

214/6/4/1/7

NO. 19

**CONSTITUTIONAL ASSEMBLY**

***THEME COMMITTEE 6.2***

**FINANCIAL INSTITUTIONS & PUBLIC ENTERPRISES**

**MONDAY, 29 MAY 1995 - V475 OLD ASSEMBLY**

**14H15**

**DOCUMENTATION**

**Embargoed until 14h15  
29 May 1995**

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# CONSTITUTIONAL ASSEMBLY

## THEME COMMITTEE 6.2

### FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

Please note that a meeting of the above Committee will be held as indicated below:

Date: 29 May 1995

Time: 14h15

Venue: Room V475, Old Assembly Wing

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### AGENDA

1. Opening and Welcome
  2. Notice of meeting and Agenda (p1)
  3. Adoption and noting of previous minutes
    - 3.1 TC6.2 Minutes: 22 May 1995 (p2-4)
  4. Law Advisor's reformulated draft on the Auditor General (p5-11)
  5. Press Clippings - For noting (p12-18)
  6. AOB
- 

**H EBRAHIM  
EXECUTIVE DIRECTOR**

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# **CONSTITUTIONAL ASSEMBLY**

## **THEME COMMITTEE 6.2**

### **FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES**

**MONDAY 22 MAY 1995**

#### **PRESENT**

**Davies R (Chairperson)**

Andrew K  
Botha WJ  
Jacobsz F  
Makgothi H  
Marcus G  
Nair B  
Welgemoed P

#### **Apologies**

Hogan B  
Marais G

#### **Absent**

Woods GG

**In attendance:** P Fahrenfort, C Rustomjee (Technical Advisor), S Nyoka

#### **1. Opening and Welcome**

The Chairperson opened the meeting at 12h10 and welcomed the members present.

**2. Notice of meeting and agenda**

The agenda was adopted.

**3. Adoption of previous minutes**

The minutes of the meetings 8 May and 16 May 1995 were adopted subject to the following corrections:

***8 May 1995***

*Item 4.3 : Schematic summary of AG* to read as follows:

After some discussion the Committee noted the following two positions regarding the role of the Auditor General namely (a) that there must be a constitutional obligation for the Auditor General to conduct audits at all levels of government and all publicly funded institutions and (b) that the constitutional requirement be extended to local government and that legislation should provide for the remainder.

***16 May 1995***

*Item 2.3 : Appointments, qualifications, tenure and dismissal*

the following minute to be read as follows:

- (a) nominated by a committee of Parliament, composed of one member of each party represented in Parliament and willing to participate in the committee;

the following to be reflected in the minutes:

- a) It was agreed that since this subcommittee does not consist of members with legal expertise and that they are therefore considering the drafts from the Law Advisors from a layperson's perspective.
- b) The Committee noted Mr K Andrew's request that any decision relating to the adoption or acceptance of the legal draft be on the basis of a written resolution put to the Committee.

**4. Law Advisors reformulated draft on the Auditor General**

The committee agreed that it was impractical to deal with documents that were not distributed in advance and that the reformulated draft on the Auditor General from the Law Advisors be tabled at the meeting scheduled for Monday 29 May 1995.

**5. South African Reserve Bank**

Following a lengthy discussion on the intricacies surrounding the issue of goal and operational independence of the Reserve Bank, the committee recommended that the technical advisor, Mr Cyrus Rustomjee analyse relevant information gathered from management literature, the Minister of Finance, the law advisors as well as the governor of the Reserve Bank, for the purpose of a presentation on June 5, 1995 in an attempt to clarify any misunderstanding around these issues. It was further recommended that the information from Mr Rustomjee be distributed on 31 May 1995.

In addition it was recommended that the Secretariat gather press report clippings relating to TC6.2 and distribute it to the members.

**6. Report back of the CA proceedings**

It was noted that the Reserve Bank was not dealt with as an item on the CA's agenda on Friday 19 May 1995 and as agreed at a subcommittee level, the matter remain with the committee until such time a greater degree of consensus is reached on the matter.

There being no further business the meeting ended at 13h12.

.....  
CHAIRPERSON

.....  
DATE

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## **AUDITOR GENERAL: SECOND DRAFT**

### **INTRODUCTORY NOTE**

We have adjusted the First draft in accordance with our understanding of the agreements reached or confirmed during the Sub-Theme Committee's discussion of the First draft. A transcription of the TC's deliberations was made available to us by the Managing Secretary.

In view of sentiments expressed in the CA meeting on the 19 May 1995 about the inclusion of detail in the Constitution we would advise the TC to reconsider whether section 4(4), (5) and (6) and section 5 should be included in the draft.

**CA Law Advisers  
22 May 1995**

**SECOND DRAFT - 22 MAY 1995**  
**Status: Draft prepared by CA Law advisers**  
**for discussion by TC 6.2**

**AUDITOR GENERAL**

**Establishment, independence and impartiality**

1. (1) There shall be an Auditor General for the Republic.<sup>1</sup>
- (2) The Auditor-General shall be independent and subject only to this Constitution and the law. The Auditor General shall discharge his or her powers and functions impartially and without fear, favour or prejudice.<sup>2</sup>
- (3) Organs of state<sup>3</sup> shall give the Auditor General the necessary assistance to protect and ensure his or her independence, dignity and effectiveness. In particular the Auditor General shall be accorded by law all such immunities and privileges as are necessary for this purpose.<sup>4</sup>
- (4) Interference with the Auditor General in the discharge of his or her powers and functions is prohibited.<sup>5</sup>

**Foot notes**

1. Section 1(1) is based on the agreed position in block 1 of the report and its formulation is based on section 191(1) of the interim Constitution.
2. Section 1(2) is based on the agreed position in block 8 of the report. It is also based on CP XXIX and is a redraft of section 192(1) of the interim Constitution.
3. As defined in section 233 of the interim Constitution "organ of state" includes any statutory body or functionary.
4. Section 1(3) is based on the agreed position in blocks 9 and 11 of the report. See also sections 192(3) and (4) of the interim Constitution.



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5. Section 1(4) is based on block 10 of the report and embodies the principle of non-interference which is a corollary of the principle of independence in section 1(2). See also section 192(3) of the interim Constitution. The IFP has suggested an alternative formulation, please refer to block 10 of the report in this regard.]

#### **Powers and functions**

2. (1) The Auditor General shall audit and report on all accounts and financial statements of all state departments and administrations at national and provincial level of government and of all local governments, and all other accounts and financial statements required by a law to be audited by the Auditor General.<sup>6</sup>

(2) The Auditor General may in the public interest investigate, audit and report on the accounts and financial statements of any institution in control of public funds.<sup>7</sup>

(3) When the Auditor General performs an audit he or she shall have access to all information relevant to the audit and all persons affected by the audit shall be obliged to give their co-operation.<sup>8</sup>

#### **[Foot notes**

6. Based on block 13 of the report. We did not follow the wording of section 193(1) of the Interim Constitution. We find the undefined expression "accounting officers at national and provincial level of government" problematic and would rather suggest a direct reference to the institutions at the different levels whose accounts have to be audited by the AG, i.e. departments of state and administrations. As per instruction of the TC we have tried to simplify the provision.

7. As per agreement in block 15 of the report.

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8. As per blocks 12 and 18 of the report. A provision stipulating respect for the AG's position of independence is not regarded as necessary as this is already implied by section 1(2) and (3). As requested by the TC we have reformulated the subsection and included in it provision for access by the AG to all relevant information.]

### **Reports**

3. (1) The Auditor General shall submit all reports on audits conducted by him or her at the respective levels of government to such authorities at the relevant level and, where appropriate, also to such authorities at the other levels of government, as may be prescribed by law.<sup>9</sup>

- (2) Reports of the Auditor General shall in principle be made public.<sup>10</sup>

### **[Foot notes**

9. As per instruction by the TC.

10. We have included the words "in principle" to indicate that there may be exceptions to the rule that reports must be made public. Words which would have a similar effect would be:

"with due regard to the general interest".

### **Appointment, qualifications, tenure and dismissal**

4. (1) The President shall appoint as Auditor General a person nominated by a representative committee of Parliament and approved by Parliament by a resolution adopted by a majority of at least two-thirds of the members present and voting.<sup>11</sup>

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(2) The Auditor General shall be a South African citizen who is a fit and proper person to hold such office, has specialised knowledge of or experience in auditing state finances and public administration and does not hold office in any political party.<sup>12</sup>

(3) The Auditor General shall be appointed for a period of not less than five years and not more than ten years and shall not afterwards be eligible for re-appointment.<sup>13</sup>

(4) If the Auditor General is absent or unable to discharge his or her powers and functions, or if the office of the Auditor General is vacant, the highest ranking member of the Auditor-General's staff shall act as Auditor General during such inability or absence or until the vacancy is filled.<sup>14</sup>

(5) The remuneration and other conditions of service of the Auditor General shall be as prescribed by law.<sup>15</sup>

(6) The Auditor-General shall not perform remunerative work outside his or her official duties.<sup>16</sup>

(7) The President may remove the Auditor General from office only on the grounds of misbehaviour, incapacity or incompetence upon a finding to that effect by a representative committee of Parliament and the adoption by Parliament of a resolution supported by at least two-thirds of the members present and voting calling for his or her removal from office.<sup>17</sup>

(8) Where the Auditor General is the subject of such an investigation he or she may be suspended from office by the President.

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11. As per agreement in the TC.
12. As per agreement in block 3 of the report. Based on section 191(3) of the Interim Constitution. The IFP has proposed the following formulation:

**"The Auditor General should be a person of appropriate character and expertise."**

During its discussion of the previous draft the TC indicated that the qualification that the AG should not be an office-holder in a political party should be included in the draft.
13. Section 4(3) is based on the agreed position in block 4 of the report and section 191(4) of the interim Constitution. The IFP proposes the following formulation:

**"The Auditor-General shall be appointed for a maximum period of two five-year terms."**
14. Section 4(4) is based on the agreed position in block 5 and section 191(5) of the interim Constitution. The DP proposes that the "highest ranking member" should be replaced by "most senior officer present."
15. Section 4(5) is based on the first agreed position in block 6 of the report and its formulation is based on section 191(4) of the interim Constitution.
16. Section 4(6) is based on the second agreed position in block 6 and its formulation is based on section 191(7) of the interim Constitution.
17. Section 4(7) is based on the agreed position in block 7 and is drafted on our understanding of the previous discussion in the TC on the dismissal of the AG.

**Staff and expenditure<sup>18</sup>**

5. (1) The Auditor-General may appoint such persons as may be necessary for the discharge of the work of the office of the Auditor-General.<sup>19</sup>

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(2) The Auditor-General may assign any of his or her powers or functions to such persons and subject to such conditions as may be prescribed by law.<sup>20</sup>

(3) Expenditure incurred during the exercise and performance of the powers and functions of the Auditor-General shall be paid from money set aside by Parliament for such purpose and from fees raised or money obtained in a manner authorised by law.<sup>21</sup>

[Foot notes

20. Although we have provided the above formulations on staff and expenditure we do not consider these provisions to be necessary for inclusion in the Constitution. Provision for the establishment of an Auditor-General already implies the appointment of staff and the provision of adequate funds. We would advise that these provisions do not meet the panel of experts' guidelines on what should be included in the Constitution.
21. Section 5(1) is based on the agreed position in block 23 of the report and section 194(1) of the interim Constitution.
22. Section 5(2) is based on the agreed position in block 23 of the report and is a redraft of section 194(2) of the interim Constitution to accommodate the DP's concerns.]

Governor's letter sparks row

# Stals in clash over Bank's independence

Greta Steyn

A ROW has erupted over the ANC's proposals to rewrite the Reserve Bank's role in the final constitution, with Bank Governor Chris Stals and ANC MP Rob Davies differing sharply over Bank independence.

Davies yesterday accused Stals of using "highly charged language" and attempting to silence the debate on central bank independence. "Stals believes the issue should not be debated because it is sending the world the wrong signals. He cannot tell us that some things should not be discussed because they are supposedly sensitive."

He was reacting to a letter in which Stals expressed his views, which had been written to NP MP Francois Jacobus and distributed to members of the Constitutional Assembly theme committee debating the issue. Davies, who is theme committee chairman, criticised Stals for directing the letter at Jacobus and not at committee members — a move which he described as "irregular" and "not helpful".

Referring to the difference of opinion between himself and Stals, Davies quipped: "As Mandy Rice-Davis said — he would say that, wouldn't he?"

The difference of opinion centres around the ANC's proposal that a distinction be drawn between the Bank's "goal independence" and its "operational independence". In terms of the ANC's proposals, the Bank's "goal independence" — the setting of its objectives — would be curtailed. Its "operational independence" — the use of monetary policy instruments to reach these

goals — would, however, be certain.

Davies said a workshop held earlier this year at the Bank had suggested there was consensus that the Bank's goals were a political decision. Consultation on choosing the Bank's objectives was the issue that now had to be discussed.

Stals yesterday reiterated the stance in his letter that the distinction between two types of independence was academic. He said he had held the same view when the workshop was held in January. "The proposal cannot be implemented in practice. How will the line between goal and operational independence be drawn?"

He said SA had advertised its central bank independence in prospectuses for bond issues. Foreign investors might be scared off if they got the idea that SA now wanted to go back on the independence given by the interim constitution.

Stals said he had written a letter to Jacobus because the NP MP had asked for his opinion. The letter had been distributed among committee members because Jacobus had asked whether he would mind if his views were made public, and he did not. He would take part in further debate if the committee requested his participation.

The ANC initially proposed that Bank decisions be taken "in consultation with" the Finance Minister. But legal advisers rejected the suggestion, saying it would "effectively neutralise" the Bank's independence. But they said ministerial involvement in setting the institution's longer-term goal independence was compatible with constitutional principles.



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# Stals kap ANC oor sy nuwe siening van Reserwebank

## Skerp reaksie op dié voorstelle

Christo Volschenk

KAAPSTAD. – Dr. Chris Stals, president van die Suid-Afrikaanse Reserwebank, is bekommerd oor die nuwe grondwetlike voorstelle van die ANC wat oënskynlik 'n beperking op die onafhanklikheid van die Suid-Afrikaanse Reserwebank kan plaas.

Trouens, hy is só bekommerd dat hy Vrydag 'n brief daarvoor gedikteer het en aan dr. Francois Jacobsz, NP-LP, gestuur het. In die brief word gesê dat die jongste voorstelle die onafhanklikheid van die Reserwebank ernstig aan bande kan lê en selfs buitelandse beleggers kan afskrik.

Dr. Jacobsz is lid van die komitee van die Grondwetlike Vergadering (GV) wat die klousules vir die finale Grondwet oor die Reserwebank se onafhanklikheid sê.

Dr. Jacobsz het gister dr. Stals se brief op 'n vergadering van die komitee versprei.

Die African National Congress (ANC) het verlede week onverwags voorgestel dat onderskei word tussen die sentrale bank se "operasionele onafhanklikheid" en sy "doelwit-onafhanklikheid".

Met "doelwit-onafhanklikheid" word bedoel die vryheid om te besluit wat met die monetêre beleid uitgerig wil word. Die "operasionele onafhanklikheid" is die vryheid om enige instrument van die monetêre beleid in te span om die gekose doelwit te bereik.

Die ANC het voorgestel dat die Reserwebank se "doelwit-onafhanklikheid" ingeperk word. Die ander politieke partye het heftig kopsie hierteen gemaak. Toe is besluit om die saak vir 'n week te laat oorstaan.

Vrydag het dr. Stals die volgende brief gedikteer:

"Ek wil dit graag op rekord plaas dat die veranderinge wat die temakomitee van die Grondwetlike Vergadering (GV) nou aan klousules 196 tot 197 van die Oorgangsgrondwet oorweeg die onafhanklikheid van die

sentrale bank ernstig aan bande sal lê.

"Dit sal ook in stryd wees met die bedoeling van die Grondwetlike beginsel 29.

"Die voorstel dat die Reserwebank in al sy bedrywighede eers die instemming van die Minister van Finansies moet soek, sal 'n onhoudbare situasie skep wat die bank magteloos sal laat om sy doelwitte na te streef.

"Die alternatiewe voorstel, naamlik dat onderskei word tussen die bank se 'operasionele' en sy 'doelwit-onafhanklikheid', sal moeilik in die praktyk deurgevoer word. Dit is 'n teoretiese en akademiese skelding wat tot 'n eindelose debat kan lei oor waar die lyn getrek moet word.

"Dit kan ook tot onnodige wrywing tussen die bank en die Regering lei wat die vertroue in die monetêre beleid kan skend.

"Oor die wêreld heen is die onafhanklikheid van die reserwebank 'n sensitiewe saak. Enige sein aan die buitewêreld dat die Regering terugdeins van die goeie bedoelinge wat in die Oorgangsgrondwet uitgestippel is, kan ernstige nadelige gevolge vir buitelandse belegging inhou.

"Daarom bly die Reserwebank by sy standpunt dat so min as moontlik aan die klousules 195 tot 197 in die Oorgangsgrondwet verander moet word.

"Ons glo dit verteenwoordig 'n praktiese en aanvaarbare kompromis tussen die behoefte aan konsultasie tussen die Regering en die Reserwebank aan die een kant en die wêreldwye druk vir groter onafhanklikheid vir sentrale banke aan die ander kant.

"As die voorstelle aanvaar word, sal dit 'n terugwaartse stap vir Suid-Afrika wees."

Die komitee het gister besluit om nog menings in te roep. 'n Voorlegging sal in die eerste week van aanstaande maand deur dr. Cyril Rustomjee, die tegniese raadgewer van die komitee, gedoen word.

/ Bus. Day

## Too much power could compromise auditing — Erwin

Adrian Hadland

CAPE TOWN — A government initiative to introduce more effective internal auditing procedures could be compromised if the public administration commission was given too many responsibilities and powers in the new constitution, deputy Finance Minister Alec Erwin said at the weekend.

According to the latest multiparty proposals, which were tabled before the Constitutional Assembly on Friday, the commission would replace the Public Service Commission as the regulator of state personnel and management practices.

The proposals stated that the new commission would be made up of 11 commissioners, including one representative nominated from each province, and would have advisory and monitoring roles.

Erwin said it would be "a mistake" for the finance department and the commission to have similar monitoring powers.

Government had agreed recently to increase its monitoring of all activities but particularly to boost its internal auditing procedures, he said.

Until the actual functions of the new commission had been decided through legislation, rather

than through the constitution, it was unwise to be overly specific about its tasks and composition.

The rapidly changing economic environment demanded a public service that was capable of flexibility and speedy adjustments, Erwin said.

"We have to introduce procedures in government that identify things as they happen," he said.

The current structure was not built for change but for rigidity.

Only the principles of the commission's purpose and functions should be included in the constitution, he said.

Even the number of commissioners should be left open.

Meanwhile, all political parties agreed that there was a need for the constitution to allow a limited number of political appointees to be brought into the public service.

The appointment of ministerial advisers, directors-general and other members of the senior management echelons would be permitted only on a contract basis.

This approach was supported on the basis that it allowed for lateral entry to the public service and accordingly strengthened and improved management expertise and capacity, a report said.





By BRUCE CAMERON

POLITICAL EDITOR

Organised business believes that only by underpinning a free market economy will the government be able to tackle the major problems of poverty and unemployment facing the country.

This was the fundamental point raised in a two-hour presentation to the Constitutional Assembly on the principles business wanted a final constitution for the country to be based on.

The business community, divided by many issues, pulled itself together over the past few months to draw up 12 "guiding principles" which it presented to the Constitutional Committee yesterday.

Joe Hlongwane, the delegation leader and Nafcoc president, said that although there were differences in presentations made individually by sectors of the business community to the assembly, the proposals were a reflection of common ground reached by business.

In a two-hour hearing, members of the delegation were closely questioned about a number of issues, particularly the principles of a free market economy and whether some rights, such as property rights, should be fully protected under the constitution when there had been a history of injustice.

The 12 principles include issues such as extending the Bill of Rights to cover companies as well as ordinary people and limitations on government profligacy. These issues are likely to be extensively debated in the months ahead.

The business delegation did not appear to be in total agreement on having "an open market economy characterised by competition ..." written into the constitution.

But it repeatedly made the point that only with a free market system could the sustainable economic growth be generated that would enable the country to address problems of poverty.

## Business unites to present its guidelines

In the presentations and supporting documents, organised business also repeatedly said that addressing the needs of business was the same side of the coin as addressing poverty.

In its introductory document, the delegation said: "Our vision for South Africa is one of peace, democracy and freedom from poverty that afflicts the great majority of the country's people."

It said the constitution had to promote the engines of growth, namely, a vibrant market, embedded in a healthy civil society, and supported by an efficient government.

"In addition, both growth and the alleviation of suffering require that the constitution advances certainty in law and property rights and an end to anarchy and violence."

The delegation said there was a unity of interest between people who lived on the margins of society and investors.

Bobby Godsell, Business South Africa delegate, who opened the presentation of the principles, told the committee that the constitution should not be a shopping list of every requirement of every interest group, including business, and neither should it seek to embody the programme of the government of the day.

But it was vital for a constitution to spell out a vision of society and for civil society to be recognised in the constitution and have access to it.

For this reason, the constitution and the Bill of Rights should apply to all of civil society, including interest groups and business, where appropriate.

For example, the Bill of Rights had

significance for unions, churches, business and women's groups in areas such as equality before the law, protection from discrimination, privacy, access to information, the right to economic activity and the right to property.

In arguing for the government to consult with civil society, Godsell said consultation "must in no way limit or undermine the powers of government", but he warned the government alone could not achieve the desired goals of society.

Raymond Parsons, South African Chamber of Business chief executive, told the Constitutional Assembly that economic policy could not and should not be written into a constitution, but the constitution should provide safeguards to protect a market-related economy.

He said property rights and legal rights of contract could, for example, be undermined by hyperinflation caused by monetary and fiscal indiscipline.

Parsons said business and investor confidence required as much predictability as possible and the supremacy of the constitution and its effective entrenchment were important for securing a stable political environment.

The principles required were:

- The principle of complementarity between the different parts of society;
- The principle of a market for all;
- The principle of certainty in law;
- The principle of fiscal integrity; and
- The principle of stable money.

These principles revolved around effective devolution of power; freedom to engage in economic activity; property rights; and fiscal and monetary

CONT'D



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## THE 12 PRINCIPLES

These are the principles that business would like to see the Constitutional Assembly use in drawing up the final constitution

discipline. He warned that if primary economic rights, such as property rights and freedom to engage in economic activity, were not secured "there can be no real or lasting improvement in socio-economic conditions in South Africa".

Parsons said these principles did not only apply to attracting foreign investment, but applied equally to local entrepreneurs.

Kader Asmal, the minister of water affairs and forestry, said there were contradictions in many of the principles, such as the jurisdiction of government or a free market versus government intervention.

Godsell said he saw these issues as tensions rather than conflict.

Tensions were evident throughout, including in what was contained in the constitution and in what was left for the legislature, the executive and the courts.

Rob Davies, ANC member of parliament, questioned whether a constitution should be specific on the precise economic system of a country.

Davies asked what the effects would be on parties which did not believe in a free market.

Parsons said it was not so important to define the system as to protect fundamental rights which underpinned the system.

These rights included the rights of person, rights of contract and rights of property.

A number of ANC members questioned whether property rights should be protected because of past injustice.

Walter Scheffler, Afrikaans Handelsinstituut president, insisted that property rights "have to be an absolute right".

"If property rights are not seen as secure then we will not get foreign investment."

He said that if the reconstruction and development programme were to succeed, the economy had to grow and this would depend on foreign investment.

### 1 The Principle of Simplicity

The best constitution for South Africa will be in plain and inspiring language. Its heart will be a set of principles which firmly protects democracy, equality and individual freedoms.

### 2 The Principle of Realism

As the bedrock of the state, the constitution presents a vision for the nation, and guarantees a set of rules for society. A clear distinction needs to be drawn between the kinds of issues that properly belong in a constitution and those issues that are the proper domain of the legislature and the government of the day. A failure to draw this distinction may erode the credibility of the constitution and unduly constrain the legislature and the executive it creates.

### 3 The Nature of the State

The Principle of Democracy and Electoral Accountability  
The constitution must guarantee effective participation by all the people of the country in the choice of government, and ensure that representatives are accountable to the electorate.

### 4 The Principle of Social and Economic Justice

Acknowledging that the prevalence of poverty and related social ills are to a great extent a direct result of deliberate political and economic disenfranchisement, we believe economic and social justice, freedom from poverty and related social ills should be key objectives of the constitution.

### 5 The Principle of an Enabling State

In the pursuit of share growth, economic restructuring and development, the role of the state should be to set a framework and create an environment conducive to private activity. Therefore it should focus on securing civil peace, investing in people, and facilitating the provision of basic social services, while preserving macroeconomic stability.

### 6 The Principle of Complementarity

The constitution must clearly define the roles, competencies, prerogatives, and functions that are best and effectively handled at the different levels of government. The allocation of powers should be matched by the granting of the appropriate administrative and financial capacity at the different level of government.

### 7 The Market and Legal Certainty

An open market economy characterised by competition, with protection against monopolies and collusion aimed at preventing, restricting and frustrating entry into the market by any segment of society, should be guaranteed in the constitution.

### 8 The Principle of Certainty in Law

Investment and enterprise will only be sustained when property rights are certain, contracts can be enforced through the legal system, and flouting the law brings punishment.

### 9 The Principle of Rights for Civil Society

The constituents of civil society — firms, unions, charities, churches, political parties and professional associations — are, where appropriate, worthy of protection under the Bill of Rights.

### 10 The Principle of Partnership

For the national vision to become a reality, civil society must participate fully in a national effort that is beyond the reach of the government alone. It is in the government's interests to provide in the constitution for orderly consultation with civil society, in a manner consistent with the government's right to govern. In this way, a common wisdom can be founded, efforts can be co-ordinated, and unintended consequences avoided.

### 11 The Principle of Fiscal Integrity

Fiscal policy should be equitable, co-ordinated from the centre and prudent. Otherwise the state will eventually become enslaved to foreign and domestic debt. The national government should set limits on the overall tax burden and level of expenditures, national, provincial and local, and have the final authority over borrowing at all levels. Expenditures must be monitored and audited for possible inefficiency.

### 12 The Principle of Stable Money

A stable currency must be ensured through a Reserve Bank independent in law and in fact. The Bank's powers ought to be set out in an Act of parliament, and there should be regular consultation with the minister of finance.



## DP wants control of fiscus enshrined

By BRUCE CAMERON

POLITICAL EDITOR

The Democratic Party wants government to be subjected to constitutional restraints to ensure controlled spending.

The party has submitted written proposals to the Constitutional Assembly asking for the constitution to contain clauses requiring a two-thirds majority vote to allow government to overstep fiscal restraints written into the constitution.

The DP also wants greater transparency regarding the government's presentation of accounts to parliament, requiring the annual budget to contain a balance sheet of assets and liabilities, an accrual-based operating statement of income and expenditure, and a cash-flow statement.

### Measures envisaged

All transactions would also

have to be on-budget and more information would have to be given about government debt.

Measures the party wants subject to a two-thirds majority vote include:

Any shortfall in income over expenditure;

Approval of the cost of servicing debt, if in excess of one-fifth of total expenditure and if total expenditure (current and capital) is in excess of current revenue; and

Allocations to provinces reduced or in different proportions to those recommended by the Financial and Fiscal Commission.

The DP wants all draft legislation presented to parliament to contain a statement on the cost of implementing the legislation.

In terms of the proposals, parliament's permission would be required for government guarantees on borrowing while any discount on government loan stock issues should be amortised over the life of the stock.

Ken Andrew, the party's finance spokesman, said South Africa could become a world leader by including clauses on the fiscus in its constitution.

Most constitutions were drawn up by lawyers concerned with issues like equality, with economic issues virtually untouched.



# DP moots controls on 'debt' Budgets

Tim Cohen

CAPE TOWN — The DP has proposed to the Constitutional Assembly that any government Budget which would result in high levels of public debt or dissaving should require a two-thirds parliamentary majority.

DP finance spokesman Ken Andrew said the party's submissions for the new constitution were aimed at providing protection against the abuse of power.

The proposals state that in three situations, a Budget laid before the National Assembly should require a two-thirds majority rather than a simple majority as required by the interim constitution.

The higher majority would be required if current expenditure exceeded current revenue; if total expenditure exceeded current revenue and the cost of servicing government debt exceeded one-fifth of total expenditure; or if provincial allocations were less than, or in different proportions to, those recommended by the Financial and Fiscal Commission.

Andrew said the proposals fell short of calling for a constitutional requirement that government balance its income and expenditure every year.

Exceptional situations did occur, he said. However, these should place more stringent requirements on the

government to seek wider consensus before increasing national debt.

If the proposal was embodied in the current constitution, the government would probably fall foul of the second stipulation — that the debt servicing cost should not exceed one-fifth of expenditure — and would have to seek a two-thirds parliamentary majority, he said.

Other proposals put forward by the DP include a suggestion that the Budget should incorporate a "proper set of public sector accounts".

These would include a full balance sheet of assets and liabilities, an accrual-based operation statement of income and expenditure and a cash flow statement.

As part of the Budget and government accounts, there should be a full statement of current and outstanding guarantees issued by the national government in respect of loans and other actual or contingent liabilities or other levels of government or parastatals, the DP said.

All Bills laid before Parliament should be accompanied by a statement indicating the cost of implementing the provisions of the Bill.

The party's proposals form part of the submissions currently being suggested by various parties, and which will be discussed by the Constitutional Assembly.

