

2/21/117/5

**CONSTITUTIONAL  
ASSEMBLY**

**CONSTITUTIONAL COMMITTEE  
SUB-COMMITTEE**

**SUBMISSIONS**

**RECEIVED AS AT  
29TH JANUARY 1996**

**VOLUME 3**

***PART 1  
ORGANISATIONS***



# CONSTITUTIONAL ASSEMBLY

## REGISTER OF SUBMISSIONS RECEIVED AS AT 29TH JANUARY 1996

VOL 3 NO	ORGANISATIONS	SUBJECT	SUMMARY
3.1	All Saints Hospital Christian Fellowship	RSA	Secular State - opposed.



3.2	Financial & Fiscal Commission	Provincial Surcharges on National Taxes	<p><b>PROVINCIAL TAXES</b></p> <p>The FFC's submits that s150(1) does not make sense in that it prohibits the provinces from imposing taxes surcharges on national taxes, whilst at the same time permitting similar surcharges on provincial and local government taxes.</p> <p>The FFC believes that the success of the system of intergovernmental relations, which is in the process of being developed in South Africa, is dependent on provinces having access to a reasonable level of own resources. For this reason the FFC avers that provincial governments should be permitted to impose surcharges on Personal Income Tax. Surcharges on national personal income tax hold much potential, according to the FFC, for generating provincial own revenue and thus creating provincial accountability.</p> <p>The provinces' own revenue, according to the 1995/6 budget, is on average about 5% of their total revenues, leaving them almost totally dependent on national transfers. If provinces are not provided with the potential to raise a greater proportion of their own revenues, they become unsustainable as viable political and economic entities and remain unaccountable for their activities. They will all not have the paraphernalia of political entities, but merely spending agencies of national government. The simplest and most cost effective way of achieving a</p>
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reasonable measure of provincial accountability is to allow the provinces to choose the rate of a surcharge on personal income tax.

The FFC's submission emphasises the importance of access by provinces to surcharges on appropriate national taxes, such as personal income tax.

On the strength of the above the FFC proposes that s150(1) should be reformulated as follows:

*"150 (1) A provincial legislature shall be competent:*

*(a) to raise taxes, levies and duties, in the province concerned, other than income tax, value-added tax, general sales tax and customs duties; and*

*(b) to impose flat rate surcharges, in the provinces concerned, on the tax bases of national taxes, levies and duties, other than those of corporate income tax, value-added tax and customs duties:*



3.3	Free Evangelical-Lutheran Synod in SA	Life	Oppose abortion
3.4	Mayfair Jumma Masjia & Madressa Institute	Property	Appropriation clause - exempt Mosques, holy places should not be violated.
3.5	Pietermaritzburg Agency for Christian Social Awareness	Life	Death penalty - reinstate. Abortion - prevent law reform.
3.6	SA Gunowners' Association	Legislation - Arms	Support right to bear arms
3.7	South Africans for the Abolition of Vivisection	Animal Rights	Abolish vivisection. Do not support any legislation governing laboratory animals.



# CONSTITUTIONAL ASSEMBLY

## REGISTER OF SUBMISSIONS RECEIVED AS AT 29TH JANUARY 1996

<b>VOL 3 NO</b>	<b>ORGANISATIONS</b>	<b>SUBJECT</b>	<b>PAGE NO</b>
3.1	All Saints Hospital Christian Fellowship	RSA	1 - 3
3.2	Financial & Fiscal Commission	Provincial Surcharges on National Taxes	4 - 7
3.3	Free Evangelical- Lutheran Synod in SA	Life	8 - 9
3.4	Mayfair Jumma Masjia & Madressa Institute	Property	10
3.5	Pietermaritzburg Agency for Christian Social Awareness	Life	11
3.6	SA Gunowners' Association	Legislation - Arms	12
3.7	South Africans for the Abolition of Vivisection	Animal Rights	13



ALL SAINTS HOSPITAL CHRISTIAN FELLOWSHIP  
P/BAG X 215  
ENGCOBO.

Mr. Ceril Ramaposa  
The Chairperson of Constitutional Assembly  
Box 15  
CAPE TOWN.

Sir,

**Re: SECULARIZATION OF THE STATE - S.A.**

In response to an extract from the draft constitution of the Republic of South Africa, we the Hospital Christian Fellowship members wish to voice our strong objection to the proposal submitted by A.N.C. that South Africa should become a secular State. The following are the basis of our objection.

- (i) To start with before April 1994 Elections when all parties were campaigning A.N.C. amongst the things it promised was freedom of religion. This we believe is one of the reasons why the A.N.C. won the elections, because it acquired many votes from the people of this country who are believed to be the Christians in majority.

When the A.N.C. leaders and other organisations who were fighting for our freedom were imprisoned, the Christians prayed for their release and when they were ultimately released we prayed for the best and capable party to lead us. This party was believed to be the A.N.C. And before the elections we prayed to God the Almighty that the A.N.C. should win the elections because we saw it as the party that could lead us. We believe that A.N.C. has won because of our prayers. To us it is as if the A.N.C. has used the people of this country as a ladder and now that it is on higher levels is kicking them away.

- (ii) **Hospitals:**

The history of nursing reveals that it originated from the Priests. Physicians and Health Inspectors who based their practises on the Mosaic Code i.e. the law given to Moses by God. Christianity was largely concerned with the recognition of every man's human worth as an individual (Ethos of Nursing: A text for basic Student Nurses: Joice Mary Mellish).

An extract from a Newspaper presented at the Nurse Educators Conference in New York in 1978 put more emphasis on the Holistic approach in Nursing which is done in four folds: physical aspects, psychological aspect, social aspect and spiritual aspect which are the components of an individual. Now the question is, how can we divorce Christianity which is a spiritual aspect making up an individual?



iii) Schools

Schools were brought about by the Missionaries who were Christians. These Missionaries taught children at early ages what is right or wrong. They also taught the children how to worship God who is the Creator of Earth, Man and everything on it.

Their doctrines with Christian basics helped and groomed the people of this continent to be what they are today. Even our leaders are the products of those Missionaries. How can we now at this stage divorce the aspect that brought us the success we have achieved as the people of this country?

(iv) General

Day and Night in services conducted in hospitals, churches, schools, public places and gatherings, Christians are converting criminals and people generally and by so doing the number of crimes committed are reduced.

In prisons criminals are rehabilitated by the word of God.

On the basis of the above we wish to inform you that we would like to practise our Christian Religion freely and that Religion cannot be separated from public life or the civil service.

Yours in Christ,

INITIALS AND SURNAME

- 1 MR V MAFENGUWANA
- 2 MRS F.B. MATENGUWANA
- 3 MISS M. N. N. N. N.
- 4 MISS N.G. MGANTO
- 5 MR T.P. HLAZO
- 6 MISS B.N. NYEHANCA
- 7 MISS N.L. LUKE
- 8 N. N. N. N.
- 9 MISS N. GANA
- 10 MR L.Z. SOMKABA
- 11 MISS B. NOGWAZA
- 12 MISS L.A. TIKINI
- 13 ~~MR HLAZO~~
- 14 Z.P. SOTIYA
- 15 MRS S. SIHELE
- 16 MRS. N. MKWA
- 17 MISS S.A. N. N. N.
- 18 MRS X.V. SIBUNZI

SIGNATURE

- 1 Mafengwana
- 2 F.B. Matengwana
- 3 N.N.N.
- 4 N.G. Mganto
- 5 T.P. Hlazo
- 6 B.N. Nyehanca
- 7 N.L. Luke
- 8 N.N.N.
- 9 N. Gana
- 10 L.Z. Somkaba
- 11 B. N. N. N.
- 12 L.A. Tikini
- 13 ~~HLAZO~~
- 14 Z.P. Sotiya
- 15 S. Sihele
- 16 N. Mkwa
- 17 S.A. N. N. N.
- 18 X.V. Sibunzi



Mrs. N. Y. Mabau  
 0 Mrs N.A Jola  
 21 Miss. K. Katambana  
 22 Mrs EN. ZAZINI  
 22 Mrs N.J. MANGAYE  
 24 Mrs F.S. QUTIR  
 5 Mrs C.T. LILATE  
 6 Mrs SN Mahwa  
 7 Mrs N. Mucozomu  
 Mrs R. Gila  
 Miss V. Ishona  
 Miss T.P. Mxuta  
 Mrs S.N. BIKI

(C) N.Y.  
 N.A Jola  
 Katambana  
 ZAZINI  
 MANGAYE  
 QUTIR  
 LILATE  
 Mahwa  
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 Mxuta  
 BIKI



Mr C Ramaphosa: The Chairperson  
Constitutional Assembly  
P O Box 992  
CAPE TOWN  
8000

11 December 1995

Fax no. 021 24 1161

**COMMENTS ON: WORKING DRAFT OF THE NEW CONSTITUTION: PROVINCIAL TAXES  
(SECTION 150(1)): SURCHARGES ON TAXES ASSIGNED TO THE NATIONAL LEVEL**

Refer the *Working Draft of the New Constitution*, section 150(1) and the Financial and Fiscal Commission's (FFC) *Framework document on intergovernmental fiscal relations, 19 June 1995* and *The allocation of financial resources between the national and provincial governments, (Recommendations for the fiscal year 1996/97), 8 September 1995*.

Although there are a number of matters from the *Working Draft* which we intend to respond to, it is the matter of provincial surcharges on national taxes which we believe is the most important.

Section 150(1) as it exists at present, prohibits provinces from imposing surcharges on those taxes residing at the national level, be they income taxes (personal income tax or corporate tax), value-added tax, any sales tax which may be imposed, levies on the sale of fuel and customs and excise duties. By implication, provincial surcharges are permitted on local government taxes or their own taxes, which makes no sense.

Provincial accountability and the beneficial properties of surcharges:

The importance of provincial own revenues underpinning provincial accountability is stressed in the FFC's *Framework document on intergovernmental fiscal relations*, (June 1995: 4)

3.3 The fiscal system should be designed to encourage accountability. Because people generally are only prepared to monitor government and to object to irregularities and inefficiencies if their own interests are affected, the system should ensure that this occurs by encouraging beneficiary participation. One way of achieving this is by linking expenditure and revenue and, subject to equity considerations, by raising the required revenue directly from the beneficiaries of the service provided.

In addition, the FFC (June 1995: 20) highlights the beneficial properties of surcharges:

5.2.2 ...it is possible for subnational governments to impose surcharges on personal income tax. If this is done subject to certain constraints, the procedure is also not complicated. The following points need to be considered. Firstly, in order to minimise the administrative complexities, the national definitions of the base must be used by all and the tax collected nationally.



5.2.3 Secondly, unless those who complete tax returns are given the choice of having their taxes credited to their place of work, place of residence, or the family's place of residence, (where these differ), a uniform decision should be taken and applied by all the provinces. Despite this, those who are subject to Standard Income Tax on Employees (SITE) and do not file tax returns, and whose home addresses are therefore not known to the revenue authorities, must have their taxes credited to their place of work. Due to the high incidence of migrant labour in South Africa this could exacerbate horizontal inequalities. As this problem could be more acute if local governments were to impose surcharges on personal income taxes, this form of tax would probably have to be limited to the provinces.

5.2.4 Thirdly, the surcharge should be on the tax base and not on the resulting tax amount. As the latter is progressive, adding a surcharge to the tax amount would be administratively complex. Similarly, the surcharge itself should be levied at a flat rate.

5.2.5 Fourthly, the maximum surcharge should be limited to a few percentage points for two reasons. On the one hand, this would keep the maximum rates within acceptable limits and not dissuade persons (especially the rich) from living in particular provinces. This point would be more pertinent if the national income tax were not lowered to compensate for the surcharges. On the other hand, if the national tax were to be lowered, the horizontal disparities mentioned above would be aggravated: the richer provinces would benefit from the surcharge revenue whereas the revenue sharing pool available to the poorer provinces would be shrinking. These points suggest that provincial surcharges on national personal income tax should, initially at least, be constrained to the addition of a maximum of a few percentage points to the national rate, so as to avoid lowering the national rate.

5.2.6 These aspects must be addressed before this route is embarked upon. The avenue is specified in section 156 of the Interim Constitution, which requires particulars to be spelt out in an Act and the consensus of both the National Assembly and the Senate to pass enabling legislation on provincial taxes.

5.2.7 (Within these constraints)...surcharges on the national personal income tax hold much potential for generating provincial own revenue in future and thus encouraging provincial accountability. Their use, however, requires the general acceptance of standardised solutions to ... problems (which may arise) ... Moreover, they should not be introduced at the expense of the revenue sharing necessary to achieve horizontal equity between provinces. Nevertheless, with the future in mind when provincial disparities have been reduced, their use should be encouraged and entrenched.

Furthermore, the system of intergovernmental fiscal relations which the FFC has begun to establish is dependent on provinces having access to a reasonable level of own revenues, as is evident from extracts from the Framework Document quoted above. In support of this the FFC's recommendations in its report, *The allocation of financial resources between the national and provincial governments, (Recommendations for the fiscal year 1996/97)*, 8 September 1995, contains a formula element "T" which is a "tax capacity equalisation grant". This element has two functions, the one is to encourage provinces to raise their own revenues and the other is to supplement provinces' revenues where their tax capacity is below the national taxing capacity. If the conditions were created where provinces relied almost exclusively on national government transfers, the benefit of linking own revenues and expenditures, a requisite for fiscal accountability, would be forfeited. At present the "T" element is not operative, but it is envisaged that during the remodeling of the formula it should be included for the reasons provided above.

.....In 1995/96 the tax yield from personal income tax, corporate tax and the fuel levy comprised approximately 90% of estimated total tax revenues at the national level, indicative of their importance.



Provinces' own revenues are on average about 5% of their total revenues, leaving them almost totally dependent on national transfers. If provinces are not provided with the potential to raise a greater proportion of their own revenues they become unsustainable as viable political and economic entities and remain unaccountable for their activities. They will have all the paraphernalia of political entities but merely be spending agencies of national government. The simplest and most cost-effective way of achieving a reasonable measure of provincial accountability is to allow provinces to choose the rate of a surcharge on personal income tax subject to the constraints outlined above. It is thus important that provinces be afforded access to surcharges on appropriate national taxes, personal income tax being a case in point.

The control mechanisms whereby provinces' authority to raise surcharges is regulated, namely national legislation and the recommendations of the FFC, seem to be sufficient to prevent provinces from undermining national economic conditions as formulated in section 150(1)(b). A maximum surcharge rate could also be imposed (in legislation) to limit the extent of the surcharge. The idea here is that national legislation could set a "surcharge band" of say two to five percentage points and provinces would have to comply with this framework.

General acceptance of the principle of provincial surcharges on nationally assigned taxes:

Subsequent to the publication of the FFC's abovementioned reports there have been numerous discussions with the Ministry of Finance, including the Departments of Finance and State Expenditure, and the Commissioner for Inland Revenue, and the provinces, none of whom have raised any objection to the recommendation that such surcharges be permitted.

A set of proposals was made to the Constitutional Assembly in June 1995 by the FFC. Included in these proposals was a re-formulation of section 156(1) of the Interim Constitution (4: paragraph 19). A revised version is provided below; it is strongly recommended that it be substituted for section 150(1)(a) of the *Working Draft of the New Constitution*:

**150(1) A provincial legislature shall be competent:**

- (a) to raise taxes, levies and duties, in the province concerned, other than income tax, value-added tax, general sales tax and customs duties; and
- (b) to impose flat-rate surcharges, in the province concerned, on the tax bases of national taxes, levies and duties, other than those of corporate income tax, value-added tax and customs duties:

provided that taxes, levies or surcharges that may detrimentally affect national economic policies, interprovincial commerce or the national mobility of goods, services, capital or labour may not be raised.

- (2) The authority to raise taxes, levies, duties and surcharges must be regulated by national legislation which may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.

Additional notes on the present formulation of section 150 in the *Working Draft of the New Constitution*:

- (i) It is essential to distinguish between taxes and surcharges and not to lump them together, because their merits differ with regard to different tax bases.
- (ii) Surcharges having progressive rates would be administratively too complex. Progressivity is addressed at the national level.



- (iii) Provinces must only be permitted to raise taxes within their own boundaries.
- (iv) Value-added tax is not a sales tax; the bases of these two taxes are totally different.
- (v) There is a distinction between a general sales tax and a specific sales tax, even though some of the latter are called excises or levies. The present formulation would exclude a tax on electricity and water, which currently are major sources of income for lower-tier governments (albeit disguised as "trading surpluses").
- (vi) For a detailed discussion of the reasons why certain taxes are either included or excluded in the FFC's proposed wording for the new section 150, please refer the abovementioned *Framework document on Intergovernmental fiscal relations*, Part D.
- (vii) All the abovementioned problems have been corrected in the revised version highlighted above.

The FFC has speculated whether the prohibition could have been a drafting error. If this is the case the abovementioned argument simply reinforces the need for provinces to have access to their own revenue sources.

Comments concerning other matters in the *Working Draft* will be submitted in due course.

Yours faithfully

*Antony Melck.*

**AP Melck**  
**Deputy Chairperson: Financial & Fiscal Commission**

CC: Mr A Erwin: Deputy Minister of Finance  
Ms G Marcus: Chairperson: Joint Standing Committee on Finance  
Dr E Calitz: Director-General: Finance  
Mr T van Heerden: Commissioner for Inland Revenue  
Dr R Davies: Chairperson: CA - Theme Committee Two (Financial Matters)  
Provincial MEC's for Finance



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PARLIAMENT OF THE REPUBLIC  
OF SOUTH AFRICA

FAX TRANSMISSION

DATE : 11 - 01 - 1996.  
TO : Constitutional Assembly  
Mr. H. Ebrahim  
FAX NUMBER : (012) 461 - 4339  
FROM : Khorombi Dau  
NUMBER OF PAGES (INCLUDING THIS ONE) : 2

MESSAGE

The letter sent herewith was brought  
to our offices to dispatch to you,  
since it was referred back to  
sender due to wrong address. Thanks

If the fax is not clear or incomplete, please call the above number





FELSISA

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✉ 331 Eastwood St 0083 Arcadia Pretoria South Africa

Office of the President

15 Sept. 1995

The Executive Council  
Constitutional Matters  
Cape Town  
8001

CONFIDENTIAL

7:02

Dear Sirs,

re: Law on Abortion

As a Christian Church bound to the Bible as the Word of God, which serves as our norm and authority, we would strongly request that the government of our country refrain from introducing any laws that will legalize abortion in our country. The only exception would be where the life of the mother is in danger.

It is the high calling and duty of you as a government to protect life, especially the life of the defenceless. This includes the defenceless fetus, which, even though not yet born, is already a human life. Where the government does not fulfil its obligation to such defenceless human beings, there it evades its duty and calls down God's wrath on itself and on a nation who practices such murder of defenceless human life.

It is therefore our prayer that God will grant you wisdom and courage to do what is right before him and what will serve as a blessing to yourselves and our country.

Yours faithfully



Peter H.F. Ahlers  
President



COR. HANOVER STREET & 10th AVENUE, MAYFAIR, JOHANNESBURG  
P.O. BOX 421047, FORDSBURG 2033  
TEL: (011) 834-4074/5 FAX: (011) 836-9739

2nd January 1996

Executive Director  
Constitutional Assembly  
Fax 0121 461 4339  
Cape Town

Sir, We are referring to Property Clause Option 2 and 3 which states that a property may be expropriated only in accordance with a law of general application for public purposes or in the public interest.

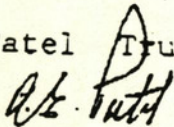
We wish to request that our Mosque be exempted from the above clauses, because Mosques are Holy places and their sanctity cannot be violated.

A Mosque can never be sold, or expropriated. Therefore we request that the Mosque be constitutionally protected.

We trust you will give this matter your sympathetic consideration.

for Mayfair Jumma Masjid and Maderessa Institute.

A E Patel Trustee





# PACSA

PIETERMARITZBURG AGENCY FOR CHRISTIAN SOCIAL AWARENESS

P.O. Box 2338  
Pietermaritzburg  
3200

Telephone: (0331) 420052/3  
Fax: (0331) 420303

174 Berg Street  
Pietermaritzburg  
3201

## FAX COVER SHEET

DATE : Nov 6 1995 FAX NO : 021 461 4339  
TO : Constitutional Assembly ATTENTION : Mr. Hassen Ebrahim  
Executive Director  
FROM : Karen Buckenham NO. OF PAGES: 1  
MESSAGE SUBJECT: Refined Working Draft - - Right to Life

Dear Mr. Ebrahim

We are writing regarding the Refined Working Draft of the Constitutional Assembly - 12th October 1995; particularly regarding the three options listed under the right to life.

We object to any provision which would:

- \* allow for the reintroduction of the death penalty (Options 2 and 3)
- \* prevent abortion law reform (Option 3)

Therefore, we would support Option 1 only.

Yours truly

*Karen Buckenham*

Karen Buckenham  
PACSA Human Rights Worker





# THE SAGA TRUST ♦ DIE SAGA TRUST

THE SOUTH AFRICAN GUNOWNERS' ASSOCIATION

REGISTRATION NUMBER 1555/85

(A non-profit, non-political association of concerned law-abiding firearm owners.)

('n Vereniging, sonder politieke- of winsoogmerk, van besorgde wetsgehoorsame vuurwapeneienaars.)

ADMINISTRATION OFFICE: PO Box 35203, Northway 4065

Tel (031) 52-6551 fax (031) 562-8389

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The Executive Director  
Constitutional Assembly  
PO Box 1192  
CAPE TOWN  
8000

6 December 1995

Sir,

## CONSTITUTION

We note with concern that our submissions on firearm rights are not reflected in the working draft of the new Constitution. In failing to acknowledge a basic right to possess firearms, and in failing to restrict government's power to infringe this right, the Constitution effectively leaves the way open for any future government to disarm its citizens, leaving them unable to resist tyranny or military dictatorship.

We note with equal concern that whereas criminals are afforded extensive rights, nothing in the draft Constitution gives law-abiding citizens the right or the means to defend themselves against criminals. The right to life, to security of the person and to be free of all forms of violence (Articles 10 & 11) and the right not to be deprived of one's property (Article 24) are meaningless unless one is entitled to the *means* of defending those rights against criminal violation.

Indeed, it can be argued that the Constitution gives the criminal more real, practical rights to help him avoid the consequences of his actions, than it gives the law-abiding citizen to protect person and property against criminals.

It is an indisputable fact that for the vast majority of law-abiding people of this country, a firearm is the only effective means of defending their rights. The police cannot protect everyone, nor are they legally obliged to do so.

Article 10 of the draft Constitution also gives cause for concern. In its proposed form, it falls far short of, for example, the European Convention on Human Rights, which qualifies the right to life by allowing for the deprivation of life, *inter alia*, in defence of any person from unlawful violence, or, in order to effect a lawful arrest or to prevent the escape of a person lawfully detained (Articles 2(a)&(b) of the Convention). This mirrors the current legal position in this country regarding justifiable homicide; the draft Constitution puts it in doubt. It would be an untenable situation if an intended victim who killed an assailant in self defence or in circumstances covered by Sec 39 of the Criminal Procedure Act could be held liable, criminally or civilly, for violating the criminal's constitutional right to life.

We strongly urge that the draft Constitution be amended to accommodate the concerns expressed above.

Yours faithfully,

Ian Lehr  
Chairman  
SA Gunowners' Association



SOUTH AFRICANS  
for the  
ABOLITION  
of  
VIVISECTION  
CAPE TOWN



P.O. BOX 44231  
7735 CLAREMONT  
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"THERE IS NOTHING MORE POWERFUL THAN AN IDEA WHOSE TIME HAS COME ..."

## FAX TRANSMISSION

TO : CONSTITUTIONAL ASSEMBLY

DATE : 14 December 1995

RE : NATIONAL ANIMAL LEGISLATION

**SOUTH AFRICANS FOR THE ABOLITION OF VIVISECTION** voice their support of the SPCA in their negotiations for Animal Legislation to remain a National matter.

We would however, like to add that S.A.A.V. DO NOT support in any way legislation governing laboratory animals.

Cross-specie extrapolation of data which follows experimentation on Animals is highly unscientific and misleading.

S.A.A.V. is currently lobbying for abolition of vivisection.

MRS L WAGNER  
SPOKESPERSON  
S.A.A.V. CAPE TOWN



