
SUBCOMMITTEE REPORT

-- DRAFT --

The Subcommittee met on 14 August 1995 and discussed the following:

1 CHAPTER ON INDEPENDENT INSTITUTIONS

- 1.1 The Committee studied the chapter on the independent institutions and the schematic overview of general principles and appointment procedures of the independent structures, contained in the documentation of the meeting.
- 1.2 The Democratic Party stated that they wished to reserve their position on this chapter pending a legal opinion from their law advisers on the draft.
- 1.3 It was noted that while it was useful to group independent institutions together in one chapter it was not possible to conflate the institutions in all instances. For example 'independence' had a substantially different meaning in the case of the Financial and Fiscal Commission and the Auditor General.
- 1.4 It was noted that a survey of international experience would assist in the discussion of the Auditor General, Human Rights Commission and Public Protector.
- 1.5 It was agreed that this chapter would only be finalised at the next meeting of the subcommittee, on Thursday, 17 August 1995.

2 INDEPENDENT INSTITUTIONS: AUDITOR GENERAL

Outstanding issues within the seventh draft on the Auditor General were considered and the following was agreed to:

2.1 Establishment and Functions

2.1.1 Liability of the Auditor General and his or her assignees (section 1(4))

It was agreed that section 1(4) should be amended to provide for the granting of immunity for the Auditor General. The detail of this immunity should be contained in legislation.

It was agreed that the present AG would be consulted in writing on this matter.

2.1.2 It was agreed that section 2(3) would be amended to read:
"the Auditor General may audit, and report on, the accounts and financial statements of any institution funded from public money, as may be regulated by law.", as per the suggestion of the CA law advisors.

2.1.3 **Access to information (section 2(3))**

It was agreed that this section of the draft would be deleted.

2.2 **Reports (section 3 of seventh draft)**

It was agreed that this section would be revisited and that the law advisors would redraft the following formulation more economically:

"The AG shall submit reports on audits to authorities as prescribed by law, operating at the same level of government at which the audit was conducted, and if such law so requires also to authorities operating at any other level of government."

2.3 **Appointment, qualifications, tenure and dismissal (section 4)**

2.3.1 **Remuneration and other conditions of service (section 4(4))**

It was agreed that this provision should be deleted.

2.4 **Assignment of powers and functions and provision of funds (section 5)**

It was agreed that this section should be deleted.

3 **INDEPENDENT INSTITUTIONS: CENTRAL BANK**

3.1 **Inclusion in chapter on independent institutions**

It was agreed that the Committee needed to come back to a discussion on the appropriateness of including a section on the Central Bank within this chapter.

3.2 **Powers and functions (section 11)**

It was agreed that the words **"Provided that such law shall not derogate from the primary independence and objective of the South African Reserve Bank as provided for in section 10"** should be deleted.

4 **INDEPENDENT INSTITUTIONS: PUBLIC PROTECTOR**

Outstanding issues on the Public Protector were discussed and the following agreed to:

4.1 Establishment (section 15)

It was agreed that this section would be dealt with within the general provisions dealing with the independent institutions.

It was agreed that section 3/(5) would be amended to read: "**Reports issued by the Public Protector in connection with the discharge of his or her powers and functions shall except in exceptional circumstances be open to the public.**"

The National Party reserved its position on this amendment.

4.2 Appointment, qualifications, tenure and dismissal (section 16)

4.2.1 Qualifications and term of office (section 16(3))

It was noted that as there are not uniform qualifications and terms of office it is not possible to include them in the general provisions.

4.2.2 Dismissal (section 16(5) and (6))

It was agreed that this provision should be dealt with within the general principles.

5 INDEPENDENT INSTITUTIONS: HUMAN RIGHTS COMMISSION

Outstanding issues on the Human Rights Commission were discussed and the following agreed to:

5.1 Establishment and governing principles (section 18)

It was agreed that section 18 (2) would be reworked as follows, or using words to this effect:

" **The Human Rights Commission shall promote the development, protection and attainment of, and respect for, human rights and, generally the development of a culture of human rights in the Republic. It shall for this purpose have the necessary powers accorded to it by law, including such powers to monitor, investigate, and report on the observance of human rights and to take steps to secure appropriate redress where human rights have been breached and to perform research and educative functions.**"

6 JUDICIARY

The first draft text on the Courts and the Administration of Justice, contained in the documentation for the meeting, was discussed and the following agreed to:

6.1 Jurisdiction of the Constitutional Court (section 4)
Section 3(1)(b) would be debated in the Constitutional Assembly.

6.2 Outstanding issues of contention
All other issues of contention would be referred to the Constitutional Committee.

7 ANY OTHER BUSINESS

7.1 Conference of Editors and Forum of Black Editors
It was agreed that the Conference of Editors and the Forum of Black Editors would address the Committee on Monday, 21 August 1995 for two hours.