

2/2/11/1013

<b>ECCO</b>	The TECHNIHIRE group of Companies (Registration No. 86/03905/06)	
	1102 Heerengracht Centre Adderley Street Cape Town South Africa Tel.: 27-21-254590 e-mail: bbohle@aztec.co.za	P.O. Box 6550 Roggebaai 8012 Fax: 27-21-4191613
CONFERENCE AND LANGUAGE SERVICES		

<b>THEME COMMITTEE</b>	CC - SUB
<b>DATE OF MEETING</b>	28/03/96
<b>NUMBER OF TAPES</b>	2
<b>CONTENT OF ENVELOPE</b>	
1) PRINT OUT	✓
2) NOTES	✓
3) TAPES	✓
4) COMPUTER DISK	✓

CC Sub-Committee 6.2

28th March 1996

**CHAIRPERSON:** (inaudible) ... the question of the desirability or otherwise of inserting a clause of that sort on public enterprises. So if we could begin there could I ask - okay welcome Alex. I just to bring you on board, we've ... (intervention)

**ERWIN:** I thought you were on my side.

**CHAIRPERSON:** Were trying to identify what we've got to do and most of the discussion here and I don't think it's needs to detain us an (inaudible) ... amount of time, is going to be going through the revised draft. I am just pointing out that we need to take account of the submissions and I've tried to sort of try to indicate there not that many and I think that we can deal with them as we come along. There are a view points that are made in some of the submissions. But one of the points which we going to start off with for a few minutes I think is that there was a submission from COSATU in COSATU's draft. And Aubrey (inaudible) ... from the public enterprises committee has also expressed a similar view. It's about whether nor not we should insert a clause similar to the one which we previously had on public enterprises, but which we took out because the legal advise was that such a clause was - did not add anything and could have some other consequences. So I am suggesting we start off with that and I am just going to ask Aubrey if he want's to say anything and then Christine can respond and then we just discuss that matter first and then I think we go clause by clause through the draft. Is that agreeable to everyone as a way of working, okay. Okay Aubrey if you want to say



something.

**AUBREY:**

Ja I just - thank you chairperson I just thought it might be a good idea to - for me to be (inaudible) ... by the committee here of the reasons why (inaudible) ... to (inaudible) ... necessarily to constitutional rights a provision on (inaudible) ... enterprises. That (inaudible) ... we first, (inaudible) ... to bore you with unnecessary detail (inaudible) ...

**CHAIRPERSON:**

Okay Christine perhaps you ... (intervention)

**MS MURRAY:**

Well firstly let me say looking at the clause that has been proposed by COSATU now, it's slightly more complexed one, more complexed (inaudible) ... than the one we dealt with before I think if I remember correctly. The argument was - and the COSATU clause has two elements. The one is the issue of oneness and transparency and the other is the issue of annual reporting to Parliament and there are several problems in the Constitution. The issue we talked about before if I remember correctly was the issue of reporting to Parliament and the argument there was that the chapter on the legislature, allows Parliamentary committees to summons people and so on as they wish. The difference between the COSATU proposal and what stands at the moment in the chapter on the legislature, is the COSATU proposal would require those organisations to report, whereas the provision on committees under the legislature, simply allows committees to demand reports. So there is a difference between the two. I think the feeling was in relation to that was that really it is up to committees to make those decisions from time to time. And it's a detail that needn't been included in the Constitution. But that is really a political decision, that's on the first point. On the second point of oneness and



transparency it strikes me that it might be a little more complex than it looks. Because that is something that is dealt with at the moment in the slightly notorious now chapter on public administration. And I don't know if anyone has been - anyone here is being partied to the debates about public administration. The chapter on public administration very clearly covers institutions that are in receipt of Government funds, but that is qualified, it's only institutions that are dependant on Government funds. And those institutions then have to comply with a fairly full list of principles that are principles of democracy and accountability and so on. This proposal from COSATU would required that any institution in receipt of any amount of Government funding would have to comply with openness transparency or something. There - it seems to me at least to start with that one has to consider the two together and ask whether a decision under public administration isn't perhaps good enough. Whether this is in - whether the COSATU proposal is meant to be a sort of lighter level of accountability for any institution receiving republic funds and then the sort of more complete accountability would come under the public administration chapter and apply only to those institutions that are dependant on Government funds. It looks to me as if it's getting quite complicated actually and I wonder whether that political decision made to restrict public administration to institutions dependent on Government funding, isn't perhaps the one you want to stick to.

**AUBREY:**

Ja thank, thanks now I understand the rational. In the definition you've just given really (inaudible) ... the position that (inaudible) ... has placed - you see because - you see the problem with that (inaudible) ... control on (inaudible) ... on public enterprises or not, we just don't know how many these public enterprises are. We



(inaudible) ... the Government (inaudible) ... it's a misery, some are stretched all over the country and so on, and it's precisely because of (inaudible) ... you see. We just have the (inaudible) ... some of them are very well run (inaudible) ... under new management and others are better run and they actually - they surprised when you call upon them (inaudible) ... you see. And we were just (inaudible) ... and see you know, five, ten fifteen years down the line when the portfolio committee (inaudible) ... to public enterprise (a) and say look we want you to come (inaudible) ... that (inaudible) ... you see. Who the hell are you - I am sorry - you see that's the point, that (inaudible) ... they say look you are just interfering, right. Now we are saying there should be a Constitutional mechanism that entrenches the fact that public enterprises are there because they are being funded from the (inaudible) ... and they are obliged to account (inaudible) ... control committee. (inaudible) ... if they account to a control committee, you see the report and (inaudible) ... it away, Parliament knows nothing. We - you see that (inaudible) ... open that we must know that ultimately must account to Parliament if the control committee sifted a report (inaudible) ... Parliament doesn't have that right to remove from itself you see. That is a fair way to straighten us at the moment. And we really feel that you - (inaudible) ... the right to include it, but I think we wrong when we put it out and the way we (inaudible) ... which I think we just endorse it. We just thought that it would be a good idea to help - not only to think of the presence of the present situation but to prevent it in the future. Then things can get (inaudible) ... and (inaudible) ... we just want it to be clear just (inaudible) ... to sent the message across that look you, for which are being funded from the (inaudible) ... and that (inaudible) ... belongs to the whole nation and you must account and that - it's (inaudible) ... that (inaudible) ... has a



responsibility, it's Parliament.

**CHAIRPERSON:** You know I wonder if the way forward is not to say that we've had this representation, put it in square brackets or something for this afternoon or goes back on and the - we ask the panel for a more considered opinion and perhaps we finalise it at the - at next week's multi lateral or whatever. So that - so that for now we tabled it - the fact that there is a desired to put it back in, Snake.

**NYOKA:** (inaudible) ... anything of the sub committee has been cancelled, the meeting is scheduled for this afternoon (inaudible) ...

**UNKNOWN:** I beg your pardon?

**CHAIRPERSON:** The sub committee - the sub committee meeting this afternoon is cancelled, okay well then in any way, it would be on - it would be - let's put it, it's on there, the proposal is not tabled and noted and carried forward to put it through and we ask that the - that the panel gives us a more considered view of this for discussion at the - at the multi lateral on next week. Is that acceptable to everyone?

**UNKNOWN:** Ja, chairperson they can also look at what is included on the auditor general on what things he must also report, what sort of things, so ... (intervention)

**CHAIRPERSON:** Okay I mean but you know they - they must do what Christine did you know this cross-reference now there bits and pieces in the Constitution so that a kind of a conclusion is reached at that meeting. Is that - is that agreeable to everyone, so the proposal is now - is now put forward for further consideration okay.



**AUBREY:** Ja except that I want to free me of the obligation to attend that meeting, just to - as long as you just note that - from the point of view of Parliament the (inaudible) ... control committee we endorsing this formulation back or something. Unless it is necessary for us to come to that meeting.

**CHAIRPERSON:** Well I don't think we are concerned with the organising of that meeting, it's a three day Bosberaad, that a few people are going to, but it's the sort of - I think most of the movers and shakers in the CA will be there. So you know if we can convince them, ja.

**AUBREY:** Can I just suggest - sorry Christine - sorry you (inaudible) ...

**MS MURRAY:** No well - all I was going to say is perhaps, I don't know how quickly we going to be able to do this, because a lot of things are happening at the same time. But perhaps one way of doing it is at least sending you a copy of whatever - of ever - whatever we set out possibly before the weekend so that you will have some time to respond to it. And I would imagine what we would do is set out COSATU's arguments in full if not just reproduce them and then both - pose ways of taking account of them and talk about where they perhaps overlap with other provisions.

**UNKNOWN:** (inaudible) ... you see that a - you see a factor that must be taken into account it would appear, that the burden you know of the argument that is advanced by the (inaudible) ... you know (inaudible) ... had been that there are different types of (inaudible) ... now an issue that arose with the recent post office budget was exactly that. As long as it is, has a new raising, even if it does not rely wholly on the Government for funding as long as it raises revenue, in any form whatever, it is - it should (inaudible) ... Ja



because if that is the - you know that has been the - you know central issue here (inaudible) ... you know are that motivated the (inaudible) ... ultimate decision to a (inaudible) ... you know. Because I think whatever the post office or any other enterprise (inaudible) ... as a dozen, raising revenue from the public (inaudible) ... hand outs from the State (inaudible) ...

**UNKNOWN:** It's a secret - welcome comrade President, the President wanted to see that you are indeed working, so I'd like (inaudible) ...

**CHAIRPERSON:** Welcome.

#### **PEOPLE ALL TALKING TOGETHER AT ONCE**

**CHAIRPERSON:** Sorry Alex.

**ERWIN:** Chair (inaudible) ... that I think the principle that there should be accountabilities not an issue here, I would just urge that when we give it thought, think off the exact practical implications of the wording. Because I understand what comrade Willie is saying that there is a tremendous proliferation of structures in one or other way deal with raised revenue or whatever. And you wouldn't want them an it'sy bitsy little pieces from every level of Government to be recountable to Parliament. So I think we just need to give the wording, because in practise the statues should ensure that there is accountability and that's what we all agree with. So I think we should just think of the wording that doesn't get us into the trap of having a proliferation of silly little reports to Parliament but does allow us to have accountability.

**UNKNOWN:** Chairperson may I just say a word, I agree with Alex, the previous



clause I now analyzed I thought it was superbness, but then prominent members in my party said well be it so, but we want it in. But I agreed that it be thrown out, and so there are different views on this. There is very good national legislation on this - but we don't oppose it, we support everything whether it's necessary it's for them to say.

**CHAIRPERSON:** I think everybody supports the sentiments, the question is whether the - the clause like this in the Constitution adds anything to it or not, I think that's the questions.

**MS MURRAY:** There is another question and this is one that I - I think Dr Alant will be aware of to because he's been involved in some of the public administration of that I think. And that is we are certainly very unclear about what the intention is under the public administration chapter insofar as what institutions are covered. There seems to be a quite clear distinction between institutions that are funded by the Government from the taxes raised nationally. And institutions which have some kind of capacity and I think this is what Willie was referring to, to impose levies so they might usually charge for services, but they put a levy on that charge which is a former taxation outside the central Government. Now as I understand it the decision under public administration is that those bodies kind of (inaudible) ... that would impose levies, are not to be included in the public administration chapter. I don't know that this is always been the attention and whether in fact other issues have sort of muddied the waters here. But I do actually think that it's a matter that this committee might also want to think about especially as it's a public administration chapter which sets out a countability sort of principles in detail and they certainly won't be repeated in as much detail anywhere else.

**CHAIRPERSON:** Okay, I think - I think this is as far as we can go for today okay, is that agreed. Can we now revert to the text that we were all given yesterday and what I propose to do is to ... (intervention)

**AUBREY:** Can I be excused.

**CHAIRPERSON:** Yes thank you - thank you comrade Aubrey and welcome (inaudible) ...

**UNKNOWN:** My apologies chair I was at another meeting.

**CHAIRPERSON:** Okay, we've given you a little task which I think Christine will be able to bring you up to date on just - at some other stage. Okay we going to start then on the first page and I think what I'll do is I'll call out the - the clauses - clause by clause and see if there is any comments or additions that we want to put in. Please note that this has been redone and for example you will find that the equatable share of - the equatable share formulation has been changed to better Provinces, equatable share of revenue raised at national level, instead of revenue collected nationally, that sort of thing. So - so that I think that the changes are all highlighted in bold, but - so you know it's not exactly the same as we talked about last time. So we need to react to this draft as well as bring other considerations in. I will try as much as I can as we go along to draw attention to submissions that are relevant when we get to those sections. So if we could start with one section one here which is brackets (186.1) let's start there, Alec.

**ERWIN:** Chair yes, I am reflecting two issues in commenting on this particular clause. One is discussions from our own ranks in the ANC, the other is a further discussion in financing State



expenditure. First one just raised the concern, the second raised a more firm concern. There was a lot of doubt about whether we should have except money reasonably excluded by an act of Parliament. Two issues arose, one was the question of what is reasonably mean and there we tried to indicate that this was - that this should be objective criteria that allow you to do it. But in that discussion it was clear that this could if - if you for example were to take reasonable away and then you starting to open it up a lot and from State expenditures advice and I must say I personally concur with this quite strongly is that the better procedure is that all monies is paid into the national revenue fund and it can be appropriated out of that fund by legislation. Where the Constitution here specifies that the direct charge to the Provinces that's fair enough, that just gets embodied in the legislation later. But it is possible now for the funds to be appropriated of the national revenue fund or a specific purpose by legislation. But we would like to propose that we drop except money recently excluded, it just goes into the national revenue fund.

**UNKNOWN:** That was the initial wording.

**ERWIN:** H'm.

**UNKNOWN:** Yes.

**CHAIRPERSON:** Okay is that agreed Christine.

**MS MURRAY:** As I understand it the reason this became a debate was because there was a comment that for instance the National Park Board - part of national Government and receives takings at the gate, and then that counted money would have to go into the national

revenue fund and come out again and there was a concern that simply financial management of such institutions becomes extraordinary complicated, but I don't know much about this. But that as I understand it was the concern that the committee addressed in it - they proposed some kind of possible limitation of the clause. Otherwise it is written in stone.

**CHAIRPERSON:** Okay.

**ERWIN:** A lot then depends on what national Government means. If national Government means each and every organ of public ownership then that would be a problem. If national Government means Government as such, then the parastatles, the Parks Boards and other things don't fall into that.

**CHAIRPERSON:** Ja, okay well what does it mean then?

**UNKNOWN:** I actually agree with Alex that the national Government ...  
(intervention)

**CHAIRPERSON:** Can you press your mike.

**UNKNOWN:** The national Government were unbalance exclude National Park Board provided depends on how they are constituted. If the National Parks board is constituted by a piece of Government legislation and is not a Government organ then it will actually be excluded. If - as I understand it that's the position at the moment. But if for example the Government decided that they were going to set up a National Parks Board which is going to be specifically attached to the ministry of Sport and Recreation for example, and run an administrative (inaudible) ... then that would be money



received by the national Government.

**UNKNOWN:** I (inaudible) ... like this in the Interim Constitution (inaudible) ...

**CHAIRPERSON:** Ja I think we can agree to take out that last bit okay. So we - the sentence finishes after paid, okay. 186(2) comments there and this is particularly this new formulation equator share of revenue raised at national level instead of collected any - any problems there Alex.

**ERWIN:** Chairperson I am not quite sure was the reasoning was of putting the Province first. I must say we feel much happier with reverting to the original argitecture which was to talk about national legislation making the divisions and this matter here is dealt with under Province. And I'll be frank about why we want that because it's quite clear that it is the prime initial activity, that the initial activity is the portion of your revenue. It's not the receive by the Province. Now I can understand that if one's wanting to make shuttle political points then you want the Provence to come forward and we would not be happy with that. We want to go back to the wording that (inaudible) ... we had before.

**CHAIRPERSON:** So just remind us what should it be now.

**ERWIN:** Well previously 193(1) would have read - would have been what we've now got it's hard to work out what this is, but it's (2) the clause is (2).

**CHAIRPERSON:** Oh! no sorry - sorry I am still working on 186(2), we haven't got there yet. It's one that introduces, it introduces instead of revenue collected it really says revenue raised, that's the main change. Are you happy with that.

**ERWIN:** Ja - no problem - so I was jumping ahead of that.

**CHAIRPERSON:** Okay, all right so now you want to talk about 193 - you don't you want to go through the national ... (intervention)

**UNKNOWN:** We want to switch the ... (intervention)

**CHAIRPERSON:** National provincial budgets and all of that before we get on to 193 is that what you proposing.

**ERWIN:** What we should have is as we had before 193(1) was what's currently (2) on the second page, and it started with that, when we get to that we can look at another matter there but we just - that is the prime initial function that is making the (inaudible) ... of revenue.

**CHAIRPERSON:** Ja.

**ERWIN:** This Province one previously we had under the Provinces.

**CHAIRPERSON:** So you want (1) oh! yes I see, national legislation must provide for - you want to start with that okay.

**UNKNOWN:** After that and then the others.

**CHAIRPERSON:** So shall we - is there an objection Christine?

**MS MURRAY:** I don't have an objection because I was asked to combine these - these clauses and I mean looking at it now, it's an absurd way to combine them. But the reason for the combination is a little bit more important. The concern was that in a sense one was setting



up - so let me just finish that first point, one could obviously switch the sequence around and put certainly be more logical and coherent. The reason for combining them though was to ensure that you don't seem to have two different test because the old 138 I think it was, which appeared in the section under Provinces, gave criteria for the provincial claims to funding and then you had 193 just all on it's own with no apparent connection. There didn't - there was a fair amount of overlap and the idea was to try and pull it all together so that you see it in the same place. But one can do it in a variety of different ways, but I think my question to you is do you object strongly to having the whole lot dealt with together and of course one's local Government comes into it to. There may be yet another leg to it.

**ERWIN:**

Chair yes I think you'll have difficulties, this deals with the equitable sharing of revenue and allocations. Then when we come to the Province later you are identifying all their sources of revenue, that includes borrowing and own revenue etcetera and that seems to me to make more sense. There is one process dealing with the revenue sharing and allocations which determines the position for each level of Government. And then when you come to the provincial Province and it's source of revenue, it has more than just this, it can also borrow and it can raise it's own revenue.

**CHAIRPERSON:**

So - so in fact that should back on page 7 under provincial and financial matters, is that where it should go.

**UNKNOWN:**

Yes chairperson it should ... (intervention)

**ERWIN:**

I think should go back to that provincial financial matters.



**CHAIRPERSON:** Okay, so let's discuss the substance of that, at that point then if everyone agrees and then let's start with the clause (2) national legislation and you will notice there is an insert there about local Government (c) which is a new thing. There is also a (inaudible) ... it's a repetition by the way, each local Government share of is repeated. But are there any comments on part (2) do we want local Government to be put in the same arrangement, Alex.

**ERWIN:** Chair really in terms of the Constitutional principles we must say something about local Government share of this revenue. I think what needs thought if you look at (c) there is how in fact this gets drafted because it's going to depend as I come to later, one of the proposals we want to make is just to use when talking about Government, Provinces equitable share we use the exact words that we have in the principle because there's been a tendency to start moving these around, we've all done it. Now with the local Government the principle is a little different to the one provincial, it just says that we should a equitable share. I think wait a bit let me just check now, I'll get to that point, the principle says each level of Government to have a Constitutional right to a equitable share of revenue collected nationally so to insure that Provinces and local Governments are able to provide basic services executed functions allocated to them.

**UNKNOWN:** The difficulty is that if you were to try and apply to each local Government, any kind of specific criteria, anything similar to the Provinces you'll have a nightmare. So now when you look at the whole level of local Government, it's very difficult to draft about levels of development etcetera. You talk about a Provinces having that, but the whole (inaudible) ... of local Government crossing all Provinces, it's more difficult to draft that. So I am not giving the



solution but I think we've got to think of how we draft that and when we clarify it exactly what local Government's position will be for revenue. It may have to be just a slight difference in the wording that is applied there. Or it's got to be termination of the Province, the equitable share, local Government equitable share, but that equitable share should refer specific to the principle that is needed to carry out your function and provide basic services.

**CHAIRPERSON:** Ja of course that (c) doesn't say equitable share, it just says share, but anyway we need to - it needs to be revisited again in the function of the local Government chapter okay.

**UNKNOWN:** I'll try over the weekend to separate them for next week the draft (inaudible) ...

**UNKNOWN:** Yes I think we all need to give a bit of thought to that.

**CHAIRPERSON:** Okay, section (3).

**ERWIN:** Chair under the (2) sorry if you don't mind me going back.

**CHAIRPERSON:** No sorry.

**ERWIN:** I just want to raise an issue here which will could be solved in another clause but I think it's appropriate to raise it here. And it was raised, this is mainly from our own discussions in the ANC. We all agree with the principle that we would share revenue, then that revenue gets applied and when it gets applied at provincial level, it must be applied in an expenditure pattern that in certain cases and this could be a lot of cases, has to comply with national legislation. So there needs to be something said in our view about

your compliance with national legislation, it can't just be automatically assumed that this will happen. Now this bear that in mind when you look at (d) deals with a specific portion of the revenue, the national revenue. That can be allocated from Government's national share. So this is the Government's national share could be further allocated to Provinces over and above the equitable share with certain conditions attached to it you know. But the suggestion here being that only that part of revenue called (d) has got conditions attached to it. In practise it will have to be the case that some of the equitable shares revenue - you get your equitable share but you utilise that revenue according to certain conditions. You going to have to comply with national legislation because there is no ways that we'll be able to draw up a budget which makes the equitable share exactly equal to the schedule (5) power. And even section (5) - schedule (5) powers are concurrent in some respect. So what really happens to the Province as we got later on it receives an equitable share, it receives additional allocations that may be specifically conditional and this is built in to deal with the transition problems we've got. But it must apply it's revenue all of it's revenue to meet certain national legislation not - I think I've made the point. Now we can deal with that possible under the national budgeting clause which is clause (3) in the old draft, sorry ja main clause (3) here. It may be that we just have to say that in the budgets you must also indicate how you comply with national legislation on your expenditure side. It's a tortious point, I don't know if I've made myself clear.

**UNKNOWN:** I understood it, (inaudible) ...

**UNKNOWN:** (inaudible) ...



**CHAIRPERSON:** Okay if that's - we will the clause is all right as it stands here but you will deal with it later okay.

**ERWIN:** Ja but we'll leave (d) as it stands here, that deals with the revenue and we'll deal with this expenditure side under the budget provision.

**CHAIRPERSON:** Okay shall we move on (3), clause (3) here. (inaudible) ... again there is another little insert on local Governments.

**ERWIN:** Chair there is a possible thing we should look at here, many of our people were saying isn't this a very detailed clause. I argued well if you look at it closely, you may have to have all that detail if you want to keep the system functioning. I don't know whether anyone more genius can look at that and say we could reduce any of those specific details to address a concern that we've been much to detail. As a second point whether under (d) we shouldn't just use the words of the principle so that 2(d) would read the ability of the Province to provide basic services and execute the functions allocated to them. That - that's the wording of the principle and it might just ... (intervention)

**UNKNOWN:** Just (inaudible) ... against.

**ERWIN:** Okay, I've extracted from that principle to make it read the ability of the Province, I don't know if that's Province or Provinces, Provinces sorry, the ability of the Provinces to provide basic services and execute the functions allocated to them. That's what the principle says should happen, that when you drawing up this (inaudible) ... sharing thing you must do it in the manner that allows the Province to provide basic services and carry out the functions

allocated to it. And basically the logic here is just to make sure there is consistency of wording and we don't get caught into arguing different meanings to the function of the Provinces and the basic services and etcetera, etcetera.

**UNKNOWN:**

Chairperson on the issue of detail we can all look at it over the weekend I think. I was informed a while ago about the developments and the - well that I mention it here in a sentence or two of the German Constitution after 1949. And the gentleman or people involved did their best to put into that Constitution in 1949 a good framework for a pertaining to finance. But there was a - an agreement although not stated in law or the Constitution that they would revisit the parts pertaining to finance after five years, ten years and twenty years. And it was only, there was much pressure from our parties side which I resisted to put in formulas into the Constitution for example for diving, sharing money and so on. It's only after twenty years in 1969 that the Germans had the wisdom of putting something like that in. So I think we must also decide - we ought to be around still in five or ten years to revisit these things and see how they developed. Or I feel it's our duty to look at the Constitution and put in something to the best of our ability now and revisit it again, it must at least exist for five years. We must run the countries financial system for five years on this basis and then we revisit it. So I am not worried about too much detail at this point in time.

**CHAIRPERSON:** Okay.

**UNKNOWN:** We have not that - don't have that background that the Germans had of - of decades of sound financial administration. Because if that had been the case I would have said yes, let us chuck out a lot



of things. But after twenty years we may feel that our graphic (inaudible) ... justifies the mission of some - some provisions here.

**CHAIRPERSON:** Okay then so we'll all see if there is any short (inaudible) ... can be done, but otherwise I think we probably want to say that most of it has been irrelevant, (4)? On this local Government thing is I am not sure if that's the direction of thinking on local Government that it does stay, it's the (inaudible) ... I think there is much more of a feeling in that it's a layer of Government in it's own right or a tier of Government in it's own right. But anyway I think it's in brackets we can just revisit that again.

**UNKNOWN:** We should at least have one - one clause under a heading local Government I think there is enough ... (intervention)

**CHAIRPERSON:** There is a blank section later on local Government and finance which we'll have to look at.

**UNKNOWN:** Okay.

**CHAIRPERSON:** (5)

**ERWIN:** Chair now where would this - where did we have it before this, this 148(3) was it. So it may have to go back ... (intervention)

**UNKNOWN:** May have to go back there, ja.

**ERWIN:** I just think that has got to back to that.

**UNKNOWN:** Ja it's the first one who goes back there, ja.

**CHAIRPERSON:** Okay so it goes back.

**ERWIN:** And when we get there chair we might - I just want to raise a slight concern that we - we might want to retest the exact wording of this when we get there.

**CHAIRPERSON:** Ja okay, national and provincial budgets. Here we've got a - there is a representation from the Human Rights commission. They want to put annual in front of budgets, I think we actually discussed that and I think we decided not to, because (inaudible) ...

**UNKNOWN:** Ja that's a part of (inaudible) ... and they will get that.

**CHAIRPERSON:** (inaudible) ... because of multi budgeting I think we should just note that, are there any other points on 187(1)?

**ERWIN:** Chair, yes if we consider now the earlier discussion there - there are two points I'll raise here, it did first start with earlier discussion. Maybe we could reword 187(1) on the following lines. Just that national legislation must (a) prescribe the format of national and provincial budgets, we've already got that. (b) the process whereby such budgets must be tabled in Parliament and the provincial legislatures respectively. You guys will - that's a horrible word to put in a Constitution, (inaudible) ... by budgets must be tabled in Parliament, that's what we've got, it's just that the process might be more important than the when. Then this is an attempted wording as (c) which incorporates what we had the manner in which the legislation must -this must be prescribed the manner in which revenue and expenditure shall be shown to comply with national legislation. It's a bit clumsy I am afraid (inaudible) ... But it just tries to deal with the fact that the expenditure should also -



it should be possible to see from the expenditure figures of the budget how national legislation is or is not being complied with.

**MS MURRAY:** So do you in fact really want the word revenue in that - in that section, that last (c) prescribe the manner in which I can understand how expenditure complies with national legislation. I am not sure how revenue complies with national legislation, so we might need to ... (intervention)

**UNKNOWN:** What do you actually want?

**ERWIN:** Well there are - there will national legislation around taxes when we come to the Province and nationally you know - what we looking for here is it needs some transparency otherwise you could say okay we've raised this amount of tax, as own revenue. A budget, I am taking an extreme case a provincial budget that just said our total revenue will be R10-billion without - normally you'll do this, but without breaking down saying this is what we getting from the national, this is what we getting from our own revenue, this is how it complies with the national legislation of revenue. But I just felt to be consistent that both there is national legislation that will apply later to both revenue and expenditure and we just want a budgeting system that shows how we comply with both those.

**MS MURRAY:** Would it be too narrow to say how raising revenue complies and my grammar is not much better at the moment, but I mean roughly to so that we don't sit over the Easter weekend trying to get the language right and (inaudible) ...

**UNKNOWN:** I am still trying to understand ... (intervention)

**MS MURRAY:** Something like that.

**UNKNOWN:** Look what do you actually want, I can understand that national legislation will say how Provinces must control their expenditure and how they must spend their money. The other side of the coin is what exactly they'll have income, they'll estimate for their income in some way and their budgets, their budgets must be sufficiently detailed to give you some idea and national legislation will prescribe the extend of the detailed to be incorporated in a budget. Is that what you mean, or do you mean something different?

**UNKNOWN:** Yes I also have a question chairperson this (c) does it - does it pertain to the budget?

**ERWIN:** Chairperson the concern that has been expressed by ourselves and one can possible infer the answer to this concern in the current Constitution as it stands. That there is a possible problem okay the concern is this that we know how we going to divide the revenue. But the Constitution specifically provides that expenditure at provincial level will have to in certain cases conform with national legislation.

**UNKNOWN:** Ja - ja.

**ERWIN:** Now what we trying to avoid from a practical budgeting point of view we trying to avoid that the norms, guidelines and national legislation sets the actual allocation, it sets the framework, it sets the guidelines. Within that guideline the Provinces can determine their actual expenditure, but they must meet the obligations posed under - imposed on them by national legislation. So we just wanted to be sure that in budgeting, both that - they set out how



they will intend meeting ... (intervention)

**UNKNOWN:** Comply with the guidelines yes.

**ERWIN:** Ja that they intend meeting those guidelines. Because it will be possible to obscure that completely in your budgeting. And we - now it could be inferred from what we had previously that you got to comply with national legislation so you going to comply with it. That we feel that we should strengthen it just on the expenditure side a little bit and say you know when you draw up your budget you must indicate how you are going to comply with national legislation.

**UNKNOWN:** Ja okay.

**ERWIN:** That's what we trying to achieve there, I don't know if (inaudible) ... enough for you.

**UNKNOWN:** No - no that's clear, that's clear I understand it perfectly now. National legislation will specifically say that the budget must make it quite clear from the way in which it is drawn how it is going to comply with the guidelines or to the pre conditions for the allocation in the first place.

**ERWIN:** Yes.

**UNKNOWN:** Okay.

**CHAIRPERSON:** I mean you just have to make a reference to the specific points where that national legislation is referred to otherwise national legislation is used twice.

**ERWIN:** Okay.

**CHAIRPERSON:** But we'll await a more elegant formulation here. Can we move on and I am a bit conscience of the time here, we got to be out of this room at twelve and Theo has got to go at twelve and I don't know what's going to happen if we - at that point. But 187(2).

**ERWIN:** Chairperson on reflection do we need to be as detailed other than the second sentence which is a statement of principle and good one I think. That the budgets and budgetary process must promote transparency and bit, the other issues are such standard budgeting practise are we not looking a little silly putting it in the Constitution almost and it's just excessive details, a budget means revenue expenditure, capital current and the Constitution should be a statement of principle. It's the same with (3).

**UNKNOWN:** Ja the thing about the expenditure and the (inaudible) ... is that you must table the budget - those are two budgets that ought to be tabled on the same day. That's the principle here you cannot budget for expenditure in May and come with a budget for revenue in June or some - you see what I mean. These must be considered simultaneously but if that goes without saying okay.

**ERWIN:** Chair I am just wondering whether since it is a fairly standard practise of our existing budgeting and we are trying to not be too detailed this is coming from the detail aspect, (inaudible) ... detail being removed. Then you have 187(1) along the lines we've discussed that we will word it more elegantly then you'll just have a second principle which is important, the budgets and budget process must be made of tranparancy, accountability and effective financial management. Just a statement of principle, we leave the



other side out of that because this sort of concerns you having here would in fact be embodied in the national legislation.

**CHAIRPERSON:** Okay.

**ERWIN:** Both in the treasury and in the budget act that we busy doing.

**CHAIRPERSON:** Okay, Derek.

**DEREK:** So we - we take out that first sentence of (2) and (3).

**MS MURRAY:** My only comment is that if I remember correctly that, that first sentence of (2) is there partly at least in response to submissions by Ken Andrew, the other part of them is included in (3).

**UNKNOWN:** If necessary this is our suggestions, maybe we could bracket it and we'll have to work it through at the multi lateral next (inaudible) ...

**CHAIRPERSON:** Ja I don't think we doing much more than highlighting issues for discussion at this meeting now I don't think we taking firm decisions here. Okay 188(1), (2), 198(1) there is a quite an important - sorry ... (intervention)

**ERWIN:** Very quickly just on the questions which we don't have to discuss in detail whether (2)(b) isn't just a little bit too detailed. There was an argument that, that's covered by Parliamentary process anyway.

**CHAIRPERSON:** Okay we'll note that as well.

**UNKNOWN:** (b), (2)(b) I always thought it was - it wasn't necessary, the whole of (2)(b).

**UNKNOWN:** Yes of course we (inaudible) ... (3) today because we missing a certain member, and we know that (inaudible) ...

**UNKNOWN:** Ja but you know it is really implied by a - Parliament cannot make a discussion unless the whole issue is referred to the Parliamentary committee with a report and so on.

**CHAIRPERSON:** Okay so we'll ... (intervention)

**UNKNOWN:** On the report by the auditor general I think that's an important thing. You can say that Parliament must approve after consideration of the report by the auditor general you know, something like that.

**CHAIRPERSON:** Ja, ja okay (inaudible) ...

**UNKNOWN:** The auditor general file must read that.

**CHAIRPERSON:** We could just have the AG thing there. 189(1) there is a submission from COSATU they want to put the clause in which we agreed as follows, they wanted to say to organs of State must contract for goods and services in accordance with national and provincial legislation which provides for and then they would have (a) (b) and they want (c), they want an insertion here. The principles on which tender boards should operate including the promotion of the principles of equality and social equity. And they think that would assist in ensuring that the tender process is harnessed to the RDP principles of job creation, affirmative action, the promotion of small business and so on. So they want to add a clause (c) there.



**UNKNOWN:** The only comment I wanted to make here was that the concept of fairness certainly includes the concept of equity for the rest it's a policy decision.

**MS MURRAY:** (inaudible) ... may I just ask Zak something is it not covered with public administration which incorporates - is it not already - tender boards are surely part of the public administration if anything is.

**UNKNOWN:** Ja.

**MS MURRAY:** Public administration is required to be exercised in terms with those and many more principles. And I would then think it's covered, well covered in fact.

**ERWIN:** I think - chair I think that is the point we wanted to raise and we've just seen from the COSATU submission the kind of problem we think we'll get ourselves in to if you - you have it here in a special clause. Because I think the interpretation of exactly what COSATU would want becomes very problematic if it's a Constitutional clause now. And we would want to suggest that possible this whole issue is covered by the general provisions of public administration that Christine's just talked about. Because putting it in here you will record an earlier discussion we had on the question of impartial where our view was that impartial may preclude any form of differentiation and our suggestion which we can just table for noting here and think about is, is that this clause actually gets removed because it's covered by the general public administration provisions.

**UNKNOWN:** But I think we should also minute that the element of fairness in the context of this Constitution certainly includes all this, what is fair is

fair in South Africa.

**CHAIRPERSON:** Okay sorry you said which clause would get removed.

**ERWIN:** Well the whole of 189.

**CHAIRPERSON:** The whole - the whole section.

**ERWIN:** If we satisfied that it's general provision the public administration would apply here anyway it might be easier to cover it there. Because we heading for two, we already heading for two problems if we - the compartial problem and now this more complexed submission which is going to get us into difficulties.

**UNKNOWN:** Then let us adjust a footnote there that we must consider this, so if she gives us a new copy tomorrow then we can think about it.

**CHAIRPERSON:** Okay so question of whether anything on - and I just needed - all right that we discussed, 190 on page 5, 190 ... (intervention)

**ERWIN:** Sorry chair 190(3) now I fully take on board your earlier point about the composition of the committee today that really (3) is that a Constitutional issue, surely that's the kind of a thing that Government do - you do through your budgeting processes and your legislation rather than - it's beginning to look a little bit crazy that in your Constitution you spell out the kind of very detailed issues that any good budgeting process would do anyway. So we just want us to flag that we should consider removing (3) it's just an additional set of detail that shouldn't really be there.

**CHAIRPERSON:** Okay 192(1) there is another submission here from COSATU they -



they want to say that the - no sorry it comes under 192(3) so let's start with 192(1) anything.

**UNKNOWN:** Ja there is just one thing, 192(1)(a) the members, members of Parliament I should say, deleted and the Cabinet and delete the comma there and Deputy Ministers, I don't know why it's written like this.

**CHAIRPERSON:** Ja correct, 192(2), 192(3) COSATU wants the commission on remuneration to be stated that it will be operated on the principles of oneness and transparency. I think that's - so should we go without saying ... (intervention)

**ERWIN:** Is that not - is that not how the whole Government suppose to operate, so we don't need to put it - s specific clause in here, a specific sentence in here.

**CHAIRPERSON:** Okay.

**ERWIN:** Chairperson just a point that is raised from our side, if you look at (1) and (3) particularly then the commission in (3) makes recommendations with regard to only the legislature.

**UNKNOWN:** It's wrong here ja.

**ERWIN:** Should it not be making recommendations in regard to these Constitutional commissions too, now there is a difficulty in the case of the auditor general but there is a concern raised here that we are getting a number of Constitutional commissions and we've already seen some of the problems where different conditions can be set for these various commissions. And the point being made

is should this proposed independent commission in (3) also make recommendations for the salaries of the members of commissions indicated in (1)(c) above. Do I make myself clear.

**UNKNOWN:**

What - what we would want is that the political people are dealt with here and I - and the politicians, the Ministers and those people afterwards can determine the - and then Parliament the salaries for public protected (inaudible) ... general and so on. There is specific acts pertaining to the auditor general (inaudible) ... actually now the auditor commission (inaudible) ... but I could say the national legislation in (c) he must provide for the establishment of the independent commission to make (inaudible) ... to Parliament on delete any legislation concerning. You say to Parliament on the salaries allowances and benefits of members of Parliament and those people, the rest of (a), all the politicians but they don't make recommendations on legislation but on their salaries.

**ERWIN:**

Ja I think then we've got to draft this thing a bit more carefully this whole - because we've got three possibilities one is that legislation will provide for the salaries, but the salary levels will be derived by recommendation from an independent commission.

**UNKNOWN:**

Ja.

**ERWIN:**

That's one option, just - we just only deal with the legislative people. The second option is what we got here, which is that the commission on salaries makes recommendations only for the legislature not for the other members of commissions they covered by national legislation. And the third option really is that the commission makes recommendations not only for the members on the salaries, for the members of Parliament but for also members



of the commissions. And I think it's not 100% clear which of those we trying to achieve.

**UNKNOWN:** Well

**CHAIRPERSON:** Well there is another possibility not that you don't say anything about that, then you could parcel it national legislation to ask the commission to deal with the others or some other commission to deal with the others if you want to, does that (inaudible) ...

**UNKNOWN:** Ja I think the distinction between the second and the third option put up by Alex is that there is a sensitivity that politicians should determine their own salaries. And that's the reason why their salaries must be determined after recommending by a commission. The politicians can determine the salaries of commissions provided it's not their own salary by national legislation and they can decided whether they want the help of a commission or not and so on. So Constitutionally all you want to do is to ensure that politicians don't fix themselves up.

**UNKNOWN:** Ja chairperson may I speak again on this, I've read this whole thing now again, you know we never had in mind to - it later on slipped in the (inaudible) ... political, public protector etcetera. So under (1) should say leave them out but only the members of Parliament and Cabinet, Deputy Ministers, but the members of (inaudible) ... legislatures, and local councils, those people and I think the traditional leaders and members of ja councils, those people but you need only (3) there, you need their permission to determine upper limits and last year it happened that the Cabinet decided that they would go for lower salaries the commission recommends upper limits and you may not go beyond that limit, those limits



pertaining to all politicians on a (inaudible) ... traditions leaders as politicians. For it would be very unwise for a Government - any Government to determine salaries of traditional leaders except after consideration of a report from an independent body.

**ERWIN:**

Perhaps we should reduce a number of traditional leaders too. But then should we not redraft it, if that's our intention as Zak's outlined, we redraft this to deal in one section with the representatives that they - there must be a commission that recommends their upper limited of their salary and legislation embodies that and then the second group of people it's just national legislation that will cover them, but we separate them out.

**CHAIRPERSON:**

Ja okay, there is a - if we finished with that - association of law society ... (intervention)

**UNKNOWN:**

Chairperson returning to this, need we say anything about Judges, public protectors and so on in a Constitution.

**MS MURRAY:**

My experience of dealing with the chapter on the judiciary, the answer is yes. I don't know if this one is worth taking any further.

**UNKNOWN:**

No but I have another problem my recollection is that if you look at the sections themselves, they make it quite clear in relation to Judges (inaudible) ... that national legislation must provide for their salaries and so on. If that is so, I wonder what the need is to repeat it myself.

**MS MURRAY:**

I think Zak this was an attempt, we were told under the judiciary chapter and I think under independent institutions that the same thing was repeated too often and it must be consolidated - and this



is the consolidated version.

**CHAIRPERSON:** Otherwise we (inaudible) ... that clause about can't drop this (inaudible) ... and the whole off that - that difficulty. Okay can we - I think I should just indicate here - we've come to end of this and it would be a new section that clause we had on office of profit which we took out and we had a lot of problems with that. The Law Society, Association of Law Society's want that re-inserted I think - I don't know if anybody wants to motivate for that again, I think we had a very full discussion of that. I think we should just take that on note.

**UNKNOWN:** Chairperson there is a problem you know, if we now could take that on board and look at it again, that double salaries there are many persons now in our system receiving double salaries, traditional leaders who are members of Parliament, members the chairpersons of RSC's Regional Services Councils sitting in legislature and so on, it's just not right.

**CHAIRPERSON:** No I think we understand that and we also gave a contrary cases, we don't want school teachers not to be eligible to sit in councils and all that, so those comes with problems.

**UNKNOWN:** But we - didn't we agree that we would look at the (inaudible) ... on provincial level only and not - and leave out local Government, wasn't that our line of argument then. Because if you count the local Government where the job is really only part time then it's a different kettle of fish.

**UNKNOWN:** Ja that's the problem you see, once you start introducing different kettles of fish, there are actually so many varieties of fish in the sea



that you get yourself into an absolute lot of trouble.

**MS MURRAY:** And - I mean we have been thinking about an ongoing basis and we concern obviously (inaudible) ... the closest I think we got to finding a way of resolving it, was perhaps to encumber the - this commission on remuneration with another task and that would perhaps be the set out principles for double salaries. But even drafting that proved thus far impossible, but that's what it is in the sense passing the buck and having the notion in but not the detail. But you can't say double salaries in the Constitution it doesn't - it's meaning isn't evident on the face.

**UNKNOWN:** But what I thought was you - if you in legislature whatever capacity or in a Parliament you only receive one salary and if you serve on other commissions you are only compensated for your (inaudible) ... of (inaudible) ...

**MR YACOOB:** Ja just to say to Theo that the problem really nobody is saying that this shouldn't be dealt with, the point is that if all the parties are agreed on it, that the appropriate way to deal with it, is by legislation to deal with specific cases, there is no general way in which you could embody it in the Constitution and even if you did embody it in some general way, you would lead legislation specifically to deal with it, because the Constitution will only cover it broadly. So the point that was being made is that it's (inaudible) ... to put here. But if all the parties are agreed with it, then the appropriate department can ensure that detailed legislation is produced to deal with the problems.

**MR ALANT:** I don't want to logo the point we can leave it chairperson just that it did exist in previous Constitutions and it was highly respected



provision I must say. There was an old one, nobody is allowed to receive two - to hold two offices, more than one office of profit under the Crown, you know before 1961.

**MR YACOOB:** But there is no - the problem with that was that there was no clarity about what it meant and it didn't avoid, however, respected the provision was, it didn't avoid the mischief at all Theo will remember because people still had lots of double salaries all over the place by fiddling with the definition of office of profit.

**CHAIRPERSON:** Okay thank you. Well me might - we might find a few people from KwaZulu Natal to hold an office (inaudible) ... and maybe another one (inaudible) ... okay can we move on. There is a new on page 6 there is a new definition of taxes which is being inserted to try to get around this impost and all of that. And I am just wondering whether I mean - I don't think it's very elegant the way it's shoved in. I wonder whether the first reference to taxes could just say taxes or any other compulsory transfers, could that not be a way around it, rather than shoving it in here, (inaudible) ... this a special clause, Christine.

**MS MURRAY:** Well this one hasn't been very carefully considered it's been put in to try and provoke people to think about the problem and the position is - is I think almost clearly wrong, it was difficult the chapter was still fairly moving around a bit to find a place. The second thing is I am not at all convinced that an equivalent consideration is a tight enough formulation, it seems that it might raise more problems than it solves. If we don't come up with a suitable definition over the next week, we going to have to retain (inaudible) ... levies and then our tributes and ... (intervention)



**ERWIN:** I just wondered why not say a tax or any other compulsory transfer of money to a Government, that might - that might be a way of you know wherever you use that long list.

**MR ALANT:** But I wanted to suggest chairperson that Alex has got at his disposal a department on tax experts it may come forward with a formulation in the next (inaudible) ...

**ERWIN:** Chairperson they happy with what we got and my guess is that attempting to (inaudible) ... to do the impossible and give a definition for every form of Government revenue will be very difficult I think we forced to live with that, there are certain practical advantages too because taxes, levies, (inaudible) ... and surcharges to financial lay persons have got different meanings. I mean it's I know it's odd like tax is a very big (inaudible) ... but a tax and a levy - if someone said to me what's a tax, what's a levy I'll say a levy is a flat rate charge probably. Whereas taxes can be all sorts of formula's. if they ask what a surcharge is, you know surcharge is over and above something you've really got. What an (inaudible) ... is, is I don't know, it's a gate post or something like that. It's a - I think an (inaudible) ... is designed to mean a specific charge for a specific purpose.

**MR ALANT:** Ja it was the old English used by Ken Durr.

**MR YACOOB:** The dictionary defines it as a duty on imports and the word I M P O seems to support that.

**CHAIRPERSON:** Well let's leave that one as still standing, I wonder if we can try and speed up a little bit by just saying - just taking heading, on the FFC I think the thing to note there is that this question of holding office



in an political party maybe we should deal with that when we get the auditor general because it's the same. Now there is a note from Francois Jacobs but apart from that, is there anything.

**ERWIN:** Chairperson on FFC just to note quickly we need to just come back, go through the reasoning on (2) as to (inaudible) ... and see what's been pointed out here is that in fact ... (intervention)

**CHAIRPERSON:** No organ of State ... (intervention)

**ERWIN:** Sorry?

**CHAIRPERSON:** That one, no organ of State.

**ERWIN:** Ja may interfere with the functioning of the commission in practise what we finding is a very - the working relationship between the FFC and the Ministry of Finance is proving to be not to different from the working relationship between the Ministry of Finance and the Reserve Bank. Where there is a clear autonomy in a defined area but in fact there is a tremendous amount of work and we just want to review (2) in the light of that.

**MR YACOOB:** Okay.

**CHAIRPERSON:** Sorry that 194(2) - and then there was a proposal can we not deal with some degree of rationalising in 195(1) all those small clauses and then specifically 195(1)(e) we need to clarify - oh! okay you've changed it in fact, it previously read taxes, levies, okay we need to - there was a wording that - elsewhere we add the FFC looked at any tax and levy - ie. it was became our tax commission which is not the case, it should be only looking at something specifically to

Provinces, but I think we've in fact covered that one. Anything further.

**MR ALANT:** Chairperson that 190 - 10 - a new 10(2) is that necessary that cross reference doesn't it go without saying that they must take cognisance of provisions of the Constitution? Let me read it (inaudible) ... perhaps cross reference I think it's unnecessary, I may be wrong.

**CHAIRPERSON:** Ja it's something (inaudible) ... a section that we want to put back again that was (inaudible) ... national legislation must provide (inaudible) ... with all etcetera, etcetera and says that they must take account of all of that.

**MR ALANT:** But of course they must account - take account of the whole Constitution.

**CHAIRPERSON:** Ja.

**ERWIN:** I think that's what we were looking for can you not just streamline this clause instead of spelling it all out again that they must take into account.

**MR YACOOB:** We said they must take into account the factors mentioned in the other section.

**MS MURRAY:** Yes I mean this (inaudible) ... from a list here which was slightly different from the list in 193 and that's how it came this way but does one need that section at all.

**ERWIN:** This one here.



**MS MURRAY:** 195(2) in performing it's function, this one is considering (inaudible) ...

**MR ALANT:** Ja that's the point.

**CHAIRPERSON:** That's the suggestion, take it out.

**MS MURRAY:** It is like an insult, suggest it might not.

**CHAIRPERSON:** Take it out then okay, do we agree on that. Anything more on the FFC?

**MR ALANT:** Ja on a report, well the commission must report regularly both to Parliament and to (inaudible) ... legislatures. I would delete the words in brackets there.

**CHAIRPERSON:** Ja all right, okay.

**MS MURRAY:** Rob I don't know if you want to talk about this separately but as I understand that the issue about membership of a political party is slightly different when it comes to a financial and physical commission from the auditor general. I thought all thought I may have been wrong, because people seems to back down that previously it be decided that the auditor general - provision about a political party needn't apply for the auditor general and Ken Andrew said to me at some point we accept that because of the independence etcetera. But because of financial and physical commission isn't covered by the opening principles that apply to all the institutions supporting democracy, they had a special concern to have that provision included here. So slightly ... (intervention)

**CHAIRPERSON:** What about 194(1) then.

**MS MURRAY:** H'm well it's a slightly ... (intervention)

**CHAIRPERSON:** Independent subject (inaudible) ... must be partial.

**MS MURRAY:** It's a - he would argue simply that this sort of more compact version I suppose doesn't go. So what they want to do as I understand it, is present the argument as a different one, in the two cases.

**MR YACOOB:** Ja but I think that the panel opinion has dealt with it and make it quite clear that's it's unnecessary in any case.

**MR ALANT:** I agree with the panel there to say that.

**CHAIRPERSON:** Okay I think we can also (inaudible) ... it again when we come to the auditor general. I said in the CC I agreed with the panel's decisions but ... (intervention)

**MR YACOOB:** You'll have not choice but to revisit it against.

**CHAIRPERSON:** The central bank, I pointed out before Alex came in that there were - there are quite a lot of submissions on the central bank. I mean not a lot, but of the submissions that we had, quite a lot of them deal with it in one way or another. I actually don't think any of them to be frank have taken our debate any further forward, I think it's a (inaudible) ... of the different sides of our debate. Some of them are calling for the independence to be (inaudible) ... in it to a greater degree and some of them are saying that there should be a requirement to operate within a national policy framework. I think



that we should just note them I - I don't know if anybody else wants to take another (inaudible) ... thrash through those debates (inaudible) ... as far as I am concerned anyway.

**MR YACOOB:** Can we just note though that the council of bankers are perfectly happy with this formulation.

**CHAIRPERSON:** Wonderful, okay so I think we can say we have taken account of them, anybody else could go and read them I gave you the references earlier on, so at this point I think we - we would say we not going to revisit it in detail. Now we come onto provincial financial matters and here we insert the clause that is now on our page 1 and 2. So apart from the reinsertion of it and the points which we've discussed earlier is there anything else, I don't - I think not, let's just go - Alex.

**ERWIN:** No sorry, there is (inaudible) ... we wondering whether - our proposals - sorry our proposal is that (a) or it's (a)(i) here should in fact read in line with the Constitution principle. We've changed it and (inaudible) ... was very much involved about affordable standards etcetera. But we feel that should we not just incorporate the Constitutional principle here (inaudible) ... share raised at national level to enable it to provide basic services and execute the functions allocated to the Provinces.

**MR ALANT:** Where are you now Alex?

**ERWIN:** I am on page 1 of the 27 March draft, I am looking at (a)(i). Now to get consistency and not have slightly different words in different places as we indicated in the earlier discussion around (3) where we talked about (inaudible) ... and functions of Provinces, we

made a proposal that you put the wording of the (inaudible) ... the principle in there that we do the same here. A number of reasons are arising here because the - we've got a Constitutional principle we apply if we start adding affordable and other areas to it, we going to be arguing about is it affordable in this Province or that Province or what about own revenue etcetera.

**CHAIRPERSON:** Okay.

**ERWIN:** I think just noting that.

**CHAIRPERSON:** Okay, anything more?

**MR ALANT:** Just the one remark there was something like user charges in this previous document of the 15th of February that we previously discussed. I just wanted to know why this dropped there was a 150(1)(a) a very short one, the (inaudible) ... as follows, the provincial legislature may in act legislation authorising in possession of user (inaudible) ...

**MS MURRAY:** Well it isn't completely disappeared it's still in the foot note but there was a lot of uncertainty about how it should be involved.

**MR ALANT:** Oh! I see.

**MS MURRAY:** Subsequently I must admit it's a question I wanted to ask is one would include it because if you talking about taxes and loans you might also want to talk about user charges and other sorts of provincial revenue. I am not certain about it as drafted at the moment, the Constitution pretends to give the complete scope of Provinces fundraising ability. And then one could leave out user



charges and I don't know whatever else that Province might ...  
(intervention)

**MR ALANT:** I am not insisting, I just want to make the remark.

**CHAIRPERSON:** Okay.

**MR ALANT:** We can leave it at that.

**CHAIRPERSON:** But it's still - it's still there for our further - further consideration. I am a bit aware of the time now, I don't know, I think maybe we should just - we got another room we can go to I understand is that not right. But I wonder if we should just sort of open the door and see if the other people come because maybe they - you know maybe they won't actually. But we have to be aware that we may have to move on but I think we within half an hour of finishing actually. So I would rather not have a disruption of moving into another room if we can avoid it. So let's go back to page 7 provincial revenue funds. Presumably we want to make that consistent by taking out except money reasonably excluded etcetera. Anything more there? Provincial taxes.

**MR ALANT:** (inaudible) ... just a good one that FFC suggested.

**CHAIRPERSON:** Sorry what you referring to Theo?

**MS MURRAY:** In front of provincial loans.

**MR ALANT:** No provincial taxes is the one proposed by the FFC (inaudible) ... and it's a very good formulation.

**CHAIRPERSON:** (inaudible) ... ja - ja. Okay section 17 provincial loans anything there.

**MS MURRAY:** Can I draw your attention to the (3) there which is a proposal from Anthony Louw, he may have already spoken to you about it, it's something he feels (inaudible) ... strongly about.

**ERWIN:** I can't see how that can be implemented in practise. May not raise loans from this (inaudible) ... which is as financial any other interest, I think it's impractical. We will be setting up develop and financing institutions specifically designed to make loans for infrastructure to Provinces so that they designed to do that, the conditions under which they do it are complexed and covered by legislation. But what this would mean is that if you wanted to have a structure, we not particular envisaging and being at local level, provincial level. You know I think to have this in the Constitution is (inaudible) ... one's hand so the position is unacceptable.

**MS MURRAY:** This is something I can only partly speak from, because of my lack of understanding all these issues. I gather that the thing he is concerned about is that Provinces will set up their own banks and you know apparently (inaudible) ... throughout the world with sub national units set up organisations like banks and people put money into then and then the Province borrows and there is a huge spiral of (inaudible) ... and the whole thing collapses and national Government has to bail them out. It may be that just because the wording is too broad or that it is just something they can't deal with it (inaudible) ...

**CHAIRPERSON:** I don't think you can deal with it here, let us live without it for five years.



**ERWIN:** Ja the legislation governing provincial borrowing in any event gives you protection at the moment because they've got to get authority from the loan liaison committee and then we'll cover it by statute later in certain aspects. But this would prevent any kind of borrowing back from public institution, and I think that's not what's envisaged here.

**CHAIRPERSON:** Okay so we leave it out for at least five years. Okay auditor general there are a couple of insertions but I think the main issue is the issue raised about - I mean you'll notice most of the rest then is about the general provisions that apply to these institutions covered under this chapter but anyway ja.

**MS MURRAY:** Can I just draw your attention to the very first provision remember we - we struggled last time to find a wording that could come in an umbrella fashion encompass the role of the auditor general and Dr Jacobs came up with this wording after that meeting. So it's there simply for consideration.

**CHAIRPERSON:** It's the first 110(a) the first section there, office of the auditor general assist Parliament to hold executive accountable for money under executive control describes the functions (inaudible) ...

**ERWIN:** Ja I don't - does it have a - is this designed to establish a particular link with ... (intervention)

**CHAIRPERSON:** With Parliament.

**MR ALANT:** You see it never appeared in any previous Constitution or provision. I always felt that 111(1) describes the function it must audit a report on it.



**CHAIRPERSON:** I think we have here ... (intervention)

**MR ALANT:** You see I specifically felt they went totally wrong with respect to this example of Moss gas they did as far I was informed (inaudible) ... they were involved in the viability study and that's not their duty. Next move will be to set up a tax division and so on under the auditor general. It may all be allowed under that 110(1) but if you say 19(11) they must audit a report then that is their function and that is why today it is developing audit a report but not to (inaudible) ... viability studies of whatever.

**CHAIRPERSON:** It is my concern whether it does seem to open things up, I suggest that if the standing committee of finance for example with all due respect says the auditor general can you please just go and do a job for us double check Goldmans Sachs's view of the Telkom or something like that, I think you going to head for a lot of problems, because their function is basically to audit a report.

**MR YACOOB:** The bigger problem is not - one is when they asked, but secondly you may have the auditor general taking it upon themselves to - can conceivable evaluate every policy decision of a Government.

**CHAIRPERSON:** Ja not that's certainly so.

**MS MURRAY:** I think that the - I mean perhaps other problems with this section it's clearly qualified by 111, however, which list (inaudible) ... a closed sort of role for the auditor general. So I don't think the notion of holding some (inaudible) ... accountable for money under it's control is necessarily much wider, it can't be wider in fact because of the wording of 111. Then there maybe other reasons for not having them there and that - it there and that's fair enough.



**ERWIN:** Mr Chairperson it's as equality which is not a normal one for a auditor I would as a general already seems to in all honesty take upon them self to hold us accountable with all sorts of grand and sweetening statements. Which I (inaudible) ... are totally out of line with what the auditor general should be saying anyway, but that's another matter. It's under this clause here say no-no I just (inaudible) ... followed it.

**MR ALANT:** Ja - no they started with this and it was (inaudible) ... who suggested this and sort of to explain to the general public in common plain language what - where this person fits in or where this office fits in. I merely would suggest that we delete it.

**CHAIRPERSON:** You know I think so, I mean I think that there are the other side to it, was to establish it's Parliamentary link but it - by doing that it opens up to many other cans of worms, so let's leave that out then. Okay then I think that the question of whether there is a need for a cross reference in 114 is also - leave it out.

**MR ALANT:** I think it's been out, that process which is not necessary, you must read the whole Constitution.

**MS MURRAY:** I (inaudible) ... to Gerrit Grove on a variety of different things. Can I take it back to him, am concerned that he most probably believes also that 111 has a limited list of auditor general capabilities and thus the cross reference. So can we talk about that (inaudible) ...

**MR ALANT:** But in that other section that we referred to the auditor general has acquired to submit - submit a report to Parliament so why - why (inaudible) ...

**MR YACOOB:** Can we just - I mean I - there are different ways of looking at these things. I actually agree that the cross references is unnecessary and would like to go to any legal debate with the recommendation of this committee that it be removed unless there are good reasons for it including.

**CHAIRPERSON:** I just remind everybody that we actually agreed that we should remove a lot of the detail in the 188(2)(b) and that we should just perhaps include the auditor general's report at that point. That's where we should deal with it I think, we probably agree with that, not - not here as well okay. Now we've got this memorandum from Dr Jacobs which I don't know you know, it's unfortunate I don't know if Theo was in the CC and Willie wasn't I am not even sure if Alex was at that particular moment when there was the legal opinion about whether this specific provision on political party affiliation was necessary. This is a response to that, we haven't had a chance to read Dr Jacob's (inaudible) ... maybe you want to summarise it first or something.

**MR ALANT:** Chairperson I (inaudible) ... ja there is nothing new in it and I happened not to agree with him, I must say it as a person, and I agree with the legal panel there. But I think the way of dealing with it is perhaps to distribute it through the system to the different members and let them have the advantage of reading it. But I won't I spoke to other colleagues in our party this morning, I won't insist on such a (inaudible) ... There are other things that I may feel strong about, but certainly not that one.

**CHAIRPERSON:** Okay well I mean I - I indicate it as I said in the CC meeting I personally was convinced by the legal opinion I think anybody else want's to push it okay. I think that basically that's it.



**MR YACOOB:** No I think we have to take a decision about that because the CC ended on the basis that the sub the ad hoc committee would sleep on it and come back to (inaudible) ...

**ERWIN:** Chairman ... (intervention)

**CHAIRPERSON:** I think you can say the ad hoc committee has - no-one is in the ad hoc committee is pressing for a specific - well none of us who are here I think we know the DP are, because they said so, but none of us who are pressing for the inclusion of a specific prohibition of (inaudible) ... interference on the grounds that we agree with a legal opinion. Christine?

**MS MURRAY:** No that's fine under both the (inaudible) ...

**CHAIRPERSON:** Ja, we've got I think what we going to have to deal with and you must all be prepared for this on the Arniston thing is the local Government finance and I have been in contact with some of our people and one preliminary meeting and I think I don't know how these discussions are being involved in by the local Government people but I think there is a lot of inconsistency between what we've been doing and what's in the preliminary draft and I think we have to be aware of that. I don't think the second chamber stuff is going to create a lot of difficulties for us, I think that is largely going to be sorted out in some way that is compatible but I think this local Government stuff we should be - spend some time and effort on.

**MR ALANT:** I endeavour to draft a clause to start with here.

**CHAIRPERSON:** Well I think what you should do is you should get - you should see whatever drafts your people are coming up with at this point



because your local Government people because and I've seen something that our people had been working on.

**MR ALANT:** That file is onto my desk already.

**CHAIRPERSON:** Okay, all right.

**MS MURRAY:** Can I - in fact there is one thing I wrote a note to myself about this, but the finance chapter now requires legislation for a range of different things. I am not sure to what extent that legislation is in place. Where it isn't in place it will probably be appropriate to have some thing in a transitional section count of bridging. I hardly - I think Zak's been thinking about transition more than I have. And there are a variety of ways of doing it. You know I can't even start speculating but I do think we need to start thinking about quite how to cope with the fact that the Constitution may be implemented and there may be gaps.

**MR ALANT:** Chairperson you know lay men like we, and we exclude them are good - have a good feeling and my feeling is that any - any court being Constitutional court will look at whether the Government took (inaudible) ... steps to give effect to the Constitution it may take two years to develop a piece of legislation, it may take six months in another case or five years or whatever as long as they take the steps and go through the motions, set up some mechanism to develop the - like the legislation pertaining to (inaudible) ... powers, nobody can really accuse the Government of dragging it's feet on that. It's still not in - on the statued book a few years after - after the introduction of the Interim Constitution. It mustn't take five years but I merely think we don't need a specific reference to this in the Constitution.



**ERWIN:**

Chair you know what in practise we doing is we've developed a kind of document working consensus document between the Provinces, finance, State expenditure and FFC which is setting out how we were actually implement the budget for 97/98 in conformance with the spirit of the new Constitution as it's unfolding. There might be some fine tuning but it's not much and then a legislative programme that will work out. But I think once we finished the exercise there may be worth just checking that there no glaring legal gaps that someone could walk into and take advantage of or where we have problems but from a practical point of view I think the transition process is well on track.