

Democratic Party Submission to Sub-Theme Committee Two of Theme Committee Six

A. Auditor-General

The Democratic Party proposes the following amendments to Sections 191 to 194 of the 1993 Constitution. Some of these "proposals" are included to indicate support for points raised by others.

1. Section 191(2)  
The President should fill a vacancy within eight months.
2. Section 191(4)  
Delete "Unless the new constitutional text provides otherwise".
3. Section 191(5)  
Change terminology to "most senior officer present" from "highest ranking member".
4. Section 191(9)  
Removal should be subject to some two-thirds majority as with appointment.
5. Section 192(1)  
Persons appointed under s 194(1) should also be independent and impartial.
6. Section 192(2)  
Delete and substitute:  
"The Auditor-General and the persons appointed under section 194(1) shall not be liable to any civil or criminal proceedings, arrest, imprisonment or damages by reason of anything which he or she has said, produced or submitted in or before or to Parliament or any committee thereof or by reason of anything which may have been revealed as a result of what he or she has said, produced or submitted in or before or to Parliament or any committee thereof in respect of anything said, produced or submitted in good faith in the performance of any duty or the exercise of any power imposed or conferred upon him or her in terms of this Act or any other law. "
7. Section 193(2)  
The Auditor-General should be required to audit the accounts and financial statements of all enterprises owned or controlled by any level of government.
8. Section 193(3)

Provincial and local governments should also be entitled to request performance audits.

9. Section 193(6)  
All persons involved with entities which are subject to audit by the Auditor-General should be obliged to supply any information or explanation reasonably required by the Auditor-General and persons appointed under section 194(1) in the exercise and performance of their powers and functions.
10. Section 193(7)  
Delete and substitute:
  - a) The Auditor-General shall report on the accounts examined by him or her and submit such report to the controlling body or accounting officer concerned and to the legislature under whose jurisdiction such body or accounting officer falls.
  - b) Such reports or a report by the Auditor-General or on any other matter shall be submitted to the appropriate legislature within seven days after receipt thereof by such controlling body or accounting officer.
  - c) The Auditor-General shall report unresolved problems at local government level to the appropriate provincial government and unresolved problems at provincial level to Parliament.
11. New Section 193(9)  
"The Auditor-General shall in respect of regulatory audits report whether accounts and financial statements represent a true and fair reflection of the finances of the entity being audited."
12. New Section 193(10)  
The Auditor-General shall report on any entity which does not have its accounts ready for audit within twelve months of the end of its financial year or such shorter period as may be prescribed by law.
13. Section 194(1)  
"Such persons" should include private audit firms if it does not already do so.
14. Section 194(3)  
In the second line, after "money" insert "which shall be".

B. South African Reserve Bank

1. Section 197  
Add: "Provided that such Act shall not derogate from the primary objectives and independence of the South African Reserve Bank as provided for in section 196. "

2. New Section 197(2)

The South African Reserve Bank shall submit an annual report to Parliament and authorise senior officers to give evidence before a joint committee of both Houses of Parliament on the policies and activities of the South African Reserve Bank.

C. Conclusion

1. Objective

The objective of these amendments is to ensure that the Auditor-General and the South African Reserve Bank are independent, impartial and accountable.

2. Drafting

While many of these proposals are couched in "quasi-legal" terminology, they are not intended to convey the final, precise wording required in the Constitution.