

2/4/6/4/6/16

Return for names to be corrected as marked.

THEME COMMITTEE	6.2
DATE OF MEETING	02/08/96
NUMBER OF TAPES	2+1
CONTENT OF ENVELOPE	
1) PRINT-OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

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CORRECTIONS MADE AS REQUESTED, 12/8/96

TRANSCRIPTION OF THE ADDRESS BY THEME COMMITTEE 6.2

HELD ON WEDNESDAY 2 AUGUST 1995

TO WHOM IT MAY CONCERN

I had some difficulty in determining the full names of speakers in this meeting because firstly I had no attendance register, the Chairperson referred to speakers on a first-name basis and in many instances the speakers would state their views without being motioned by the Chairperson to do so.

**INAUDIBLE COMMENTS ON NATIONAL REVENUE FUND DISCUSSION DATED
2 AUGUST 1995**

COUNTER NO.

(Tape 1)

008	? Marais has also
017 - 122	Inaudible comment from floor.
023	Inaudible comment from floor.
126	Inaudible comment
051 - 056	Tape goes blank
064 -067	Tape goes blank
067	Inaudible comment
142	Inaudible comment
151	They ? up with
171	have a ? of funds
179	heard what ? said
226 Afrikaans.....
269	both SACOB and ? had
586	can be done ? time
673 - 675	Inaudible comment

(Tape 2)

004	is the ? against that
037	there's a general ?
057	because the ? something
124	Inaudible comment

210 is ? possibly
292 look at the ? view
446 The experience ? and America
473 will die or get the ?,

(Tape 3)

038 with ?, we call it
053 when ? is writing
083 dont' think the ? of detail
105 I said ? accounts
123 ? to cover partly
172 The ? and regulations
229 on behalf of ?
237 the ? and others
239 maybe the ? could
307 an absolute ?
617 is ? to Sirius
687 Inaudible comments from floor.

Chairperson: ...but there were two sets of Minutes which we were supposed to have adopted yesterday. Can we postpone that to the next meeting and let's ask everybody to bring their Minutes along tomorrow. ? Marais has also made a proposal which would amount to changing our Work Program a bit. Again I must confess I ran straight into here and I only brought the stuff related to the National Revenue Fund. I haven't brought the time table I had but essentially, the thrust of his proposal is to want to discuss the FFC only after Theme 3 has dealt with Inter-Governmental. I think what we've got as far as I remember was today is the National Revenue Fund, Thursday is the Reserve Bank, Monday we meet in the afternoon 3 o'clock and our information was that Theme Committee 3 would meet in the morning of Monday to discuss Inter-Governmental relations so that that would actually meet your point, would it not?

?: (Inaudible comment)

Chairperson: Look, I suspect that ... I was also in the discussion.....

?: (Inaudible comment)

Chairperson: No, I said Monday. Theme Committee 3 is down to meet on Monday morning. And I understood and I think we all understood

?: (Inaudible comment)

Chairperson: On Monday. Correct, but I think that's what we decided, I don't know whether ... You know we're going to be in a serious problem, this is what we decided yesterday if we say that we don't discuss a word of the FFC until TC3 is completely finished, we're going to be in problems. I think we need to use that time on Monday, this is what we agreed yesterday.

?: Mr Chair, I would concur with you on that. Also I think that while clearly we may have to go back to the FFC and do a certain amount of fine-tuning depending on what happens in TC3. In essence the Constitutional Principles define the fundamental function of the FFC and in other words it's going to have to do a certain amount of recommendations to the Government in respect of equalisation and other kind of distributive things. So I suspect we will not have wasted any of our time but if we have I think you'll find we've only wasted a small part of our time. And given the fact that TC3 is on Monday the 14th, the following Monday has got an all day Local Government seminar means that if it hasn't done it by that Tuesday afternoon which is then too late for us anyway, we're going to end up only the end of the week beginning the 14th

before we can start looking at it, and I really do suspect that we are not going to waste time because I don't think the fine-tuning between Province and National is going to affect the composition and fundamental role of the FFC.

Chairperson: In any case I think everyone can reserve their position. I mean if they want to say that there's going to be something brilliant on the Tuesday afternoon..... (Tape goes blank)can we just draw to Theme 3 Management's attention the fact that the timetable has been drawn up in such a way that 6 and 3 don't clash. So if they just jump from morning to afternoon, they are going to have to consult with us and that it would if they did make that shift. Ken, are you listening? Sorry, if they make this shift they're going to inconvenience our timetable. I think we should put that into consideration. I think all of us are going to want to be in 3, all of us are going to be participating in 3 as well. OK? Could we.... (tape goes blank)

?: (Inaudible comment)

Chairperson: Yes, I'll speak to du Toit. OK. We'll stick to the timetable as it stands at the moment and we will urge 3 not to change their's. Could we now move to the business of the day. The business of the day is the National Revenue Fund and all other outstanding issues apart from the Reserve Bank, the Auditor General and the FFC on financial institutions and public enterprises. So that's what we are dealing with today and you will recall that there was quite a lot of work done in the Committee some time ago which resulted in the production and I have a Minute here dated the 8th May, I know it's also reproduced in our current stuff, but Cyrus had produced a report on the 8th May. I think we need to revisit that in the light of where we feel we're at now and we also need to revisit that in the light of the fact that at least some of the parties, notably the DP, had not made their considered submission at the time this report by Cyrus was printed. I wonder whether

?: Mr Chair, may I just ask you a question. You did indicate that the ANC in respect of some financial matters may be wanting to make supplementary submissions. Would any of those possibly touch on this or is it on other financial matters?

Chairperson: Essentially it's on Inter-Governmental Fiscal Relations and on the FFC. It's an elaboration on the document which was tabled in 3 and which is also relevant to us as far as the FFC is concerned. I wonder if we can perhaps ask Cyrus to take us through. I think what we need to do here is the parties need at this point to reflect on whether their positions are adequately reflected in the summary document. I think that's the main object of the exercise at this

point. Is that agreed? What we're going to do is that we're going to go through his document starting on page 1 of his document. It is actually just the reverse side of this. It starts here page 1 and it starts Section 185(l). I think we need to just alert Cyrus to the fact that our methodology of presenting these things is not exactly the same as some of the others and we need to have it more consistent. What we need to do is identify areas of consensus and areas of disagreement and contention. But we can go through this document as it stands and see if the positions of the parties are adequately reflected and I think maybe we can ask Cyrus to lead us.

Rustomjee:

Chairperson, I'm not sure how much leading I'm going to do. What the tables summarise are the positions of the parties per section and using the old formula, because this was a fairly old document as you mentioned in May, I had said originally that the way I've done it was where there was an empty box against a particular section by a particular party, it meant that no specific comment had been made on that. Where there was an A in that box, there was an explicit agreement in the text of one of the party's submissions against that section saying that they particularly/explicitly agreed in their submissions to that. There are effectively on the National Revenue Fund Sections 185 (1) and (2) and Section 186, and what I've already done in the 1, 2, 3, 4 pages I think on the National Revenue Fund ... I just want to double check I've basically gone through each section and extracted from each party's submission the comments and placed them into the relevant box. In a certain sense It will help me if what this meeting would do is to look at each one of those sections and decide whether the comments made in those boxes are an accurate reflection and if they are whether the meeting could contemplate whether there is agreement on any of those three sections or disagreement.

Chairperson:

OK, then I would suggest the following methodology. I'll read out the heading and then I'll go party by party and ask whether what's written in there is an adequate reflection of the parties. How about that? OK. So, let's start with 185(1). If colleagues think it would be useful I could read out what 185(1) says in the Interim Constitution. It says "There is hereby established a National Revenue Fund into which shall be paid all revenues as may be defined by an Act of Parliament raised or received by the National Government and from which appropriations shall be made by Parliament in accordance with this Constitution or any applicable Act of Parliament and subject to the charges imposed thereby." Let me go party by party across the top. ANC. Barbara.

Hogan:

We have said that we should consider the SACOB submission on

you know a special fund.

?: (Inaudible comment)
? Years ago we had a special fund for S A Transport. It caused a lot of distortions. They ? up with surplus money and in the Budget we were short of money so I think we have to consider, really evaluate it again, be careful on the question of special funds.

Chairperson: Could we take it then that the National Party agrees with the formulation as it is in the Interim Constitution but is not happy about the possibility of this other proposal from SACOB which the ANC has adopted? Is that how we understand it? OK. Well, the IFP is not here to speak for themselves. The DP.

Andrew: We had no problem with it as it is and on the one hand when I saw the ANC proposal, I thought that made sense but I hear what Dr Marais has got, so I mean my position in a sense would be that we perhaps need some further evidence or some further discussion or understanding of what the implications are because at face value the SACOB and now you know incorporating the ANC's supplementary suggestion does seem to make sense to me, but I hear what Dr Marais says and one has got to be careful. You don't have a ? of funds so I know that's a non-answer but I actually don't feel ... In a sense I have no problem with either, but I don't feel fully equipped to understand the full implications of a change. Obviously as it is, is simple and straightforward. If it's going to provide unnecessary restrictions in the efficient handling of anything like a fuel levy fund or something you know that is a dedicated fund for roads, but I quite honestly don't feel that I've thought through it sufficiently having heard what ? said to take a firm stance I'm afraid.

Chairperson: Let's just get the party views and then let's discuss the matter further. Shall we? Freedom Front.

? Mr Chair if we look at the second sentence on 185(1), there is mention of all revenues raised or received by the National Government. Now, I don't know what the relationship between the government and the provinces will be. You see the government may raise revenues but they may also receive. Receive revenues from the provinces, how do you treat this? Will they receive this revenues etc? I don't think I'm at this stage really ready to discuss this...

Chairperson: Sorry, can I just I think you're on (2). 185(2). We're talking 185(1).

?: Yes, the second sentence of 185(1) if I did not make myself clear.

You see I would like to know a little bit more what the type of monies will be which they receive. Where will it come from? How will it be levied etc? If we give a blank cheque here that this is OK, right, then we cannot really afterwards do much about money received from provinces etc or miscellaneous sources. If I'm wrong I'm prepared to listen.

Chairperson: OK, Cyrus.

Rustomjee: Chairperson, just reading that sentence, it seems to me that the order in which things would most likely happen is that Inter-Government Fiscal Relations would get sorted out constitutionally and with the FFC, Acts of Parliament would be passed and in terms of those which would follow from those relations being sorted out and then the funds would be raised or received by National Government. So it seems as if, at least in my mind not on paper, there is a standing sort of logical progression in terms of sequence which would still retain the consistency in this wording "the raising or receiving of funds by National Government" would follow from an Act of Parliament which specify what the raising and receiving would be and would also follow from the constitutional provisions which were determined. So there wouldn't be a sort of an inconsistency which would crop up as a result of exacting this wording. I maybe missing something.

?: You see Chairman, here we say "into which shall be paid all revenues raised or received". OK, this is not in my mother tongue. You must keep that in consideration when I look at this.Waarin alle inkomste betaal sal word of gestort word en waar uitbewilligings..... As long as this does not sort of prohibit you know provinces to keep certain money. That's not the idea. I don't think it is the idea but I'm not the law here.

?: May I point out Mr Chair, I think that in this section, the Constitution on provinces, there's a Provincial Revenue Fund 159 apparently which says "Provincial Revenue Funds is hereby established in the administration of each province a Provincial Revenue Fund into which shall be paid all revenue collected by or accruing to the Provincial Government and all financial allocations referred to in 158 made by the National Government to such a Provincial Government and to Local Governments within the province of such a Provincial Government." And then (2) is "No money may be withdrawn without an appropriation Bill." So I think that probably does cover

Chairperson: I would think so myself but I think that what we should just note and what the experts should note is that the Freedom Front are concerned that the way the clause is drafted, because it's not

going to be exactly the same clause, should not preclude the raising of revenue by the provinces themselves. That's your concern is it not? So I think that's the way we should record it in there. The PAC are not here. They record an agreement and the ACDP I don't think had anything directly relevant to say. So we now have... I think we have quite a lot of agreement in general about the clause. There is some uncertainty amongst some people, I think probably among many of us, about the dedicated funds issue. Whether the clause should provide for the possibility of dedicated funds? And I don't know how we can take this matter further forward. I mean I don't think we have got the time frame that enable us to take a great deal of additional evidence and so on and so forth. However, we can also say that, we can as a Committee say that there are arguments both ways. Barbara.

Hogan:

In remembering the ANC's discussion on this, I think the only reason why we really included it was because both SACOB and ? had recommended it and we ourselves wanted to know the reasoning behind it and that's why we said it should be under consideration. So I think from our point of view and you could correct me if I'm wrong but from the ANC's point of view, we're not sticking to this... You know, it's a very open thing. I also think in our experience of the RDP Fund, although it wasn't a separate dedicated fund and money was actually appropriated out of the National Revenue Fund, we've already perceived the kind of problems that can arise out of parallel budgeting processes and whatever. So I would say from my personal point of view, I can't speak for the ANC, but I think that we should stick to the original formulation that we have here. But bearing in mind, if Ken... Can we not say if Ken comes across something that he thinks is of absolute critical relevance that we then review it, but that for the time being we keep it at 185(1).

Chairperson:

We could get agreement on that. Let me just raise a couple of the matters that I think we should just take into account here. I think Barbara is right we say that consideration should be given to it. I think as it stands at the moment you could not create dedicated funds. You could not say that for example a certain amount of the tobacco tax all goes into the Health Fund. You couldn't do that at the moment. It all has to go into the National Revenue Fund and then we appropriate it. And that in general from the ANC's point of view when we talked about fiscal policy, we were not in favour of a proliferation of dedicated funds in general. But you know if Parliament were to want to have a very pressing overriding reason for a dedicated fund, it would not as the clause stands at the moment be allowed to do something to the Constitution. Is that not the situation? And that might be a problem. Jill.

Marais:

But my own feeling would be is that if you do want to set up a dedicated fund, I think it shouldn't be something that is easy to do. I think you do need to spend a lot of thought on it, and if this acts as an inhibitor, because otherwise I can quite see every department arguing for a dedicated fund and I think we could end up in a situation of a lot of problems. So, maybe having it in the Constitution and if you wanted to do it, it requires a constitutional amendment, means that you've really got to put a lot of thought into it and have a lot of consensus on it. So I would be personally inclined to go with the original, not have dedicated funds.

Chairperson:

OK, so it looks like ... Ken.

Andrew:

Yes, I don't have a problem with that because as I said I originally was happy and then I saw the other things and it seemed the alternate also seems to make some sense. But what I wanted to raise now Rob was simply the issue of what the meaning is, I mean in this clause as it currently is worded "establish a National Revenue Fund into which shall be paid all revenues, as may be defined by an Act of Parliament, raised or received by the National Government." Now the fact that they refer to these things as being defined by an Act of Parliament to be almost has an implication that there are some revenues which in a colloquial sense are raised or received by National Government which in terms of an Act of Parliament are deemed not to be, if you know what I mean, which is maybe the way that dedicated funds come into being. I don't know, because otherwise it would seem to me that "as may be defined by an Act of Parliament" would be almost superfluous because if one's wanting to say "in all revenues raised or received", that's exactly what you'd say but we now say "the revenues are as defined by an Act of Parliament." So, maybe there is a bit of flexibility built into here any way which would then satisfy all of us in its way. So I think I would support the proposal we leave it as it is.

Chairperson:

OK, then I think we've got a pretty high degree of consensus on that. Can we record that? Willie's reservation that he wants to make sure given that we, you know, we've got no guarantee that the draft is going to draft exactly the same. They won't in fact draft... We've got to guarantee they won't draft exactly the same. That Willie wants to make sure that it is sufficiently clear that it does not mean that the provinces are not able to keep their own revenue. OK. Can we now move on to 185(2). I'll read that out as well. "No money shall be withdrawn from the National Revenue Fund except under appropriation made by an Act of Parliament in accordance with this Constitution provided that revenue to which a province is entitled in terms of Section 155(2)(a)(b)(c) and (d)

shall form a direct charge against the National Revenue Fund to be credited to the respective Provincial Revenue Funds." Now, shall we follow the same model? ANC. At the time we said we were holding this over until we had a discussion about Inter-Governmental relations but I think we can actually say that there will be revenue assigned to the provinces through the process of the FFC and that this revenue should form a direct charge on the National Revenue Fund. Obviously the sections and so on and so forth will vary, but I would say speaking for myself, I would say that our reflection at this point would say that we are broadly supportive of that clause. Is that also the NP's view?

? Yes.

Chairperson: DP.

Andrew: Yes, if I may give the status to my colleague that he deserves. The Freedom Front is actually the next biggest party. But we're not people who stand on ceremony.

Chairperson: I'm following the order on the table.

Andrew: I see. OK. Rob, we did suggest one small amendment that where it says "to be credited", we have recommended that that be changed "to be paid into" because credited in the sense is almost as if the National Revenue Fund is holding the money of the Provincial Revenue Fund and it's simply pulling a book credit as opposed to paying into the Provincial Revenue Fund which may of course also be at the Reserve Bank so in terms of the Reserve Bank it may just be a book entry. But that was our proposal that it's absolutely clear that those matters that are a direct charge are immediately paid into the Provincial Revenue Funds, not simply credited. Because theoretically you can say well you've got money to your credit, but we're not paying you at present.

Chairperson: Now I just want to ask something first as a matter of I think we need a bit of further knowledge here. I mean, do departments, ordinary departments, they don't receive all their money straight away, do they? In allocations along the year? Now are we saying that provinces should receive something different? They should get there's up front, all at once? In other words they would be different if there was a sort of quarterly allocation. I think this would allow them to receive it in the same way. The formulation that Ken is talking about, as I understand it, would mean they would have to receive it straight away.

?: I would want clarity on whether it did. I wouldn't have read "being paid into" meaning that it has all got to be paid at once. I mean,

obviously it doesn't all get paid at once.

?: Can I just put a point there. I think just to follow up on this, we want to be absolutely sure that what Ken is referring to here means that if and when they require the money, that money would be made available to them.

Andrew: No, what I'm saying in a sense this should probably stand over until Sections 155(2) (a) and (b) and/or their successors are finalised because you see there may be different categories. For example there may be some taxes which are entirely belonging to the province, but for efficiency reasons the Central Government collects. Which means the moment they get the tax they must actually pay it over such as for example, I hope I'm not incorrect, but I can go and pay my motor vehicle licence at any Municipality, Pinelands, Bellville even though I've got a CA, but I can go pay it. Now, as I understand it, they are collecting that as an agent for the Provincial Government. But the moment I pay them the money, the money does not become their money to which they then credit the Western Cape Provincial Government. They actually have to pay over the money and probably less a commission for handling it. So, you will get different categories. In addition I would imagine either the law or the FFC recommendation of what various provinces should get, will also stipulate when they should get it. I don't think anybody, for example in the current Budget, is going to suggest that if Gauteng is entitled to 15 billion rands, that on the 1st April they go along and say pay us 15 billion. That would presumably be incorporated either by implication in the Constitution or in an Act of Parliament that appropriates that money. So I agree if it were to mean they can get 100% of their revenue on the first day of the financial year, I would disagree with that, and that's not what I'm wanting. But on the other hand, I don't want a system whereby money to which they are so to speak legally entitled or budgetedly entitled is withheld for some reason. Maybe the Central Government has got to squeeze on funds and it simply passes the squeeze on by crediting and not actually paying over the money that is due. But maybe we should wait until there's clarity in those other sections, Rob, because then it would help us get clarity.

Chairperson: OK, let's just follow... I mean Cyrus can respond to this, but then let's follow. I'm sorry I didn't follow the procedure correctly. We should hear the status from all the parties and then discuss the issues. We've got into discussion here. But let's just get Cyrus there.

Rustomjee: I was going to say that I think the issue of "paid into" and "credited" are going to get superseded by technology because cash

management systems will enable funds to be either credited or paid into, I'm not quite sure in my mind anymore, but without either a physical transfer of funding or book entries recurring to satisfy one or two of those categories. In other words funding could actually end up becoming credited real time and interest earned on those funds right from the time.....

Andrew: Yes, but the only thing if one said... If you say "credited to", "credited and available to", in other words because you can have a credit and you can't get your hands on the money. You know you've got creditors in the normal business in another sense you have creditors which by definition means you haven't actually got the money. Now the provinces, and when I talk about the money, the money can be simply a book entry at the Reserve Bank. It's not necessarily you know bags of money or a cheque. But that's my problem.

Chairperson: Let's hear from Willie and then let's just return to try to sort this out. Willie.

Willie: Isn't what Ken have in mind that it should form an immediate charge against the National Revenue Fund, not a direct charge but an immediate charge. In other words from the moment the money is received it is actually the Provincial Revenue Fund's money. It can be done ? time. The credit or the payment or whatever you want to call it. But what we must take into consideration is that all the money won't be collected at once. It will be collected right through a book here and as the money becomes available it is an immediate charge against the National Revenue Fund in favour of the Provincial Revenue Fund. I don't think that if something belongs to a province that the Central Government must sit with the money. With the modern technology it is possible to do these things real time, but if we look at how the Receiver of Revenue operates, I don't know if the Department of Finance themselves which handle this money is more modern or not.

Chairperson: Is that the only point the Freedom Front wants to make on this clause?

?: Yes.

Chairperson: OK. I mean I think what we could do is we could take these as two suggestions or proposals which are not matters of contention but are being put forward by specific parties, and I think we should leave it at that point. They're not necessarily being endorsed by everybody. We don't necessarily have a complete consensus on them, but I think some people are feeling that we don't know whether we would want to accept them or not. We haven't gone through the full implications but they're being put forward and I

think they should be recorded as such. Would that be agreeable?

Andrew: Yes, Mr Chairman, may I just also suggest that we get some clarity on what "credit" means. If "credit" means that the money is available, then I don't think we've got a problem. So I think it's only a technical point that has to be cleared up.

Chairperson: When Cyrus comes back and gives us a revised version of this as he will do and we'll have the drafters in here as well. I think we should see if he can find us any clarity on some of these questions and the individuals who have made these proposals can do the same.

?: Yes, I would just like to make the point that I'm quite sure, I mean even if we reached finality on this particular point, that when Section 155 as a whole is dealt with, with ourselves together with Theme Committee 3, we're going to end up having to come back to see if this section is appropriately worded anyway. I mean amongst other things, just on a simplistic level, the number of the sections is likely to change just in the nature of things. So, what I am saying is we're going to have to return to this sub clause sub section I'm sure and I don't think there's necessarily a disagreement on what we're trying to achieve, to find the words that achieve it correctly, and I would suggest we follow what you suggested in terms of the two alternatives with a kind of footnote saying "We recognise that as this depends on how Section 155 develops in Theme Committee 3, this would have to be revisited any way to make sure that it links up appropriately."

Chairperson: Can we pass on then? We come on to 186, the Annual Budget which reads "The Minister responsible for national financial affairs shall in respect of every financial year cause to be laid before the National Assembly an annual budget reflecting the estimates of revenue and expenditure which shall inter alia reflect capital and current expenditure of the government for that year. Can I begin? ANC. There's nothing specific in our submission. I think we agree with that clause. NP. The same. The IFP has a long section there which I think we should, if we haven't read it through again, we should take note of one or two things. There's special votes required for a resort to public debt and so on and so forth, but the DP has also got quite a lot of amendments. Again, I'm going along the list here.

?: (Inaudible comment)

Chairperson: Well, you're in the right order if you the "Vryheid's Front". Ken.

Andrew: Yes, Rob, if I can take a bit of time of the Committee. We have a

set of proposals which have now been handed out as a separate sheet with a 4 at the bottom, page 2 of the separate sheets that were handed out because they happened to miss out on the photocopying on the original batch of documents that came for today's meeting. And they divide into two categories really. 2.2(d) puts certain limitations in respect of the budget and I'll come back to that, in respect of what a government can do in a budget which relates to using debt and similar such things. The other paragraphs of (a) to (g) except that one, this is 2.2 (a) to (g), essentially relate to full disclosure in government accounting. So that if you look at the government accounts and the government budgets, they actually tell you what goes on. They're not hidden guarantees, off budget items, accruals, recently you've seen there has been a fuss about the discount on government loan stock so there's four billion that it's actually costing and this year it's not shown effectively as an expenditure etc. And also moving into you know the second half of the twentieth century in terms of proper sets of public sector accounts. Now in terms of the Constitutional Principles requiring freedom of information and open accountable administration, I would believe that these things are in fact necessary in the times that we're living in, the world has moved on, and for a government to simply reflect things on a cash basis is totally inadequate. I do mention I might say on page 3 at the very end, 7.2, that it is accepted that some of these proposals be subject to a time delay and only become legally binding after a period because one accepts you know if we were to adopt a New Constitution next year to do full accounts on an accrual basis, it will not be practical immediately. So, there is an acceptance that on some of these things you would need a time delay. That is the one category. The second category which is covered by 2.2(d) arises from this point of view. I do not believe that it is the role of a Constitution to determine economic policy as such. Clearly the democratically elected government of the day must determine the economic policy, but there are legitimate areas in which the Constitution should inhibit or provide some parameters on the behaviour of government, and in general terms in a Constitution in general, one of the areas is the issue of what one might call abusive power and one's using that in a fairly broad sense. Although in a legitimate sense one's not trying to use it as a kind of swear word sense. But I mean it is so. Now, there are various provisions in the Constitution to prevent abusive power of various sorts by the government. So there's provision for an Auditor-General to make sure that the government is not actually crooking the books. There's a Public Protector which provides certain kind of indirect type protections. There are tender boards to ensure that government in its procurement policy is not behaving in an improper or corrupt manner. In addition, unfortunately I thought we would have handled this by now, but I think it has generally

(Tape 2)

been felt that unexcessive money creation which is a major factor in causing inflation later on, is in fact an abusive power, and that governments, I'm not talking specifically about South Africa, although it may well apply here as well, have often used in the past that kind of mechanism to create an artificial short term economic boom round about an election for the purpose obviously of popularity and trying to retain power. Now on that score, the provision for a Reserve Bank that is essentially independent and impartial, and I know at present we having certain difficulties within this Committee on that subject, but nevertheless I think the broad scope is not denied and that the fact it is going to be in the Constitution in some form is the ? against that. Now the final, what I would call, abuse of economic power of a government is in fact to run up unacceptably high deficits because the impact of those is not immediate and rather like printing money, if you simply borrow money, you've got lots of money to hand out, and only if future governments and future generations and future voters end up bearing the full consequences. Therefore I believe that it is legitimate to lay down certain parameters. And the one's I have suggested are as follows. No 1 is that. Oh, let me say in this way I've compiled this, is one accepts there are exceptional circumstances but if rather like a state of emergency, if there are exceptional circumstances, I believe that you should require exceptional majorities in parliament to be able to take those exceptional steps because they should be self-evident to everybody. Now the parameters that I have suggested is that in the event of a budget being laid before the National Assembly which provides for 1) Current expenditure in excess of current revenue. In other words just saving. It's not total expenditure, current expenditure in excess of current revenue. Or secondly, total expenditure in excess of current revenue, in other words, a deficit, and a cost of servicing government debt in excess of one-fifth of total expenditure. In other words your cost of servicing debt is over 20% already and now you're incurring additional debt and the third one is really more to do with the inter-relations with provinces. It does fit in here but it's an issue relating to what we do in Section 155. It says that if you want to deviate from the recommendations of the Financial and Fiscal Commission to the disadvantage of provinces. Then if you want to do any one of those three things, you should require two-thirds majority to be passed by the National Assembly. I believe this and the other measures which are in a separate category of disclosure, this is in fact a limitation, are both desirable and necessary in a Constitution for South Africa and I believe also, because there's a general ?. Well, now let's not say too much in our Constitution. Maybe I should say much of this is not necessarily meant to be, in fact it's not specifically legal language, so these are not drafted clauses that economics play an increasing part in the affairs of the country

and to have a slightly expanded section on the subject in the Constitution when you think of the massive sections you have on Bills of Rights and other such judiciaries and things, I don't think is going overboard at all.

Chairperson: I think, there's obviously a lot which we're going to have to discuss there, but I think we're going to follow the proper methodology. I just think that when we get to discussing Ken's proposal, we've got to isolate three things, one I think is the question of special majorities for the passage of budgets under certain circumstances. The second is methods of reporting in the Budget and what in that regard should go into the Constitution and the last one is his clause (g), again the question of whether it should go into the Constitution about the requirement that policy proposals which are made by Government should be costed. I think that's basically the way to summarise that, is it not? So, could we first of all ask Willie from the Freedom Front.

Willie: Mr Chairperson, the Freedom Front would like to have a Constitution which forces the government to move towards a balanced budget because the ? something for nothing deficits of the past created massive pressures towards inflation and this must be brought to a halt. The Central Government must start living within its means. We say the Constitution should not be rigid but allowances can be made for emergencies and for temporary deficits in times of recession, but over the course of the business cycle we say the Budget must be balanced. And while helping to stem the tide of inflation a balanced Budget is not a "be all" and "end all" in itself because it is theoretically possible to balance the budget at 50 or 60% of GMP by raising taxes, and that would defeat the goal of freeing our economy from a downward drag of massive government spending. It is total burden of government spending which is the ultimate evil and not simply the method by which it is financed. Now the Freedom Front favours a Constitution that limits spending, basing a ceiling on total Central Government outlays however funded. This includes off-budget items, credits, loan guarantees etc as a percentage of GMP.

Chairperson: Can I just get that absolutely clear. You say the Constitution must specify a certain percentage of GMP above which government spend he must not rise. Is that what you're saying?

?: Yes, it's because all the attempts, legislative attempts of the past proved fruitless. It's about thirty or forty years. We never had, as far as I could go back, a balance budget in our history.

Chairperson: Since we are supposed to be writing the Constitution, what percent are you proposing or do you not have a fixed percent?

?: No, I don't have it. You know this is something which should be talked about. I don't have all the information to suggest the figure but it is something that can be given to the Finance Committee and say, make a study of this and come with a suggestion. It's very difficult to give a figure without really studying this topic, but the principle should be written into the Constitution of a percentage limit.

Chairperson: I think we should discuss it in the following way, if people don't mind, because I think there's quite a lot of material there, and we could have a lot of discussions. I think we've got proposals and if one reads the IFP's proposal as well, we've various proposals which would amount to saying the Constitution must impose special majorities for the passage of an unbalanced budget or a departure from allocations agreed to by the FFC, or in the case of the IFP, resorting to public debt and then there's a proposal by Willie Botha that the Constitution should specify the percentage of GMP above which State expenditure should not go. Now I suspect this is going to be a matter of some discussion. I think we need to see what the views are on the issue of special majorities from those parties that did not mention it in their proposals. What is the reaction to "special majorities" from the ANC side. Barbara.

Hogan: Obviously you can't isolate special majorities from the context in which they are being advocated. In this context it is in the question of specifying a limit to the budget and the appropriations from the Revenue Fund. I'm also expressing a personal opinion here, but from my point of view the ANC would not accept special majorities of two-thirds or special majorities in any case on an appropriation Bill because then you're getting into deep waters because then to merely pass that appropriation Bill would be an enormous task. I mean we can see even now with the two-thirds that is required how difficult it is and that you just deadlock entirely all the time on appropriation Bills. You wouldn't get your budget passed, basically.

?: (Inaudible comment)

Hogan: Yes, but you have deficits in every budget.

Chairperson: Let's just hear the views first of all and then we can come back to debate.

Hogan: I feel a little bit constrained to discuss the issue of special outside of the provisions relating to the equivalence of balance budgets and finer conditions attached to that.

Chairperson: Jill.

Marais:

Well, I think that for me, if you look at what one's trying to do in terms of the work that you're doing outside the Constitution, is relooking at the whole question of how your budget procedure, the budget reform and the budget process is dealt with and I think to have a Constitution that locks you into a system that I think will actually handicap you. I feel a lot of issues that are being raised are actually important but I think they relate to the budget reform process rather than constitutional matters, and I think that then one starts looking at the merits and demerits of what is contained here, but I would really feel that that is legislative and goes to part of... We are only going to be resolving over the next, we hope we'll resolve over the next year or two years in terms of the process itself. So you're going to have a Constitution that in fact will make it if you went along this route. I feel it would make it impossible to actually function in relation to your budget. I would have a lot of difficulties with it. I think they're issues that need to be addressed, but not in the Constitution.

Chairperson:

I think those views are fairly clear. There's one further thing I want to add by way of comment on Ken's proposal is that current expenditure in excess of current revenue. Now I think that in many cases in what would not be considered to be an abnormal unbalanced budget which I think is what many of us acknowledge that we're in a serious situation now as far as our public debt is concerned. But I think in many cases you will find a budget which is well within the parameters of fiscal discipline in which current expenditure was in excessive current revenue, and I think that to require a passage of special majorities, it would be to create a situation which a lot of political manouvering could take place around the budget given that the budget is also a statement of confidence in government and so on and so forth, and I think that I also would agree with my comrades in the ANC that I think we would not see the necessity for this instrument of sound fiscal management, and I think at this point we wouldn't agree with those kinds of insertions. The National Party.

?:

Thank you Mr Chairman. May I just say as a matter of principle we would also support the old policy of a balanced budget and obviously we're very concerned about the deficit. But on the other hand I think that if you have to start regulating for this in the Constitution you may be getting yourself into a lot problems because the actual requirements of the time, at this time in the history of a country, something which you have to make very special provisions and if the budget has already locked you into a certain type of formulation of formulas to come back at any time to change the Constitution and do certain things, that would really be

very difficult indeed. So I would think that at this point of time now to lay down specific percentages would be extremely difficult. I mean the same sort of thing if you had to lay down a policy now to say that within the next five years the deficit has to come down to ex percent, may sound very good economically. It may sound very good from a principle point of view but the practical application of that may be something completely different because I mean if you're coming back to the RDP and certain requirements are being put on the country in order to achieve objectives in the RDP, you may find yourself with a tremendous amount of problems which will require overstepping certain marks in the budget, but which you would have certain controls brought in as well and certain guarantees with regard to how you got to meet up with those shortfalls. So I think my feeling would be this, that I accept the principles definitely of a balanced budget and the deficit down to a very small percentage. But I wouldn't at this stage go and down the percentages.

Chairperson: I think there are a number of ways which we can proceed and I think my proposal would be the quickest way. Would be to say that we all had a say and I think the drafter noted... well, they've already made a proposal. There's is a proposal on a fixed percentage of the GMP. But I think we've heard the views. I think maybe we could say OK we can leave it to the report will express the views and the differences that have come at this point. I suspect we're not going to convince each other if we debated it to greater lengths, but I'm over to other views of how we should proceed. There are two other points in Ken's proposal which I think we should discuss as well.

Hogan: I would just be interested to hear from the two parties whether they would accept that this is a matter for legislation because I mean there are many interesting points which you are raising here or is it an absolute die hard thing that you feel it should be in the Constitution.

Andrew: What I do think should be in the Constitution, but to me you see the critical point in terms of what Francois is saying, is ? possibly on the absolute extreme edges, I don't think Constitution should essentially be writing economic policy for example or a number of other kinds of policies or educational policies although you put in certain rights of children's education and things. To me the critical issue is I believe that for example a government printing money is an abuse of economic power. I also believe and the reason why it's an abuse of economic power because the immediate detrimental affects are not obvious and over time it causes all kinds of problems. Now, equally I believe that deficits, dissaving and heading towards death traps are things that in the short term

can make a government look more popular and give things to citizens but in the medium and long term the chickens come home to roost and the people who got the electoral benefit, are necessary the one's who then suffer. I mean if a government is in power long enough, maybe it does. If it's not, it doesn't. So to me the essential issue is whether the kinds of deficits, look the one to do with the provinces is really protecting the rights of the provinces. It's a different kind of issue but the one and two, is it an abuse of economic power or isn't it?. If it's not an abuse of economic power, then it should not be in the Constitution. But I believe while it's not the most severe abuse like other forms of corruption, that it is a significant abuse and therefore should be in the Constitution. So to me the key issue is is it an abusive power? I think it is. And I'm not trying to use emotive words, there may be a better way of talking about abusive power. I think it is an abusive economic power and therefore I think it should be prevented by the Constitution.

Chairperson: Can I just ask you one question of clarification. Do you think that funding in any level of current expenditure out of loans is something which should be prohibited or should require special provisions?

Andrew: Yes, I do because I think it's spending money you haven't got and it's living beyond your means, and if you've got a very good reason like I mean, war is a terrible example always to have to use, but in a war where the survivor of a country is threatened, then rather like state of emergencies, you're saying this is a particular special circumstance and therefore we need a special majority from Parliament because if it is such a special circumstance people will agree that it is and support it. And I do want to make the point which partly relates to some of the points Francois made, is that this question of when a particular clause becomes applicable. I mean I'm fairly flexible. I put five years for want of a better figure. If in fact one accepts that you cannot change these things overnight. It would be harmful to the country in the economy to try and slam the door on this kind of thing, but whether it's five years or eight years or ten years, I can live with it, but I think we should actually be looking at the kind of Constitution we want for our country even if all of it is not implementable immediately and the Constitution can make provision for that. We shouldn't say we would like it, but it's impractical at present so we're not going to have to it and we hope somewhere down the line we can persuade people to do it.

Chairperson: I think that the point is the following that we have an existing situation which I think is clearly understood by all of us with a level of resort to loan funding is excessive, but what you seem to be

doing is you seem to be wanting to go further than that and say that any use of loan funding for any current expenditure at any level, I mean some minuscule level is actually in principle wrong and therefore should require a special majority. Is that what you want to say there? OK.

Hogan:

You know I can understand what Ken is arguing but whilst he's saying that economic policy shouldn't be in the Constitution and the Constitution shouldn't dictate economic policy, I would say that the very arguments that his using is economic policy. It's not a moral question or you might want to put it as a moral question of deficit spending but you've got a whole range of use on fiscal policy. I mean if you look at the ? view, an injection of government spending does speed up the economy and has effect on the economy which can be beneficial for economy risk. You're not looking at the immediate, but you're saying in the long term you can have beneficial economic effects. Now you could possibly differ with me on that issue, but the point that I'm trying to make is that it's not an absolute moral issue, it's a question of your macro economic perspective, what kind of macro economic model you're working with. And so I would say it is an insertion to put these things into the Constitution of an economic viewpoint and that is why I would argue that instead of it being in the Constitution, it should be in legislation because there might be a prevailing opinion over a certain period of time but this is the kind of economic policy which is desirable.

Andrew:

You see clearly it is part of the economic policy. The question is as I said was the question of whether it's abusive power. But you see equally you were quite happy we've got to do the fine-tuning to have a Reserve Bank in here with a primary objective of the value of the currency, I've forgotten the wording, which is the economic policy. But because it's of a certain type, there are economists I'm sure who believe that printing money is one of the ways of helping in a depression of getting the economy moving and so one. So I accept, yes it is economic policy, but I was meaning it's a special category. To me it's an abuse of economic power in the same way that printing money would be an abuse of economic power. Now that's obviously a matter of opinion. I'm not saying that that's an absolute truth, but that's my perspective on it.

Chairperson:

Francois.

Francois:

Mr Chairman, may I just start off by saying that I completely agree with Ken about this question of the money supply. It can be, I mean we've had the experience in this country before that the actual manipulation of the money supply can have all sorts of short

term political advantages but very very drastic long term economic disadvantages. But the point is this I think it would be extremely difficult to lay down as a matter of principle what the parameters of the money supply should be because those things are determined by factors which are very unpredictable and you know could change overnight. To come back to the question of the money supply, that's one of the most important reasons why we felt that the independence of the Reserve Bank is such an important factor because they control money supplies and it's stated as their primary objective that they should protect the value of the currency. Without saying what policy you should adopt to protect the value of the money, that could be determined by a number of other factors, maybe even to a certain extent by the government of the day, but that comes back to other factors which I think we would probably be discussing tomorrow as well, and that is the actual relationship between the Reserve Bank and the Government and a very close consultation has to take place there to keep things like this money supply question under control and that it remains within the acceptable parameters. The question of loan funding, I think is a very important factor for us as well. You know when we talk about balanced budgets, I think we must differentiate between another factor as well and that is that when it comes to capital expenditure there's a tremendously strong economic justification for a country going into long term loan situations to finance capital expenditure. We are completely against it and I'm sure you will agree as well, to finance current expenditure from a long term loan. We don't want to fund any current expenditure out of loans or operating expenditure. So, my feeling is this, that the principles that he puts are correct but I would like to see a situation where we have to try and define the parameters between which these things like money supply could be operative and put that into a Constitution.

Chairperson:

I think that one of the sort of reasons why I personally feel that we should not be having these provisions in, it derives from Ken's important clarification that he sees certain things as an abusive power. Now just to use his own analogy if you have a low bond repayment on your house, I would not consider it as an abusive power to take out a small loan bond on your house to pay for education for children for example. I would not consider it an abusive power. It might be a question of judgement about financial management. I do not think that because the prevailing mood in terms of the current economic fashions is in favour of balanced budgets as it is, but that that necessarily means that any other view is an abusive power, I think it's a matter of political debate, and I think that that political debate should be the way in which a budget is arrived at and determined and it should not be that the Constitution.... I think that the only justification for these

special majorities would be to protect against abusive power, and I don't think any of these points which have been put down here would constitute will possibly I think the whole question of allocations to the provinces would in any case be possibly subject to the Constitutional Court and the provisions there. But I don't think that the others would constitute as such an abusive governmental power and therefore I don't think that a special majority is warranted. I don't know whether we can take this discussion much further. I think maybe we should just note that there are differences on this. Could we come back to the other points that... OK, Willie.

Willie: This is a very interesting discussion but I think it's the type of discussion which we should have in the Finance Committee. We should actually spend hours and days and weeks on this. Now I'm a business economist. I'm allowed here by my Party to give my inputs on my business economics perspective, and for those of you who don't know, a business economist is not somebody who goes and think out new things, rather he goes to practice and see what works and then you teach your students according to what is working, what is the ideal thing or what you can suggest is the ideal way to follow. So I don't come with new theories etc and I've looked at the American experience. I've read a lot about it. I've been over to America two times in conjunction with these things and it is so that all their legislative efforts to try and get rid of a budget deficit did not work. The experience ? and America will come down one day economically like the Berlin Wall has come down because of the deficits, so I believe. Now I've always said it and I said it to Francois' party when they were in power, we all know what the correct thing is to do, we know precisely what the cure for a problem is. All that is lacking is the political guts. Now, this is the problem and because I know it's a very touchy issue and it's not possible to get all these things overnight. I've chosen my words carefully and I said we must move towards a balanced budget. If you want to achieve that overnight then it would be like taking drink away from a drunkard. You will die or get the ?, or whatever you call it. Now, Ken's argument that it is an abuse of power to print money is correct because inflation is nothing else than borrowing against the future for the political pleasures of the day. That is what inflation is about and only Government causes inflation and I agree with the abuse of power argument that he uses. And something which people don't take into consideration is that by inflation, it is the rich people who benefit, it is the people

(Tape 3) of debt, it is the people of assets..... but negative interest rates at that time. Now what I say is this percentage is a touchy thing also. You should not work in a percentage just for the sake of a percentage, but if we can tell the outside world in one way or another that we are moving in a direction of a balanced budget, you will see the influence that it will have on the economy of this country. One way or another if you can, in a way to accommodate

Barbara but also to give the impression that you're working towards this problem in the Constitution, then maybe we can do something good for the economy.

Chairperson: OK, I think we should leave this matter and come on to the other points which Ken has raised. I think there are a number of proposals here about basically the method of reporting, I'll call it that. I think that's probably the right thing. Now I think the question we have to raise here is or let me just say how I react to it. I think that a lot of this is quite interesting. I don't think that it's at the level where we can say it should go into the Constitution at this point because I think it's linked to the whole question of budgetary reform which I think is an ongoing process. But I think that's the question we have to discuss, whether any of this could go into the Constitution, the method of reporting? And then I think the third point we'll come back to is the question of cost in the proposals. So the method of reporting. Let's hear views from the parties, the ANC. Barbara.

Hogan: I think we hold the same view as you do.

Chairperson: It's (a), (b), (c) and (f) effectively of Ken's proposal. Page 2. You've got Ken's proposal. It's basically a set of requirements about the way in which public accounts would be presented which I think ... I mean a lot of these ideas are interesting, innovative but I think they're the kind of ideas which we have to surface in the context of a broader discussion about budgetary reform and so on and whether they go into the Constitution or not? I don't know what your views are.

?: It's very difficult for me to take a viewpoint now on my feet. Now if you look at (c), if you go back on all my budget speeches since Barend du Plessis, I've taken him on on this discount on government loan stock. Earlier this year I had the same in my speeches, but it seems to be a party with ?, we call it, but if Cape Town University comes with this, then it becomes news on the front pages of the newspapers. This is a way in which I would say the tax payer of the country has been deceived, I don't know if that's too strong a word. And if you deceive people, then you must make a provision somewhere not to do it in the future. And if the Constitution is the place, let the Constitution be the place. If there's other ways then we must talk about other ways. It's for me difficult to say now in this few minutes time after having seen this, should it be in the Constitution or not. As far as I'm concerned and as far as financial matters you can have too much and not too little.

Chairperson: OK. I can't resist a little remark there with Willie talking about

things on the front page of the newspaper. I was going to say there can be some disadvantages to be on the front page of the newspaper when ? is writing the story. Now, I've never been on the back page. Willie, I don't know whether you have? Could we... I think we should just record this. This is a proposal of the DP and the others have reacted accordingly. I think the final...

Andrew: Chairperson, may I just ask you... I mean I accept it's a slightly argumentative question that I would like to ask you. I don't want to reopen and I know we're not in fact supposed to negotiate and so on, but my interpretation of the comments of the other parties, all the other parties, yours, the National Party. Well, the two of you, is that you are actually saying you don't believe the Constitution should have a requirement that requires full disclosure of the Government's financial position. I mean I'm not fussed about my words or anything like that at all, but all these little things are meant to be adding up is that the Government must play open cards with the public as to what exactly the financial position is, what their commitments are, what their guarantees are and so on, and do I understand that... I mean I accept my question is slightly argumentative and I'm not really trying to particularly trick you or anything like that, because I'm rather surprised at the reaction to this. I thought this would be one in which people would say... I could understand under (d) that there would be a lot of argument and so on, but the others, well we haven't got to (g) yet. I'll also be surprised there I must say, that there isn't an acceptance that one of the problems is that we have things off budget, we have guarantees we don't know about etc and that constitutionally we should have a requirement that once a financial year at least the public, parliament is fully informed in its totality of the true financial state of the country.

Chairperson: I think what you're doing, you're going a little bit further. You're going into detail and I think that's where people are losing you, if you want Ken. You know that a full balance sheet of assets, of liability and accrual based operating statement of income and expenditure and a cashflow statement, I mean that's a level of detail that it actually might be important to have a new way of presenting certain accounts but I don't think the ? of detail is there. I think that let's entertain this and let's react to that. A more simple statement about a full disclosure of the financial system of government finances or something. A full and framed disclosure. I don't know, some such phrase. Barbara.

Hogan: I think Ken isn't referring if I understand him in this last question to (a), (b) and (c) , but to (e) where his talking about there should be a full statement of current outstanding guarantees issued by National Government.

Andrew: (a), (b) and (c), as well. A full picture.

Hogan: My concern is that ... OK, there's a lot of detail and that's where I agree with Rob and having this in the Constitution would be difficult and accrual based operating, who knows we might have a different system later on and then we'll be bound by the Constitution. But my concern is that you're talking about as part, and this is in (e) and also in (a), as part of the budget and government accounts there should be a full statement of current. Now, if you're looking at how expenditure committees operate in other countries, often it's not in the budget where there's a full disclosure of loans and whatever. It's in other reporting systems that come up and here you are linking it very closely to the budget itself. So I have problems. Once again it's part of the process of budget reform, what you put in and what you don't. And here it's unspecified to me. You specify that it comes in the budget itself. I'm not sure that that's the appropriate place where it comes.

Andrew: I said ? accounts in (e).

Hogan: Yes, but the general question is that what we dealing with here, is with balanced budgets and whatever. If you could just reword it. I mean I'm fully supportive of full disclosure but it's too specific and your details here tie you down to too many specific things.

Andrew: Can I just respond. You see, I think I did say that I'm tied to any of these words. I spelt it out in some detail and whether at the time of the budget you table a set of government accounts or you table those six months later after end of financial year or whatever the appropriate time is, and exactly how one wants to word it, but I think it's absolutely critical for Parliament amongst other things, that there's an absolute requirement on Government to give a full financial picture of disclosure. And I'm not fussed about any of the words.

Chairperson: If we could. You know, yes, whether it's at the time of the budget or whether it's to the public accounts committee or those sort of details. But leaving aside those details, could we agree that there should be some phrase talking about there must be full disclosure of the financial system of government. Could we agree on something like that?

Hogan: ?..... to cover partly because I think we have a problem with assets and liabilities, that we don't have that even. That we should be saying to include assets and liabilities and then loans and guarantees.

Chairperson: But of course we're know there are going to be certain secret accounts and things like that as well. So obviously taking that apart. OK.

?: I fully support the point of view for disclosure and it could be very important to give some guidelines as to what we mean by that. But let me tell you, Mr Chairman, that one of the most important things that we have to have there, is this off-budget sheet finance. If there's been a thing that has caused us problems with regard to the financial structure of South Africa, it's the fact that we've never been informed about what off-budget sheet finance involves. Off-budget, I'm sorry.

Chairperson: The report will include some general phrase which captures some of this sentiments without the sort of specific details which I think everybody has agreed are interesting, but there could be, you know, 57 other detailed things that we need to talk about. The final one in Ken's thing is that Bills Ja, is it Bills because also sometimes they say White Papers you know. I think this was in other countries. I mean it's basically policy proposals laid before Parliament should be accompanied by a statement indicating the cost that would be involved in implementing the provisions of the Bills. A sort of , you know, that everything has to be costed. But in any case that is the proposal that's been put forward.

Andrew: I don't have a problem with the White Papers, although in a sense you then have to start defining what a White Paper and what a Green Paper and so on, is that the Bills are the things that turn into laws. White Papers are indications of what kind of laws may be coming. So White Paper is a kind of policy discussion thing as I see it. I mean I've got no objection, but to me the critical thing is that when a Bill actually comes. I mean I know there is a Bill that I was pressing for that was actually passed in Parliament last year and it's not implemented, it's to do with Disability Pensions for children who are mentally disabled as opposed to physically disabled. And it's been passed and accepted. And when I approached the Minister and said, please when is it going to be implemented? He said, look, I would hate to be hypocritical because if I implement it, I haven't got the money. You know I could get the Bill brought into law but then I haven't got the money to pay the benefit to the Bill required. So it's just as an example.

Chairperson: I think the question we have to ask ourselves again is in the Constitution or not because I think that as part of sound financial management, I would think that we should be moving in that direction. I mean, Ken wants to put into the Constitution with a sort of a proviso that can take five years to be implemented. I think it's a matter of policy, not a matter of the Constitution, myself.

But anyway, let's hear views on that.

?: There's a very strong argument to be made now for this, Mr Chairman. How it's going to be formulated and the practical implication is something one would have to think through as well before putting it into the Constitution. But this question of compliance costs is something which we in this country would have to give a tremendous amount of consideration. Ken was talking about one aspect of it. But let me tell you if you go into the business world and you're start thinking about relations that follow from Acts, from new laws, and you think about the compliance costs that this has on business, you find out after a while it's one of the most detrimental factors that you have. The ? and regulations require these compliance costs which people cannot meet and if in the first instance if people had understood what those compliance costs were, probably the legislation would go through. Therefore, the principle, the compliance costs or financial implications of Acts should be investigated and put before Parliament. I think is a very important one.

Chairperson: Willie, do you want to say anything, from the Freedom Front. Barbara.

Hogan: Am I to understand that the Nationalist Party would want to see this in a Constitution or can I just have a bit of clarity there?

?: Mr Chairman, I'm not competent really to express an opinion on that, but I think on principle it should be applied throughout is a very important one, whether it has to be put into the New Constitution or not? I couldn't say.

Chairperson: I think then we should probably leave it like that and there's a general acceptance that this is a desirable thing that we should have. The question is in the Constitution or not? Only the DP I think at this stage is saying in the Constitution. Could we move then to the next one, 187, Procurement Administration, and here we have if you look at page 6 of your document from Cyrus, we have 187(1) - "The procurement of goods and services for any level of government shall be regulated by an Act of Parliament and provincial laws which shall make provision for the appointment of independent and impartial tender boards to deal with such procurements." Let us ask all the parties again. ANC. As far as I know we agree. The NP. Agree. The DP. Agree. The FF. Agree. 187(2) - "The tendering system referred to in subsection (1) shall be fair, public and competitive, and tender boards shall on request give reasons for their decisions to interested parties. ANC. Agree. NP. Agree. DP. Agree. Freedom Front. Agree. 187(3) - "No organ of state and no

member of any organ of state or any other person shall improperly interfere with the decisions and operations of tender boards." ANC. Agree. NP. Agree. DP. Agree. Freedom Front agree. OK. 187(4) - "All decisions of any tender board shall be recorded." ANC. Agree. OK, let's just put it this way, I can see the DP has got an amendment. Let's just see whether we all agree with that and there's "and shall be open to public inspection". ANC, I think we can agree to that. We all accept the DP's. OK. Then Section 188 refers to Guarantees by National Government of Provincial Government Loans. Now this I think is actually something which.... Well, I think we could ... there two ways we can deal with it. We can either deal with it in substance or I think we could say that this matter although it's dealt with here in the Constitution is really a matter of inter-governmental fiscal relationships which we should refer to (3). I would propose the latter course, so we put it onto (3). Would there be agreement on that? 189.

?: Sorry Rob, just one point. The one aspect is not inter-governmental relations. We did suggest that guarantees issued on behalf of ? or any other body or person, in other words other than provinces or local governments that there should be some mention and that there should be some parliamentary kind of scrutiny or approval of that. I don't know what other parties feel about that, but I mean it's not only provincial and local government to which government can issue guarantees. It can issue guarantees to Eskom and can issue, well, theoretically to anybody. And I think that the provincial and local government thing is clearly a sort of inter-government relation, the ? and others is not.

Chairperson: You are saying prior parliamentary approval rather than reporting to Parliament?

Andrew: Yes, because the existing one for the provincial and local is the norms and conditions for guarantees set out in the Act of Parliament. Now I don't mind maybe the ? could also be norms and conditions set out. I'm not particularly fussed about the detail. I just don't think we should be silent on it because it could be a fairly important element.

Chairperson: Is there some agreement on that? What are the views of others. ANC, NP, Freedom Front? OK, then we'll take that one forward. I think we can get through this quite quickly if we're not held up. Special Pensions. 189. Well I think that several of the parties have suggested that this is not necessary any longer or that if it is necessary it's not a matter which we're particularly going to deal with. 190. Income Tax of Elected Representatives. I think the ANC, Yes.

- ?: Sorry, but what happens to 189?
- Chairperson: I think we are suggesting that this is no longer relevant in the New Constitution.
- ?: OK, so it's not something for the New Constitution. OK.
- Chairperson: 190. Income tax of Elected Representatives. It says here "Without derogating from the Receiver of Revenue's powers and functions, the Receiver of Revenue shall annually assess the income tax returns of all elected representatives at all levels of government." Party views on that. The ANC's submission said accrual similar to that should be retained in the Final Constitution. National Party.
- ?: The person who is supposed to handle that is unfortunately not here, but I know that the National Party was very much in favour of extending that clause to request the Receiver of Revenue to publish names of public representatives who haven't paid their tax over two or three years and bring it to the attention of Parliament and also the public.
- Chairperson: Do you want that in the Constitution or do you want that in ...
- ?: It could go into legislation as well, probably, Mr Chairman.
- Chairperson: OK, so that idea into legislation I personally wouldn't have any problem about it going into legislation. I don't think it should go into the Constitution though. The DP.
- Andrew: Yes, Chair. I'll just read the point we've got here in which we say this section would be better handled by way of a parliamentary law containing more detail and covering broader elements of an appropriate code of conduct. As it is it is superfluous in law and also refers to a person not defined in the Constitution. Now the Receiver of Revenue is not defined in the Constitution and therefore you start running into problems because you better start defining the person. But in addition, I mean all this actually says, and I know I was there when it came up at Cadisa in the middle of the night and really nobody wanted to argue about it plus nobody wanted to look as though they're suggesting electorate representatives should somehow get away with something. But all this is saying, I mean, the Receiver of Revenue is obliged to only assess the income returns of all persons in the country. So this may be a nice kind of motherhood sort of throw a sweetie to the crowd kind of thing, but I mean in actual fact it's meaningless, and in addition it also has a kind of strange connotation as though for some reason income tax returns are something that's particularly

important, but other forms of obeying the myriad of other laws that all the citizens including elected representatives have to obey, has some lesser importance. I mean you could put here, you know if I came and now said well the Attorney-General or something must investigate whether any members have been convicted of offences during the year and if so report it to Parliament. Then a lot of people would say.... some people would say it's nonsense because it is, but a lot of people would say well if we say it's nonsense it sounds as though we want the MP's to get away with illegal behaviour. It's actually an absolute ? as it is and I think you either need to broaden it to mean that something in addition to what applies to every citizen in the country is going to apply to members of Parliament if that's what you mean and I actually think that's better contained in legislation or else you can leave it here as a meaningless song to people and it may be considered something of a public relations exercise. But simply saying that the Receiver of Revenue must do the job that he's obliged to do by law anyway, I think is... to me it's demeaning in a Constitution because it's actually a kind of false pretense that one is putting in here. Thank you.

Chairperson: Yes. Well I must say I think that what Ken says makes quite a lot of sense actually. I must admit I always assume... I just didn't understand this clause. I thought it was the Auditor-General. I thought it was going to be an additional ... I was under that misapprehension for a while. But yes, the Receiver of Revenue is supposed to assess all income tax returns. So what's the point of shoving it in. I do think that we will probably all agree that there needs to be full disclosure about anybody who doesn't pay their tax. The suggestion of Francois Jacobs, but that this is appropriately done in some kind of code of conduct or something. OK. Pensions of Political Office-Bearers.

?: Mr Chairman, I just want to also put the Freedom Front's viewpoint on that part and that is we think it's nonsense.

Chairperson: Sorry Willie. Pensions of Office-Bearers. 190A.

Andrew: Is that a recent amendment of the Constitution?

Chairperson: Well, it's in here.

Andrew: It's not in my Constitution. I'm not arguing that it doesn't exist, all I want to say it's not in my Constitution.

Chairperson: Shall I read it out. I mean I tend to think that if we've got it here, we don't need to read it out. I would tend to think that it's in the same category as Special Pensions, that in fact we don't need to

... We're not discussing it at this Committee. We don't see any need for it to be in the Final Constitution. It should be covered by legislation dealt with in that way. But if anybody has any other views, then I will read it through. It's quite long. I mean the pension fund for political office-bearers is the same. I think we're nearly finished, but we haven't quite finished. What we've done is we've paralleled the Interim Constitution.

Andrew: Can anybody, because this was obviously an afterthought, I see it came in in 1994. Does anybody know what the motivation I mean that was last year. What caused it to come in? What the motivation behind it was? Because I must say my natural reaction is the same as yours Mr Chairman, but I'm just wondering if there's something that we're missing that's not kind of self-evident.

Chairperson: I don't know the details of this. It's all pre-election '94 stuff. Can we conclude because this part of our report has also got to deal with public enterprises or other provisions that anybody wants to propose in relation to constitutional provisions. I stress constitutional provisions on financial institutions and public enterprises. Let's go around the parties. ANC. We say nothing, we make a small note that we would be willing to see some further discussion about the autonomy of the commission for an Inland Revenue but we would see that as being dealt with in legislation rather than in the Constitution. But we basically don't have any other proposals to introduce any further constitutional provisions around financial institutions and public enterprises. Barbara.

Hogan: This isn't a financial institution, but under Section 60. I know we've brought it up before and that it goes to another Committee, but I'm getting worried that that other Committee isn't going to consider it. It's the passage of Money Bills and there's the clause there under 64 that the National Assembly shall not pass a Bill unless it's being considered and reported by a joint committee of both Houses. Now given that we are going to be going through quite a budgetary reform process, I don't ... I'm concerned about just entrenching just one aspect of passing a budget in the Constitution, it might tie us down. The Senate might have very different powers later on.

Chairperson: I think the point is correct but I don't think that this is the Committee that's dealing with it.

Hogan: Is there no way of cross-referring and making sure that it's followed up?

Chairperson: Let us then ask Pat. I think it's 2. Is it not 2 that deals with the Legislature and the Executive and all that. We noted this as a potential point of overlap, but that we need to record in the Minutes

that this Committee is concerned that the matter of the passage of Money Bills is addressed and that we want to draw this to the attention of 2, and point out that it's not within the brief of 6(2). OK. So, ANC, further points? NP, no further points? DP.

Andrew:

Chairperson, just, I mean obviously we want to move on, I don't have a firm view on it but I would be interested in your and other colleagues' views on public enterprises. As a general thing, I don't think they should be in the Constitution at all. The issue does arise as to whether something in terms of accountability and disclosure in respect of public enterprises or enterprises in which the State has a stake or a majority stake or something, whether there should be something of that sort requiring reporting to Parliament and if so, whether it's needed in the Constitution. Because over time, I mean when you've official public enterprises or whatever they end up being called, and when they start commercialising various things and so on, I'm sure quite a few of these things in various forms will continue to exist for decades to come and whether there should be some requirement of reporting/disclosure within the Constitution. I don't know how other people feel about it. I know in terms of the current practice and the current being current over many years now, I have been highly dissatisfied in the way that it seems to me that say like Transnet is a law unto itself and while technically it deals with the Minister, for Parliament to get its grips on it, is virtually impossible. And I would think it's at least worthy of serious consideration and I'm sorry I can't find my various previous notes on it, so I haven't got anything more specific than that, but I may as well just see, you know I wanted to raise the matter and see how other people feel about it.

Chairperson:

Could we just take the Freedom Front before discussing that. Freedom Front?

?:

Mr Chairman, I have written something on this later suggestion by the Freedom Front that when there is misuse of money then that particular public enterprise should account to Parliament. I've laid down 3 or 4 paces in which it should happen. I can't remember now. I couldn't get my notes, but it is somewhere in the official notes. When things go wrong, that is the point I want to make, I think it is the right of the tax payer via Parliament to get the people and let them account for what's being wrong.

Chairperson:

Can I just draw the attention to colleagues that when we did the Auditor-General, we did actually say that the Auditor-General at the Auditor-General's discretion etc etc. I'm not quite sure. I can't remember whether we said has an obligation or has a right to report on these public enterprises. I actually think we

strengthened it to say that the Auditor General should. That would be one line of accountability. I think that the other point which Ken's point raises is should there be an annual report of Transnet to Parliament just describing its activities or should that be specified every single one and then how do you define when is something public enterprises. At the moment the IDC puts R20 into a small enterprise and that becomes the State enterprise or how do you define it. Or is the Auditor-General route sufficient? The Auditor-General route allows any enterprise which uses public funds to be investigated.

?:

The basic problem that Ken is referring to here which I share as well is the fact that there were many of these State Departments which started commercialising themselves, became registered under a separate Act, had their own Board of Directors and then submitted an annual report to the Minister concerned. Whereas in the past their accounts were audited by the Auditor-General and that then came through to the Parliament and then to the joint committee on public accounts, and there was scrutiny and there was reporting. And we wanted to get back into that situation and therefore we passed a Bill in Parliament which regulated the reporting by public enterprises. And in terms of that Act, the Auditor-General receives the reports that have been done in all public enterprises and has the right then to report to them as well. I think that that does cover us to a certain extent there. But Mr Chairman, may I just say this. I'm just taking up Willie's point here. I would much rather see a system working here where we get regular Courts every year on every public enterprise. Anything that uses money. Just to come back to your ... the point is I don't think we can wait until things go wrong. We have to get into that much before that time, so I would suggest that system. You see the question that you just raised about the IDC. The IDC's policy is never to take in cases like this a majority interest in anything, so if they do assist the organisation they don't necessarily take equity, they can also give them financing through other means as well. So that's a different category. What we want to know we want to know what the IDC is doing with its money and what sort of propositions and projects are being financed and how well is that money being used. You see the principle for me is the following. Let's just take two big one's, Transnet and Eskom. I've got nothing against either of them per se, that's not the reason why I'm choosing them. The State earns 100% of their share capital. They are commercialised enterprises. Now normally you have an annual shareholder's meeting and if there are dissatisfied shareholders they can come along and ask questions and voice opinions and vote out the board of directors. They can do a range of things. Now obviously where the State is a 100% shareholder, it's a different kind of thing. But quite honestly if the shareholder's

meeting consist of the board of directors talking to the Minister, I mean it's the people of the country that own the shares via the Government and I just feel that that link is too limited. Now clearly by definition if you're going to get the benefits of commercialisation, you don't want them to be subject to numerous dictates of Parliament because otherwise it gets back to being a government department and then you may as well make it a government department. So there is some kind of balance but I do believe that as the... I mean I think Parliament should be the representatives of the people or of the shareholders rather than simply the Minister. And therefore not only should an annual report be laid, but there should be the equivalent to a kind of annual general meeting which to me would be Transnet in addition to tabling its report, publicising its report, would also be to have their directors meeting with the Standing Committee on Transport and Eskom on Mineral Energy. Sorry. Well public accounts is if it gets into the naughty kind of bracket. But anyway, be it as it may be public accounts, but I'm thinking of people who would ask them about their policies, interact with them and so on, without the Standing Committee assuming any kind of executive responsibility. Now maybe that kind of accountability... To me the accountability at present is extremely limited and whether there is any appropriate level at a Constitutional level, I'm not entirely sure in my own mind, but I just wanted to raise the issue. Thank you for the opportunity of doing so.

Chairperson:

I just wondered... I just had a possible sort of formulation around that. I don't whether it would meet the Bill. We could say something like just a very short clause that Parliament shall have the right to receive reports from any enterprise in which there are state funds deplore it in a manner, and I think this is where the problem comes in, in a manner to be determined by legislation so that you can decide whether you want to call in the report of some group where the IDC has invested in. Because you may want to. I mean they may... and on the other hand you don't want a slow job. I wonder if something like that, some general clause like that, would be the only other sort of clause that we would say would have some validity in the Constitution. Billy.

Billy:

To go further, I think many of those enterprises, you take control boards and so on, are revenue raising institutions. And any revenue raising institution even if they don't receive funding from the State should disclose because after all they're taxing the people and raising revenue, and therefore they should be also disclosure to Parliament, especially where it's sanctioned by Parliament.

?:

I agree with you. All the control boards have to report because the

Auditor-General goes through them in any case, but Billy is right because the principle here that if their sources of revenue are regulated by law, they should report.

Chairperson: Colleagues I don't think we have any further business. I think we need to just briefly sketch up the procedure from here. I think what we should do now is ? to Cyrus now. When we receive a report from Cyrus, I think we should not be discussing the substance of the issues, I think we're simply going to be saying whether this is correct or not as a reflection of it's like a Minute whether it's correct or not. I think we could do that fairly quickly when Cyrus is able to do this. I think that we have to bear in mind we have to have this identification of points of consensus and points of contention and we have to prepare a normal report. That report would then be submitted and then presumably we will get constitutional text on these issues for us to draft constitutional text for us to discuss. So I think that's the procedure from here on. I don't know if Cyrus is able to tell us what sort of time frame we could be working towards.

Rustomjee: A question and a comment Chairperson. The question is I'm not sure where we left this final discussion on the last section. I don't know what. When I heard all the discussion I'm not sure what the final result was of what we were discussing on Public Enterprises.

Chairperson: I thought there was agreement about something like I had suggested.

?: Yes, but Billy and Francois suggested a kind of supplementary element. I'm not sure you have because by then I've forgotten exactly what your wording. I think there was consensus agreement on what you were suggesting but I think Billy and Francois indicated maybe in addition to being a shareholder that where there's a body that in terms of law is allowed to raise money or something, that would also fall in the category.

?: If its revenue is determined by legislation, then it should be subject to the same scrutiny.

Chairperson: Is it any enterprise in which public money is invested or which is able to raise revenue in terms of the legislation?

?: Yes.

Chairperson: OK. Should report to Parliament in a manner to be determined by ... or could be required to report to Parliament in a manner to be determined by National Legislation. OK, so Cyrus when could we expect this. I know you've also got the FFC thing to do as well.

OK, nine o' clock tomorrow morning.

Rustomjee: I can try to get something done by Friday but I'd much prefer it if it's reasonable to get it done on Monday.

Chairperson: I think Monday is fair enough. We should also have some initial presentation about the positions on the FFC. Tomorrow is the Reserve Bank.

?: Inaudible comments.

?: Just under one condition Chair that you're not going to bring the legal draftsman to start trying to do...

Chairperson: I think we should have a legal draftsman in tomorrow.

?: Well for every one draftsman, could we have five tranquillisers please.

Chairperson: Well if you bring your own tranquillisers. Is this the document you're supposed to have for tomorrow? OK.