



CONSTITUTIONAL ASSEMBLY

MEMORANDUM

TO: Members of the Constitutional Committee Subcommittee
FROM: Executive Director
DATE: 15 February 1996
RE: Draft Formulations on Finance

We enclose for your consideration revised formulations from the ad hoc committee on finance for discussion at the Monday 19 February meeting of the CC Subcommittee.

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THE NEW CONSTITUTION

DRAFT FORMULATIONS ON FINANCE

16 February 1996

CHAPTER 14 FINANCE

GENERAL FINANCIAL MATTERS

National Revenue Fund

- 186.(1) There is a National Revenue Fund into which all money received by the national government must be paid **except money reasonably excluded by an Act of Parliament.**¹
- (2) No money may be withdrawn from the National Revenue Fund except in terms of an appropriation by an Act of Parliament; but, a province's equitable share of ~~the~~ revenue collected nationally² is a direct charge against the National Revenue Fund.

National and provincial budgets³

187. (1) National legislation must prescribe the format of national and provincial budgets and **when they must be introduced in Parliament and the provincial legislatures.**
- (2) The national and provincial budgets must contain estimates of revenue and expenditure and **proposals for financing any potential deficits** for the period to which they apply, **differentiating between capital and current items.** The budgets and budgetary process must promote transparency, accountability and effective financial management of the **economy, debt and the public sector as a whole.**
- (3) The national and provincial budgets must be accompanied by statements of borrowing intended for purposes other than meeting budgetary deficits.

Treasury control

188. (1) National legislation must -
- (a) prescribe effective measures to ensure transparency, uniform and generally accepted accounting practice and expenditure

¹ 'Loans' are covered by 'money'.

² The phrase 'revenue collected nationally' needs reconsideration. CF ss193 and 148.

³ FF reserved its position.

- classifications, expenditure control, and uniform treasury norms and standards at all levels of government;
- (b) establish a national treasury and prescribe the framework within which provincial treasuries must carry out their financial responsibilities; and
 - (c) confer on the national treasury effective powers to stop the transfer of funds to any organ of state in the event of serious or persistent financial maladministration.
- (2) (a) A decision by the national treasury to stop the transfer of funds to a province lapses unless it is approved by Parliament within 30 days.⁴
- (b) Before Parliament may approve the decision -
- (i) the Auditor-General must report to a parliamentary committee;
 - (ii) the committee must give the province an opportunity to state its case; and
 - (iii) the committee must compile a report and submit it to Parliament.
- [(c) A majority of the members of Parliament must be present when Parliament approves the decision.]⁵

Contracts for goods and services

189. (1) Organs of state must contract for goods and services in accordance with national and provincial legislation which provides for -
- (a) independent tender boards; and
 - (b) a fair, public and competitive tender system.
- (2) No person and no organ of state may interfere with the functioning of a tender board.
- (3) Decisions of a tender board must be recorded and open to public inspection.

Government guarantees

190. (1) The national government or a provincial or local government may guarantee a loan only if the guarantee complies with the norms and

⁴ To be reconsidered when the role of the second house is finalised.

⁵ To be reconsidered when the second house is finalised. DP wants a sunset clause and special majorities.

- conditions for such a guarantee set out in national legislation.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.
- (3) Each year the Cabinet member, the Executive Council member in each province and the member of each local government responsible for finance must table, in their respective legislatures, a list of all outstanding guarantees issued by their governments.

191. ...⁶

Remuneration of persons holding public office

192. (1) National legislation must provide for the determination of any salaries, allowances or benefits of holders of any of the following offices:
- (a) Members of Parliament and the Cabinet, and Deputy Ministers.
 - (b) Judges.
 - (c) The Public Protector and the Auditor-General, and members of any Commission provided for in the Constitution.
 - [(d) Traditional authorities and members of any councils of traditional leaders.]⁷
- (2) National legislation must determine the upper limits for the determination of any salaries, allowances or benefits of holders of any of the following offices:
- (a) Members of provincial legislatures and Executive Councils.
 - (b) Members of local governments.
- (3) National legislation must provide for the establishment of an independent and impartial commission to make recommendations -
- (a) to Parliament on any legislation concerning the salary, allowances and benefits of members of Parliament and the Cabinet, Deputy Ministers, members of provincial legislatures and Executive Councils, members of local governments, and

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President + Dep. President.*

⁶ This section is deleted.

⁷ The treatment of traditional authorities can only be finalised when the chapter of traditional authorities has been dealt with.

- traditional leaders and members of any councils of traditional leaders; and**
- (b) to the national and provincial executives, local governments and any other authorities on the implementation of that legislation.

Equitable sharing and allocations to provinces.

193 (1) National legislation must provide for -

- (a) the equitable division of the [revenue collected at national level]⁸ between the national and provincial levels of government;
- (b) the determination of provinces' equitable shares of this revenue; and
- (c) any other allocations to provinces from national revenue and any conditions on which those allocations may be made.⁹
- (2) Legislation referred to in subsection (1) may be enacted only after the provincial governments have been consulted and any recommendations of the Financial and Fiscal Commission have been considered; and with regard to -
- (a) the national interest;
- (b) any provision that must be made in respect of the national debt;
- (c) the needs and interests of the national government determined by objective criteria;
- (d) **the functions of the provinces;**
- (e) the fiscal capacity and efficiency of the provinces;
- (f) **developmental** and other needs as well as economic disparities within and among the provinces;
- (g) obligations of the provinces in terms of national legislation;
- [(h) the functions of local governments within each province;]¹⁰**
and
- (i) other interests based on objective criteria.

⁸Wording needs reconsideration.

⁹ When local government is finalised this section must be revisited.

¹⁰ Possibly necessary if local government remains a provincial matter.

- (3) The allocation of revenue by the national government -
- (a) to a provincial or local government may be made only in terms of an appropriation by an Act of Parliament; and
 - [(b) to a local government must be made, ordinarily, through the provincial government of the province in which the local government is located.]¹¹

FINANCIAL AND FISCAL COMMISSION

Establishment

- 194. (1)** There is a Financial and Fiscal Commission for the Republic, which is independent and subject only to the Constitution and the law, and which must be impartial.
- (2) No person or organ of state may interfere with the functioning of the Commission.
- (3) National legislation regulates the functioning of the Commission.

Functions

- 195. (1)** The Commission may give advice and make recommendations to Parliament, provincial legislatures and any other authorities determined by national legislation regarding -
- (a) the financial and fiscal requirements of the national, provincial and local governments;
 - (b) financial and fiscal policies;
 - (c) criteria for the allocation of financial and fiscal resources;
 - (d) equitable allocations to national, provincial and local governments from revenue collected at national level;
 - (e) any taxes, levies, imposts, and surcharges that a provincial [or local] government intends to impose;¹²
 - (f) the raising of loans by a provincial or local government and the norms and conditions that apply to those loans; and
 - (g) any other matter assigned to the Commission by the Constitution or national legislation.
- (2) In performing its functions, the Commission must consider all relevant factors including those listed in section 193(2).

¹¹ To be considered when the chapter on local government has been dealt with.

¹² To be confirmed with Revenue office that the meaning of terms is comprehensive or the list is complete.

Appointment of members

196. (1) The Commission consists of the following women and men appointed by the President -

- (a) a chairperson and a deputy chairperson who are full-time members;
- (b) a person for each province nominated by the Executive Council of the province; and
- (c) seven additional members, some of whom must be experts in local government finance.

7. (2) Members of the Commission must have appropriate expertise [and may not hold office in any political organisation or party]¹³.

Reports

197. The Commission must report regularly both to Parliament and to provincial legislatures [as prescribed by national legislation.]¹⁴

CENTRAL BANK

Establishment

198. The South African Reserve Bank is the central bank of the Republic and is regulated by national legislation.

Primary object

199. (1) The primary object of the South African Reserve Bank is to protect the value of the currency of the Republic in the interests of balanced and sustainable economic growth in the Republic.

- (2) The South African Reserve Bank, in the pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice; but, there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.

Powers and functions

200. The powers and functions of the South African Reserve Bank are those customarily exercised and performed by central banks, and must be determined by national legislation.

¹³ To be considered in relation to judiciary and institutions in Chapter 7.

¹⁴ unclear what the phrase in brackets refers to - time of reporting; content of reports, or procedure for reporting.

PROVINCIAL FINANCIAL AND FISCAL MATTERS

Sources of provincial funding

148. (1) A province -

- (a) is entitled to an equitable share of [revenue collected nationally] and determined in terms of section 193 to enable it to provide services at affordable standards, and to exercise its powers and to perform its functions;
- (b) may receive other allocations from national revenue, either conditionally or unconditionally; and
- (c) may raise additional revenue from taxes, loans and user charges as provided in sections 150, 151 and 151A.¹⁵

(2) Additional revenue raised by provinces may not be deducted from their share of revenue collected nationally, or from other allocations made to them out of national revenue. Equally, there is no obligation on the national government to compensate provinces that do not raise revenue commensurate with their fiscal capacity and tax base.

(3) A province's equitable share of revenue collected nationally must be transferred to the province expeditiously and without deduction except when the transfer has been stopped in terms of section 188.¹⁶

149. ...¹⁷ ~~DP~~ see 193

Provincial taxes

150. (1) A provincial legislature may¹⁸ -

- (a) impose taxes, levies and duties excluding income tax, value-added tax, general sales tax and customs duties; and
- (b) impose flat-rate surcharges on the tax bases of taxes, levies and duties imposed by national legislation, excluding those of corporate income tax, value-added tax and customs duties;

¹⁵ It will be necessary to ensure that this section also refers to the way in which local government will receive an equitable share of national revenue. This can be done effectively only after the chapter on local government has been finalised.

¹⁶ DP reserves its position.

¹⁷ It was agreed that the section be moved to Chapter 14. DP reserved its position until it had considered the revised formulation.

¹⁸ DP wants exclusive provincial taxes.

(2) The power of a provincial legislature to impose taxes, levies, duties and surcharges -

- (a) may not be exercised in a way that materially prejudices national economic policies, interprovincial economic relations or the national mobility of goods, services, capital or labour; and¹⁹
- (b) must be regulated by national legislation which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Provincial loans

151. (1) A province may raise loans for capital expenditure within a framework and in accordance with reasonable norms and conditions provided for in national legislation.

(2) A province may raise loans for current expenditure only when necessary for bridging purposes during a fiscal year and only if any reasonable conditions prescribed by national legislation are complied with. These loans must be redeemed within 12 months.²⁰

(3) National legislation referred to in subsections (1) and (2) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

~~(4)²¹~~ *see 140 deals with it*
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Provincial User charges

151A A provincial legislature may enact legislation authorising the imposition of user charges.²²

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¹⁹ TRT is concerned about the precise legal meaning of the test in section 150(2)(b) it. It is being investigated further.

²⁰ The meaning of (1) and (2) needs clarification.

²¹ Agreed to delete.

²² The provisions in the interim constitution dealing with a province's right to impose taxes (s156(1)) and user charges (s156(3)) expressly prohibit discrimination against non-residents of a province who are South African citizens. Although there is an argument that this provision is covered by the equality clause, consideration should be given to its inclusion for reasons of certainty.

152. ...²³

Provincial Revenue Funds

153. (1) There is a Provincial Revenue Fund for each province into which all money received by the provincial government must be paid except money reasonably excluded by an Act of Parliament.
- (2) No money may be withdrawn from a Provincial Revenue Fund except in terms of an appropriation by a provincial Act; [but, revenue allocated to a local government through a province in terms of section 193 is a direct charge against the provincial revenue fund.]

PROVINCIAL CONSTITUTIONS

Adoption and Certification

154. (1) A provincial legislature may adopt a constitution by resolution of at least two thirds of its members.
- (2) A provincial constitution must be consistent with the Constitution; but, provided that it does not deviate from the principles embodied in the Constitution, it may -
- (a) establish different legislative and executive structures and procedures; and
 - (b) provide for the institution, role, authority and status of a traditional monarch in the province.
- (3) No provincial constitution and no amendment to a provincial constitution has force or effect unless the Constitutional Court has certified that all the provisions of the provincial constitution or of the amendment are consistent with this Constitution.
- [(4) Any provision in a provincial constitution which requires resources additional to those envisaged in this Constitution must be provided for by the province itself.]²⁴

²³ This section has been moved to Chapter 14.

²⁴ This provision needs reformulation.

General application
General application.

AUDITOR GENERAL

Functions of Auditor-General

111. (1) The Auditor-General must audit and report on the accounts, financial statements and financial management of -
- (a) all national and provincial state departments and administrations;
 - (b) all local governments; and
 - (c) any other institution or accounting entity required by national [or provincial] legislation to be audited by the Auditor-General.
- (2) The Auditor-General may also audit and report on the accounts, financial statements and financial management of any institution funded from public money, as may be regulated by legislation.
- (3) The Auditor-General must submit ^{*expeditiously as possible*} audit reports to the legislature that has a direct interest in the audit, and to any other authority prescribed by national legislation. All reports must be made public.²⁵

Tenure and remuneration

112. (1) The Auditor-General is appointed for a non-renewable term of not less than five years and not more than 10 years. *fixed term* *intent can*
- (2) The salaries, allowances and benefits of the Auditor-General may not be reduced.²⁶

Acting Auditors-General

- 112A National legislation must provide for the appointment of an Acting Auditor-General when the Auditor-General is unable to fulfil the duties of the office.

ELECTORAL COMMISSION

Functions of Electoral Commission

113. (1) The Electoral Commission must manage [in accordance with national legislation] elections of national, provincial and local legislative bodies and ensure that they are free and fair. *(a)* *deduce the words*
- (2) The Electoral Commission has the additional powers and functions prescribed by national legislation.

²⁵ DP reserves its position on this clause. It proposes that "or provincial" be inserted after "national".

²⁶ This provision has been inserted to ensure similar treatment of the Auditor-General and the Judiciary. If section 102(3) is amended this should also be.

Composition of Electoral Commission

114. The Electoral Commission must be composed of at least three persons. The number of members and their terms of office must be prescribed by national legislation.

GENERAL PROVISIONS

Appointments

115. (1) The Public Protector and members of any Commission established by this Chapter must be women or men who are South African citizens, are fit and proper persons to hold the particular office, and who comply with any other requirements prescribed by national legislation.
- (2) The Auditor-General must be a woman or a man who is a South African citizen, is a fit and proper person to hold that office, and ~~who does not hold office in any political party or organisation~~. Specialised knowledge of, or experience in, auditing, state finances, and public administration must be given due regard in appointing the Auditor-General.
- (3) The President must appoint the Public Protector, the Auditor-General and members of any commission established by this chapter on recommendation by Parliament acting on the recommendation of Parliament.
- (4) Parliament must recommend a person -
- (a) nominated by a committee of Parliament in terms of the rules and orders;²⁷ and
 - (b) approved by Parliament by a resolution adopted by at least two thirds of the members.

Removal from office

116. (1) The Public Protector, the Auditor - General or a member of a Commission established by this Chapter may be removed from office only on -
- (a) the grounds of ~~misbehaviour~~ ^{misconduct}, incapacity or incompetence;²⁸
 - (b) a finding to that effect by a committee of Parliament;²⁹ and

²⁷ DP reserves its position on the composition of the committee.

²⁸ The Auditor-General's legal adviser proposes that this provision should be brought in line with removal provisions for the judiciary by replacing "misbehaviour" with "gross misconduct."

²⁹ DP reserves its position on the composition of the committee.

*misconduct
misconduct
misconduct*

- (c) the adoption by Parliament of a resolution, calling for that person's removal from office, and supported by at least two thirds of the members.
- (2) The President may suspend a person from office upon or after the start of proceedings before a committee of Parliament for the removal of that person, and must remove a person from office upon adoption by Parliament of a resolution calling for that person's removal.

