's just a matter of convenience, it's not here to say that this is where we have to start now. This is where we were before we went through the process that you described.

Jakobsz
Mr Francois?

Just to take up a further point. Coming back to the meeting which was chaired by Barbara, we decided there to ask the legal advisers to give us a report on the whole question of consultation that exists, that takes place between the minister and the governor, to find out and to focus our attention on the accountability aspect of that. We want to be absolutely sure that whatever happens there that sufficient things happen there which could convince us that there is accountability of the sort that we were looking for.

Chairperson

Correct, and that was recorded in the minutes. I don't know what's happened. We have not... I mean, I understand. I wasn't at that meeting, but we haven't received anything

of that sort.

??? Unknown

Chairperson, wasn't that an instruction to the technical advisers, not to the draftsman?

Chairperson

Well, I wasn't at that meeting. Can somebody confirm?

Unknown
MS???

My understanding is that it was for the technical advisers that's why I say I think the mistake does come in where the understanding was that the legal advisers were to draw up the draft where it was actually the technical advisers who would give us an opinion. But I think in essence the evidence that was led by the Reserve Bank and other interested parties gives us a sufficient enough base and understanding of the kind of consultation that exists already at hand. I think, instead of stalling the process, we should go ahead, look at whatever we would want changed in the Interim Constitution, whatever we want to remain, see if we can get consensus and go ahead. Otherwise, we are going to sit on this forever. Could we just progress to that?

Jakobsz
Mr. Francois?

All that I am trying to find now is just an orientation of exactly where we were and whether there were things that happened in the past which we now have to forget about? OK. I agree with this.

Chairperson

I think what... You see... I should just have said earlier on, apologies from our technical adviser, he was under huge, huge pressure between conflicting claims. I put pressure on him to be here and he had overwhelming pressure to go to Johannesburg or Pretoria or something, so he's not here and he sends his apologies. I think that what we need to do

now is, I would say, if there is agreement, we would look again at the clauses in the Interim Constitution. We would write a report in which we say that this is what we believe the consensus option would look like and table that in the CC. I think that is the exercise we are engaged in today. If everybody agrees with that. OK? Could we then begin by referring... I don't know whether anybody wants to rehearse, since we have the law adviser here, but I think that we... It was discussed I think at the meeting that I was not present at, the preference for the text and formulation in the Interim Constitution as compared to the draft you've got now. I think particularly on our side there are important balances and nuances that are present in the language here that we think need to be retained and particularly, although there may be a generalised desire to simplify the Final Constitution by cutting compound sentences, we think that sometimes compound sentences with two things together are actually quite important in a constitutional document. But anyway, could we begin? The first clause is the South African Reserve Bank established and regulated by Act of Parliament shall be the central bank of the Republic. Here we would want to just simply draw to the attention the point made by the law adviser in the draft which he prepared saying that: "The requirement that the SARB be regulated by Act of Parliament is too specific and may eventually give rise to legal uncertainty, for instance whether the bank could be bound by subordinate form 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'. Taking that point, we wonder whether it would not be appropriate to put in South African Reserve Bank established and regulated by law,

shall be the central bank of the Republic." Are there any other points there. Mr Grové?

Mr Grové~~???~~

Chairperson, I think we can use the term 'national law' then there is no possibility that it can refer to any other law than an Act of Parliament or any law subordinate or made under an Act of Parliament.

Chairperson

Are there any other views on that? Is that acceptable? Primary objectives, 196.

???
UNKNOWN

Mr Chairperson, I think the second part of the current thing should be added as a second sentence under 195, namely "The South African Reserve Bank shall be independent, impartial and subject only to this Constitution and the law." The Constitutional Principles require us to define it as independent and impartial and if one were wanting to put it in some other place, but if you are using the format of the Interim Constitution as your basis, that would be the logical place to put it and it is required because the Constitutional Principles require it.

Chairperson

Barbara?

Hogan
Ms ~~Barbara~~???

As I understand it that should fall under 196(ii) where it says "exercise its powers and its functions independently".

Chairperson

Gill, you had your hand up as well.

Mairs
Ms ~~Gill~~???

My understanding of the Constitutional Principles was that you didn't have to work in the exact wording of the Constitutional Principles, it is something that as long as it

reflects the spirit of it. And I personally would have difficulty in putting in... I mean, I think that it is covered in terms of independent, it is saying that the Reserve Bank is impartial. Impartial from what? And I think that you then have to spell out what you are impartial from? Impartial from government, impartial from world influences, what are you impartial to or from? And I am just not sure if it doesn't actually become something that's a bit confusing for me in terms of the Constitution. I don't know what impartial means.

Unknown
Mr Rabie???

Through you, can the law adviser advise us on the Constitutional Principle 29 where it is already addressed, I think, the impartiality etc.? While it is there, must it be in again, that is the question that I... I don't know, but I would like to hear the experts, we are not experts.

Mr Grové???

Chairperson, it is not necessary to follow the exact wording of the Constitutional Principle. You can do it in a number of ways. One of those would be to follow the wording of the Interim Constitution, but I have only one problem there and that is that the independence, the reference here to independence in that clause only relates to the pursuit of the primary objective. It should cover all objectives of the Reserve Bank. That is the requirement of independence.

Mark
Ms Gill???

I would need to get some explanation of what you mean by ??? all its ???. I thought that this has been the whole discussion of the past three months to actually discuss that it is independent in a sense that the Reserve Bank is not simply something that is independent sitting out there. There is an inter-activity and if you are then saying it's

independent absolute, then we are coming back to that very argument we have been having over the last three months. That's why you have got independent, provided there is consultation between, which is the heart of this discussion.

Unknown
???

And around the definition of its objectives of protecting the value of the currency.

Marion
Ms Gill???

It's only got one objective.

Chairperson

I think that what we are probably going to have to do is we are probably going to have to sort of go round and see what the parties' views on these things are. I don't know. Unless Ken is convinced. No, Ken... As I say, the DP would want that clause inserted, the ANC would not want that clause inserted, the NP? Sorry, having a caucus? OK. Let me ask the FF then.

(mike off for a spell)

Oh, I see. That's quite an interesting statement. Anyway. Has the NP caucus finished? Do you want to come back or do you...

???
Unknown

Could I just ask the legal adviser. This term 'impartiality', I'm coming back to Gill's point here. I think this is an important thing. We must get some clarity on it. Why would that be put in here? What does it really imply as far as the Reserve Bank is concerned? I don't think we've got that clear yet.

Mr Grové???

Chairperson, I cannot given an explanation what exactly it

means in relation to the Reserve Bank. All I can say is that it is a Constitutional Principle and there must be a reference in the Constitution to the impartiality of the Reserve Bank, whatever it may mean. I don't know.

??? Unknown

I mean. Words all have their meanings. 'Impartial' is different from 'independent', they're not necessarily in conflict, but it is a separate context and in this kind of context I believe impartial means in practice that it will act without fear or favour. It will act independently, but also without fear and, in particular, without favour. In other words, in striving to perform its functions and achieve its primary objectives, it will do so irrespective of fear or favour of... It won't favour a particular vested interest, whatever that may be, whether it be the ruling government or whatever. It's like being biased or unbiased and everything is in that context of depending on what that particular decision is. So I would see the impartiality as saying that is what it amounts to, when the Reserve Bank applies its mind to performing its powers and functions and achieving its objectives, it will do so in a manner which is not biased or partial towards some outside influence other than attempting to achieve what is required of it.

Chairperson

I think the point has already been made by the law adviser, and certainly this is the legal opinion that we have received, is that it is not necessary to write in the principles into the provisions as long as they are substantially covered by the rest of them. However, there is a view which some parties have put forward that they would want that in. That's not shared by others. I think that we should perhaps leave it at that point. We've got the DP and the FF wanting to put that

in and we've got the National Party waiting to tell us.

UNKNOWN
Mr Rabie???

You see, the principles, we accept it that it is part and parcel of the Constitution.

UNKNOWN
???

If I can just come back to that point. We, I think, would be quite happy with the situation where impartiality is described in the text sufficiently to cover this principle that's in 29.

Chairperson

Then you would not want that in, but you will see as we go along whether it is substantially covered by the rest. OK then. Fine. Can we now move to 196(i), "The primary objectives of the South African Reserve bank shall be to protect the internal and the external value of the currency in the interests of balance and sustainable economic growth in the Republic." We've already had that internal and external debate. Would we all agree to say "the value of the currency". OK? Correct. OK. So we all agree on that one. 196(ii).

UNKNOWN
???

Are you...? See if we agree that we all understand it?

Chairperson

Well, I think we would assume that everybody who puts... OK. 196(ii), "The South African Reserve Bank shall in pursuit of its primary objective 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, provided that there shall be regular consultation between the South African Reserve Bank and the minister responsible for national financial matters." Comments on that clause? I think our view is that if we are going to

identify the consensus option, the link in one clause between the 'independently' and the 'consultation' is important, the link. We don't want to split that sentence so that it can be subject to different interpretation. Our suggestion would be simply to change "objectives" to "objective" and I think we would have to say "subject only to law" for the same reasons as we had, put law instead of... National law, sorry, national law. is that what everybody agrees to? I have to stress again we are talking about the consensus option not necessarily that anybody's committed to this. Is that agreed to?

Unknown
???

Chairperson, is it really necessary to have the reference there to Section 197? I think we can leave that out.

Chairperson

No, no I said just now we would scrap that "subject only to national law".

Unknown
???

But not referred to in Section 1...

Chairperson

No, no, no that would go. Powers and functions, Section 197. "The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks, 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." Here we would suggest the following: "The powers and functions of the South African Reserve Bank shall be those customarily exercised and performed by central banks. Such powers and functions shall be determined by national law." In line with the rest. That is what... Ken?

Mr Ken Andrew

Yes, I would go along with that if we could add the proviso that "such law shall not derogate from the primary objective and independence of the South African Reserve Bank". If necessary, if we want to add "as provided for in Section 196". OK. So. Well you've divided 197(ii), the words would be "provided that such national law or law shall not derogate from the primary objective and independence of the South African Reserve Bank as provided for in Section 196". So again it is linking it up and so the context, the various links are not broken, but it is making it quite clear that as an independent paragraph it is now not overriding some other paragraph.

Chairperson

OK. So there's the proposal. Francois?

Jakobsz
Mr ~~Francois~~???

Mr Chairman, could I just come back to the point that was raised by the legal adviser in regard to this point. I mean this principle is very acceptable, but I think the legal adviser at one stage felt that this specific point is covered. In his report on this aspect he makes such a statement.

Chairperson

OK. Other views on that. Gill?

Marius
Ms Gill?

I mean I don't think it is absolutely essential, but I don't think it does any harm because it is repeating the 916 in 197. Ken I think is definitely belt and braces as far as this is concerned and I don't have a problem with it in principle; it's just maybe something... My hesitation would be perhaps a slightly different angle, is that having done all of this when they want to do the Constitution, they will say: Well, all of this is repetitive. And they chop it all out and we go back to where we were a while ago. But I haven't got a

problem in putting it in.

Unknown
Mr Rabie

Just to add on the lighter side, what you girls say. He is putting in a parachute as well as something else to say it! But I think, I don't know, I would like to ask, through you, Chairperson, the law adviser. If we put it through like that then it is in the hands still of the legal people to scrap it or not? If we put on these lifebelts and everything that we would like in it.

Chairperson

I think we again have to understand, just to answer your question, what we are doing here. We are putting forward an option to the CC. What happens at the CC is another matter. Francois?

Jakobs?
Mr Francois???

Mr Chairman, no, I agree with that. But now if I may just come back to the law adviser's report, the one of the 19th May, Sections 13 and 14 relate to this. And I just want to ask him whether he still holds the opinions that he held there or would he have any objection if this belt and braces clause was put in there?

Mr Grové??

Chairperson, I think the emphasis at this stage is on the contents, not on legal refinement, that will be done at a later stage, but I am firmly of the view that it is not necessary to insert this phrase.

Chairperson

Well, we've heard that view. Any response to that or does everyone say, well it's a legal point, but we are not as the members of this committee objecting to the belt and braces approach? OK.

Unknown
???

Just to add on to this. I think the question of provisos per se in this type of legal drafting that has been adopted so far is something that is going to be avoided as much as possible because after all, when you are to interpret a Constitution, you interpret it holistically. You won't just take one provision and look at it in isolation. When you interpret a particular section in a chapter, for instance, you look at the overall intention of that chapter. So that proviso would most probably not be necessary because it is already covered by a prior provision.

Maia
Ms Gill???

Perhaps it's that response that gives me a little bit of nervousness because some of the provisos are actually quite crucial to the preceding sentence and they don't make sense without it. The heart of what the arguments and discussions and all the expertise that we've brought in are the linkages that say this is possible, provided that is actually happening. Otherwise it isn't possible. So I would really urge that we don't take an approach that looks at provisos being a qualification that's not necessary because there is a lot of nuance in this that's really important to retain and I would just ask that, that be borne in mind when you are looking at these kinds of questions otherwise we are going to go back in the circle that we've spent months on.

Chairperson

Could we agree now? I think we've covered the matter. What we will do is, we will present a report which I think should say the following: "The committee has met in terms of its mandate to explore the direction of a consensus around issues of the Reserve Bank and the committee is of the view that a text of this nature is in the direction around

which a consensus will be reached." Could we also agree and I will take this to the CC, is that while we understand that the aim in the Constitution as a whole is to make it simple, to cut out provisos, to cut out compound sentences and all that kind of thing, there are cases and we would argue that this is one of them, where the point that Gill has just made is applicable that the provisos are actually quite critical to understanding the delicate balances and nuances that are required in this respect. And that we would want to urge this very strongly on the CC. Is that acceptable? Colleagues, after a long and tortuous roundabout route, I think that we can finally say that at the level of this committee, we have disposed of the matter of the Reserve Bank. It's a personal relief to me I might add. OK. Actually I haven't disposed of it, I have to go to the CC about it, but the thing is that I think that there is nothing else for us to discuss this afternoon. Next week we meet again and we discuss the other complicated issue that confronts us. The FFC. OK. Pat is talking about the time for Monday. The time for Monday is 3 p.m. I must confess that I've let the committee down. I haven't spoken to Du Toit yet about the arrangement for Monday. I'll try and see if I can get him now, but we are still going to try to meet on Monday at 3 o'clock to discuss the FFC. We may need more than one day to discuss the FFC so if there is still a discussion going...

???

Unknown

I might say, Mr Chair, as a member of Theme Committee 3, we have received no notification that there is a change of time. There was a discussion so that is how it arose, but it was going to be looked at and we would be informed if there were a change of time. As of yet we've received no

change of time, so they're going to have a great deal of difficulty between now and Monday morning informing people if they are planning to change the time. But I still think it is worth speaking to Du Toit.

Chairperson

OK. I'll do that. Francois?

^{Jakobsz}
Mr Francois???

Mr Chairman, may I just come back to this question of the Reserve Bank, just to be quite clear. When we started our discussion there were these two points that were raised in the Interim Constitution about the impartiality and the independence and the point of view that was raised there, we won't go into this now, we'll just see in which way these clauses are now formulated, to be absolutely sure that those two principles are covered. And I would just like to get some discussion on that specific point as well.

Chairperson

Well, okay then, having gone through the text as we have, what we have recorded at the moment is that the DP is in favour of the specific inclusion of a clause like that in the law adviser's draft. The DP is in favour of including "The South African Reserve Bank shall be independent, impartial and subject only to this Constitution and the law." And the Freedom Front supports that. The NP, you had reserved your position to see whether you were substantially covered by the rest.

^{Jakobsz}
Mr Francois???

Yes, but if that could come in there, that would cover our point as well because I don't see it really covered in the body of the clauses.

Chairperson

So you support the view of the Freedom Front and the DP?

Unknown
Mr Rabie

On the point as stated, where will it come forward again?
196 or 197?

Chairperson

OK. So we've got the three parties.

Hogan
Ms Barbara???

Just on the impartiality question. Is Ken meaning... OK. I can understand impartiality when it refers to that you are not partial to business interests or mortgage lenders or vested interests, but could impartiality also be interpreted as you do not follow any particular policy, any particular economic theory when you are exercising your function? I am saying this because I can see a lot of danger. I mean there is the whole thing about the money supply and how the money supply shouldn't be used as the major factor for handling inflation, that there should be various other things. You've got a continuing debate on what is the role of the Central Bank. Central banks have gone through periods of adopting various economic positions and have changed it. We've gone through a saturated thing, we are going to a new phase and whatever. Does this impartiality imply that they are not allowed to pursue an economic... It's almost like you are saying journalists must be impartial, and the debate is: Can journalism ever be impartial?

???
Unknown

If I may respond. First of all, let me say there have been comments with which I concur that because the Constitutional Principle uses the word 'impartial' and uses the word 'independent' does not necessarily mean to say that those words literally have to be in here. But the concepts... It is required, that the formulation, in this case as section of what 3 or 4 paragraphs, three sections, does in fact ensure those two characteristics. Now the

independence we've discussed and that is... So the issue is how... There is nothing in here, unless you put that in which actually says the Reserve Bank must be impartial. Now your question is impartial vis-à-vis what? I didn't write the Constitutional Principle that phrased it like that. I think you then have to say: OK, in this context, what do you mean? Now clearly it doesn't mean impartial in terms of some approach to handling the value of the currency, because clearly the Reserve Bank has to take a view that the interest rates are too high or too low or whatever in trying to achieve its primary objective. So I think that the impartial in this context, in my view, can only mean that it will apply its mind independently with the consultation and all the... But when it actually comes to making a judgement as to whether it should take a certain action, for example on interest rates which is one of the common ones, it will apply its mind independently and without fear or favour. So it won't say: Having decided I should drop interest rates, but sector X or Y is going to be cross with me although I think it is what is required to meet the primary objective of the currency in the sustainable economic growth context. So that's how I see it. Now, if there is another way of expressing it and maybe to achieve the Constitutional Principle one might even have to expand one word into a phrase, to make it clearer, I am not, I haven't bought into the word 'impartial'. It wasn't my word that was put in there in the Constitutional Principles, but I don't believe without something in addition to what we've talked about that you will have achieved it and in actual fact when it goes to the Constitutional Court they would actually rule if someone said there is nothing in here which requires... Bear in mind also because we have been fairly cryptic here

compared for example with the Auditor General, there is no sort of building in that the... You know, how you appoint the Governor. Remember in the Auditor General we have got phrases like "anybody who attempts to influence the Auditor General in an untoward way will commit offence" all that kind of thing.

Hogan
Ms Barbara???

Chairman, you see why I am worried about this impartiality. I concur with your position that of course a central bank should not be pandering to any vested interests. My question is... Say during the eighties, when there was substantial debate about the way certain central banks – not all of them – were pursuing a particularly strong objective of sort of tight boundaries to the money supply. Putting of targets and objectives. Certain parts of society were definitely affected by that particular approach to controlling the money supply. Putting up a target and saying: Come hell or high water. And of course there were people like Calder and all of those people who were posing that particular way that the central bank was operating. Now if you leave that impartiality clause in, that word impartial, you are then opening up for any sector that is disadvantaged by a particular policy approach that the Reserve Bank is adopting, getting up and saying: This is not impartial. I am being affected by it because it is an active policy that is actively undermining me. And in fact the whole Reserve Bank becomes its autonomy, becomes further undermined by that. You can understand impartiality in the sense of independence, independence from strict government control. But I think that is covered by independence. But the impartial thing opens up, I think, a kettle of fish that you are just going to be going on and this

isn't trying to undermine the Reserve Bank, but I don't think it is something you can keep in a Constitution without having numerous constitutional battles about.

Unknown

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I must say that I think that Barbara has got a very strong point there, but may I just come back to a point in the... Before I do that... If we say here, when we come back to what has been said here in 196(ii) which is going to be essentially in our version as well...

(end of tape)