

2/4/3/8/18

**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 3

**FINANCIAL & FISCAL
RELATIONS**

DRAFT 7

BY

TECHNICAL ADVISORS

21 AUGUST 1995

Embargoed until 10h00 Mon 21/8/95

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Embargoed until 10h00 Mon 21/8/95

**REPORT THEME COMMITTEE 3
REPORT: AREAS OF AGREEMENT & CONTENTION:
FINANCIAL & FISCAL RELATIONS¹**

Constitutional issues	Agreement	Contention	Further clarity
1. Constitutional restrictions on capacity of provinces to levy taxes.	The provinces should not have an ineffectual power to levy taxes.		1. The ACDP submission is not totally clear ie whether they favour the so-called Canadian option ie. parallel tax power for provinces and central government.

¹ Certain of the party submissions impact upon the workings of Theme Committee 6.2. Only those financial and fiscal issues which relate to provincial and national powers have been included in this report.

Constitutional issues	Agreement	Contention	Further clarity
<p>2. Nature of restriction ie should there be changes to S156 of the Interim Constitution?</p>	<p>The provinces should be entitled to levy <u>non-national</u> taxes such as in reports of:</p> <ul style="list-style-type: none"> (a) casinos (b) gambling (c) vehicle levies 	<p>Whether provincial tax powers should be constitutionalised in express terms</p> <ol style="list-style-type: none"> 1. DP & NP say yes, ANC say no. 2. PAC says that the Constitution should only grant provinces administrative powers. 	<p>1.1 NP submits that Financial & Fiscal Commission should be able to recommend an extension of list of provincial taxes. With respect to stamp & transfer duty the NP suggest that the rate should be determined by National Government (in consultation with the provinces) which shall have right to abolish those duties upon recommendation of the FFC.</p> <p>1.2 The NP submits that the fiscal competencies of Provinces with respect to user charges [S156(3)] & levies on certain taxes [S156(1)] should not be diminished.</p> <p>2. The DP submits that provinces should be competent to levy taxes & levies other than income tax & VAT, as well as surcharges & retail sales tax after consultation with Minister of Finance & the FFC, provided that there is adherence to & compliance with principle of non-discrimination against non-residents of the province. A provincial legislature shall not be entitled to levy taxes, levies & duties which materially & unreasonably prejudice the national mobility of goods, services, capital & labour.</p>

Constitutional issues	Agreement	Contention	Further clarity
			<p>3. The ANC suggests that where it is more efficient for provinces (or local government) to collect particular taxes, they should be allocated those powers as well as the power to use the revenue as collected.</p> <p>4. The ACDP wants greater tax powers for the provinces.</p>

Constitutional issues	Agreement	Contention	Further clarity
<p>3. Constitutional restrictions on loans raising by provinces.</p>	<p>1. S157 should be retained.</p>		<p>1.1 The NP suggests the establishment of Loans Authority to co-ordinate issue of loan stock. This Authority would also determine policy for management of the debt of the 3 levels of government. Detail to be contained in government legislation.</p> <p>1.2 NP proposes that the three tiers of government may not borrow to finance current expenditure.</p> <p>1.3 NP proposes a Committee under the chair of the Minister of Finance to co-ordinate the borrowing requirements of general government.</p> <p>1.4 NP submits that S157 be retained.</p> <p>2. ANC suggests an amendment to S157(2) - loans referred to in S157(1)(a) may be raised for bridging finance in the fiscal year subject to reasonable conditions as may be described by an Act of Parliament passed after recommendation by the FFC. [S157(1)(a) deals with current expenditure].</p>

Constitutional Issues	Agreement	Contention	Further clarity
<p>4. Should the Constitution have a specific formulation to ensure an equitable revenue share to provinces?</p>	<p>1. There is agreement that there should be an equitable share of revenue to provinces. The contention relates to the formulation & determination of the formula.</p>	<p>1. ANC & NP submit that formula should not be stipulated in the Constitution but be provided for in national enabling legislation. 2. The DP suggests an express provision in Constitution. 3. The ACDP & PAC are silent.</p>	<p>1.1 The Constitution should provide for the determination of the revenue formula through a specified process in which the FFC make recommendations on the formula to parliament & provincial legislatures: recommendations subject to appropriate inter-governmental consultation & the final formula passed by national parliament. 1.2 Constitution to provide for framework legislation empowering National Government to pass legislation facilitating intergovernmental co-operation on fiscal matters. 1.3 A Budgetary Co-operative Council could be established to give the provinces greater role in co-ordination of fiscal matters. Any such structure should operate under the auspices of the Council of Provinces (Senate). 2.1 The NP supports the revenue sharing model outlined in S155 read in conjunction with S199.</p>

Constitutional issues	Agreement	Contention	Further clarity
			<p>2.2 All taxes raised by means of a budget presented by the National Government to be deposited in National Revenue Fund for sharing with provinces.</p> <p>2.3 Servicing of national debt should have first claim on taxes collected nationally before the balance is shared in terms of the formula recommended by FFC. [See S155(4)].</p> <p>2.4 Servicing of provincial debt to have first claim on revenue accruing to provinces.</p> <p>2.5 The NP submits that the Constitution should prohibit withholding of province's share of revenue other than by resolution of Parliament following report by Auditor-General confirming gross mal-administration by a province.</p> <p>2.6 NP submits that the fiscal competencies & the taxes raised by the provinces shall not be taken into account to determine the share of revenue to be allocated to each province.</p>

Constitutional issues	Agreement	Contention	Further clarity
			<p>3. The DP proposes definite formulae to determine equitable shares - each province shall obtain the following as an equitable share: 25% of income tax on individuals, VAT & fuel levy & 50% of other taxes raised by national government in proportion to population size; 25% of individual income tax, VAT & fuel levy in proportion to amounts collected in provinces; 2% of all taxes raised by National Government to be distributed to local governments in proportion to their population sizes & conditional or unconditional grants as defined, with limitations on the extent to which grants can be made conditional.</p> <p>4. The PAC submit that central government after consultation with FFC allocate should the budget.</p>

Constitutional issues	Agreement	Contention	Further clarity
<p>5. Expenditure by provinces: should the Constitution provide for regulation of provincial expenditure?</p>			<p>Various party proposals impact upon the expenditure process.</p> <p>1.1 NP submits that the servicing of provincial debt should have first claim on the revenue accruing to a province.</p> <p>1.2 NP proposes that National Government should have power to take over financial management of a province, after report from the Auditor General that the province is incompetent to perform this task.</p> <p>1.3 S126 to be amended so that provinces be granted greater autonomy to determine spending priorities in respect of their functions; National Government power to withhold tax revenue of province which doesn't maintain minimum services or standards to be scrapped [S126(3)(c)].</p> <p>2. ANC recommends constitutional framework legislation to provide for effective role of legislatures in budgetary process.</p> <p>3. PAC submit that budgetary allocation be administered by central government with consultation by FFC.</p>

**POLITICAL
PARTY
SUBMISSIONS**

ACDP

**AFRICAN CHRISTIAN DEMOCRATIC PARTY
SUBMISSION TO THE CONSTITUTIONAL ASSEMBLY
THEME COMMITTEE 3**

FINANCIAL AND FISCAL RELATIONS

The ACDP believe that effective government is determined by the extent decentration is realised, which in turn affects political accountability and measures a population's response or involvement to socio-economic demands.

The foundation for effective financial and fiscal discipline is proportional to the say people have in where and how their taxes are being utilised. It is reported that on average, the tax levels on gross personal income lingers around 30%, yet the people get very little value for their tax money. In fact, we have a situation where the so called wealth of the people is only apparent wealth. Simply stated our people are becoming poorer, while the state takes more and more.

If there is a large difference between taxes paid and services or benefits rendered, dissatisfaction creeps into the population, and in many instances efficacy decreases and country-hopping is being encouraged.

In so far as the disparities of the past have affected a large sector of our population; pressures on government spending and increased taxation to redress these imbalances are seen as ways to solve such problems. However, we ask for caution on such "drastic" methods, as our economy is still too weak to sustain major changes.

For example, the growth rate of South Africa is at present 3% and with regards to unemployment, the economy needs to expand at a rate of 5,5% per annum to absorb new entrants into the labour market.

Already we have an unemployment rate of 32,4% with the largest rate of unemployment in the Northern Transvaal at 47% followed by the Eastern Cape at 45,3%. Coupled with this is that 87% of the unemployed are unskilled.

The demands for wage increases and improved workers rights are important economic factors which need to be taken into consideration.

We are also seeing an increase in the crime rate, and this is already having a negative influence on investment opportunities.

What further distresses the economic climate is that we are a new democracy in the making, which still has to prove itself and which is strained by the above emerging factors characteristic of an open democratic society.

It is required of us to balance these diverse influences and demands, by ensuring a steady growth rate and friendly investment climate, as well as securing ready or disposable cash to the average person in the street.

In view of all these factors, the ACDP believe in the principle that smaller is better; the adage which states that the bigger you are the harder you fall is readily more true in the case of the latter than the former.

By allowing districts, regions or local communities to control their own finances, better controls can be exercised and larger returns can be expected.

Each community or region will commit itself to building up its infrastructure through a finance system supported by the community, and as a result services will trickle down quicker and be more cost effective.

A special tax system should be devised which is compatible to the status of a given region, and which corresponds co-efficiently to a tax structure on a national scale.

What is required is that finance and fiscal policy be based on simplicity, stability, equity and efficiency, through a process of community or regional consultation.

With regards to socio-economic upliftment and equity, a National "Watchdog" can be instituted to measure the regions economic growth patterns on one hand and how disparities of the past are being redressed, on the other.

People at local level need to experience economic growth in the shortest possible time, and this can be achieved through creative methods of enterprise and community contributions.

Masakhane is a good example in how finances are generated to pay for services rendered.

As the RDP is a process of delivery, decentration is a plan to fund these projects. For example a variety of tax incentives or subsidy schemes at local level are useful economic growth initiatives, where the biggest beneficiary will be the local regions, and for which the people will readily finance such projects.

11 July 1995
[FINFIS.WPS]

ANC



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FINANCIAL AND FISCAL RELATIONS

CONSTITUTIONAL ASSEMBLY
AMENDED SUBMISSION TO THEME COMMITTEE 3
PHASE 5

Draft 6

FINANCIAL AND FISCAL POWERS

Discussion

Constitutional Principle XXVI provides for the right of every level of government to an equitable share of revenue collected nationally to ensure that they (including local government) are able to provide basic services and execute the function allocated to them.

This Principle recognises that the major sources of revenue in the South African economy are collected nationally; in particular the major taxes, namely income tax (including company tax) and VAT.

The ANC does not favour the Canadian approach, which allows powers to levy any direct tax within the provinces in order to raise revenue for provincial purposes.¹ The German model represents a far more systematic approach to intergovernmental fiscal relations. In particular the German Basic Law gives the central state extensive legislative powers in the field of taxation, such that all major tax laws are central laws. This is considered to be in accordance with the wording and intention of Constitutional Principle XXVI.

Three inter-related questions are raised in this regard:

- The content of the formula for equitable shares (linked to the developmental objectives of the country),
- the manner in which the Financial and Fiscal Commission (FFC), responsible for making recommendations on the revenue sharing formula, should relate to the provincial and national legislatures, and

1 Sect 92(2), Canadian Constitution.

- the role of provinces (in the context of cooperative governance) in making decisions about the recommendations of the FFC.

Determining the formula

The ANC proposes that the formula not be stipulated in the final constitution, but be provided for in national, enabling legislation. The constitution should provide that the determination of the formula should be consistent with the developmental objectives of the country and arrived at through the following process:

- The FFC submits its recommendations on the revenue sharing formula to the relevant standing committees of Parliament and the provincial legislatures for comment on the norms and parameters encapsulated in the formula,
- the FFC submits its revised recommendations, after feedback from Parliament and the legislatures, to an appropriate intergovernmental forum,² which should include appropriate local government representation, for amendment through joint consultation between the provinces and national government, and
- the revenue sharing formula, with the proposed amendments from the intergovernmental consultation, is submitted to national Parliament for final consideration and enactment.

The ANC's view is that South Africa should have a predominantly unified legislative and administrative fiscal and public financial system. It should be a *joint* fiscal system, under leadership of national government, and not a rigidly *divided* system between national and provincial levels of government. In this regard there should be a *co-operative* rather than a *competitive* relationship between national and provincial governments. This would amount to the provinces being involved in decision-making about fiscal matters through the involvement of both their legislatures and executives in considering FFC recommendations and approving, where appropriate, policy frameworks, revenue sharing formulae, and the norms and standards forming the basis for intergovernmental grants. This will ensure that all governments concerned will accept responsibility for acting within frameworks agreed through the process as proposed.

Proposals

Giving effect to the above new arrangements, would require the following:

1. The final constitution should provide that the new Council/House of Provinces (Senate) be given an appropriate role in the passage of money bills.
2. Any recommendations in this regard should fit in with proposals to broaden and strengthen the role of Parliament in the passage of money bills.
3. Legislatures' standing committees and departmental representatives of the provinces should be actively involved in the process of agreeing on the norms and standards upon which the revenue sharing and grants formulae will be based. They should also be suitably involved in the preparation of their budgets. This will be facilitated through a multi-year budgeting process broken down into clear steps at which the participation and agreement of the legislatures will be required. The constitution should require that there be framework legislation to provide for an effective role of the legislatures in the budgeting process.

2 See in general the ANC submission on Intergovernmental Relations, Theme Committee 3, Phase 3.

4. A national *Budget Cooperative Council*, operating under the auspices of the new Council/House of Provinces (Senate), could be established by national legislation to achieve greater coordination over fiscal matters. With representatives from the standing committees and finance executives of both national and provincial government, and possibly an appropriate forum of local government representation, such a BCC could give provinces a role in the determination of the macro-framework. This could provide a rational context within which provinces could draft their own budgets. This process would empower provincial legislatures, as well as the national Parliament, to play a more meaningful role in the determination of the allocation of public resources and the building of a broad understanding of what governments are trying to achieve. All provinces should have equal representation on such a BCC, which should be chaired by the national Minister of Finance.
 - To this end it is proposed that the constitution shall in general terms empower national government to pass framework legislation to facilitate intergovernmental cooperation on fiscal matters.
5. Clauses similar to Sections 156(2), 157(1)(a), (b), (3) and 158(a) and (b) in the Interim Constitution should be carried over to the final constitution. These may have to be amended for greater clarity or consistency. For example, the formulation "surcharges on taxes" could be interpreted as allowing only a percentage to be added to the national tax rate (an undesirable mechanism), rather than a percentage to be imposed on the nationally determined *base* (e.g. personal income), which would avoid many of the negative features of the first interpretation. The ANC is of the view that these powers should be allocated and exercised in a manner consistent with the concept of cooperative governance.
6. Where it is more efficient to collect a tax locally, regionally or provincially, the appropriate level should be allocated this power and the right to use income thus collected.
7. The constitution should provide that the bulk of revenue should be apportioned at national level through a process like that proposed above, thus ensuring that provincial governments and legislatures, and, indeed, representative local government, participate³ in the formulation of the norms and standards upon which the FFC will have to make its recommendations.
8. A clause similar to Section 157(2) of the Interim Constitution should be included along the following lines:

"Loans referred to in [157(1)(a)] may be raised for bridging finance in the fiscal year subject to reasonable conditions as may be prescribed by an Act of Parliament passed after recommendation by the Financial and Fiscal Commission."

3 Also by way of the new Council/House of Provinces (Senate).

FINANCIAL AND FISCAL COMMISSION

Discussion

Constitutional Principle XXVII specifies that the new constitution shall provide for a Financial and Fiscal Commission in which each province shall be represented to:

“recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.”

The ANC is of the view that many of the broad principles contained in Sections 198 to 206 of the Interim Constitution should be carried into the final constitution, but consider much of the detail included in these sections should be dealt with in national legislation rather than the constitution.

At present there is considerable lack of clarity in the wording of the applicable sections of the Interim Constitution. In particular:

- The reference to “equitable financial and fiscal allocations” leaves open to doubt whether the section refers exclusively to vertical equity⁴ or accommodates horizontal equity. It should refer to both.
- Section 199(1)(b), which refers to revenue collected at national level, could mean one of the following:
 - Revenue collected in the nation as a whole, i.e. by all levels of government, or revenues collected by the national government, whether for its own account or as an agent on behalf of the other levels of government, or
 - revenues collected at the national level, including the shares of the taxes specified in Section 155, but excluding revenues collected on an agency basis on behalf of other jurisdictions⁵, or
 - revenues collected at the national level, but excluding the specified shares of income tax, VAT and the fuel levy that has to go to the provinces, and excluding revenues collected on an agency basis on behalf of other jurisdictions.
The ANC submits that it should refer to the third definition.⁶
- It is uncertain as to what distinction should be drawn between taxes, levies, imports and surcharges in Section 199(1)(c).
The ANC submits that an alternative phrasing to the effect that “any form of tax regardless of the name given to it” is more precise.⁷
- Section 199(1)(d) speaks of the “raising of loans”. The Financial and Fiscal Commission has submitted that this ought to cover any form of credit or advance to a provincial or local government or any agency owned or controlled by such a government. The ANC concurs in

4 Sect 199(1)(b).

5 E.g. transfer duties.

6 Concurring with the submission by the FFC of 5 June 1995.

7 *Ibid.*

- Section 178(2) states that local governments are “competent to levy and recover such property taxes, levies, fees, taxes and tariffs as may be necessary”. Once again it is not possible to draw a clear distinction between these terms, but the implication is that local governments are not subject to the same constitutional restraints as provinces. The clauses should be consolidated into one coherent and consistent section with a formulation similar to the above proposed new Section 199(1)(c). Local government powers of taxation and borrowing should be correspondent to those of provincial governments.

Proposals

9. The provisions relating to the establishment, objects and functions of the Financial and Fiscal Commission in Sections 198 to 199 of the Interim Constitution should be incorporated in the final constitution in abbreviated and revised⁸ form.
10. The constitution should provide that the Financial and Fiscal Commission shall be an independent statutory body, composed of persons with knowledge, experience and expertise in the fields as defined in Section 200(3)(b) of the Interim Constitution.
11. The constitution should provide that members of the Commission shall be appointed by the President in consultation with both the Cabinet and a cooperative council composed of representatives of the Executive Committees of the provinces, provided that if representatives of provinces in which the largest majority party is different from that in the National Assembly are dissatisfied with the composition of the Financial and Fiscal Commission as it emerges from this process, they may nominate persons of their own choice that meet the requirements in terms of expertise, in accordance with the number of seats in their provincial legislature as a proportion of the total number of seats in all provincial legislature.
12. While the constitution should specify the method of appointment (and possibly also the method of impeachment) of commissioners to ensure their independence, national legislation should specify the number of members of the FFC, their full-time or part-time status, and the manner of choosing a chair and deputy chair, to allow for flexibility in terms of numbers and extent of participation, and to take account of the experience of the present Financial and Fiscal Commission and international practice.⁹
13. The provisions for meetings, remuneration, co-optation and length of office that are covered by Sections 200 to 206 of the Interim Constitution shall be provided for in national legislation.
14. The constitution should state clearly that the Financial and Fiscal Commission has advisory and mediatory powers which must be reflected in the procedures for drafting budgets and fiscal legislation.
15. The constitution should provide that the Financial and Fiscal Commission present regular reports both to Parliament and to provincial legislatures in a manner to be determined by national legislation.

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⁸ See the above discussion.

⁹ It would also reinforce the position that the FFC is an independent, expert body, in which all the members have the same function and lines of accountability.

DP



PARLEMENT
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Demokratiese Party
Democratic Party

**Democratic Party Submission
to Theme Committee 3**

INTERGOVERNMENTAL FINANCIAL AND FISCAL RELATIONSHIPS

1. Fundamental Points of Departure

- 1.1 International experience shows that legislative powers without the necessary financial resources to implement programmes, leads to frustration and the erosion of the credibility of the provincial or local government.
- 1.2 The allocation of financial and fiscal powers, particularly in respect of tax distribution, should be laid down in the constitution clearly and in detail. It avoids annually recurring negotiations which make proper financial planning impossible. Furthermore, squabbling over the allocation of taxes can give rise to considerable tensions within a country and have a potentially destabilising effect. Using ad hoc arrangements to determine the allocation of revenue is also likely to lead to over-politicisation of the process.
- 1.3 The allocation of revenue should provide for as much predictability as is feasible, so that all levels of government will be able to formulate plans and budgets on a multi-year basis.
- 1.4 Each government should have an equitable share of revenue so as to ensure that it is able to provide basic services and execute the functions allocated to it.
- 1.5 Financing responsibility should follow executive responsibility. Whichever government is responsible for performing a duty should also bear the cost.
- 1.6 It is imperative to place an equal emphasis on revenue generation as on revenue allocation. It also cannot be the point of fiscal equity to burden thrifty states to the benefit of high-spending ones.
- 1.7 Provinces which generate most of the country's wealth should not be deprived of income needed to sustain and develop their economies, since to harm them could ultimately be to the detriment of all provinces.

2. Constitutional Principles

The Constitutional Principles which are relevant to this submission and their essential content are:

- XVII** 2. Powers and functions of provinces not to be substantially less than in 1993 Constitution.
- XX** Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. Allocation of powers to be conducive to financial viability.
- XXII** National government shall not use its powers so as to encroach upon the integrity of the provinces.
- XXV** The Constitution must describe national, provincial and local government fiscal powers and functions.
- XXVI** Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.
- XXVII** A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations from revenue collected nationally.

3. Shares of revenue collected nationally

- 3.1** Provincial and local governments shall be entitled to an equitable share of all taxes raised by the national government to enable them to provide services and to exercise and perform their powers and functions.
- 3.2** An equitable share of revenue referred to in paragraph 3.1 shall consist of:
- (a) twenty-five per cent of income tax on individuals, value-added tax or other sales tax and any national levy on the sale of fuel, and fifty per cent of all other taxes raised by the national government, shall be distributed amongst the provinces in proportion to their population sizes;
 - (b) twenty-five per cent of income tax on individuals, value-added tax or other sales tax and any national levy on the sale of fuel, which are raised by the national government, shall be distributed amongst the provinces, in respect of each such tax or levy, in proportion to the amounts collected in each province;
 - (c) two per cent of all taxes raised by the national government shall be distributed amongst the local governments in proportion to their population sizes; and

- (d) any other conditional or unconditional allocations out of taxes raised by the national government, provided that not more than fifty per cent of such allocations may be conditional.

3.3 All transfers to provincial and local governments shall be effected expeditiously and without any deduction therefrom, with the national government acting simply as a collecting agency for the provincial and local governments in respect of the monies referred to in paragraphs 3.2 (a), (b) and (c).

3.4 The amounts and conditions referred to in paragraph 3.2(d) shall be fixed reasonably in respect of the different provinces and local authorities after taking into account the recommendations of the Financial and Fiscal Commission and the national interest.

3.5 Allocations referred to in paragraph 3.2(d) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account -

- (a) the recommendations of the Financial and Fiscal Commission, and
- (b) the sufficiency of revenues of provincial and local governments to provide reasonably comparable levels of public services at reasonably comparable levels of taxation and efficiency of utilisation of revenue.

3.6 Notwithstanding anything to the contrary contained in paragraphs 3.2 (d), 3.4 and 3.5, for a period of ten years the national government may, after consultation with the Financial and Fiscal Commission, make special conditional grants to provincial and local governments for capital works to enable them to reduce or eliminate infrastructural backlogs.

4. Levying of taxes by provinces

4.1 A provincial legislature shall be competent to raise taxes, levies and duties, other than income tax or value added tax, and to impose surcharges on the taxable income of individuals and companies, and to impose a sales tax, provided that -

- (a) it has consulted with the Minister responsible for national financial matters and the Financial and Fiscal Commission; and
- (b) there is no discrimination against non-residents of that province who are South African citizens.

4.2 A provincial legislature shall have exclusive competence within its province to impose taxes, levies and duties (excluding income or value-added tax) on -

- (a) casinos;

- (b) gambling, wagering and lotteries;
- (c) betting; and
- (d) motor vehicles.

4.3 A provincial legislature shall not be entitled to levy taxes, levies and duties which materially and unreasonably prejudice the national mobility of goods, services, capital and labour.

4.4 A provincial legislature shall be competent to enact legislation authorising the imposition of user charges: Provided that -

- (a) such legislation may only be enacted after formal consultation with the Financial and Fiscal Commission; and
- (b) there is no unreasonable discrimination against non-residents of that province who are South African citizens.

5. Levying of taxes by local governments

The powers of taxation of local government are set out in Chapter 10. However, either in Chapter 10 or in this Chapter, it should be prescribed that a local government has the exclusive competence within its area of jurisdiction, to impose property rates, and duties on the transfer of property.

6. Raising of loans by provinces

Section 157 of the 1993 Constitution should be retained.

The Democratic Party has also made a submission to Theme Committee 6.2 in respect of Annual budgets which would impact on national and provincial governments.

7. Financial allocations by national government

Section 158 of the 1993 Constitution should be retained provided that it is made clear that the allocations refer to paragraphs 3.2(d) and 3.6 only.

8. Provincial Revenue Funds

Section 159 of the 1993 Constitution should be retained, provided it is clear that transfers received for local government from national government, do not have to go through an appropriation account as the provincial government would simply be acting as a conduit.

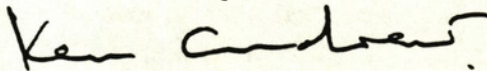
9. Local Government Revenue Funds

Provision needs to be made in the Constitution requiring local governments to establish revenue funds.

10. Conclusion

Many of the ideas and words in this document have been taken from submissions made to the Constitutional Assembly directly or at workshops etc. They have deliberately not been individually identified or acknowledged to encourage all proposals to be evaluated on their merits, irrespective of the source.

Legal and "quasi-legal" terminology is frequently used for the sake of brevity and in an attempt to be precise. It is not suggested that those words and phrases are all necessarily the most suitable ones for a constitution.



Ken Andrew MP
15 June 1995

NP

15 JUNE 1995

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 3

GOVERNMENT FINANCE AND INTERGOVERNMENTAL FISCAL RELATIONS

In this submission the above subjects are discussed with reference to the provisions contained in the Interim Constitution.

Introduction

It is essential that the fiscal relations between the three tiers of Government should reflect the spirit of the Constitution, take cognisance of competences and functions allocated to the various levels of Government by the Constitution and enable them, by granting them on an equitable basis access to the country's tax base and financial resources, to reasonably perform their respective functions.

The ideal would be, in particular, to grant greater fiscal autonomy to the provinces. However, various factors militate against the implementation of such a fiscal model and a more pragmatic approach, dictated by the realities of the South African situation, is therefore appropriate - namely a revenue sharing model, as outlined in the Interim Constitution. It should nonetheless not be viewed as confining the provinces to the role of agents having to perform certain functions on behalf of the National Government. The fact that a revenue sharing model is supported, does not impair the competence of the provinces to manage the expenditure sides of their budgets. Furthermore, several examples of revenue sharing models exist in other countries.

The following economic imperatives need to be taken into account in the shaping of fiscal relations between the various tiers of Government:

- **The skewed distribution of income and wealth, socio-economic backlogs, also in respect of infrastructural services in certain regions, and the uneven distribution of economic activities and of the total population.**
- **The tax base and its growth potential are extremely limited in certain regions and as a consequence these regions will be almost entirely dependent on transfer payments from a national source to maintain minimum standards in respect of the functions assigned to them in terms of the Constitution. The alternative is a vast migration of people to the existing cities which will in any event increase the fiscal burden of these growth metropolises.**
- **It is impractical for each province to have its own tax administration and to raise its own taxes. Such a tax dispensation may also give rise to the problem which reared its head under the previous constitutional system where some TBVC-states not only used the tax system (lower taxes) to attract enterprises but also failed to collect taxes efficiently and then expected the central Government to compensate them, through transfer payments and Government guaranteed loans, for the resultant loss of revenue. Great difficulty is currently being experienced to upgrade the administration of Inland Revenue and it will be an impossible task to establish competent tax administrations in each province. It is also in the interest of the provinces that the efficiency of Inland Revenue be improved without delay.**
- **Maintaining fiscal discipline and macro-economic stability is of paramount importance and remains to a large extent the responsibility of the National Government. The Provinces will in the final analysis, however, be key players in maintaining fiscal discipline. South Africa's total tax burden, for a developing country, is already high and additional tax revenue should rather be generated by higher economic growth than an increase in the total tax burden. The deficit before**

borrowing in the national budget is also too high and should be reduced. The assumption has always been that tax revenue from the National Government would be transferred to the provinces in respect of the functions for which they assume responsibility and that a higher tax burden should not result as a consequence - taking cognizance of the fact that loans are to some extent currently used to finance recurrent expenditure.

- **There is furthermore concern about the capability of some provinces to manage their financial affairs prudently and it is consequently essential that their powers to raise taxes and loans be subject to checks and balances.**
- **All taxes, in respect of which the revenues thus collected have to be deposited in the National Revenue Fund for sharing with the provinces, have to be raised via the budget presented by the National Government.**

The point that needs to be emphasised is that the principle of transfer payments is well established in South Africa and that the centralised system of tax collection (for revenue sharing purposes) is an unavoidable consequence of the structure of the economy. It should, however, not distract from the competences of the provinces to perform the tasks assigned to them by the Constitution - within the constraints of available resources.

In order to protect the integrity of the office of the Commissioner of Inland Revenue from political interference in its performance as tax collector, it is deemed desirable that the Commissioner should be granted independent status and that his office should fall under a supervisory body similar to the Audit Commission.

Prohibition on the withholding of a province's share of revenue

The fiscal relations between the National Government and the Provinces should furthermore be structured in such a manner that the National Government cannot abuse these financial relations to coerce provinces to implement policies dictated by it for reasons other than financial maladministration. It will create an untenable situation should the National Government attempt to use the centralised tax collection system, the product of practical considerations, to dictate policies to the provinces - which may in any event infringe their constitutional competences and impact adversely on the people of such provinces.

It is consequently proposed that the following provision be inserted after Section 155(3) of the Interim Constitution:

"The amounts referred to in subsection (1), without any deductions, shall be transferred to the Provinces and no share thereof shall be withheld other than on the basis of a resolution by Parliament following a report by the Auditor-General confirming gross maladministration by a Province."

The existing fiscal arrangements between the National Government and the Provinces as arranged in terms of the Interim Constitution

The Sixth Schedule to the Interim Constitution, read in conjunction with Section 126, details the functions which fall within the competences of the Provinces. This matter may still be open to negotiation.

It is vitally important that absolute clarity be obtained about the functional competences of the various tiers of Government as this aspect has serious implications for intergovernmental financial relations. However, we are more concerned here about the financial principles involved than the actual distribution of functions between the various tiers of government.

(a) **Revenue sharing between the National and Provincial Governments.**

The factors that impact on the fiscal relations between the National Government and Provinces, as alluded to above, had been taken into account in the drafting of the Interim Constitution. **The National Party is therefore broadly supportive of the tax revenue sharing model as outlined in Section 155 of the Interim Constitution - read in conjunction with Section 199.**

The National Party proposes that the following taxes and incomes should be collected nationally and be deposited in the National Revenue Fund for revenue sharing purposes:

- Direct taxes: personal and corporate plus mining taxation
- VAT or any other sales tax
- Fuel levies
- Customs and excise duties and any levies imposed thereon
- Estate duties

The servicing of national debt should have first claim on the taxes collected nationally and the balance should be shared between the National Government and the Provinces on the basis of formulae recommended by the Financial and Fiscal Commission - as outlined in Section 155 (4), but subject to the condition that the fiscal competences of and the taxes raised by the Provinces, in view of the limited extent of the sources of revenue available for this purpose, shall not be taken into account to determine the share of revenue to be allocated to each Province.

(b) Levying of taxes by Provinces.

The National Party proposes that the taxes listed hereunder should fall within the **exclusive** competences of the Provinces. There should be provision to add to this list on recommendations by the Financial and Fiscal Commission.

- Stamp duties
- Transfer duties
- Vehicle licences
- Toll taxes
- Taxes, levies and duties imposed on casinos, gambling, wagering, betting and lottery tickets.

The rate of stamp and transfer duties shall, however, be determined by the National Government in consultation with the Provinces and it shall also have the right to abolish these duties if so recommended by the Financial and Fiscal Commission.

The National Party also proposes that a provincial legislature should be competent to enact legislation authorising the imposition of user charges, as provided for in Section 156 (3) of the Interim Constitution.

The National Party is of the opinion that the Provinces should in principle have the competence to impose levies on taxes raised by the National Government, as provided for in Section 156(1) of the Interim Constitution.

All revenues accruing to a Province shall be paid into a Provincial Revenue Fund.

(c) **Raising of loans and Government guarantees**

The National Government currently uses loan funds to finance some consumption expenditure and it implies therefore, as long as this undesirable practice persists, that a portion of the loan funds raised by the National Government will have to be included as part of the transfer payments to the Provinces.

The National Party is of the opinion that the Constitution should provide for the establishment of a Loans Authority to co-ordinate the issue of loan stock and to determine policy for the management of the debt of the three tiers of government and guarantees provided by them. The details should be contained in an act of Parliament.

The National Party proposes that the three tiers of government may not borrow to finance current expenditure.

Borrowing by the Provinces (see also Section 199 (1)(d) of the Interim Constitution), which may be in lieu of loans raised by the National Government, imposes demands on the South African capital market and affects the general government's total budget deficit before borrowing. It is therefore essential that the borrowings by the general government institutions shall be properly co-ordinated. The NP proposes that a Committee under the chairmanship of the Minister of Finance be established to co-ordinate the borrowing requirements of the general government which should also take into account the ability of the public sector bodies to service such debt. General Government faces a possible debt trap and it is therefore essential that strict control should be exercised on its total loan requirements as well as the management of the debt of the three tiers of government.

As far as the competence of Provinces to raise loans is concerned, the National Party supports the principles as enunciated in Section 157 of the Interim Constitution.

(d) **Expenditure by Provinces**

As in the case of the National Government, the servicing of Provincial debt should have first claim on the revenues accruing to the Provinces.

Allocations to the Provinces to finance the provision of services have to be based on nationally determined minimum criteria - as laid down by Sections 126 and 199(e) of the Interim Constitution. The National Government can in terms of Section 126 of the Interim Constitution withhold the allocation of tax revenue to a Province which does not maintain minimum standards of services. The reason for this provision is obvious. The NP is, however, of the opinion that it should be scrapped and that the Provinces should enjoy greater autonomy to determine spending priorities in respect of the functions they have to perform and the standard of the services provided by them.

It is essential that the Provinces should maintain financial records in accordance with established accounting standards and introduce effective auditing procedures - to the satisfaction of the Auditor-General. The NP also proposes that the National Government should have the power to take over the financial management of a province, or certain elements thereof, should a Province, in the view of Parliament after a report to that effect from the Auditor-General, be regarded as incompetent to perform this task or certain elements thereof.

The fiscal competences of Local Authorities

The NP is in agreement with the powers and functions accorded to Local Authorities in terms of Section 175 of the Interim Constitution, the sources of taxation reserved for them in terms of Section 178 and the provision for transfer payments from the Provinces - in accordance with criteria recommended by the Financial and Fiscal Commission. The National Party is of the opinion that the revenue from property rates and land taxes should accrue to Local Authorities.

The borrowing activities of Local Authorities should also be subject to the surveillance and disciplines applicable to the Provinces. The Provinces shall be obliged to transmit to the Local Authorities all funds received from the National Government earmarked for Local Authorities.

The Financial and Fiscal Commission (FFC) (Sections 198 to 206)

The NP is of the opinion that the Constitution should provide for the FFC, in much the same way as outlined in the Interim Constitution. The NP furthermore proposes that experts on local authority finances should gain greater representation on the Commission.

Provincial FFC's

The NP proposes that the Constitution should provide for the establishment by Provincial Statute of a body similar to the FFC in each Province to deal with the financial and fiscal relations between the Province and Local Authorities in its area of jurisdiction. Each Province and the Local Authorities within its boundaries should have equal representation on the proposed Commission.

PAC



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Preliminary submissions

THEME COMMITTEE 3

The Financial and Fiscal Commission

Constitutional Principle XXV11 does accommodate the role of the Financial and Fiscal Commission in the Final Constitution that is currently being drafted by the Constituent Assembly. The PAC is not opposed to the above position in principle. Rather the PAC would go a step further and submit that the Financial and Fiscal Commission should be given a Constitutional recognition, but only when the relationship(s) between the three levels of government are clearly delineated and resolved. This does not mean that the Constitution should contain provisions setting out the functions of the different levels of government but only a framework of those functions.

This stems from the central belief in the PAC that the Provinces and Local government structures should only have administrative powers and nothing else.

If one were to look at the provisions of Constitutional Principle XXV11 the following emerge amongst others :

- (i) that they shall recommend equitable fiscal and financial allocations to the Provinces and Local governments from revenue collected nationally
- (ii) that they take into account the national interest
- (iii) that the economic disparities between the provinces

The PAC is of the view that the budget allocation must be administered by the Central Government wherein the Financial and Fiscal Commission will be fully consulted in order for the above objective to be fulfilled.

The PAC would submit that the composition of the Commission should draw representation from the Provinces, Local government structures and any other interested party.

Ms Patricia De Lille (MP)