

TC 6.2

16 May 1995

2/4/6/4/6/10

AG + SARB

Please return disc
when Gent has loaded

From Liz Berry

SECRETARY TO PARLIAMENT, P.O. BOX 15, CAPE TOWN, 8000
SEKRETARIS VAN DIE PARLEMENT, POSBUS 15, KAAPSTAD, 8000

CONSTITUTIONAL ASSEMBLY

DATE: 16 MAY 1995
VENUE: PARLIAMENT, CAPE TOWN

THEME COMMITTEE 6

SUB-COMMITTEE TC6.2

AUDITOR GENERAL AND SOUTH AFRICAN RESERVE BANK DISCUSSIONS

Tape 1 - AUDITOR GENERAL

Chairperson We agreed that this meeting was going to discuss the text on the Auditor General (AG). That was the main item. But the members of the Committee are also aware that the issue of the Reserve Bank (RB) went to the Constitutional Committee (CC) on Friday. As a result of some of the discussions in the CC, the matter has now been referred back to us to discuss the two amendments and one or two other points that came up in the CC. This discussion is supposed to be part of a process of trying to gather greater consensus within the Committee, as part of the preparations for the debate in the Constitutional Assembly (CA) on Friday.

In addition to the item which we agreed on the agenda last week, which is the Auditor General, colleagues will know that the matter of the

Theme Committee 6.2 - 16 May 1995

Chairperson Reserve Bank was referred to the CC last Friday. We have also got an item on the agenda there. Basically there were two outstanding proposed amendments to the text on the Reserve Bank which I was mandated to raise at the CC. We had some discussion at the CC, but the effect of that is that the CC has now referred the matter back to us. To see whether there can be some processive gathering greater consensus prior to the debate in the CA on Friday. The matter will be debated in the CA on Friday morning between nine and one o'clock. Not only this item, other items as well. But the Reserve Bank will be debated in the CA on Friday. We do need to address that item before Friday. I suggest that we follow the agenda because we also do need to deal with the Auditor General and I am hoping that we can deal with both items this afternoon. Otherwise we are going to have to try and find another time this week. So, without any further ado, can we move on and begin to discuss the text on the AG. Does everybody have that text? OK?

I think that everybody has now had a chance to go through that text on their own and, that being

Theme Committee 6.2 - 16 May 1995

Chairperson the case, I think what I will do is the following. I will just call out pages. Page one, page two, page three, and I will ask if anybody has any amendments which they want to propose, relating to the text on that page. Not the footnotes on the page, but the text on that page. OK?

Mr K Andrew As I said to you informally this morning, I don't know where this is leading. What are you asking me about page one? I understand page one. If I were to write it, would I write it differently? Do I want something extra in page one? This is my problem, I don't know what question you are actually asking me when you say page one.

Chairperson OK, let me try and explain the procedure a little more. What has actually happened is that the role of the committee in terms of the Constitutional text has increased. We are now expected to go through quite substantive discussions around the Constitutional text. The draft which we have before us purports to be a text which is written on the basis of our report. Reflecting the views of the different parties and the predominant view

Theme Committee 6.2 - 16 May 1995

Chairperson in some cases. It purports to be a draft text which reflects our discussions. However, as we noted last time, there is an attempt to simplify the language. So where we were satisfied with the language as it is in the Interim Constitution, that language does not necessarily hold because the entire exercise is aimed at simplifying the language.

I made the point several times in the CC that we did not feel ourselves competent as legal people, but nonetheless we are expected to read through the text and make whatever observations and proposed amendments, suggestions, that we want to make.

I am suggesting that since we have all had a chance to read it, if there are additional points, Ken, they would come at the end. We if we could deal with the text as it is and then perhaps deal with that under the headings. You will see it goes

Established, independence and impartiality

At the end of establishment, independence and impartiality if you feel there are additional clauses which need to be inserted perhaps we

Theme Committee 6.2 - 16 May 1995

Chairperson could discuss it at the end of each chapter heading. For the moment could we just discuss what's here and then come back to any omissions.

Mr K Andrew Under page one, looking at independence and impartiality you can simply say it as it has been. The question of immunities and privileges, as are necessary for this purpose, here it simply refers to the AG. Not to his office. Not to people employed by his office. Not to people making statements. In other words, it is a in a very limited area because it is not simply the AG as an individual that needs to have these indemnities. Its all the people helping do the work and give the various evidence and so on.

Mr P G Marais There shall be an AG for the Republic. Then, conceptually, that means, the office, the AG, the whole lot. Otherwise you will put - "There shall be an AG and an office for the Republic of SA". Or something like that.

Chairperson Maybe we could just take that point over as a query of Ken's because I'm not sure whether that interpretation of Org's is right or not. Whether

Theme Committee 6.2 - 16 May 1995

Chairperson it applies to all the employees of the AG's office and everybody who is delegated or subcontracted by the AG enjoys those immunities. It is perhaps not entirely clear. Maybe we could put that as a query to the CC.

Mr K Andrew You see I think its quite clear in various contexts. If you get clause 5 on page 7 it says: "the AG may appoint such persons as may be necessary for the discharge, assign any of his powers, or functions, to such persons, expenditure occurred etc and..". So that is saying, he is not doing all these things on his or her own. But there are certain contexts, for eg, where the President may remove the AG from office, is clearly referring to the individual. This one as well, this is not a power or function of the AG, this indemnity, this is applying to the AG alone. And I think that's inadequate. So I just make that point.

Chairperson Does everybody agree with that point of Ken's? I think myself its a valid point. We want to know whether the word AG covers all employees and all persons that are contracted by the AG. If not we

Theme Committee 6.2 - 16 May 1995

Chairperson suggest that the wording be phrased in such a way that it does apply to them all.

Page 2 - we have a point. The first one I think is very straightforward. Paragraph two - there's a lot of repetition here. I think it could be made more reader friendly by saying: "the AG shall audit and report on accounts and financial statements of the following" and then we don't have: "the accounts and financial statements", again. Then it could read: "all state departments.." and we don't have to have it under B. "the accounts of financial statements of all local authorities", we could just have "all local authorities in control of public funds" and so on. I think there's a sort of repetition there that's not necessary.

Then under 3 - I think that we felt that that performance audit should not be specified in the constitution. That that should be specified in legislation. I think that actually several of us agreed on that when we discussed it. That that clause does not belong in the constitution.

Theme Committee 6.2 - 16 May 1995

Chairperson Then on 4 - we wonder what the word "entitled to" means. The person shall be entitled to the co-operation of all persons. Its a bit of an unfortunate choice of phrase there. And I think it should be put in some other form.

Dr F Jacobsz I would like to make a suggestion about 4 which may clear up some of the uncertainty. To make the thing more understandable. Exactly what should be done and what should be given to the AG. I would suggest you say here "when the AG performs an audit, he or she shall". The thing that I would like to add here is that after "she shall" "have access to all books, records and other documents and information relating to the accounts and statements referred to in this section". If you say that "he shall be entitled to the co-operation" what does it mean. Co-operation could be a very relative term indeed. If you specify that he has to have access to the books and records, then there's no uncertainty about that at all.

Chairperson I think they should also be entitled to have further discussions with the people, so we just

Theme Committee 6.2 - 16 May 1995

Chairperson have it as you say, "have access to the books and records of all entities that have been audited" and "receive" and not "entitled", "and receive any further co-operation as may be necessary". It would meet your point and then add the possibility of further co-operation. The possibility of receiving explanations from people. Not just having the books but also the right to be explained what this or that or the other thing means. I wonder whether that might meet the bill there.

Mr K Andrew I don't have a problem with putting performance audit element in legislation. Whenever one makes a change like that you then rush backwards and forwards in the document. But whether you don't need some enabling provision. In other words, if you say you list the functions the AG, and one of them you haven't listed, is doing performance audits. That would be my concern. That if one were entirely silent on the issue, that the constitution may not empower the AG to do such a thing.

Theme Commitee 6.2 - 16 May 1995

Dr P Welgemoed I would like to ask, that on the same line as what Ken said. Just to broaden it a little bit more. "Wherever request to do so by the president of the parliament". You might have a president that says, I don't want.. Possibly, I'm saying its theoretical, but possible. If it is in here, then is must be stronger, or it must be out. One of the two, for me.

Ms G Marcus Can we not put it into you first line of 1 or "shall comprehensively audit" or "shall audit including performance, where deemed necessary"? I just think that once you're doing that, there are a whole lot of things that come into audit. Performance audit isn't the only question. I just think that it should be the enabling question there, rather than spelling it out. I certainly don't think it should be qualified, because, otherwise, the president is busy, and the AG wants to do a performance audit and needs a month before he gets the response to the letter authorising him. I just don't think we want those kinds of unnecessarily referring unnecessary things. I think it should be seen as part and parcel of his job. I would have thought audit

Theme Committee 6.2 - 16 May 1995

Ms G Marcus covers all kinds of audits. I wouldn't have thought it needs spelling out.

Chairperson I think that's right as well. Also you then have to define what performance audit is. You could go to the constitutional court. You can define it much more acceptably in legislation. The question of whether it should go in the constitution or not? I don't think it excludes that. It can also be defined in the constitution.

Dr F Jacobsz If one understands what performance audits are all about, you'd understand that it doesn't mean that the AG is going to go into a department and give you an assessment of how it performs. Its only focuses in on certain procedures that are adopted in the department. I think Gill is actually right there. With the audit itself, there is an all embracing term which would include this.

Mr K Andrew Back to the thing you mentioned right in the beginning. We're not lawyers. Somebody who drafted that, obviously thought, and I'm talking about even in the original/current constitution,

Theme Committee 6.2 - 16 May 1995

Mr K Andrew besides this one, obviously thought, that if you wanted to empower on a performance audit basis, you had to mention it. I accept Gill's logic, in lay person's terms, or in, accounting business terms. Whether it has the same legal thing, and if it does, why did it come in the first place? In particular, in the existing constitution. They specifically end up mentioning performance audits. So presumably some constitutional lawyer, or drafter, felt that unless you stipulated, then perhaps there was a problem with performance audits and that all audits didn't require performance audits automatically. I am arguing against it on the grounds that, I'm not a lawyer, but I don't think other people are necessarily either. We may think that the word "audit" would permit the other kind of audit, the performance type of audit. But maybe it doesn't and we suggest it comes out, and then we find that in fact the AG doesn't have that kind of authority.

Mr S Nyoka I want to refer members to foot note 9 - where the drafters explain. There is an explanation about "the AG shall conduct performance audits whenever requested to do so by the president of

Theme Committee 6.2 - 16 May 1995

Mr S Nyoka Holland". In footnote 9, "as per ... in block 15 and 16 of the report, we have included these provisions in the draft for purposes of further debate in the TC (Theme Committee). However, we are of the opinion that, the matters dealt with therein, should be left for ordinary legislation and that both sections 2.2 and 2.3 be deleted".

Chairperson I think we're going along with that suggestion, subject to understanding that "audit" would include the possibility of "performance audit" and that "performance audit" can then be specified in legislation. We can say that, that is our interpretation and we will go along with that suggestion subject to those provisos. Is that agreed?

Mr K Andrew Also on page 2. 2.1b - local government. I can't understand what the logic is of not saying, where it says "all state departments and administrations at national and provincial level of governments". Why don't we put "national, provincial and local levels of government". The implication is that in respect of local governments, if they got trust, special or other

Theme Committee 6.2 - 16 May 1995

Mr K Andrew separate accounts, the AG should not be auditing them. Clearly by definition a local government is in control of public funds. In the same way as national, provincial government, you don't have to say "who are in control of public funds". They clearly are.

mike off

Mr K Andrew Well presumably you can have provincial on the basis, and even at local government I would suggest probably gets some public funds to buy some tea for its meetings and print its agendas and so on. Even if it is not running anything.

mike off

Dr Welgemoed Just a follow on question to you or to Ken. Is it not that when there is public funds involved, that that must be audited. Isn't that the point of departure of this whole issue? If not, then I've got problems.

Chairperson We said, and that was the agreement we came to last time, that "national, provincial and local government" - "compulsory" and we said "other parastatals" - "may". That is what we said. I

Theme Committee 6.2 - 16 May 1995

Chairperson didn't agree with that. You may recall? But that was what most of us went for last time. I think the question now is whether there is something special about local government which requires a separate paragraph, a separate heading or whether we just add in "national, provincial and local levels of government".

Ms G Marcus I think that last point is logical. That points that apply to the national/provincial, should apply to the local. Either way, if one took Marais' approach, then B should be out altogether. What you are really saying is, put it in A and it covers all the other aspects of it. The AG, right now, has that responsibility and audits all the local government and I would think that its logical just to put it with it and make it all 3.

Mr P G Marais Yesterday, when we had this workshop on local governments, Mr Boraine mentioned the question of the tribal authorities. Where it is possible, that they are actually only in an advisory capacity, but you bring in the participatory type of government. Maybe we can just check. At this

Theme Committee 6.2 - 16 May 1995

Mr P G Marais stage, I don't think we have local authorities without public funds. My argument, after yesterday's workshop, is that it is possible that you may get some.

Chairperson Could I suggest the following, that in the same way as we did just now, we will say that we recommend that unless there are any overriding reasons to the contrary, we just shove in the word "and local". So we will agree, "national, provincial and local levels of government", and then if there are other motivations for why that should not be, we'll consider it and take it up later on. But at the moment our recommendation is to just put "and local" and then to scrap B. Is that acceptable?

Now I think we've come to the end of the first chapter, "Establishment, independence and impartiality". Are there any omissions or any additions that anybody wants to suggest in this chapter?

We are on the first chapter. We have come to the end of it.

Theme Committee 6.2 - 16 May 1995

Chairperson The next one is headed **Reports** on **page 3**. On page one it is called "Establishment, independence and impartiality". I said we would go through the text and then we would deal with omissions or additions. If there are none could we go on to "Reports", which is on page 3 and then I think we have a couple of points there.

I think that this first one here is a little bit vague and I think our reading, where we talked about it in the ANC group, we understand this to be saying that the AG shall submit reports to national government about national government, local government about local government, provincial government about provincial government and that perhaps others who make funds available have the right to receive these. It seems to be a bit of a shorthand way of saying that and possible not a satisfactory way of saying that. That was our feeling when we discussed that. I don't know if there's other views on 3.1.

Mr K Andrew I agree with you, it would be longer. But I think it needs to be spelt out.

Theme Committee 6.2 - 16 May 1995

Chairperson So shall we suggest that? Is there any objection to that?

The second one, "all such reports shall be made public". The legislation which we're dealing with, on the AG, actually make some exceptions, secret accounts and things of that sort. So there's an issue there.

Mr K Andrew I think, in that sense, the law doctors his report. The report still becomes public. So in other words, the law we've been considering, that AG amendment bill, gives what it amends, you always have had some authorities. It gives him authority to use his discretion in what manner he reports. But once he has actually reported, the report becomes public. I don't know, maybe you are interpreting that every single thing he finds to be reported. So again its a kind of quasi legal thing. There are no reports of the AG in terms of the current law that are not made public. Its what kept out of the reports.

Dr F Jacobsz Just to follow up on that point. I feel that we should put some time limit here, to it as well.

Theme Committee 6.2 - 16 May 1995

Dr F Jacobsz Because the interim constitution states that these have to be submitted to parliament within 7 days after received by the such authority.

Chairperson Can we come back to that when we deal with omissions? Can I just clear up this point about the reports being made public. Ken has said the report itself will be made public but the AG has discretion to leave certain things out, will leave certain details out of the report. Can we say, if that is the understanding, we accept it? If, on the other hand, it means that all the details have to made public, there is some conflict with the legislation. We draw this to the drafter's attention. Shall we do that? We leave it like that?

Now let's take Francois point. You want to say that there should be a time limit?

Dr F Jacobsz Yes. Why I'm saying that. This is going back to experiences that we've had about this. That sometimes when a report is submitted to its specific department, because of certain problems that they have with it, that report can stay

Theme Committee 6.2 - 16 May 1995

Dr F Jacobsz behind for up to 9 months. Before its submitted, and sent back to us. I think that once the AG has written that report there should be a specific time limit, to say look, we've given it to the department, but within a specific period of time, we're submitting that to parliament.

Chairperson Should that be in the constitution or in legislation?

Dr F Jacobsz Well, you've asked me the question which is absolutely relevant here. I wouldn't put this into the constitution. I think that can be done in legislation itself. If we want to simplify the constitution.

Mr K Andrew I concur with problem that Francois highlights. The slight difficulty I have. All of this is at the AG's discretion, so unlike the past. If you went back 6 - 8 years, where there were different kinds of difficulties of, in effect, departmental interference in AG activities. That, to the extent that the AG is strong enough, the AG is protected under this situation. If the AG doesn't want a report to become public, too quickly, all

Theme Committee 6.2 - 16 May 1995

Mr K Andrew he or she needs to do, is simply describe it as a draft report, and send it to the department. It is a very easy way to beat the system, if the AG wants to hold back until he or she has got the agreement of the department or whatever. So I'm not quite sure to what extent, it would help us. Because it the AG, for eg, who tables it in parliament. Once its tabled, then you want it to be made available, say within a short time, and that kind of thing. But I'm not quite sure whether putting a time limit in here, or even in the law, would actually overcome the problem which is a real problem, which I share with you.

Dr F Jacobsz The reason I'm thinking about that is. If a department wants to hold back on certain information, and there's no time limit to this. It does present us with a problem. On the other hand, if there is a time limit, there's nothing to stop any member of parliament putting questions to parliament about the progress being made about the evaluation of such and such a report. It puts pressure on a specific departments to come forward with the information that we want to see there.

Theme Committee 6.2 - 16 May 1995

Chairperson The question I asked earlier on. We say that this is the subject for legislation. We're not saying this should go in the constitution. Are there any other amendments or additions or omissions in this section on reports?

In that case, can we turn over to page 4 **Appointment.**

If we could deal with 1, which has actually been left pending. It has been put on page 5 - options for appointments. I actually must say that I think that the drafter misunderstood the submissions because the first option which is supposedly the ANC, DP, ACDP and PAC, would have the AG appointed after the nomination is approved by the National Assembly and the Senate. I actually don't think anybody disagreed with the two thirds majority. That was when I read through the table of submissions. That nobody disagreed with the two thirds majority. So I think that this one here, as a separate option in clause B from option 3, is wrong. I think that everybody agrees with the two-thirds majority. In other words the phrase as it is written in B of option

Theme Committee 6.2 - 16 May 1995

Chairperson 3. I think there were some differences about the process in A, not in B. If I can just say what we felt in the ANC about this. We felt the following. That, first of all there were a couple of points which cropped up in the discussion in the CC the other day. Which was when we start saying things like, joint committee of the houses of parliament. It actually pre-empts a whole discussion which hasn't taken place. Whether parliament should have a joint committee or another committee is the prerogative of parliament. So you should actually just simply say a committee of parliament. We should not specify in a joint committee, in any sense like that. You should just say, a committee of parliament. We were happy to consider some formulation like, nominated by a committee of parliament after consultation with the Audit Commission. That was the sort of formulation we were thinking of putting in there.

inaudible

Chairperson Another point which is also true, unless, if it is a committee of parliament, we should not

Theme Committee 6.2 - 16 May 1995

Chairperson confine in the constitution the nature of the committee of parliament. Unless we just simply say, nominated by a committee of parliament. Its up to parliament to decide which kind of committee it wants to have.

Dr F Jacobsz The Audit Commission is not a committee of parliament. It is a statutory body which was established by legislation. The members are nominated.

Ms G Marcus My feeling on it is, that if we're going to bring in the audit commission, we're going to have to define the audit commission in the constitution itself. You can't bring it in without that definition. I think that the AG is accountable to parliament. That's how he places his reports. Therefore, I would have thought, its sufficient to say nominated by a committee of the houses of parliament, as it is there, with the two-thirds majority. Because obviously then you're able to consult the inputs in terms of the nominations. I don't think that one should limit it to an audit commission where he's accountable as to who is also going to be responsible for nominating

Theme Committee 6.2 - 16 May 1995

Ms G Marcus the next AG. I'm not sure that that's a healthy way to go. I actually think other people should also be able to nominate. The Audit commission may have a view on it. I would be reluctant to leave it as the audit commission being the one that does the nominating on its own.

Dr Jacobsz May I make this a bit simpler for you. This option 2, is certainly not the National Party's point of view. I don't know where this came from. We were not pushing for the audit commission after consultation. In fact, what we said, that we support the original suggestions made by AG himself, and that refers back to sections 191.2 (a) and (b) as in the interim constitution. Which is a committee of parliament, which is formed, and the two-thirds majority.

Mr Andrew May I add? That was the DP's position. There are two elements. You have raised the element of the two-thirds majority, which has been excluded. The other thing that's been excluded, is that it was a special type of committee of parliament, who is composed of one member from each party represented in parliament, and willing to

Theme Committee 6.2 - 16 May 1995

Mr Andrew participate in the committee. So it was a very special kind of investigative committee because it had no powers of decision, other than recommendation. That changed the character too, in the process that one's looking at. What I'm saying is, that the DP favours the retention of the wording. We can maybe look at some grammatical things, and one doesn't necessarily have to say a joint committee, you could say, a committee. I think the other element is in fact, an important element.

Chairperson I think actually, that was what we all agreed on. Wasn't it? I thought we all agreed on that. So maybe we should just say that its 191 not 2, and they can reword it accordingly. They can simplify the wording but we want to carry that one through.

Apart from that, on page 4, clauses 2 to 6. Were there any points there?

Dr F Jacobsz The very first point that arises here, is as far as I see it, is whether it is necessary to put this into the constitution. I'm talking about 4.

Theme Committee 6.2 - 16 May 1995

Mr Andrew I would argue that it is. There may be little elements that are not. But if you're going to have somebody who is independent and impartial, security of tenure is a very important feature, as with judges. Security remuneration is also a critical feature. Because, if one were to have a government at some stage in the future, which would prefer not to have an independent, impartial AG, what are the kinds of actions or steps that that government could take to impinge upon that? That's why I do think that the security of tenure and of remuneration is important. There may be other elements that are not essential.

Chairperson Any other views?

Dr F Jacobsz It's just a question of what we want to put into the constitution. What goes with legislation. I take his point. Its by exception that we agree with Ken.

Chairperson I said 1-6. There is 7, which is the dismissal. I think here the committee is the same committee as is responsible for the appointment, isn't it?

Theme Committee 6.2 - 16 May 1995

Chairperson So the committee mentioned there has to be harmonised with 1.

Mr K Andrew We made a suggestion, which has not been taken up. At that time we weren't really discussing things in too much detail. It would be very unusual to have a procedure whereby you appoint somebody with certain prescribed mechanisms, but you can get rid of them easier than you can appoint them. Normally if you even appoint on a simple majority, you would need a two thirds majority to get rid of the person. We have agreed that we should appoint with a two thirds majority and I believe that that two-thirds majority, in other words the provisions for appointment, should apply in the provisions of dismissals. Because otherwise you can get in a rather ridiculous situation where two-thirds agree to an appointment and shortly thereafter, the simple majority decide they didn't like that, so they just dismiss and you have the vacuum until you've replaced the person.

Chairperson Views on that? Agreement from the NP? ANC? Agree. We accept that. So the same procedures for

Theme Committee 6.2 - 16 May 1995

Chairperson appointment and dismissal.

Are there any additions to that chapter, which was appointment, qualification, tenure and dismissal?

If not, we move to **page 7** - the last chapter - **Staff and expenditure.**

Are there any points on those 5.1-3?

Dr Welgemoed I would like to support. I mean there might be good reasons. But I would like to support why in the constitution.

Chairperson We're supposed to make a suggestion. Do we want to suggest that this is not necessary in the constitution?

Dr Welgemoed Let's first debate it. That's why I asked the question. I say again there might be good reasons for it. I was on this committee 10 years back, on the AG. In the meantime it changed a lot, new committees came in. I would like to know why did

Theme Committee 6.2 - 16 May 1995

Dr Welgemoed they put it in the interim constitution. Let's get that answer.

Chairperson Hang on, all I'm saying is that we can raise questions for discussion among ourselves. But there's no one else we can ask, in a sense. We must reach some conclusion. So there's a question raised for us to consider. Is any of this necessary in the constitution?

Mr K Andrew Yes, I think it is. Because a constitution is a supreme law. So anything else that is in interpretation a statute or anything else, does not apply directly in that sense to the constitution. Now generally, if a person is going to be allowed to delegate or assign any of their powers or functions, or a body is allowed to do so, it has to be specified, in the legislation, that you have the power to do it. So that its quite clear that maybe the individual themselves, himself or herself, is not going to be doing it all themselves. Therefore, you need the ability to assign and therefore, you obviously need the ability to appoint and make it clear that the AG who appoints those persons.

Theme Committee 6.2 - 16 May 1995

Mr K Andrew In other words, that ends up creating the office. Also, how the AG is financed. Again needs to be stipulated. I think all three of these are necessary here. Otherwise again you have a potential void. If there were a government that didn't want to have subsidiary legislation, you'd simply have one person in the whole of the country who would have to run around and do all the auditing and checking themselves on their own, because they weren't allowed to assign any of their powers or functions. So that's as I see it.

Chairperson OK there a motivation for it to go into the constitution. Does anybody want to counter motivate at this point?

Dr W Botha These are things which can just as well be taken up in the law. I would argue that even if its not in the act of the AG, then it is still implied. I think we're going into too much detail for the constitution. I think the constitution must lay down certain broad principles and the most basic prescriptions but not into logical detail such as this.

Theme Committee 6.2 - 16 May 1995

Chairperson I wonder if we could just leave it like that. We raised the question. When it comes to the CA, there will be lots of other views on this. There will be something to talk about. Any other points in these provisions that anybody thinks need to go in?

Dr F Jacobsz I would like to go back to 14, page 6. This question of the AG holding office in a political party, has been excluded here. I feel that we should retain that provision. If we're thinking of the impartiality and the independence, then I would imagine that that should be factor which could play a role. The note does not come out with a specific recommendation to us. It says it is uncertain whether or not the parties are in favour of the retention of this provision.

Chairperson I do not think anybody has argued that the AG should be an office holder in a political party. But I just wonder whether it is covered by the impartial phrase which is not mentioned in the interim constitution. Independence only, not impartiality. I wonder whether it is covered by impartiality. We could make a specific comment on

Theme Committee 6.2 - 16 May 1995

Chairperson that, that we do agree, I think, that the person should not be an office bearer in a political party. But whether that needs to be specified or whether its covered by impartiality, we will leave it to the legal gurus to let us know. Would that be acceptable?

Mr S Nyoka In fact, if one can relate it to the other drafts that have already gone through the CC, ie the public administration draft, the political report on the question of political appointments into the civil service, specifically said, such political appointments shall not be along party political lines, or ideological affiliations. But the feeling of the CC was that you don't really need that, as long as the intention of the policy maker is clear. That that is the situation.

Mr K Andrew Obviously everything is a matter of degree. We are supposed to be, amongst other things, making a constitution that's clear to the public. We keep saying that we want simple language and that we want things that are understandable etc, transparency, all that kind of stuff. Now we sit as a group of people who have been involved in

Theme Committee 6.2 - 16 May 1995

Mr K Andrew all these matters of various sorts over time. We can't be sure in our own mind whether a particular word means something. If we're not sure then I think we should spell it out. If we're trying to make a friendly constitution. I accept that everything is a matter of degree, so you could say, if you are going to spell that out, you could spell out a hundred other things. But I think, on a thing like that, which is a fundamentally important point. Because as we know, in the respect of the AG, even now, many members of the public, and kind of senior well educated members of the public, not just people who haven't been in contact with government or are not perhaps educated or literate, they think that the AG is actually a government department or part of the cabinet or something like that. So, while I think one can go over board, I think the point that Francois makes is desirable and it makes it more understandable, user friendly to someone in the public and let's say who has something to do with government department, wants to know what's the role of the AG, gets out the constitution, reads in straight simple language,

Theme Committee 6.2 - 16 May 1995

Mr K Andrew they say this impartial, independent person cannot be an office bearer in a political party.

Chairperson Shall we make a recommendation that there should be some phrase to that effect? If there are no further points, may I suggest the following process? Could we ask our technical experts, Cyrus and Pat, who has been taking notes, and lets ask Snakes if he can arrange for some kind of **(end of recording)**

Tape 2

RESERVE BANK

Chairperson **Report back from CC**

Those of you who were here last time will recall that the mandate which you gave me was to go to the CC and say that we are not lawyers. That we read this thing through with a legal lay persons view, although we had some background in economic affairs, and to convey the two issues which were raised and were the subject of that letter which I got from Mr Grove to the CC.

Theme Committee 6.2 - 16 May 1995

Chairperson Now, I did that. We had some discussion about the substance of these proposed amendments, as well as, over the status of the legal opinion which Mr Grove had given. There was a general sense that this was not a binding view, but that it was just one persons' view. It was not necessarily even from him, a definitive legal opinion. We had some discussion particularly around the substance of the proposal which we made. From the ANC side. The mandate which we got from the CC was that we should bring the matter back to the Sub-Theme Committee and we should see whether there was the possibility of some greater consensus around these issues. If you remember the two issues were the following:

1. That if you have got your text on the Reserve Bank here, the first one was that the DP wanted inserted, at end of clause 3.1, "the powers and functions of SARB (South African Reserve Bank) shall be as prescribed by law". And then the DP wanted to add in "such a law shall not derogate from the independence and primary objective of the SARB". The view of the law advisor

Theme Committee 6.2 - 16 May 1995

Chairperson

was that, that phrase was redundant, as the constitution was the supreme law anyway and as the independence of the RB was also covered in clause 1.2. That was the substance of his opinion.

2. The second issue was the issue which we raised about the consultation. And I informed everybody that after our conference, the issue of the consultation, as the ANC wanted it inserted was that the consultation between the Governor of the RB and the Minister of Finance, should be, in consultation, rather than, after consultation.

Now the law advisors said that, that would undercut the independence and then went on to say that if the question was one of wanting the consultation not to be "exposed facto", but also, in advance about policy questions, it could be dealt with by adding at the end of the last line there, the line which reads at the moment, "there shall be regular consultation between the SARB and the Minister responsible for national financial affairs on the discharge by the bank,

Theme Committee 6.2 - 16 May 1995

Chairperson of it's powers and functions and the policy applicable to the discharge of such powers and functions". It was said that you can add that phrase in.

Now when we got to the CC, I said that this partially met our intentions, in that it did allow policy discussions, and particularly specified that, but that it didn't cover another important aspect of our concern. Basically the matter here is that, we make a separation between the issue of "goal independence" and "operational independence". That the interference for partisan political ends, on a immediate short term basis by the government, with the RB, we don't want to see any more than anybody else wants to see. But we think that that is covered by giving the bank operational independence. We want to follow up the views of the conference which was held on the bank in which there was a fair degree of unanimity, that the bank should not have goal independence. This is the independence related to longer term policy objectives. We think here that, that kind of consultation should be binding consultation and we would like a formulation

Chairperson which would provide for that kind of policy consultation, and for that policy consultation to be in consultation with, rather than after consultation. Now the law advisor, Mr Grove, said he would some such suggestion. He is not here. He has not made it. He has not made that at the moment. So there is no text which can be put on the table. But we are supposed to try to get some kind of greater degree of consensus, if that is possible. If not, then we have to go debate it out in the CA.

- (a) The other thing that I think is worth mentioning as well, was that I said that we, in illustrating the lack of capacity of us as lawyers. I made two illustrations. I said that, footnote 2 of the law person had changed "the RB act shall be regulated by an act of parliament to law". We said, well, as far as we could see, that was acceptable. But that we are not sufficient skilled to be able to say whether the important common law considerations, which would come in beyond the statute itself, which may make a difference.

Theme Commitee 6.2 - 16 May 1995

Chairperson b) And the second thing which I mentioned was that the phrase "impartial" was inserted for the first time. "The SARB shall be independent", and that had put in "impartial" and they say that this is necessary because the principle talks about impartiality. There was some debate in the CC by other members about that. Basically, a number of people said that, just because the principle says impartial doesn't mean you have to shove the word "impartial" into the constitutional provision. People raised questions about what impartial mean anyway? Whether that word "impartial" is necessary or not. So that is another point of discussion which came up from the CC.

I think I have more or less, given a report of what happened at the CC meeting. Snakes was there. I don't know if you think there was anything salient that I have left out? Franscois was there as well. If not, can we throw the matter open? I think particularly, the matter of the consultation. Can we throw open to some

Theme Committee 6.2 - 16 May 1995

Chairperson discusssion and debate in the Theme Committee
now?

Dr F Jacobsz I would like to come back to certain of the
points that were raised during the CC meeting. I
have already put a point of view there as to why
this should be "consultation" only and not "in
consultation with". I would just like to put
further point to you, that this question of
impartiality and independence are two very
important principles, which are one of the
principles in principal no, I think it is 29? It
states here that the independence and
impartiality of the public service, the RS and
the AG, "shall be provided for and safeguarded by
the constitution in the interests of the
maintenance of effective public finance and
administration and a high standard of
professional ethics and public service". Those
two concepts have to be accommodated in our
constitution. I would submit further that we have
to be consistent in our point of view about what
independence and what impartiality really means.
We've just discussed, for instance now, the
question of the AG. We have put in this document

Theme Committee 6.2 - 16 May 1995

Chairperson that we prepared here, in clause 1.4, that "it is prohibited to interfere with the AG in the discharge his or her powers and functions". And the note there says, that this section embodies the principle of non-interference, which is a corollary of the principle of independence, in sections 1.2. So the fact that there should be no interference, is a corollary to the whole principle of independence and what I'm arguing now, is that I think we must be consistent to this. We can't take one of these entities which is referred to in principle 29 and treat that in a certain way and another one in a completely different way. The fact furthermore that we are talking about two new things like "goal independence" and "operational independence" are separate issues here which I think have to be debated. I think in that regard we would also require the further evidence from the RB about this. They have a specific point of view which we should address them on. I still think that the way that it was formulated in the document that we laid before the CC, is the correct one.

Ms G Marcus I would have difficulty with a direct comparison

Theme Committee 6.2 - 16 May 1995

Ms G Marcus with the AG's office. The AG's office is investigating how you use your resources. The RB and its strategy has to be part and parcel of what your economic strategy is. If you've got the RB pulling in one direction, and your economic policy pulling in another, you've got a recipe for absolute disaster. Therefore, the question for me is, that doesn't matter what you put in your constitution, if that happens, your country cannot survive very easily. I don't see how it would. So to look at it and to say it's got to be impartial, I would have difficulty with the concept impartial in RB. Impartial in relation to SA, vis-a-vis other countries. Impartial in relation to economic policy of government. How can it be impartial? Because what government does, impacts on it, what it does, impacts on government. So I think that the concept of goal independence and operational independence is actually quite critical to the perception of independence. Because if you don't have a common approach to goal independence you are not going to survive as reserve banks. So I would difficulty simply equating the two. If the feeling is, is that, in order to get a better

Theme Committee 6.2 - 16 May 1995

Ms G Marcus understanding from the RB itself, I think that that should be done. Certainly in the conference that was held, my understanding was that there was full agreement from all representatives of the RB, that they couldn't function outside of goal. Of having the question of operational independence, but that goal independence was something was not possible. It had to be part and parcel of what was government perspectives and strategy. So I don't have a problem, being sort of RB coming along. But I think that logic itself must say that you can't actually do that. I think that you'd have a lot of difficulties functioning effectively if you do.

Mr K Andrew The whole concept of goal independence and all these kinds of words, are moderately loose, as to where goal independence begins and ends and where operational independence begins and ends. To me the critical thing is, that the constitution sets out the primary objectives, which are, protect internal and external value of the currency, in the interest of balanced and sustainable economic growth in the republic. In that sense, that is the goal. That is the RB's job and the goal,

Mr K Andrew

which includes, balance and sustainable economic growth. The RB is bound by that. What other goals is one talking about that are not operational independence. Because, are you saying that the Minister of Finance must be able to say, you cannot lift the bank rate unless I agree to you? Or our goal is to keep the bank rate below 12%, irrespective of what happens to inflation or the money supply. That's my problem. The primary objective is there. This is why, in fact, the RB is in the constitution. So that they have that power to pursue that primary objective. Assuming you have a primary objective such as this, I have a problem, in the first instance, of understanding what goal independence is. We have got three terms that have been used: **primary objectives**, which are in the constitution; **goal independence**; and **operational independence**. I have got a difficulty in my own mind, in distinguishing. Clearly I can distinguish between operational independence and primary objectives. But each of the others, I have difficulty in distinguishing between the two. I favour the formulation that has been proposed. I think it's appropriate. I think words like "independence"

Theme Committee 6.2 - 16 May 1995

Mr K Andrew and "impartial", are required by the constitutional principles, and I think all words have to be seen in a context. In the same way as independence, the RB isn't outside of the law. It cannot ignore the bill of rights, and all sorts of things. So its independence is limited. But its always in a context, and that of course one has to accept. I think impartiality in that sense, also means, in effect, without fear, or favour, of one or other group. It pursues its primary objective. So it is not only independent, it is not interfered with. In doing it, it is impartial.

Chairperson I don't sense we are any closer to any consensus and I don't think anybody is convinced anybody at this point.

Mr S Nyoka I just wanted to make a point which came from the Chairperson of the CA. He was very impressed with the engagement that took place at the level of the CC. It largely involved the DP, ANC and NP, around some of the issues that have been debated here. The feeling is that, if those debates take place at the level of CA, it will present an

Theme Committee 6.2 - 16 May 1995

Mr S Nyoka opportunity for the members of the Assembly to understand what the debates are. His feeling, and that of the Executive Director, was that if it cannot be resolved here, these points are taken further and debated. That would be a way of bringing more people to the process and making them understand what the issues are. That is the point I wanted to bring to the attention of the members.

Dr Welgemoed The question is, when we debated it at CC, is it coming back to us again? Or where is it going from that moment?

Chairperson I can't really answer that. Except, I think one of the things, yes it is important point that Snakes made. At several stages in the discussion at the CC, they said they didn't want the CA to be a rubber stamp, where people came along and gave said piece speeches around the kind of agreed position. That there should be substantive debates in the CA . That was one of the points that was made repeatedly. They also said something about an interactive process. I don't know how its going to be structured. We're not

Theme Committee 6.2 - 16 May 1995

Chairperson just going to have one list of party speakers, one after the other, but somehow or other, every party is going to be catered for in terms of the time allocation. I don't know how its going to work. I also don't think we're going to vote on it, at the end of the Friday session. So it could very well be that there is a possibility of it coming back to the TC again. It may well be possible that we can interrogate the governor again. I do think there is a distinction that can be made between goal and operational independence. I do think it relates partly to the planning, forward planning, and to the odd day to day decisions. I think the other point is that, in consultation, in so far as monetary policy is concerned, would be both ways. Therefore the Finance Minister would be bound by the same agreements, which the bank is. In effect, in consultation as well. So I think that what has been said here is, that you would have to two institutions agreeing on a framework. That framework would be then established and binding on both of them. Then there is the independence, on a day to day basis. For example, it is 3 months before the election, and the bank rate, as

Theme Committee 6.2 - 16 May 1995

Chairperson Franscois and Willy said in the CC, and both of them know better than many of us. They said previous governments used to do this. Phone up the governor and say, well, you know, don't raise the bank rate because the election is going to take place and it won't look good for us. That is the sort of thing that I would regard as operational independence. It is that kind of thing, that I think that the RB should be insulated from. But not necessarily, that it should have some individual up there who has a completely different approach to macro economic policy, and you have the two institutions pulling at one. You want to have a process in which they are each able to influence the monetary policy, and then reach an agreed framework, particularly about future conduct. I think that the distinction therefore, is an important one. But perhaps, as Snakes said, we don't need to resolve these questions. I think we can report back that we debated the matter, at the level, and that we would prefer to reserve all our positions for discussion at the CC and perhaps subsequent consultations.

Mr P G Marais If you look at RB law, where the prime objective is basically to maintain price stability, and via that, growth. It is around that question, of maintaining price stability, that I believe, is a goal, and a goal of utmost importance. If you take the American situation, where you have a constant conflict between the treasury, that tend to spend too much, and allow a deficit to build up, and the Federal RB, that tries to maintain price stability. It is possible that we will get the same. In economic history, you have in many countries. You have it in Germany, where RBs say, our job is price stability, so we increase the interest rates or we move onto the money capital market, to obtain the objective. Whereas, your Minister of Finance is definitely far more under political pressures. Also in history, I remember Mr Havenga, also other ministers, started to spend before an election. (Interjection). I did a part of my PhD thesis on it, what Havenga did. Therefore, we mustn't have, we can't follow an approach that we must have, always close co-operation. Yes, we work together, but I think we must give the RB the possibility of, or not the possibility, must always go for price stability.

Theme Committee 6.2 - 16 May 1995

Mr P G Marais Otherwise we put the RB under pressure that makes it impossible to follow the right monetary policies.

Dr Welgemoed If this is going to be debated on Friday, I don't want to say anything more. I would "rather keep my powder dry". So I have got nothing further to say.

Mr Rustomjee I attended the RB Conference that is being referred to. Unless it is a different one, because there is no specific date referred to there. The conference that I attended was at the RB, spread over 2 days, had two days of discussion about the content of what we're discussing now, different types of objectives of the RB. The impression I got very very strongly was, that there was, most of the things that we are talking about here, there was consensus about, coming out of that conference. That there were very distinct areas of goal and operational independence of the RB. That these were recognised areas of difference and clarified, in very considerable detail, at that conference, what they were. Papers were distributed. My

Theme Committee 6.2 - 16 May 1995

Mr Rustomjee suggestion would be that, prior to the debate on Friday, that the secretary obtain copies of that. Some people may have been at that conference. It was very detailed. It was very thorough. There were experts from around the world participating and it really went through this issue in absolute thorough detail. It was very valuable and it would serve as useful input to this.

Chairperson I think that is a very valuable suggestion and I am just trying to work out the mechanics of Pat getting them ready and getting them distributed.

Mr Rustomjee The critical thing that I would like to emphasise is that the RB itself, after two days of deliberation, came to a common understanding with those who were advocating the separation of these two types of objectives. There was a sort of a consensus, saying, that there are these two types of objective. They should be kept separate. They should be understood better, so that, when one is debating them, all the various sub-categories of what is intended in each of those two boxes, are elaborated on. The ultimate conclusion, after

Theme Committee 6.2 - 16 May 1995

Mr Rustomjee brain bashing, was that there are these objectives.

Chairperson Cyrus, could I just put upon you? I don't know how many papers there were? But could I just put upon you as a technical expert, to select a couple of them? If I am not wrong, I think I saw one which was a kind of a summary of the conclusion. Yes, that right, Krefs' thing. Is it possible to just put together one or two papers? As a matter of some urgency and circulate them to all members or give them to Pat, so that they can be circulated to all members before Friday. So that we can have an, as informed a debate, about this matter, on Friday, as possible.

Mr K Andrew Two points. One on this. I think that is a good suggestion. I would like to ask Cyrus if there was a paper suggesting that that was an inappropriate thing to do. We also see that. Not just the two best ones that argued in favour of it.

Secondly. Could we also, when we are distributing things, don't smile Mr Chairman, the opinion from

Theme Committee 6.2 - 16 May 1995

Mr K Andrew the legal advisor, Grove. Could that also be distributed. I have had a casual conversation to an attorney who took a different view to him. But I didn't have his actual thing.

Chairperson It was last week. If you haven't got it, Pat could get it to you. That one page paper. Grove's paper.

Mr S Nyoka I tried to get a copy on my way here. If you recall, at the CC meeting, Mr Grove actually said he had prepared that document for purposes and that he would work on a comprehensive opinion. So when I went to his office to see if it was ready, I was told it will be part of the CA documentation, that will be circulated to members for the meeting on Friday.

Chairperson That must be in advance. We do not want to walk in there and find that there is a definitive legal opinion which substantially influences our discussion.

Mr K Andrew Also, might I say? I don't know how the process is going to unfold, but I did undertake to get my

Theme Committee 6.2 - 16 May 1995

Mr K Andrew own legal opinion. To see whether we accepted his opinion, which would then remove that as a point on contention. So it doesn't help me simply to get a longer opinion of his. Well it does, but I need more time. I am happy to wait for it. As long as the sub-committee is cognoscente of that. So you don't then ask me on Monday what's now the DP's opinion on the subject.

Chairperson As soon as possible, can we circulate that.

Mr S Nyoka The documents will be circulated tonight or tomorrow morning at the latest.

Dr F Jacobsz Must it be debated on this Friday?

Chairperson This was a decision taken by the CC.

Mr Rustomjee A question about the circulation of the RB papers. If I don't have those papers, I certainly know that the summary report by the people who organised that conference, did pass my desk about three weeks ago. Can I make a copy of that as the summary of what took place in the conference? And

Theme Committee 6.2 - 16 May 1995

Mr Rustomjee certainly if I can find those other papers,
circulate those?

Chairperson Do the best you can.

I think the debate is a bit outside our hands. What happened was as Snakes said. There were also some discussions out the public administration people as well. One of the other TC sub-committees. They decided, as we said earlier on, that they don't want just finished positions taken to the CA. The CA must be interactive, and all that.

I hope we get some details as to how this debate is going to be structured. I am not sure whether I am supposed to report as a Chairperson of the discussion of the chair or whether I am supposed to participate in the debate, for example. There are a few things like that and presumably we will be informed by our Whips or something about how the parties are going to participate. But it is supposed to be interactive. That was the theme. So it not going be just like the National

Theme Committee 6.2 - 16 May 1995

Chairperson Assembly, supposed. But how it is going to work,
I don't know.

Mr K Andrew What time of the day is this? From when to when?

Chairperson 09:00 to 13:00. It is not all on the RB.

Mr P G Marais I am worried that, for the first time today, here
is a clear difference of opinion between us and
the ANC, in regard to the RB. That's what I feel.
In regard to long term objectives and
operational objectives. I don't think that we
ever discussed it in depth. This whole problem.

Chairperson You're right. I explained the circumstances. We
discussed the matter at our constitutional
conference, after we made our original
submission. I explained that, at various points
along the way. I certainly explained it when we
received this draft. That's where the issue has
arisen. But we didn't have a substantive
discussion about it. Except from that point
onwards.

Mr K Andrew I plead guilty to drowning under paper. The point

Theme Committee 6.2 - 16 May 1995

Mr K Andrew you make now is absolutely correct. Can you just confirm? Have we got the actual ANC proposal in writing? Have we received that? What you are actually specifically proposing? I know the general thrust. Is there an actual amendment that you have proposed? The ANC?

Chairperson Well what we did was, the same point was made by the SACP, and we took that position forward. But we now refined it in a discussion. That's what we've done. We refined it in the discussion, to the issue that we're talking about now, the goal and operational independence. We've refined it.

Mr K Andrew It would be useful. Obviously, it is at your discretion. I can't tell the ANC what they got to do. It would be useful to actually get a piece of paper which says the ANC. Our own says, the DP proposes that the following words be added. That we say that, such and such a clause, be deleted or amended, to read as follows. And then one knows exactly what one is debating and talking about.

Chairperson Well we hope that we can do that. And we hope

Theme Committee 6.2 - 16 May 1995

Chairperson that we can do that in the next few days. I mean produce a text which we would propose. I think it would partly incorporate the words which Grove has suggested and we might want to add a proviso. Provided that the consultation over goal. That will be the sort of thing.

Mr K Andrew Those words goal independence. Are you not planning to qualify them or describe them in any way? Just using those words as such in the constitution?

Chairperson We'll have to discuss with legal people how that might be formulated.

Dr F Jacobsz There's so much of this discussion about the RB and the way it functions, the way it formulates its monetary policy, the way it works in the capital markets, which is highly technical. I think that, in order to understand what sort of role the RB should play, and to what extent its impartiality and its independence and its importance, will depend to a very large extent on a debate on those technical aspects. So that we can understand how this is formulated and what

Theme Committee 6.2 - 16 May 1995

Dr F Jacobsz role political policy would play in this. That leads me to the thought that, I think this debate on Friday is premature. If they want us to put on a show, yes sure, we'll do it. If it really is a question of coming to some sort of consensus on how we can structure the provisions related to the RB and the constitution, then they should give us, in this specific theme, sub-theme group, more opportunity to investigate this more thoroughly. That could only be postponing it for another week or so. So that we can really get our teeth into it. Let me just say once again. I'm extremely concerned about political influence in the RB. And its not because I have some ideological thought about this. Its because we went through this in previous governments. And therefore, I think its extremely important, if we're going to write the constitution now, that we have the opportunity of discussing this and investigating it in detail, before we go along to the CA to debate this.

Mr P G Marais What is worrying me is that we heard about the ANC's change in views after meetings of this committee. After formal submissions. And that

Theme Committee 6.2 - 16 May 1995

Mr P G Marais makes me worried, that how many of, what we accept, may be changed on the way, to another committee. I personally believe that it must first be discussed here in detail, and we must differ here. Its the first, that I heard, that the ANC decided to accept the Communist Party's approach to the RB. Today.

Chairperson I can only say that you must not have been listening at some stage, because it was certainly made clear at a number of meetings that we had previously. However, let me just take on board Franscois's point. Franscois is suggesting that we make a proposal that it is not tabled at the CA this week. That we go through a further process in the TC. Can I have reactions to that?

Mr K Andrew I think we generally function quite well generally in parliament on the financial and economic things. Obviously we end up with our differences. But we don't go as grandstanding for the first option and serious discussion as the second option. We tend to go the other way around. I would endorse that.

Theme Committee 6.2 - 16 May 1995

Mr S Nyoka

Maybe to state the objective of the CA meeting on Friday. I think the aim is not really to take a formal position on the final constitutional formulation and say public administration or the RB. But the aim is seen more as reporting to members of the assembly broadly. What is happening is the TC is seen as not representative of the entire assembly. And for a fairly long time the CA has not been convened. The purpose of that meeting is essentially to go and report back and maybe even to say whatever is coming up now, or whatever the TC are doing, in terms of the CA resolutions, they're not necessarily final positions. Once the first draft text of the constitution is completed, again there would have to be a process of consulting with the public. In terms of which the stakeholders again might come up with influence and particular positions. So that's the context in which the CA meeting on Friday has to be seen. Its not there primarily to force parties to come to a consensus position. But essentially to go and report back what has been taking place. And the drafts. As you see it is going to be called second draft to the CA. It can end up being a tenth draft. So it is not

Theme Committee 6.2 - 16 May 1995

Mr S Nyoka really a policy making or policy will be taken on
a decision on policy will be taken on that day.

Ms G Marcus I will have a lot of difficulties with that
approach. I think the issue is actually for us to
discuss in this committee. I think that from what
Comrade Snakes is raising, I would feel that we
are doing is sort of going through motions of
trying to have to prove why we exist. I think the
issue is to find a resolution. And if that means
sitting in this meeting and having the RB in and
discussing, let's do that. But I would feel that
that meeting if that's the reason given does not
serve any purpose and should not be held.

Dr Welgemoed I will like to go along with Gill. We can rather
come here and carry on with Grove, for example,
and ask him specifically. You gave us a first
draft, summarising it, now come and talk to us.
Don't give us only papers. Explain it to us and
then we can say to Stals, that's what the legal
people are saying. It will serve much more
purpose. But just to have a meeting because there
was a meeting long ago - that does not serve
really the purpose. Why do we have TCs? I would

Theme Committee 6.2 - 16 May 1995

Dr Welgemoed like to go along with Gill and Francois, that we take our view from the CC, on Friday. That we carry on with our debate, that is more fruitful than stand there and put view points that are really not view points of ours at the moment. Because we haven't got the background music yet.

Chairperson Can we first of all see if there are any contrary view to that. That we ask not to debate it in the CA on Friday. Is this the thrust of it?

Mr B Nair It is not an opposing view. Just to allay the fears that were raised, that the ANC has gone back on the submissions that were made. Our position is quite clear. It is on record. The various positions take by the ANC on issues. These are all verifiable. You could actually go through them. And there's no problem about that. Now what this whole thing turns on, is the issue of partiality or impartiality of the RB, and whether we are going to accord or do we actually want to encroach on what is proposed as the RB being impartial. There's no question about it. We want the RB to be as impartial as possible. But in practise, if right from the time of .. or Adam

Theme Committee 6.2 - 16 May 1995

Mr B Nair Smith go through it, there's been very close collaboration between the fisc and the RB. And now you take even the very good old days of the early days of the institution, banks collaborated with government. Now that is the position here. Now anything that the RB does or does not do impinges, impacts on the general economy. Now I'm not in the least suggesting that we should actually interfere with the -

Chairperson Sorry to cut you - if we don't meet in the CA on Friday I'm going to suggest that we meet on Monday. Just before people go.

Mr B Nair Just to tickle the submission, some of our colleagues here, what we should actually do is to think about vested interests. That actually vested interests, apart from state interfering with the impartiality of the RB, vested interest, which actually solicit favours from the RB. There have been very good examples of that. The deputy governor of the RB for instance. Let me now not cause, start a, stir up a hornets nest. Now others, you take, big business or you take, others, are constantly lobbying the RB. That's

Theme Committee 6.2 - 16 May 1995

Mr B Nair the truth about it. There is no concrete evidence for this. So the impartiality is just, has to be tested really. These are some of the things that we'll have to bear in mind when we are talking about. I am wholly in agreement. But the RB itself cannot be regarded in our circumstances, or in anywhere else in the world, in the capitalist world largely, as being wholly impartial. There has to be constant collusion or constant interaction between the fisk, the Ministry of Finance and the RB. And this has been the practise. Up to this day. I think.

Chairperson Can I suggest that? I think that we? I don't think that anybody wants to argue now that, or at least there's sufficient consensus to use this term, that this subcommittee should suggest that the matter not be tabled in the CA on Friday.

Mr S Nyoka Just regarding the aspect. Is the meeting saying the whole report on the RB shouldn't be tabled on Friday? Or that the issue that.

Chairperson No. The whole report. Because the moment we table the whole report we've got to then report on this

Theme Committee 6.2 - 16 May 1995

Chairperson debate. I don't know how that's going to be received. But that's what everybody feels here.

Mr S Nyoka I understand that from the point of view of the TC. But the problem might be that the CC took a decision that it is going through. And as I said earlier they're just in the process of printing those documents, to circulate them to members. And that report would definitely be part of that documentation. So I'm not sure if they would accept that. And in the event of them not accepting that, I think a practical way out of the situation would be, in the preliminary comments by the chairperson, he may maybe indicate that there's this debate that has not been resolved and its not going to be opened for discussion.

Chairperson Well if "force major" intervenes in that way, do we agree that I try to handle it in that way then? That I say that there is a debate going on? But our first preference would be we would ask Snakes and Pat to convey that we would rather it was not tabled. I think we need to Monday. I do not know what the slot is but I have

Theme Committee 6.2 - 16 May 1995

Chairperson a problem at 09:00 on Monday. There is a group of Mozambican parliamentarians. I have to give them an introduction to parliament. So if it could be either 11:00 or 14:00 or something like that. We could just ask the chair. What I would suggest we do at that point, is the following. That we receive in advance the documentation on goal and operational independence. And that we will have to come along with a suggested wording. Which I think we will probably only bring to the meeting as such. And I think we will debate the matter among ourselves. I must say, I have some problem. I think that at a later stage we might get the reaction of the RB. I think it is, a reaction, among others. I would have a problem myself, with the idea that we must call Dr Stals in and throw the alternatives, and whichever one he likes, carries. I think that that would not be the way we should deal with it. So I think how we bring in the RB, if we bring in the RB again, I think is something we need some further reflection on. I think the meeting on Monday should be among ourselves. And we debate and we take whatever independent counsel we want. But we debate this issue of goal and operational independence.

Theme Committee 6.2 - 16 May 1995

Chairperson Whether there can be some distinction made in the constitution. How that distinction can be written into the Constitution. I think that is basically the issue. Is that agreed?

Mr P G Marais Two points. Let's make it 11:00. And then we ask Advocate Grove to be here also. Because, I would like, if it is 11:00. Lets make it 11:00 but then say to Grove to be here. So that we can discuss with him certain issues.

Chairperson OK. I think thats fair enough as well. What time do you want to make it? We've got finance at 14:00.

End of meeting

End of tape