

2/4/6/4/1/4

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

6 MARCH 1995

ROOM V226

09H00

DOCUMENTATION

CONSTITUTIONAL ASSEMBLY

SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6

SPECIALISED STRUCTURES OF GOVERNMENT

MONDAY 6 MARCH 1995

AGENDA

A meeting of the above committee will be held on Monday 6 March 1995 at 09h00 in Room V226, Old Assembly Wing.

1. CONFIRMATION OF MINUTES

1.1 Minutes: 27 February 1995 (p1-3)

2. MATTERS ARISING

3. FORMATION OF SUB-COMMITTEE BETWEEN TC3 & TC6

Request by the NP to consider this matter.

4. INVITATION TO THE WORLD BANK

The NP has requested that Professor Shah of the World Bank be invited to address the committee.

5. PROGRESS REPORT

The Committee is requested to consider the progress report to be drawn up by the Technical Experts.

6. PUBLIC PARTICIPATION

For consideration.

7. SUBMISSION

7.1 COSAB (Council of Southern African Bankers) p4-8

Presentation: Mr Piet Liebenberg, Chief Executive

8. FURTHER BUSINESS

Enquiries: Pat Fahrenfort Room 1013, Regis House, Tel: 245031

p:\tc\tc6\stc2a.9

CONSTITUTIONAL ASSEMBLY
SUB-THEME COMMITTEE 2 OF THEME COMMITTEE 6
SPECIALISED STRUCTURES OF GOVERNMENT
MONDAY 27 FEBRUARY 1995

PRESENT

Davies R (Chairperson)

Andrew KM
Botha WJ
Hogan B
Marcus G
Welgemoed P

Apologies:

Jacobsz F
Makgothi H
Nair B

Absent:

Bekker H
Jordaan JA
Marais G
Woods G

In attendance: P Fahrenfort

1. CONFIRMATION OF MINUTES

The Minutes held on 14 and 20 February 1995 were confirmed and signed.

2. MATTERS ARISING

The Committee is requested to note that Dr Stals' memorandum was not dealt with.

3. SUBMISSION PRESENTATIONS

3.1 It was noted that COSAB's submission will be presented on Monday 6 March 1995

3.1.1 The Committee noted the following proposed work plan:

- a) that party submissions be circulated
- b) to move into the phase of preparing the report due on 15 March 1995; proposal that on 6 March, depending on the scheduled time of the CA meeting, COSAB as well as pending submissions be heard in the morning
- b) 13 March a business meeting to be held to discuss the report on the first cycle of the Committee's work to be drafted by the Technical Experts who is to meet with the Chairperson for onward transmission; report to be circulated well in advance; Following this to move on into the FFC and Public Enterprises and any other questions around Financial Institutions which may arise
- c) 20 March 1995: no sub-theme committee meeting due to the meeting on the Finance Committee of the Budget
- d) 27 March 1995: Secretariat to follow up on the FFC to make a formal submission
- e) an attempt be made to schedule meetings to co-incide with occasion for Theme Committee meetings
- f) the Freedom Front's request that their members will be abroad on March 13 at the time of the presentation of Technical Experts' report. If possible, the report be made available earlier in order for them to submit a written input if necessary

3.2 JSE (Johannesburg Stock Exchange)

Presenter: Mr Peter Leon, Attorney
Webber, Wentzel & Bowens

Mr Leon highlighted major issues from the submission indicating that the JSE made its submission in reaction to that made by Transnet which had argued in favour of entrenching constitutionally the independence not only of the Reserve Bank but also of other bodies which involved financial services regulations in South Africa. Mr Leon particularly dealt with the Financial Services Board and argued against constitutionally entrenching its independence in its current form.

It was decided that the JSE submission be formally referred to the Joint Standing Committee on Finance for their attention.

The meeting closed at 16h11.

.....
CHAIRPERSON

.....
DATE

To: The Chairman - Constitutional Assembly
c/o Parliament
P.O. Box 15
CAPE TOWN
8000

PROPOSALS AND COMMENTARY IN CONNECTION

WITH THE FINAL CONSTITUTION

OF THE REPUBLIC OF SOUTH AFRICA

From: The Council of Southern African Bankers
P.O. Box 61674
MARSHALLTOWN
2107

COSAB/17 February 1995

THEME COMMITTEE 6 : SPECIALISED STRUCTURES OF GOVERNMENT

In this regard we are particularly concerned with:

- the independence of the Auditor-General
- the autonomy of the Reserve Bank
- the independence of the Financial and Fiscal Commission and the lack of representation by local government on this Commission
- control of the National Revenue Fund and budgeting
- the Commissioner for Inland Revenue

The Auditor-General:

We believe that the independence of the Auditor-General is critical to good government and that this independence should be enshrined in the final Constitution as per many of the provisions in sections 191 to 195 of the Interim Constitution.

In particular, the following should be retained in the final Constitution:

- appointment for between five and ten years and not eligible for re-appointment;
- prohibition on the performance of other remunerative work outside his duties;
- prohibition on the holding of political office;
- restricted basis on which he may be removed from office;
- remuneration and conditions of service not to be altered to his detriment during his period of service.

The Reserve Bank:

The Interim Constitution deals very briefly with the Reserve Bank. 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.

An independent Reserve Bank should play a significant role through its duty and ability to conduct an autonomous monetary policy directed at internal and external price stability.

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 to carry out the function autonomously and in a technically competent manner must be the main criteria for appointments, not merely being representative of a specific population or interest group. This is particularly important to ensure that proper monetary policies are implemented, and to maintain the international acceptance of the Reserve Bank among its peers.

The terms of office of the Governors and Directors appear short when viewed from an international perspective and it is proposed that the effective functioning of the Bank would be served by increasing the term of office to eight years for the four Governors and to four years for the four Directors. In practice this would allow for the appointment of two Directors each year and one Governor every second year.

Transparency of decision making together with effective marketing of issues and decisions would enhance the Reserve Bank's credibility with the population at large. A suitable vehicle for this could be regular televised testimonies to a specific Parliamentary Committee, e.g. the Joint Parliamentary Committee on Finance, in the form of a report back, but not to account for or seek approval of actions.

The Financial and Fiscal Commission:

The objects, functions, expertise and impartiality of this Commission have been provided for in sections 199 and 200 of the Interim Constitution and we recommend that similar provisions be retained in the final Constitution.

The creation of this Commission is an innovative measure. Similar types of bodies in other countries, e.g. the Commonwealth Grants Commission in Australia and the Finance Commission in India, do not appear to have the extensive powers given to this Commission. Whilst we support the creation and continued functioning of the Commission, the large responsibility given to the Commission means that the financial functioning of the country at policy implementation level is dependent on the proper working of this body.

The functioning of the Commission could well be impaired by it becoming politicized. The likelihood of this is increased by the short terms for which members are appointed together with the fact that they are available for re-appointment. In order to allow the Commission to function efficiently and to avoid a permanent polarisation between those members appointed by the central government and those appointed by the regions, we suggest that their terms of office be lengthened to 5 years.

The Commission is given the task of looking at national, provincial and local government and making recommendations regarding their financial and fiscal requirements. Whilst the national and provincial governments are represented on the Commission, the only concession to local government is a provision that one of the members appointed by the President on the advice of the Cabinet must have "expertise in local government finance." It is necessary that the financial requirements of local government be fully understood and provided for and we

therefore recommend that their interest be given proper representation on the Commission in the same way as the first and second tiers of government.

The National Revenue Fund:

We agree in principle with the provisions contained in sections 185 and 186 of the Interim Constitution, i.e. that all revenues be paid into a fund from which monies may not be withdrawn unless such expenditure has been authorised by an Act of Parliament (section 185) and that the budget must be laid before parliament each year.

The final Constitution should therefore incorporate the following principles which are found in most modern Constitutions:

- all monies raised and received shall be paid into and form the National Revenue Fund unless a specific Act of Parliament creates a specific fund into which monies collected under such Act are to be paid;
- monies may only be withdrawn from this fund for expenditure which has been budgeted by Parliament, i.e. by means of an Appropriation Act;
- provision can be made for interim budgets in the form of Supplementary Appropriation Bills if it is necessary to incur expenditure which has not been provided for in the budget.

Public Enterprises:

We were specifically invited to comment on the desirability of including Public Enterprises in the Constitution. The Interim Constitution applies to Public Enterprises insofar as they are included in the definition of "organs of state" (section 233(1)(ix)). To this extent we support the application of the Constitution to Public Enterprises, but we do not see any need for a specific section of the Constitution relating to Public Enterprises. At present such enterprises are governed by separate Acts of Parliament, which Acts can easily be amended as required by changing circumstances from time to time. There appears to be no reason to change this or to provide constitutionally for provisions relating to Public Enterprises, which should be treated the same as any other corporate entities.

The Commissioner for Inland Revenue:

The Commissioner for Inland Revenue was not specifically mentioned under the topics to be dealt with by Theme Committee 6, nor were his functions and powers incorporated in Chapter 12, or any other chapter, of the Interim Constitution.

The mechanisms of state expenditure, social (e.g. RDP etc) and economic (e.g. attraction of foreign capital, etc), depend on the efficient, equitable and neutral collection of taxes in South Africa.

Tax legislation without efficient enforcement and administration is worthless. The efficiency of the Commissioner's office is impeded by, inter alia, outdated administrative and computer systems and the inability to attract top tax experts as has occurred in the United States, Australia, the Netherlands and other tax jurisdictions.

In order to attract qualified staff, the Commissioner for Inland Revenue cannot be bound by the rigid bureaucratic structures of the Commission for Administration's human resources salary policies which are insufficient to cope with the special needs of revenue collection in the light of its importance to the State.

It is therefore recommended that consideration be given to a provision in the Constitution enabling the independent function of the Commissioner for Inland Revenue, e.g. through a separate Act of Parliament.

COSAB/17 February 1995