

2/4/6/4/5/9

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

SUBMISSIONS

(AS AT 15 MAY 1995)

VOLUME 12

ORGANISATIONS

SUBMISSIONS - ORGANISATIONS

VOLUME 12

INDEX

	NAME	PRINTED EXTRACTS	PAGE
1.	AHI (Afrikaanse Handelinstituut)	Financial Institute & Public Enterprises	1
2.	Baptist Union of South Africa	Financial & Fiscal Commission (1 para)	2
3.	Conservative Party	Auditor General, Reserve Bank, Financial & Fiscal Commission, Procurement	3-8
4.	Development Bank of South Africa	Financial Institutions and Public Enterprises	9-14
5.	South African Institute of Chartered Accountants	Financial Institutions and Public Enterprises	15-17
6.	Department of State Expenditure	Financial Institutions and Public Enterprises	18-19

2054

CONSTITUTIONAL
ASSEMBLY

24 FEB 1995

16 February 1995



DIE AFRIKAANSE
HANDELSINSTITUUT

(Reg No 05 15560
(Vereniging ingelyf
kragiens Art 21)

Lynnwood Galleries
Eerste Vloer
Rosemaryweg 35-
Lynnwood 0081

POSBUS 1741
PRETORIA 0001

Telefoon (012) 47-6166
Telefaks (012) 47-7722
Int 27 (12) 476162

Our ref : JPVW/pvo/B1122

The Secretary
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

001961

Dear sir

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

We refer to your undated letter, requesting submissions by 31 January 1995 (later extended to 15 February 1995) and wish to respond particularly to paragraph 3.7 thereof regarding Public Enterprises.

Our only comment is that the Reporting by Public Entities Act needs to be applied to many more entities. Currently a very few entities are listed by the Department of State Spending as being subject to the very much needed reporting standards.

We consider that at least some 300 more institutions of substance (there are more than 4 000 nationally), including all forms of local government and provincial government, should be listed for compliance.

Attached please find a brochure of one of our members in which the effect of the reporting standards are discussed.

We suggest that in the constitution some reference needs to be made to a requirement that all public funded entities need to report in a standard format on a regular basis and according to certain accounting and disclosure guidelines such as those contained in the Reporting by Public Entities Act.

Yours faithfully


KOOS VAN WYK
CHAIRMAN : STANDING COMMITTEE ON FINANCE

DIREKTEURE
W R Scheffler
(President)
H.J. Terreblanche
(Visepresident)
T van Wyk
(Voorsitter)
J.P. Myburgh
Visevoorsitter

BAPTIST Union of Southern Africa

Ph 021 4614487

fax 021 4614339

rights legislation in being the only nation to recognise a perversion. If the matter must be listed in the Bill of Rights, then we plead for a distinction between the acceptable right of homosexual not to be discriminated against because of his/her orientation and unacceptable right to be discriminated against because of practice. A parallel may be drawn between kleptomatic orientation and practice. No-one judges the orientation, but the practice (the act of stealing) cannot be regarded as a "right".

(08) THE PUBLIC SERVICE:

Must be trimmed and as much work as possible contracted to private enterprise. The economy will benefit, especially small time entrepreneurs. It is important that every opportunity be taken to stimulate small business and job-creation in the country, but to do this within the Bureaucracy of government is unwise.

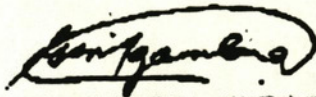
(09) FINANCIAL AND FISCAL COMMISSION:

PK
Everything possible must be done to minimise the temptation and possibility of consumption. Please take a strong stand to safeguard the nation against such scandals. External auditors should be empowered to do spot checks at any time. Accountability is essential.

(10) SUPREMACY OF CONSTITUTION:

See 04 above.

Yours faithfully



GEORGE M NGAMLANA (Rev)
ASSOCIATE GENERAL SECRETARY



DIE KONSERWATIEWE PARTY VAN SUID-AFRIKA

Hoofleier/Leader:
Dr. F. Hartzenberg

Vryheid met Geregtheid
Freedom with Justice

Tel: (012) 342-3408/5
P/Sak X847
PRETORIA
0001
Faks: (012) 342-3912

Pretoriusstraat 1142 Pretorius Street
HATFIELD 0083
PRETORIA

THE CONSERVATIVE PARTY OF SOUTH AFRICA

Die Besturende Sekretaris
Die Grondwetlike Vergadering
Temakomitee 6
Posbus 15
KAAPSTAD
8007

AANDAG: MNR SNAKES NYOKA

12 April 1995

Meneer

Ignoreer asseblief die vorige voorlegging wat aan u gestuur is.
Hiermee saam die korrekte weergawe.

Baie dankie

D G H NOLTE
VOORSITTER VAN SPESIALE KOMITEE VAN DIE KONSERWATIEWE PARTY

VOORLEGGING VAN DIE KONSERWATIEWE PARTY NA AANLEIDING VAN 'N SKRYWE VAN DIE BESTURENDE SEKRETARIS VAN TEMA KOMITEE 6 VAN DIE GRONDWETLIKE VERGADERING, MNR SNAKES NYOKA

1. Inleidende opmerkings

Die onderwerpe ter sprake hou verband met: "The Constitution Making Process: Financial Institutions and Public Enterprises". Van die tersaaklike finansiële instellings is reeds in die Oorgangsgrondwet (Wet 200 van 1993 soos gewysig) voorsiening gemaak. In paragraaf 3 van mnr Nyoka se skrywe word gewag gemaak van die wenslikheid van verdere instellings.

Die instellings, soos die Ouditeur-Generaal en die Reserwebank, vorm uiters belangrike sleutel-funksies onder die huidige grondwet. Dit sal ook die geval wees van die nuwe instellings wat moontlik daargestel sal word wat oor ingrypende magte en pligte onder die finale grondwet sal beskik.

Die KP het in diepte die voorstelle en sake te berde gebring, bespreek. Die voorstelle het ten doel om ekonomies/finansiële stabiliteit en vooruitgang te help verseker. In dié opsig moet dit besef word dat hierdie tipe voorstelle slegs suksesvol kan wees indien daar 'n algehele klimaat van politieke stabiliteit bestaan. Om laasgenoemde te bereik, gegewe die realiteite van die RSA, is die daarstelling van 'n konfederale staatkundige bestel 'n voorvereiste soos wat die ervaring wêreldwyd deur die eeue getoon het.

Die Party wil dit dus duidelik stel dat meegaande reaksie op mnr Nyoka se brief nie vertolk moet word asof die Konserwatiewe Party daardeur sy goedkeuring gee aan die grondwetlike bedeling waarin ons ons tans bevind en wat beoog word om voortgesit te word nie.

Die Konserwatiewe Party se uitgesproke doel bly steeds die verwesenliking van 'n eie soewereine republiek waarin die Boere-Afrikaner sy vryheid in geregtigheid kan ultiem. Die Party is op enkele mindere uitsonderings na van oordeel dat die beoogde maatreëls en finansiële instellings nie hierdie doelwit dien nie en dus ook nie in hulle doel sal slaag nie.

Die Party is ook van mening dat in sy reaksie deeglik rekening gehou moet word met wat as 'n oorgangsfase en uiteindelijke onafhanklikheid bestempel word.

Wat die primêre doelwit en meer spesifiek finansiële selfbeskikking betref, vind die Konserwatiewe Party dit nodig om byvoorbeeld die volgende aan te haal uit die

finansiële komitee van die Vrye Volksrepubliek se verslag (Deel B, Bladsy 14, Punt C(ii) en (iii)):

"Wetlike voorsiening dat alle regte en verpligtinge kragtens konvensies, verdrae of ander soostgelyke ooreenkomste wat voor die inwerking treding van die grondwet op die regering van die RSA (ten opsigte van die Vrye Republieksgebied) bindend was regte en verpligtinge van die Volkstaat word....)"

" Verskele van die tientalle (ongeveer 30) bi-latterale interstaatlike ooreenkomste tussen die RSA en die beoogte Volkstaat het in 'n wisselende mate direkte of indirekte finansiële implikasies. Voorbeelde hiervan is ondermeer:

(a) 'n Ooreenkoms wat ten doel het dat bank- en ander fasiliteite in die Volkstaat nie ontwig word en daardeur ongerief vir die Volkstaat burgers veroorsaak nie....

(b) 'n Ooreenkoms betreffende voortgesette deelname deur die Volkstaat aan bestaande en nuwe termynkontrakte aangegaan deur die Staatstenderraad van die RSA.....

(c) 'n Ooreenkoms met betrekking tot die monetêre verhoudings tussen die RSA en die Volkstaat waarin ondermeer bepaal word dat devisie-beheermaatreëls van die rand-monetêre gebied van krag bly in die Volkstaat...."

Die KP wil dit beklemtoon dat (en soos die indringende studies wat gedoen is oor die Vrye Volksrepubliek se finansiële selfbeskikking ook aantoon), die KP teen alle moontlike teenkanting in sal voortgaan om sy ideale te verwesentlik.

Die KP se siening met betrekking tot die individuele finansiële instellings word vervolgens teen die agtergrond van voorgaande aan u voorgelê.

2. Die Ouditeur-Generaal (OG)

Die KP glo dat die onpartydigheid en onafhanklikheid van die OG in die nuwe grondwet verskans moet word. Dit is nodig omdat die twee-derde meerderheidsbeginsel, nie 'n voldoende verskansende maatregel is nie.

Die ontslagbepallings vir die OG is ook 'n uiters sensitiewe saak en dit noodsaak streng vereistes in die wet.

Die belangrikheid van hierdie saak moet benadruk word deurdat enige sweem dat die onpartydigheid en onafhanklikheid van die OG onder verdenking is, binne- en buitelandse vertroue in die gesonde finansiële bestuur van die staat kan knou wat tot

nadeel van die land se ekonomie sal wees.

3. Die Reserwebank

Die KP sou in belang van ekonomiese samewerking 'n enkele onafhanklike Reserwebank in 'n konfederale politieke bestel voorstaan. In so 'n bestel sou die Reserwebank sy normale beheerfunksies moet uitoefen. Bo en behalwe dié funksies sou die KP bykomend wou voorstel dat die Reserwebank in 'n konfederale bestel onder geen omstandighede aan enige van die deelnemende state se regerings enige staatstekorte finansier nie. Indien dit wel sou gebeur sou die Onafhanklike Vrye Republiek sy eie Reserwebank tot stand bring en uit so 'n monetêre gebied onttrek.

4. Die Finansiële en Fiskale kommissie

Hierdie kommissie sal uit die aard van sy samestelling soos bepaal in die wet deur ANC-gesindes oorheers word. ANC beleid sal dus deur dié kommissie aanbeveel word. In die lig hiervan sien die KP weinig nut vir die totstandbrenging van so 'n liggaam.

Indien die regering van die dag ernstig is om onafhanklike objektiewe advies en riglyne te ontvang sal die lede van die kommissie onpartydige kundiges op die gebied van die ekonomie en die finansiewese moet wees. Indien nie die geval nie, sal die kommissie net maar nog 'n dienstige burokratiese instelling wees.

5. Die Nasionale Inkomstefonds, Begroting en Verkryging ("Procurement")

Die begroting: Weereens is gesonde fiskale beleidsmaatreëls 'n voorvereiste. Dit vereis vooraf-neergelegde norme soos:

- a. Dat die staat se uitgawes nie meer as 25% van die land se BBP sal bedra nie
- b. Dat die tekort beperk sal word sodat geen leningsfondse ter finansiering van lopende besteding aangegaan sal word nie
- c. Dat indirekte belasting verkieslik bo direkte belastings sal wees ten einde besparing, investering en produktiwiteit te bevorder
- d. Dat die staat nie van bankkrediet gebruik sal maak om tekorte te help finansier nie.

Oor "Verkryging" moet die wet geen twyfel laat oor wat gebeur as wette van die

- 4 -

verskillende Provinsies oor hierdie saak verskil nie. Die wesentlike beswaar van te min magte vir die Provinsies is ook hier ter sake. Die verstandige is om die Konfederale benadering in hierdie saak te volg, sodat Provinsies soos Kwa-Zulu wat aandrang op selfbeskikking, self oor hierdie aangeleentheid kan besluit.

6. Waarborge vir Provinsiale en plaaslike Regerings

Die Konserwatiewe Party se ondubbelsinnige standpunt is dat regeringswaarborge gevaarlik is en dus vermy moet word.

Die enigste verstandige ding om te doen is dat regerings geen waarborge vir laer owerheidsliggame gee nie. Die antwoord is en bly gesonde finansiële dissipline. Die KP verwag dat die sentrale regering sy bevoegdheid in hierdie verband van die provinsiale regerings gaan afwentel. Dit sal bydra tot die enorme skuld wat weens hierdie maatreël kan ontstaan. Die KP stel dit dat waarborge nadelig is deurdat:

- a. onkredietwaardige instellings daardeur finansiering bekom
- b. geld daardeur "goedkoper" sal word as wat die mark sou vereis.

7. Spesiale pensioene en Inkomstebelasting van verkose verteenwoordigers en pensioene van politieke amptenare

Die KP wil sy ernstige afkeur uitspreek van so 'n beoogte maatreël wat ten doel het om pensioene uit te betaal aan partypolitieke ondersteuners.

Die KP vra dringende opheldering deur ANC wetgewers oor die gebruik van die term "political officers" in die beoogte wetgewing. Volgens die wetgewing sou hierdie "political officers" (wat volgens die KP se oordeel partypolitieke ampsdraers kan wees) geregtig wees op besoldiging deur die staat.

Indien dit waar sou wees, moet dit betreur word want dan maak die regering die belastingbetaler aanspreeklik vir die uit-en-uit partypolitieke bedrywighede van 'n politieke party.

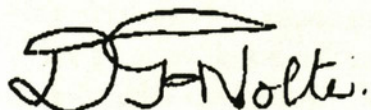
8. Bepalings oor Openbare Ondernemings in die finale teks van die Grondwet

Finansiële ondernemings is instellings wat verkieslik in die private sektor tuishoort. 'n Goue reël is verder dat openbare ondernemings so vër as moontlik vermy behoort te word en waar dit bestaan geprivatiseer moet word. Waar openbare ondernemings

tans egter nog bestaan behoort staatsinmenging in hulle doen en late vermy te word sodat dié instellings op suiwer sake-beginsels bestuur kan word. Sou dit wenslik wees dat 'n regering wel verplig word om in sulke ondernemings in te meng, behoort dit slegs tydelik van aard te wees om die onderneming(s) op 'n gesonde finansiële grondslag geplaas te kry.

9. Maatreëls in verband met finansiële instellings

Dit moet aan finansiële instellings oorgelaat word om op grond van gesonde finansiële beginsels sake te doen. Maatreëls soos staatswaarborgs aan finansiële instellings byvoorbeeld vir spesiale projekte kan die ekonomie skaad en kanalisier geld in 'n sekere rigting tot nadeel van ander sektore en die ekonomie in totaal



D G H NOLTE

Voorsitter van spesiale komitee van Konserwatiewe Party

Insake skrywe: mnr Snakes Nyoka
Komitee 6

DEVELOPMENT BANK OF SOUTHERN AFRICA

SUBMISSION TO

THE CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6

ON FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

1. INTRODUCTION

1.1 The past few years have been devoted to mega-constitutional change in South Africa, resulting in the introduction of an Interim Constitution in 1994. The introduction of a process of economic transformation of a society marked by deep diversity has coincided with the implementation of this Constitution. **The final Constitution presents the opportunity to move beyond the 'political' covenant reform of the Interim Constitution to a new foundation for a 'social' contract among all South Africans by recognizing the importance of socio-economic issues in the design of the political system**

1.2 The Interim Constitution *inter alia* defines a way of life and the people comprising the community which is so directed; a form of government; the regime, the public and citizenship; as well as establishing the basis for the authority of the regime and distributing political power. Furthermore, it contains a set of binding and juridically enforceable principles with which all future Constitutions have to comply.

1.3 The form of government is defined by providing a framework for three levels of governments and the basis for its behaviour; providing a framework for, and in some instances the shape, of political institutions and specialized structures of government, e.g. an independent Public Service Commission, Reserve Bank, Auditor-General and Public Protector; as well as formalizing intergovernmental fiscal arrangements both in mechanism, i.e. a Financial and Fiscal Commission, and in criteria to be taken into account for this purpose. This submission will comment on specialized financial structures of government and specifically on the Financial and Fiscal Commission.

2. POINT OF DEPARTURE

2.1 There is a need to recognize **the importance of socio-economic issues** in the design of the political system.

2.2 The disparate socio-economic situation, interpersonally, and intergeographically, the stage of economic development, and the design and implementation of a reconstruction and development programme, all suggest that South Africa will experience profound structural shifts in the social and economic spheres. In order to accommodate this dynamic socio-economic environment, it is believed that constitutional proposals, specifically on financial and fiscal mechanisms, should not be excessively detailed, but rather outline the broad parameters and principles within which mechanisms and arrangements have to be developed. Therefore, the nature of the Constitution will have to be enabling rather than prescriptive or restrictive.

2.2 It is recognized that the vision, strategies and mechanisms for implementation of a socio-economic reconstruction and development plan should be fully compatible with the Constitution and foster the envisaged development of the nation-state. However, in turn, accomplishing the long-term socio-economic visions of a country, is not only dependent on specific policies and strategies in this regard, but also on enabling political, fiscal and financial, as well as administrative arrangements. It would thus be relevant to identify and strengthen those features of the political, fiscal and financial system as well as administrative arrangements that would have a positive impact on the process and outcomes of reconstruction and development. The **people-centred development focus of the RDP** as reflected in its six basic principles, i.e. **an integrated and sustainable programme**, that must be a **people-driven process**, that provides **peace and security for all and builds and integrate the nations, links reconstruction and development and deepens democracy**, provides a useful point of departure for shaping constitutional proposals in a way that will reinforce the socio-economic reconstruction and development of South Africa.

3. AUDITOR-GENERAL

3.1 Sections 191-194 of the Constitution provides in considerable detail for the establishment, appointment, independence, impartiality, and effectiveness of a common Auditor-General for the public sector at large, including all levels of government. This section could be shortened and reordered without detracting from the content of the Constitutional provisions. For example, sections 191(3, 8 and 7) deals with the eligibility criteria for an Auditor-General; section 191(5) with a temporary substitute; and sections 191(4, 6, 9 and 11) with terms of office, remuneration and service conditions. Some of these

issues such as those on remuneration and service conditions could even be dealt with statutorily rather than in the constitution.

3.2 A well-functioning national system of financial accountability is essential, but represents only one aspect of accountability and strategic management measures that need to be promoted in South Africa in realizing our visions for reconstruction and development. In the past and irrespective of the level of government, public financial accountability and financial control systems have been artificially divorced from accountability for overall socio-economic performance. However, the systems and mechanisms to promote these as well as strategic management are interdependent. Although constitutionalisation of an elaborate system for financial and socio-economic performance accountability is not desirable, the linkages of the financial accounting system with accountability for socio-economic performance and strategic management need to be recognized in the Constitution. It is, therefore, proposed that section 193 be amended to incorporate the linkages of the financial accounting system with accountability for socio-economic performance and strategic management.

3.3 Furthermore, in view of these interdependencies, whether intergovernmental or on a particular level of government, as well as the need to encourage community participation through political and informal control mechanisms, it could be argued that accountability on the provincial level could be strengthened by the establishment of provincial Auditor-Generals as well. The functions of these could be extended to include overall socio-economic performance assessment of provincial and local authorities. It is proposed that the Constitution be amended to enable the establishment of provincial Auditor-Generals.

4. THE SOUTH AFRICAN RESERVE BANK

4.1 The independence of the Reserve Bank as enabled in the Constitution is supported.

4.2 A Constitutionally independent Reserve Bank, however, supposes strong cooperation and coordination with loci of responsibility for other macroeconomic policies, not only with *the Minister responsible for national financial matters*, section 196(2). The degree of cooperation and coordination between the monetary authorities and other macroeconomic policy decision makers would *inter alia* influence the choice and level of policy instruments for achieving price stability and the appropriate external balances.

4.3 This could be illustrated by the fact that in many other countries, money supply has lost some of its appeal as an anchor for monetary policy purposes, and, in some instances, has been abandoned and replaced by a different basis, e.g. the exchange rate. In a number of countries - for example in the United Kingdom, New Zealand and Canada - the authorities

are now pursuing inflation targets more directly, instead of through an intermediate target such as the money supply. This approach, however, requires a degree of cooperation between government, private businesses, trade unions and the central bank which, in the present phase of socio-political reforms in South Africa, is extremely difficult to obtain. Therefore, the Bank is of the opinion that money supply targeting remains, at least in the present South African context, the most sensible anchor for monetary policy and for guiding the authorities in their decisions in executing their monetary policy responsibilities.

5. THE FINANCIAL AND FISCAL COMMISSION (FFC)

5.1 It is recognized that it is rarely possible to design a multi-governmental constitution in a way that allow for the precise matching of autonomous revenue sources with expenditure responsibilities for each level of government. Even if it could be done initially, the relative shares of different taxes and expenditures are likely to shift over time, thereby creating imbalances and a source of intergovernmental controversy. In South Africa, such a perfect matching of revenue sources and expenditure responsibilities is particularly unfeasible, due to the imbalances in economic activity and the need for interjurisdictional and interpersonal equalization. This makes the constitutionally established FFC (section 198) an immensely important link in the overall operation of the constitutional structure and the relationship between the various tiers of government, particularly regarding advice on a rational, accountable and predictable structure of intergovernmental fiscal relations.

5.2 Sections 200 to 205 can be considerably shortened and refocused in the new Constitution. Except for the composition of the FFC, section 200(1), the focus of the Interim Constitution should shift from an emphasis on structures to ensuring the impartiality, integrity, objectivity and professional competence of the FFC. This could be done through establishing eligibility criteria for members, e.g. those in section 200(3 to 10) as well as through establishing principles for operation. The latter might include e.g. fostering transparency; providing for interaction with communities/parties/institutions, e.g. to present their views; undertaking professional technical analysis; having access to relevant information; fostering the exercise of sound and impartial judgment; ensuring that reporting is done fairly, comprehensively and clearly; and effectively managing its resources.

5.3 Current constitutional proposals regarding its meetings; establishment of committees; cooption of persons by committees; terms of office of members and officials; remuneration and conditions of service of members and other persons; appointment of staff; and other relevant matters, could be allowed for statutorily rather than constitutionally.

5.4 An important element in establishing sound intergovernmental relations is the existence of a framework and criteria for evaluating and deciding on the intergovernmental

allocation of functions. As DBSA subscribes to the principle that *finance should follow expenditure function*, it is proposed that section 199(1 or 2) be amended to include an in-principle statement on such functional criteria that should serve as a framework for the FFC's advice and recommendations regarding the financial and fiscal requirements of the different tiers of government. The details of such a framework and criteria should, however, be dealt with in separate legislation.

5.5 Furthermore, it is proposed that section 199 on objects and functions be extended to provide for the FFC to play a facilitating role regarding inter-governmental fiscal/financial relations. In particular, the FFC should seek to facilitate coordination and cooperation between the different levels of government (vertically) as well as between same-level governments (horizontally). Although the process for this facilitating role need not be constitutionalised, it is important to notice that, for this purpose, close coordination between the FFC, the Public Service Commission, the Commission for Provincial Government, and/or any other institutional mechanism that might impact on intergovernmental finances would be essential.

6. OTHER

DBSA is of the opinion that issues such as the national fund, budget, procurement, special provisions for pensions and income tax of elected representatives and political officers, and provisions on public enterprises should not be constitutionalised.

7. CONCLUSION

7.1 These comments depart from the viewpoint that a constitution should be designed as a foundation for a social contract among citizens, through recognizing the importance of socio-economic issues in the design of the political system. Furthermore, the dynamic South African socio-economic environment requires flexibility and appreciation of the fact that a constitutional text cannot and should not with certainty and precision control every detail of the future.

7.2 The socio-economic realities, the intergovernmental allocation of resources, functions and powers, and the design and implementation of a reconstruction and development plan all require great intergovernmental cooperation, coordination, joint planning and sharing of resources

7.3 While the fiscal relations are to a certain extent constitutionalised, other types of intergovernmental relations will probably be provided for either statutorily or through informal arrangements. As in other federal and regional-type systems, the success of the South

African political dispensation will to a large extent depend on the success of these intergovernmental relations.

7.4 Serious consideration should be given to constitutionalise an advisory commission on intergovernmental relations, in order to analyze, evaluate and improve intergovernmental relations in general. It could have a number of functions, ranging from investigative tasks regarding the functioning of the system to the formulation of policy inputs and arbitration of intergovernmental disputes. The Commission for Provincial Government may well be transformed into a permanent advisory commission focusing on intergovernmental relations in general.



The South African Institute of Chartered Accountants
Die Suid-Afrikaanse Instituut van Geoktrooieerde Rekenmeesters

DOC43.JHD/kg/G.G1.2

2 March 1995

The Managing Secretary
Theme Committee 6
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Sir/Madam

THE CONSTITUTION MAKING PROCESS: FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

Your undated letter received on 6 December 1994 and Hassen Ebrahim's letter dated 3 February 1995 refer.

Herewith out comments on "Specialised Structures of Government":

1. The Auditor-General

The Public Sector Committee (PSC) of SAICA supports the arrangements regarding the Auditor-General and the Office of the Auditor-General as included in the interim Constitution. ~~The most important feature of the interim arrangement is that the Auditor-General has obtained statutory independence.~~

~~The arrangement whereby the Auditor-General reports to the Audit Commission is also supported. The functions of the Audit Commission is very similar to that of audit committees and it results in enhancing auditor's independence.~~

The statutory independence of the Office of the Auditor-General and the establishment of the Audit Commission significantly enhances accountability and transparency, not only of the audit office, but also of the public institutions reported on.

However, it is submitted that, in many cases, parliament does not react or is not seen to be reacting on adverse audit reports issued by the Auditor-General. This perception of non-reaction materially undermines accountability. A mechanism should be established whereby adverse audit reports are followed up and guilty parties brought to be accountable for their deeds.

It is further submitted that, due to the importance of the Office of the Auditor-General in the transparency and accountability process, the Constitution should recognise that the Office needs to be professional and therefore allow the current process of professionalising the Office to be continued.

2. Public Enterprises

The Reporting by Public Entities Act, 1992 is recognised as one of South Africa's most advanced and soundly written items of legislation. The main focus of the Act is to enhance accountability and transparency in public institutions and parastatal enterprises. It promotes sound corporate governance in those institutions and was also addressed in the King Committee Report on Corporate Governance which was issued in November 1994.

The PSC therefore supports the inclusion of public entities in the Constitution and strongly believes that the Constitution would be flawed without the recognition of public entities.

3. Guarantees for Provincial and Local Government loans

The concept of guarantees for Provincial and Local Government loans is acceptable if the process is properly managed. The question arises as to how the guarantees would be allocated and who/which body would ultimately be responsible to manage the debt of those governments.

The PSC is of the view that the proposed guarantees would most likely undermine accountability in Local and Provincial Governments and therefore it is not supported.

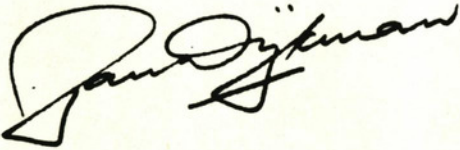
4. The Financial and Fiscal Commission

Clearly from para 199.1 (c) the draftsmen anticipate the levying of provincial taxes, etc. From an administrative point of view, the Taxation Committee of SAICA believes that such a possibility should be discouraged.

The full-time staff members are, in terms of the proposals, automatically chairperson and deputy chairperson. The Taxation Committee of SAICA questions whether this is appropriate. In effect, it may well be that certain people are suited to a position in the Secretariat in terms of which they are full-time employees, but the aims of the Commission may well be better served by having its direction set by other members of the Commission.

Please do not hesitate to contact me if you require any further information.

Yours faithfully

A handwritten signature in black ink, appearing to read "J H Dijkman". The signature is written in a cursive style with a large initial "J" and "D".

J H Dijkman
LEGAL AND ETHICAL DIRECTOR



Organization

PRIVAATSAK • PRIVATE BAG X845
PRETORIA. 0001

Mr S Nyoka
Managing Secretary
Theme Committee 6
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

• TELEX
• FAX NO. 325-4533
FAX NR.
• TEL.
• UITBR. 315-5170
EXT.
• NAVRAE G J Smit
ENQUIRIES
• VERW. ST 5/395/3
REF.
• DATUM 1995-01-10
DATE

16 JAN 1995

Dear Mr Nyoka

THE CONSTITUTION MAKING PROCESS: FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

1. I refer to your letter of 1 December 1994 to the Minister of Finance in the above regard, which was referred to me for a reply.
2. I shall deal only with paragraph 3.4 of your letter. The Auditor-General (paragraph 3.1) will supply you with an input on matters concerning Sections 191 to 194 while the Department of Finance will co-ordinate inputs on the remainder of the matters listed in your letter.
3. With reference to your paragraph 3.4:

As far as the National Revenue Fund (Section 185 of the Constitution, 1993) and the Annual Budget (Section 186) are concerned, I am satisfied that no need exists for amending any of these Sections as they


Rig alle korrespondensie aan die Direkteur-generaal
Address all correspondence to the Director-General

provide for the purpose for which they were intended.

As far as Procurement Administration (Section 187) is concerned, the Afrikaans text of subsection 187(2) requires of the tender boards to, on request, give reasons for their decisions to "belanghebbende partye", whilst the English text refers to "interested parties." According to the Oxford dictionary, the term "interest" includes "a quality exciting curiosity or holding the attention". Tenders contain information that must be considered as privileged and that in all fairness should not be made public to parties who are merely curious. The Afrikaans text, that restricts the disclosure of information to parties concerned, is the better practice.

It is, therefore, suggested that the English text of subsection 187(2) be amended to read ".... give reasons for their decisions to parties concerned".

Yours sincerely


DIRECTOR-GENERAL

2088MB