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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2 : FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

MONDAY 8 MAY 1995

DISCUSSION ON THE SOUTH AFRICAN RESERVE BANK (Doc. SARB)

- KA: K Andrew (DP)**
- RD: R Davies (ANC - Chair)**
- PW: P Welgemoed (NP)**
- GM: G Marais (NP)**
- CR: C Rustomjee (Tech Adviser)**
- BH: B Hogan (ANC)**
- BN B Nair (ANC)**
- Snakes (Man Secretary - Secretariat)**
- Thandi (Secretariat)**
- Pat P Fahrenfort, Committee secretary**

RD There's a bit of a confusion about the agenda today and that's because there was a misunderstanding between Pat and I about what we were supposed to deal with. So there's actually - the agenda's in two parts. First of all there's this rather thick document. Em here called Documentation and then on the page of that there's 6 items on the agenda. And then, there's another thinner document here which has got another announcement of the meeting. And then its got em what actually is in my understanding the main business of today's meeting which was the National Revenue Fund and other provisions together with two submissions that were received from the ANC and from the NP. So I think what we need to do, we need try to work fairly quickly through the other items on the agenda then come to this discussion. Because this is what we agreed was the substance of what we were going to do today. There is a communication which I think is going to be circulated from the Freedom Front because I think there's going to be an issue which we're going to face up front as to where we are going to deal with the National Revenue Fund. There's a couple of suggestions that we don't. But anyway we'll discuss those. If we could just go through the - before I - before we begin the meeting proper, there are three announcements about other meetings. First of all I think possible many of you know that at 11 o'clock there's a meeting in the old Volksraad building on - of business, basically SACOB, Business South Africa, I don't know, various others talking about their whole approach to the constitution. Its kind of one of these public forum things but a specialised one. Em I think its open and anybody from the committee, sub-committee who wants to go is welcome. And there are two other meetings. I'm going to circulate a circular which I hope won't come back entirely empty. But there's a commission on public - on provincial government which is holding a workshop on

Intergovernmental relations. I think its mostly a matter for committee 3. This is taking place on the 18th to the 19th of May and its going to be here in Cape Town. But perhaps anybody who wants to go can just write in their names. I don't know quite if we got any limitations or if anybody can go. But we can find that out later depending on who wants to go. And then the other one is that there's one of the public information activities which we've never shown up any of us, we've ever shown up as far as I can understand. This one is in the Eastern Transvaal. So if anybody wants a free ticket to the Eastern Transvaal and hotel accommodation whatever, its this weekend 13th to the 14th of May. So **laughter** - well I don't know those details. I suspect its not, its probably a township somewhere Ken. So But I'll circulate this as I say. I hope that it doesn't come back blank. But anyway, we'll se what happens.

Okay, the next thing we have to do, is we have to just adopt some minutes. They're on the first two pages of this thick document. I'm hoping that everybody's had a chance to read the minutes. If there are any corrections in the minutes.

KA Chairperson I hope it doesn't become a material matter em - I didn't recall there being a specific requirements that parties had to have submissions in on National Revenue Fund a week before today. I mean I maybe I wasn't paying attention. So em

RD I think maybe you weren't because that's what we said. IF anybody wanted to make a written submission it was a week before

KA Ya

RD I mean if you want to make an oral submission, which was also what we said, you can make oral comments as we go along. But we did say if you want written submissions

KA Yes, well, I'd like to deal with it as a matter arising em then

RD Okay. Any further points of corrections on the minutes

PW One minute. Mine starts off on page 15

Pat Oh no, don't tell that's the stuff they photocopied this morning. You haven't got one like that

PW I haven't got one. I've got one but haven't got the first lot of pages, look there, starting off at 15.

RD Oh dear

Pat Take that one

PW Thank you

RD Okay it just records our decision to meet today and what we're going to deal with today and what we're going to - the whole business about us being in 3 now and when we're going to reconvene and then there's a sort of summary of the FFC meeting which we had. So I don't know if there's any further corrections there. If not could we move to matters arising.

KA Em, chairperson

RD Ken

KA Em yes, well I just want to explain the position from my point of view and from the Democratic Party's point of view. We have in fact prepared a submission on National Revenue Fund, its in fact not finished being typed yet. Or that section on - you know that General affairs section. Em and our particular problem was that in terms of our kind of time tables or my kind of time table, when they suddenly at the last minute decided to abandon the week of parliament, em the caucus members of my party who are not Cape Town based were then suddenly not in Cape Town. And so it wasn't possible to have discussions and consultations with them. And that in effect delayed that process from our side for a week. I did as best as I could last week and managed to complete the document on Friday but its not completed typing yet. And so I would crave the indulgence of the committee that we get a postponement on that. I think it is a very important issue and there are some fairly substantial suggestions that we have to make. And I apologise for the fact that it wasn't in earlier so members would have had a chance to look at it at this meeting or in fact consider it before. But as I say that sudden week of parliament that disappeared which gave me more free time to do it but it gave me no opportunity to consult with my colleagues and so I would ask that we don't attempt to finalise that matter today, thank you.

RD I think we'll find when we get to that item, it we can come back to that point there are a number of other proposals which would amount to postponements. I think we'll have to - we can take that together with the others when we get on to that. I don't know what its going to do to our whole time table. I also think there's a real question as whether this matter would be dealt with in 3 or in this committee separately as well which comes out - I think it arises from the other proposals. But perhaps we can discuss that when we get to that item on the agenda later on. The next item on the agenda is the tabling of our report and also the - you will notice on the Reserve Bank that its actually been written in constitutional text. But first of all I think we should note a couple of things. First of all I think, what's been recorded here in the minutes in terms of this schematic summary that we have ourselves were engaged with was its the first draft here. Its not what went in in our report. Its got here Cyrus Rustomejee, 10th of March. So this is actually what Cyrus gave to us which we worked on.

And then there was another report which took account of our discussions and identified the points of contention and so on and so forth. That report was tabled in 6. And then the CA staff had then rewritten this report as its recorded on page 3. And I think we need to bear this in mind when we do our next reports because I think this is what they want. The issue, consensus, contention and remarks. They want it drawn up like that. I think possible they want both actually. Also the recording of the positions of the parties. So I wrote it in much more shortly, briefly said this is a point of contention, this is a - otherwise there are all points of different shades of opinion. But I think they -we need another table like this when we do our later stuff. And then as far as I can see on that they've done a reasonably good job. And I was also a little bit unclear as to what we now supposed to do with this material because you'll notice later on, I can't quite find the page. Where is it - oh yes here it is, on page 11 there is actually the legal people have now written this on the Reserve Bank into constitutional language so its now gone through the Constitutional Committee. Its now gone to the legal advisors. And its now been in some sense referred back to us but I'm not quite sure what for. I don't know if we can have some guidance on that. Maybe Snakes if you can tell us, are we supposed to comment on this or is this just for information

Snakes

Chairperson its been referred back to the committee because I think late in March the Constitutional Committee took a decision which is really opposed to the original position of the CC. That as and when a committee of the CA submits its report on whatever constitutional issue they would have considered it at that point in time. That report has got to be covered with a draft constitutional formulation. So this position was taken soon after this committee had completed its report which at that point in time was not possible to have followed that procedure. But in any event when we submitted the report to the Executive director, instructions were given to law advisors of the CA to work on the constitutional formulation. And this is the constitutional formulation. And what is expected of the committee is essentially to say they've gone through this and they are happy with it. If they aren't happy with it they can make further suggestions which then the CA and law advisors will try and incorporate into the draft.

RD Okay so its a sort of never ending process. We're going to have to constantly meet when these things come through because the Auditor General is not here yet. The Auditor General is still being discussed and Cyrus will have a point to make on that. I don't know whether members feel equipped to discuss this text on page 11. Its quite short, whether people feel equipped to discuss it today or whether we have to postpone it to another day. Can I have some views on that.

KA Yes I'm a little confused about the status because most of the -there are one or two qualifications but most of what is here without having the opportunity without having to refer it to legal advisors - what is the

legal interpretation of these words. But besides that fact most of what is here I haven't got a problem with. The problem is what's not here. And I'm not sure in that sense what the status is. If the suggestion is are you happy that this be the whole section on the Reserve Bank, I would say no, I would say there are a couple of other things that need to be here. If its as to what is here like take the one "there shall be a South African Reserve Bank which will be the central bank to the republic and the reserve bank should be regulated by law " I've got no problem with that.

RD Before you get into the substance can I just say I understand what you're saying. I think that basically we should be in a position and I think we are and I'm asking if we are in a position to say whether we think that this covers the ground, if you want to say there are things that are left out, I think that would also have to be a comment. But I think that is basically our total comment on these clauses as they stand. I think that's what we have to discuss today. Are we in a position to do this or should we postpone it for a week and do parties want to refer it to law advisors whatever. I don't know that's what I'm asking at the moment. Just a point of procedure.

PW We from our side from the NP are happy with the 3 points as summarised on page 11 with the footnotes. From our side we will take it back to our committee because this is the first time we see it but at the moment we are happy with it as it is.

RD Ya I think the same from ANC side, we're happy with it too. So really the question is the DP do you want to make some comments at this point what you think is left out

KA Well on page - under the summarised things on the No5 consensus point under powers and functions. there's a suggested qualification on the consensus issue and we actually for clarity we believe that that's actually an important - the precise words are not necessary because they're using law rather than act now and so on but we consider that qualification to be an important one. Its page 6 the big page 6 and towards to top of that page on the top left hand corner, there's number 5 and the issues powers and functions - consensus thing - and then there's a suggested qualification which is underlined under that column. Now we didn't ever discuss it in a group whether anybody else has got a problem with that. But we actually consider it quite an important element that should be in the constitution to make the status of the law that one is talking about and the kinds of laws and regulations one's talking about quite clear.

RD So you feel that that point should be reflected somehow or other in the text on page 11 is that the point

KA I would see for example on page 11 under 3.1 at the end of the first sentence where it says the "powers and functions of the South African Reserve Bank shall be as prescribed law provided that such law shall not derogate from the primary objectives and independence of the Reserve Bank" well I suppose they've now put the word impartial as well so one may have to say independence and impartiality, except that other word is in there now. So what its saying the law can't over ride the primary objective that's the suggestion

- RD I don't know whether we've recorded that now, sufficiently in the minutes. I'm just asking Pat whether she's recorded that now. Because I think this is where it's going to be recorded. Have you got that down
- Pat I've got "can't override the primary objective -
- RD There's a feeling that I would say its probably at the end of the first sentence under 3.1 The DP feels that its point made on page 6 under block 5 should be incorporated at that point. That's the DP's view. I think we should also say that the ANC constitutional conference there was a - there was a mandate which would apply - alter in our initial submission which I know will be a matter of some contention. But that is - that would refer to 3.2 - that the consultation. Basically the position adopted here was that is similar to that of the SACP and that the consultation should be in consultation with rather than after consultation. I'm just trying to see if the SACP's position was recorded there - recorded on page 3. No its in the powers and functions. Sorry, I can find it more easily on
- KA Page 4 at the bottom of the column under consensus - regular consultation ... in consultation with
- RD That's correct, that's now the position of the ANC. I think we should record that as well. Refer that back. But otherwise I think its probably worth just noting that the - there is an attempt now to write the constitution in more accessible language, simplify and shorten it with these kinds of headings, establishment, primary objectives, powers and functions. I think we should just note that for future issues. Although we broadly said take over the same clauses, the language is slightly different and I think we should note that just for the future.
- PW Its a very good movement forward.
- RD No I think we'd all agree with that. So in future I think when we make submissions or proposals we're not saying the clauses should go in unchanged. Its the sentiment of the clauses - the content of the clauses should go through unchanged but the language is not going to be unchanged. The language is going to be made slightly different
- GM Mr Chairman I think we also tried to bring too much detail into the constitution. You know just to mention an interesting possibility, okay I don't want to discuss but all that we actually want in the constitution is that the government must protect the internal - external value of the currency in the interest of balance and sustained the economic growth of the republic. Its actually a much stronger clause. Because now you make the government responsible. Doesn't matter If they used the Reserve Bank or they use the development bank but the government is responsible to protect the internal/external value of the currency. But I don't want to discuss it I just have a feeling that we try in general to bring too much detail in the constitution.
- RD No I think that point is taken. I think generally that is the thrust of the process now is to make the constitution more simple, less detailed. However we have to understand of course that there are other views. Some people do think its necessary to put quite a lot of detail into the constitution in order to sort of make sure that the future governments don't act in certain ways and so on and so forth. I wonder if we could move now on to the Auditor

General. We don't have a constitutional text but we do have one of these schematic summaries which they've written up. It starts on page 27 and goes through to 38. As far as I can tell it was fairly good summary. We

KA Is this from the week before

RD It is in a sense Ken. What happened is we wrote ours in slightly different way which is recorded earlier on. Its recorded the positions of all the parties and then they - what they wanted and I think this is what we have to bear in mind for future submissions is they want issue, consensus, contention, remarks. So its been sort of redrafted. I think it has not changed the content. My reading of it it has not changed the content but it has put it in that kind of form. Em and I think that there is some communication that Cyrus wants to make to the committee because the drafters have not yet drafted this section. Once the views of the committee on a particular issue. So Cyrus if you care to tell us what this is.

CR Thank you. There are Two things I wanted to raise - one was my status in this issue and the second the issue itself. Come back to the status issue in a second. The issue is the law advisors called me on Friday to say that they were not clear whether the committee intended the Auditor General's obligations to be to report on all levels of government and all tiers of government. they said under the interim constitution the Auditor General had an obligation to report on national and provincial bodies but a right to report on others if a complaint were raised and brought to the Auditor General's attention or to the officer's attention. But under the formulation that seemed to being proposed by the parties the Auditor General in the new formulation had an obligation to report on all government bodies which would include local authorities, regional services councils and a whole range of others, many, many others. the point the law advisors were saying was that does the committee realised that what this is doing is vastly broadening the obligations of the Auditor General's office. And if that was the intention then the way the whole clause would be written would be decisively different from the way it would be under the current approach. That the AG has the obligation for national and provincial bodies but a right in certain circumstances to report on all other bodies. That's the question that the committee needs to give the law advisors a bit of clarity on. The other issue is I want some guidance from the committee as to what I do when law advisors call me and say this is a difficulty I have in drafting an aspect of the constitutional text. Do I have any mandate and told in this case I said that I have no mandate I'll have

to check with the committee and what comments am I required to make.

RD I have a feeling that that might be one section in the summary that's not an accurate reflection of our report. I think that's where the misunderstanding may arise. Because if we do look em on page 33 number 13 it does sort of have ANC, ACDP, Freedom Front, IFP, NP and PAC saying that the AG shall audit and report on all accounts etc at all levels basically. But I'm not sure that that actually is a reflection of what we actually said. I think that might be - I'm just trying to look at the appropriate clause in the interim constitution because I think that - You see its 193 1 and 2. And I don't think there was any em any suggestion in 193.1 and 2 that would substantially

change it. And you see that the ANCs submission is should provide for the AG to have the right to audit the accounts. The DP said should be required to audit the accounts. So I'm not sure it was a - okay

BH I seem to remember in our discussion on this matter is that we felt that many of the public institutions of government aren't subject to the audit of the Auditor General. And that we needed to expand it in order to include those. Now I also - presently the auditor general does audit at the regional services councils, local authorities and whatever. So I'm not sure to what extent this does increase the present workload of the Auditor General's office.

RD It would and I think the thrust of the thing and this is what the written statement from Cyrus is we need to clarify to them. Are we intending to talk about a continuation of the position in the interim constitution. Where they had the right, all these other bodies. Not necessarily an obligation. Or are we intending to say that there should be an extension of an obligation, a constitutionally entrenched obligation to conduct audits of all public bodies. That's basically what I think the issue at stake is.

PW But what is the definition of all public bodies. Because all this marketing boards is part and parcel of the present auditing function of the Auditor General. So I would - what I would like Mr Chairman that we know exactly where we start off, we start off with central government and where we stop. The problem is the stop. And I think we must get some clarity from the auditor general to tell us what he is doing exactly at the moment, what does we want to include or what does we want to take out of the present and then we can make a decision. Because at the moment I think we talk about a vast area. For an example, just as an example. The commuter corporation, the rail commuter corporation is audited by the Auditor General but not Transnet. Transnet is audited by private auditors. And I think we must task the Auditor General to advise us exactly what is responsible so that we can start from that as a point to discuss must we add or must we leave out in our formulation here.

RD I mean I would actually motivate that we don't need to do that. I would actually motivate that what we are saying and what we did say was what was in the interim constitution. Let me just clarify by reading it out. Okay, 193.1 is the auditor general shall audit and report on all accounts and financial statements of all the accounting officers at national, provincial level of government. Other than that that the auditor general and of all persons in the national, provincial public services entrusted with public assets, trust property and other assets. So there's a constitutionally entrenched obligation. 193.2 says the Auditor General shall audit and report on all the accounts and financial statements of any local government, board fund, institution company corporation or other organisation established or constituted or under any law, by or under any law and of which the accounts and financial statements are required in terms of a law to be audited by the auditor general. And the accounts and financial statements of all persons in employment of such a body who have been entrusted by it with the assets or any other assets. In other words what he's saying here, except for a national, provincial government, a law will specify the

obligations of the auditor general. And I think what we're asked to decide on, are we wanting to say the constitution should say the whole, every single public body or are we saying that apart from national or provincial government a law should specify which other bodies. And I think that is actually that is what we will say. And I think we should clarify it that way. I don't think we need to go back to the AG myself. Is that agreed. Ken.

KA Just let's focus on the local authorities for the time being because it does get slightly complicated when you get into transnet although its relevant. I mean - I have absolutely no doubt. WE have decided em in our approach that there'll essentially be one auditor general's office country wide. The Auditor General will have provincial auditors and so on who have responsibilities but in the end it will be part of one structure. Against that background and given the critical element and critical problems that we've had with public finance in this country, I think its absolutely vital that there be no discretion other than the auditor general be responsible for auditing local - local authority accounts. Em - I don't think we would have that discretion otherwise. I mean who - would the local authority then just have a discretion, whether who is going to audit its accounts. And I think just let's bear in mind when we talk we're talking about this, the auditor general contracts out an enormous number of audits to private - just auditing firms. So its not a question of building up the necessary the establishment of the auditor general's office as such. They already do for all local authorities. And I think, I don't see any reason - any good sense, why the auditor general should be responsible em - or why provincial and national government should be required by the constitution to be audited by the auditor general but local authorities not.

GM Chairman I support Ken because if we're going to leave out local authorities

then we have to give the provincial government the power to institute an auditor general in - a provincial auditor general in the office. I mean that is the situation we have. Because they must be audited. I mean there must be some control.

RD Okay so the two of you are saying local government but not every other parastatal.

KA Well, I think they're separate issues. Em I mean I actually think every other parastatal as well. But I mean I think the whole line of logic and there are very different kinds of factors and its a far more complicated a matter

RD No but hang on let's just clarify this. You want the constitution to impose the obligation to audit local government but law would be able to say what is going to be audited, what is going to be required for every other parastatal and what ever

DP No the Democratic Party's view has been that the auditor general should audit accounts and financial statements of all enterprises owned and controlled at any level of government. So where government controls has a controlling shareholding or you know its not necessarily a company obviously but in effect controls and organisation the auditor general should be responsible for auditing that - those things

RD So the DP wants a constitution requirement to impose a constitutional requirement to audit every governmental institution

KA Ya and let me just in one sentence have motivation, I think there are other motivations too in terms of accountability and openness. But in practise if the auditor general is not auditing things controlled by the state, whatever

the form of the body or the corporation whatever is in practise its very difficult for parliament to have any serious control over what is going on in it.

RD Okay now the NP wants local government - auditing of local government to be specified in the constitution. But what about other parastatals, other government institutions. Can it be regulated by law.

BN Mr Chairman I think there should be a composite approach. I agree with Ken's formulation that it should be all embacive including local authority. At the same time law may actually specify it or impose an obligation on the Auditor General to audit certain accounts. For instance parastatals or you take the control boards and so on. Then the 3rd element should be I think where the auditor general is directed by the state, say parliament and so on, he will then have an obligation assuming that we - the law itself is not sufficient or where the obligation is in terms of powers and functions are not sufficient he, the auditor general can be directed either parliament or the ministry to actually audit certain accounts which do not fall within the ambit of those clauses. It should be all embacive I think.

RD So hang I'm just trying to unpack what you said there. You're saying that local authorities should be specified in the constitution as an obligation and everything else should be subject to a law. Okay

BN And further he can also be directed. I don't know which institution he can direct, if at any time you find that the powers and functions are not sufficiently described in terms of law or in terms of the constitution itself. Then we should also have the power to direct the auditor general to audit

certain accounts or certain institutions of government.

RD Barbara

BH I agree- my personal opinion is that I would agree the incorporation of local government into the constitution. Whilst I sympathise with the sentiments of Ken about the question of incorporating an audit of parastatals and whatever, I have problems with the exact definition. I think its very difficulty in a constitution to spell out that definition of what we're trying to cover. Because as Mr Welgemoed has pointed out, you know Transnet - what is the difference between Transnet and a .. corporation. And when you start looking at ownership, I think you've got real problems in trying to disentangle that. I think an act as provided for in clause 2 here, is far better equipped to deal with the intricacies of that matter. And that's why I would argue for the inclusion of that clause 2. But add in local authorities in clause 1. And the same thing with Billy to say the auditor general could be directed. I'm not sure that that wouldn't be an infringement of anyone's constitutional right if an auditor general is used almost as a watch dog over a range of institutions and one doesn't understand the constitutional basis for the auditor general's intervention there.

PW You see Mr Chairman why I would like to agree with Barbara's and Billy's is on the following lines. First of all it is important I think, I don't say that the auditor general must audit the books of transnet. I think the second part as put out by - set out by Barbara is a solution. You know when a bill that goes through parliament and becomes an act, makes provision for the auditor general or not the auditor general, other words outside auditors. I think that

is point number one. But what worries me is that somewhere the auditor general, its not necessary for him to into detail, but he must take note. In the end we are sitting with the government as its on the one side and all the loans signed at this moment by the minister of finance as security - when Transnet goes out they get security, for that they get between 35 and 65 points below a company like company A, B or C. We all talk about the big amount government owes. Somewhere that figure must come together. The only place that you can get that figure together in the end I think is when the auditor general says, I'm not responsible for the auditing of the books. And the day in the accounts for example Transnet or Eskom. But let me tell you, I received it from auditor A and Auditor B, from that I did my homework and I found out that we must add to the total liabilities of government, X amount. That we somewhere along the line we must find out what we owe. And that's why I'm saying I don't want the auditor general to be part and parcel of the auditing of Transnet, not at all. But somewhere there must be a role for it. That's what I think and that's I say I do agree with Billy that we got two clauses with different approaches in this that's why I'm supporting Billy and Barbara on this one.

RD I think okay, Cyrus then Ken

CR I just wanted to draw attention to Item 16 on page 35 which gives the auditor general as it stands at the moment - it can initiate its own investigation or audit according to the way we frame this. According to the way the committee's agreed to this. There are qualifying comments that the ANC and NP think that this should be a matter for legislation. But there is a

framework for allowing areas for example such as Transnet where the auditor general feels its necessary to do an audit within the constitution if this kind of clause goes in, there is that kind of framework.

KA Ya chairperson, I think its gets down to a basic philosophical approach, that you know there's the whole kind of story that the most efficient form of government is a benevolent dictator. Now what is a constitution about. Now an important part of a constitution is saying if you've got a bad or corrupt government, you need a law to protect the people individually or collectively against a kind of abusive power. Em now the moment you're saying that all sorts of things need to go into laws, or you're relying on laws for the very government you're trying to protect yourself against if its going to behave in a certain way, they can simply change the law. Because presumably if they're in the government, they've got a 51% majority or more in the legislative authorities, that's why they're the government. And you then are in fact - you don't have the protection at all. And important part of a contract like a constitution is to say within reason, let's look at a worse case scenario. What about if your worst and most corrupt enemy is in government, can you put in sensible things in a constitution that control them and protect you. I would agree that in a world where you've got a reasonable and sensible and so on government, in any country, then doing a lot of things by law is a lot easier and so on. But I would also caution on this score. that I personally think it is inevitable that the way government is evolving around the world, that more and more government activities are going to be either commercialised or in fact put out to kind of agencies.

Such as for example, you know one's looking at present of some kind of autonomy for inland revenue. Now the moment you create that in terms of the wording we're talking about, once inland revenue say, ceases to be a government department, then on is relying that in that law and of course it can be amended, it may be in the initial law and then subsequently a - some other government may decide no, it actually wants to fiddle around with inland revenue, it doesn't want all these thing exposed to the public accounts committee and so on. So that is where is my concern lies. And even at present, in fact the example of Transnet for me is a very good example. Transnet is handling and I mean I find it quite strange because I mean generally I'm on that kind of free enterprise end of the spectrum of kind of government keep your nose out of peoples business. But I see that Transnet is handling billions of rands of tax payers money. They have no accountability of any consequence to parliament. There is no committee of parliament that can really call them to account. Public Accounts Committee do not get their accounts before our committee to look at. And therefore if there were a government or a group of people in control of Transnet. And I'm using that as an example, its reference to any individual . It could apply to Alexander Corporation or any one of the others. that were doing things that were wrong, it would be that much more difficult to actually call them to account and to expose it in the light of day. And that's the reasoning why I have this approach. Not because I want an over bureaucratic regularity approach. But I leave - its critical. While government is responsible to assets, then the people handling those assets must be responsible in a tangible way

to parliament, not in the kind of indirect way that we get now. And any of us who are on the public accounts committee when Transnet last appear before it, it was say few years before in Pretoria, quite honestly there are senior management who had already moved out and we were looking at the accounts for the previous period just about in a slightly more polite terms than Will Carling but virtually said to us go to hell you people you know you've got nothing to do with us anymore, we don't really have to answer your questions seriously. that was the whole mode. Its a pity Francois Jacobsz is not here because he was present, in fact he was in the chair on that occasion. So I just mention - that's why I do feel that you know quite strongly about this, not because of that incident. But because of that broader principle

RD Okay we've got one clear position there which wants to say that there must be a constitutional obligation for the AG to audit all levels of government and public funding. The other position which we've heard so far is that the constitutional requirement must be extended to local government and law must provide for the remainder. I don't know whether in the light of what anybody said, anybody else wants to change or whether we just leave it like that and that's the report that you put through

PW I would like that we leave it like this, that we send back the experts, that they draw up for us a memo on what they heard

CASSETTE TWO

here today and then we can discuss from that point onwards

RD I would like to suggest one thing that these particular minutes and this note

from Cyrus be sent also to the AG so that they can comment on this as well.

I would add that rider as well. Is that Agreeable.

? Yes

RD Okay. I wonder if we could now move on. The next item on the agenda is - sorry Cyrus do you want to raise your matter about you being contacted in this regard

CR I would just like some guidance - I have a suggestion and that is exactly what happened here and that I bring it to the committee, the approach but I'd like the committee to give me some guidance there. Next time the law advisors

RD I think you did the right thing. I mean I don't - if you on this kind of issue if you'd given your own views it would have been inappropriate - I think you did the right thing.

RD Number 5, I think we've already dealt with the Public hearing with business. Some constitutional expert, 158 to 50 - don't recall exactly what that is at the moment.

KA The stuff from the world bank has just come back - ..

GM Mr Chairman I want to report on the World Bank official. I received a message via my son in the World Bank that Mr Shah informed him that our department of finance recommended him not to come. So I phoned Dr Carlitz, well, Dr Link and he reported to me he said well he can't see any reason for him to come to South Africa because there is a World Bank official here and - so I said but I think its very important for us and so he promised me to investigate it again and then I received a message from Pat

because our financial costs considerations Mr Shah is not coming any more.

RD Can I just raise here that since we're now in 3 that matter was referred to 3 and we should take it up in 3 and follow it up there. I mean it was referred to them to organise the thing. We're dealing with intergovernmental fiscal relations in 3. I think this is - you know again I think we're in 3 - I don't know who this guy is Prof Elazar - federalism. I think this is a matter for 3. And since we are basically dissolved into 3 I think that that is a matter dealt with in 3 and the other item there was this provincial commission thing.

PW But don't you want to refer it back

RD Its already down there for 3. As a matter for 3. I think now we need to come to what is supposed to be the main business of this meeting today which we called which was basically to deal with the national revenue fund and all the other matters in chapter 12 and any other provisions around financial institutions and public enterprises that we have not - that were not dealt with either in the Reserve Bank or AG or would be dealt with under the FFC. That was what we were supposed to do and prepare a report from that. Now I think that what we have to deal with first is that I understand the NP's memo on page 7 and a very similar report - a very similar point is made in the Freedom Front's memo which is circulated as well, is there is a feeling now that from the NP and the Freedom Front that the matter of the National Revenue Fund should be held pending the whole approach to intergovernmental fiscal relations. And Ken has also asked for our indulgence because they haven't had time to get in their memo. So I'm just wondering, do we have an agreement that we - I think we will have to say that we

postpone the matter for one week only. I think we come back - I'm sorry, no we first of all we have to reach agreement on whether we're going to handle this matter beyond - after we've dealt with the intergovernmental fiscal relations. And in fact I think then refer to matter to TC3 and say these are clauses in the constitution which will also have to be dealt with depending on how we deal with intergovernmental fiscal relations. Is there an agreement on that.

PW On a specific issue Mr Chairman I think I would like to agree with you. Let's send it through to 3 as well looking at the National Party's view point as stated here by Francois. I would like to apologise he had a knee operation end of last week and he will be back some time in next week. So my apologies for this week on behalf of Dr Jacobsz

RD So the National Revenue Fund, it doesn't exhaust our discussion today but the National Revenue Fund provisions will be now referred to 3 and will be harmonised with what ever discussion comes out around intergovernmental fiscal relations.

KA I would think that's most inappropriate in the sense that there will be some elements in the National Revenue Fund that impact on the relationship between central government and provinces. So I agree whatever we do on it there may come a point - I mean it could apply for example even on the Auditor General, it might be that having completed our work that if 3 decides something unexpected, that we need to come back and say well given the relationship they're talking about we actually need to look at the auditor general set up a little bit differently. But I would say the essence of

national revenue fund and the procurement and the annual budget and so on is a national thing which stands on its own feet. And when we get to the others we will have to revisit and add or subtract, but I would see the major chunk of it is still entirely within the province of this subcommittee and not in fact of Theme Committee 3

GM Mr Chairman I don't know why I agree so much today with Ken. But there is a section or element of the national fund that is our responsibility. I take one principle, that all revenue perceived by the National government must come through the - must be paid in at the National Revenue Fund . You can go on that all expenses of fund taken out of the national fund must go through a budget. The government's national budget. I think its a very important principle. Because this way you prevent to some extent that you have these kind of separate little budgets, separate little incomes and we have Ken will support me that is a very harmful type of budgeting if you have some kind of separate funds, separate expenditure budgets. So I think that we have to discuss

RD Well I think the ANC would be quite happy to discuss the matter now because I mean it seems to us that whatever - you know whatever kind of intergovernmental fiscal relations we have there will be even on the most federal proposals that have come through, there will be a national government and there will be national revenue fund, there will be national procurement so that we would be happy - I'm just trying to respond to what I perceive to be a strong request coming from two of the parties here, the Freedom Front and the NP. Now the NP position seems to be a bit different

GM The one has to do with intergovernmental relations. But then you have still the principle of the National Revenue Fund and .. come from the national revenue fund.

RD Okay. But I'm just trying to put this in - I mean we've got two options. One of them is that we can say that we will deal with it next week. We will respond to the DP's call for further time and we will decide to deal with it next week. But I'm - the NP's proposal here is that on this thing on page 7 it therefore considers it the National Revenue Fund should be considered in conjunction with the financial and fiscal commission which I take they want to say that this should happen right at the end

GM You see Mr Chairman the problem is that we believe that the central government, national government must be responsible to collect funds also for the provinces and if you give central body that right of function, that money must come through the national revenue fund. Now the question is, let's take tax revenue sharing system, now the question now is are you going to put that through your central budget and at the moment we have the concentration that its not going to go through the national budget. And that thing we have to clear up where your national government is fulfilling the function of collecting funds also for provinces

PW But Mr Chairman in all honestly I don't want to agree with my colleague. He was not there when we discussed this. He was unfortunately overseas. My viewpoint is as we are sitting now, this thing developed that most of this relationship between the province and central government that relates to finance at the moment is in 3. Its out of our hands. If you look at the present

185(i) on page 108 of the Constitution, there it says exactly that everything as I see it, that is income must go through the national revenue fund for central government. The problem that we are sitting with at the moment, that's what we discussed, Francois and I is let us wait until we hear what 3, because this isn't such an important issue for us. We know that all the money that must come in must go through some sort of account, let it be the National Revenue account. but if, if the province says they want their own finances, they want their own tax system and its agreed by on 3, it will have a tremendous influence on those especially their department that deals with provincial affairs. Our attitude, our attitude is, let us wait until all the cards are on the table because then we know exactly. But if the committee feels that we must discuss, I would like exactly to know what are we going to discuss today or next week. Which specific part because we must go and fence the discussion, not to interfere with 3 at the moment

RD Okay well, look, I think that what's happening now is that we got at least two strong suggestions that we should deal with when we deal with the FFC. And I'm actually wondering if we shouldn't then say that I mean the rest of it I think is - I mean 188 in our submission we say that that needs to be dealt with after the FFC - that's provincial loans. And then 189, 190, 190(a) we're actually saying is not under our purview and then we have said we don't think there should be anything on public enterprises. I actually think that we don't have sufficient material outside of the National Revenue Fund to justify another report at this stage. So I would suggest that we do is that we say that we deal with the FFC and everything else at the end.

Would that be acceptable

BH I find that acceptable but I just also want to point out that under Section 60, under money bills, the passage of money bills through parliament there are also references there to the passing of - for instance 65 says the bills should not be deemed to appropriate revenue or monies or to impose taxation by reason only by it containing provisions for the imposition of appropriation of funds on the pecuniary penalties". What I'm concerned about is that the National Revenue Fund is linked to the issues of the way the budget is passed through parliament. And we have a split here, I think Theme Committee 2 is dealing with this section 60. And I would say that whilst we do not want to reach a final position on the national revenue fund and we're waiting for the outcomes, I think that we need to be looking at these issues because I think we have more insight into these in Theme Committee 2 and start trying to bring proposals together that we can feed in that are consistent, that will go to both committees.

RD I actually already wrote a communication to the CA suggesting that there is this overlap and what I said was more importantly than this committee that the - there should be liaison with the finance committee of the national assembly and with the budget sub-committee of that because I think there are people who involved in that who are not on this committee and that there should be some discussion with those people. I've already written that and I don't know how we can follow that up. But you know yes, that is also what we noted in our very first work plan. that was the second overlap. Now we're dealing with the first one with the intergovernmental - I don't

think we can all go and join 2. But I think that we can ask that the people in 2 make contact with the Budget subcommittee of the National Assembly - sorry, no, the Joint Standing Committee on Finance, I think that's what we need to do.

PW But isn't Gill Marcus is a member of that committee

RD Gill Marcus is a member of that committee and so is

Barbara who's coordinating the Budget Subcommittee but there are also other people on the Budget subcommittee who are not on this committee

PW But if it is not - can't we ask Barbara to just go through and just find out what's going on there and report back at next meeting so that we at least know how to manage it as correctly mentioned by her from this point onwards. So that we just take note of what they are doing in 2. If my information is they did not give it any attention yet but I don't know if my information is correct that's why I'm asking

RD Well I think that would be a reasonable proposal if Barbara is prepared to do it, let's give her the mandate. She can also follow up with the CA secretariat, what has happened to that proposal or that communication and also then contact 2 and ask them what they're doing in this regard and if they've got any plans and so on. I think that's a reasonable proposal.

PW Thank you very much Mr Chair

RD Okay I think basically in the light of the decision which we've just taken, I don't think we need to convene again until we've finished our work in 3 except, no hang on, sorry we will need to convene again when we get a text on the AG, okay

PW Can we ask about next week, Monday because it will be nice if we're in Guateng on a working day Mr chair but not on weekend, that's why I'm asking If we are not going to sit let's decide about it today, if it is possible.

RD Let's see if we can get any information on whether the text on the AG may come

Snakes

The text might be ready in the light of clarity in the next two days or so which would mean it would be circulated to members in the course of the week. And I don't know if members would want meet later in the week or whether they want to meet on Monday. But if say its ready by Wednesday, maybe

RD If its ready by Wednesday would members prefer to try to meet on Friday. I don't know if you've got a -

PW No, no, because Friday is not a day that we are involved in - you know are already going to Guateng on Friday morning to do some work there with the last of the registration. That's why I'm asking if we can stay on, if it is possible to stay on to Monday, at least then you get two working days. You can't do a lot on a Saturday and a Sunday unfortunately

Thandi

I just want to remind members that Friday is also plenary, Constitutional Committee in case you are involved in that

RD I don't think - do we have anybody here on the - I don't think we've got anyone on the Constitution Committee. Well I think we've got a choice, we either meet on Monday or Friday. I mean we could meet - we could try to

meet it seems to me, I'm not sure if the National Assembly is meeting on Friday or not. But we could try to meet sort of about. I anticipate it will be a short meeting. We could try to meet at 9 on Monday or Friday

PW Nobody will be here from the National Party in any case on Friday.

RD Okay then

BH I have a constituency obligation that I cannot miss. Its a major conference that I have to be at unfortunately.

RD So I don't know what we say. Then we say that we're not going to make it on Friday or Monday, then when can we make it.

PW What about the following week on Friday. I heard that the grapevine told us that possibly the CA will sit on that Friday. Possibly. Let we sit that morning before the CA. I heard, I don't know, they change their mind even more than we do.

RD Is that alright - a week on Friday.

PW Friday the 19th

RD Friday the 19th. I think it will be a fairly short meeting myself

Sbakes

Can't we do it on a lunch on Tuesday for 30 minutes

RD Okay there's a sort of a request to try to do it fairly quickly. Em you say it will be ready on Wednesday

Snakes

Ya the chances are it will be ready by Wednesday.

RD I couldn't do it on Wednesday lunchtime, Thursday lunchtime - I don't know if we could do it on Thursday lunchtime 1.30

PW Yes - you're talking about the 11th Mr Chairman

RD Ya

PW Yes, let's do it over lunchtime

RD Okay shall we say

PW After causes at 12.30 - 1 o'clock

BH Make it 1

RD Okay 1 o'clock then. 1 o'clock on Thursday

PW The 11th

RD Ya

PW In this place

Pat We'll have to check the venue

RD We'll get a note about the venue but that's the time, okay. I mean I don't know we may find it three quarters of an hour meeting but not more much more than that I don't suppose. Any way it can't be more than that. Okay

PW Thank you very much

RD Cyrus

CR I must just apologise I won't be able to be there on Thursday

RD Okay we'll have to just communicate with Cyrus afterwards. Snakes

Snakes

Just one thing from the meeting it seems the meeting accepted the Reserve Bank draft with minor adjustments. I mean it will be tabled at the Constitutional Committee on Friday. So whenever a report is tabled normally they expect members of the particular sub-theme committee or committee to be there so that if there issues that need to be clarified that they're there

to clarify.

RD So on Friday you want someone at the CC. What time is that going to be.

Thandi It is expected 9 o'clock

RD Okay. May I ask that I've also got constituency business but its not too far. Its about you know about 2 hours drive. Could I ask that I could come as long as our item is dealt with closer to 9 than to 12. Okay.

PW We accept the proposal that you go as - viewpoints you know we are more or less consensus as it is at the moment. And we will appreciate if you will -

RD With those couple of sort of differences. But er - I was just going to say if anybody else wants to come, they're welcome as well. Particularly from other others. I see any great shakes here. What about these circulars that we sent in advance. Have we got any aims on them. Are they coming back blank or are they - oh we've got some names.

GM When is that provincial one

RD 19th

GM I may be -

RD Once again I regret to say that nobody wants to go to the Eastern Transvaal.

? Is it a

Pat Ya

RD Okay, I've written your name down as well. Okay then I think we can adjourn. Thank you.

Transcriber: Pat Fahrenfort