

EMBARGOED UNTIL TABLING IN THE NEGOTIATING COUNCIL

**SEVENTEENTH REPORT OF THE TECHNICAL COMMITTEE
ON CONSTITUTIONAL ISSUES TO THE NEGOTIATING
COUNCIL
20 OCTOBER 1993**

1. INTRODUCTION

This report deals with Chapter I 1, Finance. Provision has to be made for the transfer of assets and liabilities from the existing administrations, some of which will cease to exist under the new Constitution, to the new administrations, some of which will only be established under the new Constitution. Provision also has to be made for the operation of a national revenue account and the control of state expenditure, for the appointment of an impartial and independent Auditor General, and for the establishment and functioning of the Fiscal and Financial Commission.

2. TRANSFER OF ASSETS AND LIABILITIES

- 2.1 The problem which has to be addressed is how the liabilities and assets of the present national administration, the provincial administrations, the administrations of the self-governing territories and the administrations of the TBVC states, if reincorporated, will be dealt with.
- 2.2 Certain functions presently carried out by the administration of the national government will be assumed by the new national government and others by the SPRs. The provinces, self-governing territories, and TBVC states, if reincorporated, will cease to exist when the new constitution comes into force, and functions presently being carried out by their administrations will be allocated partly to SPR administrations and partly to the administration of the national government. In the circumstances the matter cannot simply

be left to the ordinary rules of state succession; special provisions are called for in regard to how the assets and liabilities of existing administrations should be divided between the new national and SPR administrations.

2.3 This issue was raised by us in the Negotiating Council at the time when the provisions of section 119 were discussed. It calls for a political decision which ought to be resolved in conjunction with the problems relating to the rationalisation of the existing administrations and the establishment of the new administrations at national and SPR level.

2.4 A possible solution to the problem is to deal with the liabilities and assets as follows:

- a) All long term liabilities should be consolidated and assumed by the national government as part of the national debt. According to the Consultative Business Movements' report: "Multi-Tier Fiscal Relations: Financing Regions in South Africa" (September 1993) the estimated total debt of the self-governing territories and the TBVC states is in excess of R14 000 million, and the estimated annual interest on the existing national debt is in excess of R13 000 million. In the circumstances this may be the best way of dealing with this problem.
- b) If the long term debt is consolidated and taken over by the national government the servicing of the national debt should be a first charge on the national revenue account. This would mean that the financial allocations to the national government and the SPR governments would be made out of the funds available after this charge has been met.
- c) The assets, rights and short term liabilities of the various administrations which relate to functions to be taken over by SPR administrations, could be vested in the SPR administrations which assume those functions. In that event, all other assets, rights and short term liabilities could be vested in the national administration.

d) During the rationalisation process contemplated by section 119, the allocations of these assets, rights and liabilities could be adjusted by agreement between the national government and the SPR governments in the light of the rationalisation that will take place, and the functions which the various administrations will be required to perform. In the absence of agreement, disputes could be resolved by the Commission on SPR government in accordance with the underlying principle that assets, rights and short term liabilities should follow the functions to which they relate.

2.5 If all liabilities and assets are to be assumed by the administrations of the national and SPR governments, a question which arises is whether any criteria or controls should be specified in regard to the acquisition of new assets, and the incurring of new liabilities, between now and the date of coming into force of the new constitution. If such criteria or controls are required, then it may be necessary to stipulate that assets acquired and liabilities incurred contrary to such requirements, will not be assumed by the new administrations, unless they are specifically ratified and adopted by them.

2.6 There is need for discussion of these issues, and for a decision to be taken as to how the assets and liabilities of the present administrations should be dealt with under the new constitutional order. The Negotiating Council may wish to obtain advice from financial experts on these matters.

3. CONTROL OF REVENUE AND EXPENDITURE

Provision has been made in section 146 for the establishment of a National Revenue Fund from which appropriations shall be made by Parliament for expenditure by the national government. It should be noted that SPR revenue accounts are dealt with separately in Chapter 9 of the Constitution. Such appropriations are required to be made in accordance with the annual budget debated and approved by Parliament. These provisions are more or less in line with existing

procedures and practices relating to appropriation. (Sections 81 (1) and 81 (2) of the 1983 Constitution).

4. AUDITOR-GENERAL

4.1 Sections 161 and 162 make provision for an independent and impartial Auditor-General to be appointed on the recommendation of a joint standing committee of Parliament approved by a two thirds majority of members at a joint sitting of the National Assembly and Senate.

4.2 We have had the benefit of written submissions from the present Auditor-General who, inter alia takes the view that it would be inappropriate to have separate Auditors-General for the national accounts and SPR accounts. In section 163 (1) and (2) in accordance with the Auditor-General's recommendations, we have made provision for one national office to investigate, audit and report on accounts and financial statements of not only the National Revenue Fund and SPR Revenue Funds but also of any local authority, board, fund, institution, company, corporation or other organisation established under any law which enjoins such a body to submit to an audit by the Auditor-General. The Auditor-General may, in the public interest, upon receipt of a complaint, conduct other investigations and audits and report thereon (Section 163 (3)).

4.3 Section 164 deals with the staff and expenditure of the Auditor-General's office. Expenditure of the Auditor-General's office shall be defrayed from money voted specifically for that purpose by Parliament and from money accrued in a manner authorised by an Act of Parliament. In terms of present legislation the office of the Auditor-General may charge fees for services rendered.

5. RESERVE BANK

The framework within which the Reserve Bank is to operate as a central bank is dealt with in sections 165-167. In a memorandum from the Reserve Bank the question has been raised whether it is appropriate for the Reserve Bank is to be required to provide both monetary stability and economic growth at the same time. This is a requirement of the present legislation, but the Reserve Bank suggests that under given circumstances in the short term these may be contradictory goals. The phrase "sustainable economic growth" has been used in section 166(1) in order to address this potential tension.

6. FISCAL AND FINANCIAL COMMISSION

We have made provision in sections 170 -178 for the appointment and structures of a Fiscal and Financial Commission in accordance with the provisions of the Constitutional Principles, in particular, principles XXI-XXIII. This Commission will have important functions in relation to "fiscal equalisation", the taxing functions of SPRs, and other matters already referred to in section 121. We propose that it be composed in a manner similar to commissions which deal with the relationship between the national government and SPR governments, namely, the chairperson and deputy chairperson being appointed by the President, and nine other members, each one being a nominee of a different SPR government.

ADDENDUM TO THE 17TH REPORT (CONSTITUTIONAL ISSUES)

CHAPTER 11

Finance

Existing Assets and Liabilities of the State

143 - 145 [To be formulated after further research and debate - see the Seventeenth Report]

National Revenue Fund

146. (1) There shall be a National Revenue Fund into which shall be paid all revenues raised or received by the National Government, and from which appropriations shall be made by Parliament for the purpose of the National Government in a manner prescribed by this Constitution and any other law, and subject to the charges imposed thereby.

(2) No money shall be withdrawn from the National Revenue Fund, except under appropriation made by law in accordance with the provisions of this Constitution.

Appropriation bills

147. Any bill which appropriates or authorises the appropriation of revenue or money for the ordinary annual services provided by the National Government shall deal only with such appropriation.

Appropriation to be initiated by a Minister

148. The National Assembly shall not consider any bill or other proposal for the appropriation of any part of the public revenue, or of any tax or impost, for any purpose which has not been initiated by a Minister.

Annual Budget

149. (1) The Minister of Finance shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimated receipts and expenditure of the Government for that year.

(2) The annual budget shall distinguish expenditure on revenue account from all other expenditure.

(3) If in respect of any financial year it is found -

- (a) that the amount authorised to be expended on a particular service for the current financial year is insufficient, or that a need has arisen for expenditure upon some new service not included in the annual budget for that year; or
- (b) that any money has been spent on any service during a financial year in excess of the amount granted for that service for that year;

the Minister of Finance, as soon as reasonably possible after becoming aware thereof, shall cause to be laid before the National Assembly a supplementary budget or an excess budget, as the case may be.

(4) Appropriation in terms of the annual budget, supplementary budget or excess budget shall be detailed in appropriation bills which shall be submitted to the National Assembly and dealt with in accordance with the provisions of section 59 of this Constitution.

Auditor-General

Establishment and appointment

161. (1) There shall be an Office of the Auditor-General for the Republic to which shall be appointed, in terms of subsection (2), an Auditor-General who shall have the functions, powers and duties prescribed by this Constitution and by any other law.

(2) A joint standing committee of Parliament, composed of one member of every political party represented in the National Assembly and the Senate, shall, at the request of the President nominate a person to be appointed by the President as Auditor-General and such nomination shall be approved by resolution adopted by two-thirds of the members present at a joint sitting of the National Assembly and the Senate: provided that, in connection with such resolution, no debate shall be allowed.

(3) The Auditor-General shall be a South African citizen who is a fit and proper person to hold such office and who shall be appointed with due regard to his or her specialised knowledge of or experience in auditing, state finances and public administration.

(4) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, the Auditor-General will hold office for a period of not less than 5 years and not more than 10 years and shall not thereafter be eligible for reappointment.

(5) The remuneration and other conditions of service of the Auditor-General shall be determined in accordance with the provisions of an Act of Parliament, and such remuneration and the other conditions of service shall not be altered to his or her detriment during his or her term of office.

(6) The Auditor-General shall not perform remunerative work outside his or her official duties.

(7) The Auditor-General may be removed from office by the President, but only on the grounds of misconduct, incapacity or incompetence determined by the joint standing committee of Parliament referred to in subsection (2) and upon receipt of an address from both the National Assembly and the Senate requesting such removal.

(8) An Auditor-General who is the subject of investigations by the joint standing committee of Parliament in terms of subsection (7) may be suspended by the President pending such investigation.

(9) The Auditor-General may at any time resign by lodging his or her resignation in writing with the President.

Independence and Impartiality

162. (1) The Auditor-General shall be independent and impartial and carry out his or her functions, powers and duties subject only to this Constitution and the law.

(2) The Auditor-General and the persons appointed in terms of section 164(1) shall have such immunities and privileges as may be assigned to them by Act of Parliament for the purpose of ensuring the independent and impartial exercise of their powers and functions.

(3) No member of the Cabinet or the Legislature or of any organ of the state or any other person shall improperly interfere with the Auditor-General or a person appointed in terms of section 164(1) in the exercise of his or her powers, duties and functions.

(4) All organs of the state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the Auditor-General in the execution of his or her functions, powers and duties.

Powers, Functions and Duties

163. (1) The Auditor-General shall audit and report on all the accounts and financial statements of all the accounting officers at national and SPR government level, other than that of the Office of Auditor-General, and of all other persons in the national and SPR public services entrusted with public assets, trust property and other assets.

(2) An Act of Parliament may empower the Auditor-General to audit and report on the accounts and financial statements of any local authority, board, fund, institution, company, corporation or other organization established or constituted by or under any law, and of any person in the employment of such bodies.

(3) The Auditor-General may, whenever he or she considers it to be in the public interest, or upon receipt of a complaint, investigate, audit and report on the accounts and financial statements of any statutory body or any other institution in control of public funds.

(4) No duty or function may be imposed upon or assigned to the Auditor-General otherwise than by means of an Act of Parliament.

(5) Whenever the Auditor-General or a person appointed in terms of section 164 exercises his or her powers and functions in terms of this Constitution, he or she shall have access to all books, records and other documents and information relating to the accounts and financial statements referred to in this section.

(6) The Auditor-General shall report on the accounts examined by him or her and submit such accounts to the authorities designated by Act of Parliament to receive them, and, unless otherwise provided by Act of Parliament, such reports shall be tabled in each house of Parliament within 7 days after receipt thereof by such authority; or if Parliament is not in session, within seven days of the next ensuing session.

(7) The Auditor-General shall make public any report referred to in subsection (6) after the expiry of a period of 14 days from the date on which such report was submitted to the authorities concerned.

Staff and expenditure

164. (1) The Auditor-General may appoint, in a manner prescribed by law, such persons as may be necessary for the discharge of the work of the Office of the Auditor-General.

(2) The Auditor-General may delegate any of his or her functions to persons referred to in subsection (1) subject to such conditions as shall be prescribed by law.

(3) expenditure incidental to the performance of the functions of the Auditor-General in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose and from money earned or obtained in a manner authorised by Act of Parliament.

Reserve Bank

Central bank

165. The South African Reserve Bank, established and regulated by Act of Parliament, shall be the central bank of the Republic.

Primary objectives

166. (1) The primary objectives of the Reserve Bank shall be to achieve monetary stability in the interest of balanced and sustainable economic growth of the Republic and for that purpose to exercise control over the supply of money and the cost and availability of credit.

(2) The Reserve Bank shall, in the pursuit of its primary objectives referred to in subsection (1), exercise its powers and perform its duties independently: Provided that the Reserve Bank shall act in support of the general economic policy of the government of the Republic.

Powers and duties

167. The powers and duties of the Reserve Bank shall be those customarily performed by central banks, shall be determined by Act of Parliament and shall, subject to such conditions as may be described by such Act.

Financial and Fiscal Commission

Establishment

170. A Financial and Fiscal Commission shall be appointed by the President in terms of this Constitution within 60 days of its coming into operation.

Objects and functions

171. (1) The objects and functions of the Commission shall be to apprise itself of all financial and fiscal information relevant to national and SPR government, administration and development and, on the basis of such information, to render advice and make recommendations in terms of this Constitution regarding the financial and fiscal requirements of the Republic and the SPRs, including -

- (a) financial and fiscal policies;
- (h) equitable fiscal and financial allocations to the SPRs and local governments from revenue collected nationally;
- (c) taxes, levies, imposts and surcharges that an SPR government intends to levy;
- (d) the raising of loans by an SPR government and the financial norms applying thereto;
- (e) criteria for the allocation of financial and fiscal resources to SPRs; and
- (f) any other matter allocated to the Commission by law.

(2) In carrying out its functions the Commission shall, inter alia, take into consideration the provisions of this Constitution, the national interest, economic disparities between the SPRs, the population and developmental needs of the SPRs, the administrative responsibilities and other legitimate interests of each SPR.

Constitution, expertise and impartiality

172. (1) The Commission shall consist of -

- (a) a chairperson and deputy chairperson appointed by the President on the advice of the Cabinet; and
- (b) 9 members each of whom shall be nominated by a different SPR executive and who shall be appointed by the President.

(2) No person shall be qualified to be appointed to the Commission unless he or she -

- (a) is a South African citizen; and
- (b) is a person who, by reason of his or her training and experience, has expertise in the field of public finance.

(3) Unless the Constitution adopted in terms of Chapter 5 provides otherwise, a member of the Commission shall be appointed for a term of 5 years and during such term may only be removed from office by the President on account of misconduct, incapacity or incompetence for his or her duties: Provided that removal of a member of the Commission from office and the reasons therefor shall be communicated by the President by message to Parliament and to the SPR legislatures within 14 days after such removal or, if Parliament or an SPR legislature is not then in session, within 14 days after the commencement of its next ensuing session.

(4) Vacancies in the Commission shall be filled in accordance with the provisions of this section.

(5) A member of the Commission shall be eligible for re-appointment.

(6) A member of the Commission shall perform his or her duties fairly, impartially and independently.

(7) A member of the Commission shall not perform or commit himself or herself to perform remunerative work outside their official duties.

(8) A member of the Commission shall not hold office in any political party or political organisation.

(9) It shall be an offence to influence or attempt to influence a member to act otherwise than in accordance with the provisions of subsection (6).

Meetings of the Commission

173. (1) The first meeting of the Commission shall be held within 30 days of its appointment at a time and place to be determined by the Chairperson, and subsequent meetings will be held at a time and place determined by the Commission or, if authorised thereto by the Commission, by the Chairperson.

(2) A quorum for a meeting of the Commission shall not be less than one half of all its members.

(3) A decision of two-thirds of all the members of the Commission shall constitute a decision of the Commission.

(4) All the decisions of the Commission shall be recorded.

Committees

174. (1) The Commission may establish committees from among its number.

(2) Any such committee shall consist of such number of members as the Commission may determine.

(3) The Commission shall designate one of the members of the committee as chairperson thereof, and if any such chairperson is absent from a meeting of the committee the members present shall elect one from among their number to act as chairperson.

(4) (a) The Commission may, subject to such directions as it may issue from time to time -

(i) delegate any function entrusted to it by or under section 171 to such a committee; and

(ii) grant authority that a duty assigned to it by or in terms of section 171 may be performed by such a committee.

(h) The Commission shall not be divested of a function so delegated and the performance of a duty so authorised, and may amend or set aside any decision of a committee.

Co-option of persons to serve on or advise committees

175. (1) A committee may co-opt any person to serve on such committee or to attend a particular meeting thereof in connection with a particular matter dealt with by the committee.

(2) Such a person may take part in the proceedings of the committee in connection with the matter or at the meeting in respect of which he or she has been co-opted, but shall not be entitled to vote.

Remuneration and allowances of members of the Commission and other persons

176. Members of the Commission and persons referred in section 175 who are not in the employment of the State, shall be paid, from moneys appropriated by Parliament for that purpose, such remuneration and allowances as the Minister of Finance may determine.

Appointment of Staff

177. (1) The Commission may appoint such staff as it may deem necessary for the efficient performance of its functions and administration, and may, in consultation with the Commission for Administration, determine the remuneration and conditions of service of such staff.

(2) Expenditure incidental to the performance of the functions of the Commission in terms of this Constitution or under any other law shall be defrayed from money appropriated by Parliament specifically for that purpose.

Regulations

178. The President may make regulations regarding -

- (a) procedures in connection with any function of the Commission; and
- (h) any other matter in connection with the achievement of the objects of the Commission.