

# **CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 3**

**5 JUNE 1995**

**[ VOLUME II page 56 - 109 ]**

2/4/3/9/27

**MR MEYERFELDER:** The question we understood - to what amount the general tax burden.

In Germany we have a very high tax burden.

Industrial Enterprise in Germany would pay Corporate tax would pay a local business tax and would pay the land tax and this all taken together would sum up at 65%.

very advanced social system and the money has to come 10  
from somewhere.

We have a progression in our income tax.

The minimum to guarantee a livelihood is not taxed and this amounts for individual to 12 Thousand Marks - roughly R25 000,00 here and for couples 24 Thousand Marks roughly R50 000,00.

And when the progression in the income tax table will run 20  
up to 53%.

The highest bracket - 52% will be reached on income of 200 Thousand Marks for couples. This something like R450 000,00.

**THEME COMMITTEE 3  
5 JUNE 1995**

... (Inaudible) asked about borrowing powers. Who grants authority to take up (inaudible) ... Each Federal State has its own budgetary law and procedure.

This means, actually, that each of the lender Parliaments each year will decide on the budget.

Within this budget law of each Federal State authority is given to take credit.

10

If the State, that is lending, is borrowing money gets into difficulties and finds that they in fact - their deficit is too large and they cannot pay back. Who takes responsibility. Does the Central Government guarantee the borrowing of the States?

Each fellow State has its own responsibility for the budget.

Normally, there is no assistance by the Federal Government.

20

However, under German Law, the Federal State cannot declare bankruptcy.

**CHAIRPERSON:**

The next one is Mrs Mapheripheri.

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



**MR MEYERFELDER:** No Federal State can get so deep into debt that the burden goes for repayment and for interest would make it impossible to comply with instructions.

We have the some problem with us as all democracies that prior to elections more is promised that can be fulfilled and implemented later on.

**MS MAPHERIPHERI:** If I understood you well. Your very first sentence was (inaudible) ... and it was a Country of unification. I take it 10 that you (inaudible) .... I cannot understand why do you say it is a Feudal Country. Oh, Federal. I thought you said a feudal Country. Okay.

**UNKNOWN:** I've got one question. Does the Minister think that the - the public finance system is the one that we had in the Federal Germany. Does it actually have (inaudible) ... the challengers of United Europe. And the United market that seemingly would (inaudible) ... with a small little (inaudible) ... What those type of Federal Republic actually survive 20 and ... and actually still be there given the overpowering market and the economy existing of the United Europe.

**MR MEYERFELDER:** It is certainly correct that Germany is not only in a competitive relationship with European Countries but also worldwide.



And it is also true that we have big problems in Germany because of our jobs - our workplace has become too expensive.

I have mentioned a while ago that more and more jobs are transferred to foreign countries.

But this all taken together has nothing to do with the financial equalisation system.

10

Because within this system it only is achieved what has been beforehand. Brought about by as an economic result. Only economic results are being distributed.

And therefore the decisive question - not only for Germany but for all European Countries is whether we will be able to maintain our social systems our social security systems in the amount (inaudible).

To be more explicit.

20

An unemployed person, married with two children would receive more in Germany through Social Security benefits and if he would work in a low paid category.

UNKNOWN:

Just a small follow up. So, therefore, it is important for a developing Country like ours which has more serious

**THEME COMMITTEE 3  
5 JUNE 1995**

economic backlog like no Country. I mean in comparison of trying to re-incorporate the former East Germany. It is, therefore, very very - one would say that one has to be very very careful in adopting typical federal financial system or public system because of those particular things you have mentioned. In particular, that one has to rationalise all the currency. If you are truly intending of having a strong currency because want it to relate to the Country that you making .- money with or that you are trading with. Thank you.

10

**MR MEYERFELDER:**

This actually would mean that I would have to respond to a question that you yourselves have to answer. The Constitutional Assembly.

While, I, as a German, would have advocate a Federal System is for the simple reason that Government and Parliament in the Province (inaudible) ... the Federal State are closer to the Citizen. Central Government are far away. In many places. And if we look at Provincial Governments (inaudible) ... listen to what the Citizen wants and answer the questions and anxieties of the people.

20

**CHAIRPERSON:**

We will take our last question. Deputy Minister Alec Erwin and Professor Dennis Davis.

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



- ALEC ERWIN:** Can a Lander - can they borrow money in non Dutch Mark currency or secondly -. secondly, can they do currency swops, etc. to try and maximise their return from their borrowings.
- MR MEYERFELDER:** The Federal States can borrow money abroad, but through National Banks. In this context, you do have swop sections.
- ALEC ERWIN:** Just clarify. Is that through National Commercial banks or 10 do they borrow through the ...
- MR MEYERFELDER:** National Commercial Banks.
- CHAIRPERSON:** Professor Davis.
- PROF DAVIS:** I just wanted to ask the Minister if I could take him back to the first answer he gave. That is the one to Mr Andrew about equalisation system. I am not sure that I completely understood his answer. I just want to get it clear in my 20 own mind. As I understood him to say. The system was that the calculation was done that for each of the Lander for each of the Provinces you calculated the potential tax yield.
- What I really want to know is then - is the shortfall, the difference between the actual tax yield for each of the



Lander and the potential tax yield for each of the Lander.  
Is that what he meant to say.

**MR MEYERFELDER:** In equalisation between the Federal States what they put as the basis is the actual tax yield and not the potential tax (inaudible)...

**PROF DAVIS:** How is the shortfall. What - how is it calculated. The amount that is then transferred to the poorer states.

10

**MR MEYERFELDER:** The Law which regulates the struggle for equalisation is a very complicated law.

I will have to send you an Expert because experts know more than Ministers.

We have a unified tax administration in all Federal States.

And this implies that in each Federal State there is a central accounting office.

20

So each day you can read in German how much taxes have been levied on the tax levies.

And there is a quarterly account each three months. Every three months.

**THEME COMMITTEE 3  
5 JUNE 1995**

Based on the results of the previous year, you would have advance payments for the present year.

And every three months when the private account is taken and then of course any difference now they take care of.

**CHAIRPERSON:**

Thank you very much Mister Meyerfelder on behalf of the Constitutional Assembly Theme Committee Three. We want to thank you for your time and for sharing your experience with us. We will now have a five minute break 10 and then thereafter we are going to continue with our presentation from Nigeria. Thank you.

**ADJOURN FOR TEA**

**ON RESUMPTION:**

**CHAIRPERSON:**

Anybody who has not yet signed the Register. It is here. Please come and do so quickly. And can we please get our Speaker. Mr Offa, the Nigerian Acting High Commissioner. 20

We say welcome to this Gentleman. Ladies and Gentlemen, we are running behind time, so we will have to probably have to short-cut on questions a little bit. Because we have another speaker still to follow Mr Offa. Mr Offa thank you very much for coming along and giving

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



us some of your very precious time and it is over to you immediately Sir.

**MR OFFA:**

Thank you Madame Chair. I would like to begin by thanking the Organisers of this function by inviting me to participate in this afternoons session. I am particularly delighted that the members of Theme Committee 3 have, through this invitation acknowledged the utility of their experiences of other African Countries in the (inaudible) ....

10

The Federal Republic of Nigeria, the Country which I have the Honour to represent in this beautiful land has had the rich and varied experience and the management of fiscal relations between the various tiers of Government. It is my wish, therefore, that this modest contribution will prove useful to the members of the Constitutional Assembly in their honourous task of drawing up the framework Constitution for South Africa.

20

Nigeria is a three tiered Federation with a Federal Government at the Centre. (Inaudible) ... corresponding to Provinces here and 589 Local Government areas.

There is a map attached to the back of this presentation, which shows the relationship between my Country and South Africa. And it also shows (inaudible) ... of the



Federation. For purposes of clarification - looking at that marked at the Centre I am looking at the mark of Nigeria behind. Our Centre is marked FCT because sometime during this presentation I would make to this area that the Federal Capital Territory, which represents the area that is supposed to be the new Capital of Nigeria. Within this territory, we have the new Capital called Abuja. The area is approximately 100 square kilometres.

Quite naturally, such a political arrangement necessitates 10  
a fiscal system that allows each village to carries out  
Constitutionally our assigned responsibilities. In this  
manner, I intend to discuss firstly our Revenue allocation  
of Nigeria from the following perspectives. Reasons for  
Revenue allocation, autonomous (inaudible) ... principles  
of (inaudible) ... formally of revenue allocation. Our  
present system of revenue allocation are lessons from the  
Nigerian experience.

From 1989 revenue allocation in Nigeria was determined 20  
on the basis of Reports read up by ad hoc commissions  
established for that purpose. Between 1946, when such  
exercises began and 1989 there were 8 such  
commissions. The appointment of these ad hoc  
commissions was usually met by the Federal Government  
and prompted by changing Political circumstances, such  
as the adoption of the new Constitution or of the new

**THEME COMMITTEE 3**  
**5 JUNE 1995**

Political arrangement. These ad hoc Commissions were able to establish a number of practises which have endured over time.

For instance, these exercises have helped to settle parameters such as independent (inaudible) ... for each tier of Government. Development of Principles used in Revenue allocation. The establishment of a Distributor will (inaudible) ... account which has consequently been incorporated into the Constitutional Federal Account. 10  
There were, however, a number of drawbacks associated with these ad hoc Commissions.

Usually, they are highly publicised attended to attract a lot of attention especially as each Unit at the Central Government (inaudible) ... wanted to use the opportunity to improve each share of Revenues. These also led to an overemphasis on the division of existing Revenue at the expense of Revenue generation. In any case, such temporary commissions meant that there was no means 20  
of obtaining a feasible response to changing circumstances. For instances, such ad hoc Commissions did not have the power to make periodic reviews of the Revenue business, so each time there were some changes that should not really necessitate the revue of the situation. It meant that the Government had to appoint a fresh ad hoc commission. The inadequacies of ad hoc revenue



**THEME COMMITTEE 3**  
**5 JUNE 1995**

Commission cost of the Federal Government of Niger published in 1989 a National Revenue Mobilisation allocation of fiscal commission as a permanent mechanism for revenue allocation and it was assigned the full responsibilities.

The design and mobilisation of all sources of all public sector revenue, periodic reviews of revenue allocation principles are to minimise short term political pressures for (inaudible) ... share of Revenue between Federal, State 10 and Local Government.

Commission studies on the Federal (inaudible) ... system and on in parliamentary discussions. It is probably too early to pass judgement on the work of the Permanent Commission. However, in the short time of its existence, it (inaudible) ... to the introduction of Value Added Tax in 1994 which significantly boosted revenues of all tiers of Government. It has also helped to reduce Politicisation of Revenue allocation issues. A debate on the subject 20 (inaudible) ... of the subject of (inaudible) ... would tend to indicate - If you permit me, I would like to (inaudible) ... here. Presently, we have a Military Government, so (inaudible) ... would wonder what a Constitutional Conference is all about.



**THEME COMMITTEE 3  
5 JUNE 1995**

A Military Government set up the Constitutional Conference which is supposed to trash out the problems of certain Democratical Governments in Nigeria and was, (inaudible) ... to the Military Government which would then announce a new Political Programme for the Country. A pertinent issue in the fiscal relationship between the three tiers of government in Nigeria. How one determines who gets to give what. Put differently. What are the independent sources of (inaudible) ... available to each unit of Government to enable it (inaudible) ... assigned 10 responsibilities. For instance, on the central of our Revenue, may create a Quasi (inaudible) ... . On the other hand, (inaudible) ... jurisdiction over all revenues in their territories may result in a confederal arrangement. Given the importance of finance, and the relative trend of the Centre (inaudible) ... of the States and the most (inaudible) ... it was imperative to find a balance between these two extremes.

In finding a balance, the fuller (inaudible) ... were taken 20 into consideration. The need to return revenues arising from Constitutional Powers. The need to return revenues relating to the prohibition of public services such as local roots, sewerage and sanitation and land registration are inter alia.

The need to return revenues derived from innovative or (inaudible) ... activities. These include, for example, State Government, investments in business concerns, levies of funds are (inaudible) ... from the contravention of (inaudible) ... goals of behaviour. (inaudible) ... binding on everybody. In terms of social behaviour certain behaviours are tolerated in some states and in others one has to be careful for instance in some States (inaudible) ... is band in other states (inaudible) ... which are predominantly Moslems. In other states where you have 10 predominantly Christians States (inaudible) ... if somebody from a Christian State is going to a State which is predominantly, you have to know what (inaudible) ... so you don't infringe on the Moslems.

As a direct consequence of the aforementioned factors, you have in Nigeria four types of Revenue accounts. These are the (inaudible) ... account, Federal Government, Independent Revenue Account, State Government Independent Account and Local Government Independent 20 Revenue Account. A judicial account is the conditionally prescribed distributable pool account. Each unit of Government of have all three tiers, receives of allocation from the Federation account. On the basis of a Revenue formula described later in this paper. The Revenues paid into the Federation Account include - Company income tax, import duties, export duties, excise duties, petroleum



tax, (inaudible) ... royalties, Nigerian National Petroleum Corporation earnings from the (inaudible) ... oil and gas plants license fees, (inaudible) ... losses from the sale of natural gas.

The Second one the Federal Government Independent Account includes the personal income tax of armed forces and foreign affairs personnel. (inaudible) ... also included are revenues appropriated from Federal Government on Agencies (inaudible) ...

10

The Third Government independent Revenue account include gas made the prohibition of services of (inaudible) ... enterprises in addition, however, the following accrue into the Coffers of the State in (inaudible) ... are generated. Personal income tax, sales taxes, property taxes, motor vehicle masses and fees, land registration and (inaudible) ... fees. The fourth Local Government Independent Revenue account is not as fully developed as the (inaudible) ... of other Government, but includes profits 20 made from the investment in business concerns, donations and communal levies.

The autonomous (inaudible) ... are at present not very substantial. This is because the (inaudible) ... of total Government Revenue is from petroleum and natural gas and natural gas levied taxes which are paid into the



**THEME COMMITTEE 3  
5 JUNE 1995**

Federation Account. In addition, taxes which the states are allowed to collect depend to a large extent on economic development. For instance, they still would need to develop (inaudible) ... houses that fall into the category required to (inaudible) ... our Citizens that (inaudible) ... if it is to (inaudible) ... independent revenue.

These weaknesses are further compounded by the problems of tax collection and administration at both 10 levels. South Africa also has (inaudible) ... here because in (inaudible) ... it is difficult to expect to (inaudible) ... on taxes because somebody has to have a profitable venture to be able to pay tax. (inaudible) ... before you can tax them and you will find that most people in the rural areas indulge in petty trading and feel that you cannot (inaudible) ... profit. The excessive reliance on the Federation account has resulted in a lot of attention on the principles for (inaudible) ...

20

I have stated in earlier parts of this paper. The use of ad hoc commissions and the (inaudible) ... of revenues bear (inaudible) ... federation account, then they generate excessive interest in the rules used by the (inaudible) ... For instance, in 1990 the Federation Account relied on oil related revenues for at least 75% of its total at the same time States relied on the Federation Account for between

70 - 90% of their current budget. The local Governments have a (inaudible) ... level of independence.

A location from the Federation Account taxed on a vertical and horizontal basis. Vertical allocation refers to distribution of total revenue between the three tiers of Government while the horizontal location consists of the share of the total official (inaudible) ... our local government between each individual needs. This is to say that when we talk of the vertical allocation, we are talking 10 about what is normally allocated to the Federal Government not the Central Government.

The percentage that is allocated to the Central Government and the percentage that is allocated to Local Governments. That way (inaudible) ... horizontal allocation and have these amounts now broken down. It would be if you have 30% of total revenues allocated to States then each State will have so much. Vertical allocation from the Federation Account shall be determined by Constitutional 20 prescribed responsibility. Thus, apart from our resources to maintain Government structures, allocations are also made to (inaudible) ... of services.

This (inaudible) ... for example - Local Governments were assigned the responsibility for Primary School Education and as a result the total share of (inaudible) ... Account



**THEME COMMITTEE 3**  
**5 JUNE 1995**

was increased from 15% to 20%. Apart from the Vertical Allocation meant to the Federal Government, State Governments or Local Governments, but on the (inaudible) ... has also been allocated to special problems and (inaudible) ... of national character. These special (inaudible) ... include allocations for - one, the Federal Capital Territory (inaudible) .... As a National Project funds are allocated from the Federation Account for the development of new University of Abuja to stabilisation. Government or the Federation Account is (inaudible) ... to 10 establish the stabilisation formed. (Inaudible) ... indicates the resources are formed to create a financial buffer where major deficits are the (inaudible) ... in Government resources occur.

Conversely, should there be excess revenues, our Federal Government (inaudible) ... budgetary estimates. These are also paid into the stabilisation account.

Three - Ecological problems. The Federation account is 20 allocated annually to enable the three tiers of Government to cope with natural disasters such as earthquakes, soil erosion and oil pollution.

Four. Development of oil mineral to (inaudible) ... areas. (inaudible) ... for ecological problems. Special emphasis is placed on the development of oil mineral (inaudible) ...

areas. This is because of the amount of damage done to the habitat in such areas coupled with the huge expenses of (inaudible) ... construction in the (inaudible) ... delta from which most of the oil is derived. Such resources are meant for the particular areas to produce good oil and nobody (inaudible) ... in which the good oil is located. Horizontal allocation. Over the years, a number of principles have been developed to determine the width of the allocation between states.

10

The first one is derivation and (inaudible) ... which the Government recognises the contribution of individual States to the Federal Account. Derivation was giving greater emphasis to the Horizontal Principle. With taxes on Agricultural Exports where the main sources of Governmental Revenue. (inaudible) ... to be given less emphasis (inaudible) ... royalties on mineral resources. Such as oil and gas are main sources of revenue and in addition is now a vertical principle. What we are saying here is short that by the time agriculture was the members 20 of the Federal Government Revenue.

States and local Governments (inaudible) ... allocation for Revenue derived here, but now that (inaudible) ... each State was given his allocation on how much he produced agriculturally, but such is not the case any more. It was the case at the time because for one reason it was



**THEME COMMITTEE 3  
5 JUNE 1995**

necessary it was best to be encouraged to find ways of rejuvenating depleted forests and crops and in the case of oil, it is not (inaudible) ... naturally and, therefore, we think it was no longer necessary to compensate this in which the oil is located because they did not put the oil there.

Population is a surplus planetary principle. We take into account the number of citizens each State has. (inaudible) ... as a principle takes into account the fact that there are certain things the State must have irrespective of size. 10  
Apart from Constitutional (inaudible) ... other examples are the Civil Service, judicial Legislatures and so on. One must (inaudible) ... refer to the geographical size of the State, while taking into account the type of terrain. For instance, it should cost more to (inaudible) ... network in a geographically fast State. Yet work construction may more expensive per kilometre in the (inaudible) ... delta than in the (inaudible) ... Government because of the nature of the soft soil. I think it would take a vast Province here, for instance, the cost of constructing a road from 20  
Pretoria to Pietersburg should not only be higher than the cost of constructing the road from Johannesburg to Pretoria. Where the soft soil is weaker it means that you have to spend more to strengthen the soft soil before you can start the construction.

**THEME COMMITTEE 3  
5 JUNE 1995**

A social development principle refers to the need for all State Governments to play a roll in promoting socio-economic development within their territories. This principle (inaudible) ... and defined over the years including the need minimum National Standard in quality of access to development even development minimum responsibility and National interest. The socio-development principle is calculated using (inaudible) ... such as primary and secondary school involvement, number of hospital beds and liability of bread, food and water. The principle is calculated in a manner to give States with heavy responsibilities in these areas the resources to carry out duties and at the same time States which are underdeveloped are also given the resources to enable them to make (inaudible) ... This principle links allocation from the Federation account to the nearby States generate independent revenue from within the boundaries. 10

This is not easy to measure as the use of actual revenues generated would penalise smaller underdeveloped States. They are (inaudible) ... adopted, therefore, how to measure the percentage increase in State Revenues over a period and (inaudible) ... numbers 1 and 2 of the vertical allocation and horizontal allocation principles. You will find, number 1 for instance that out of the Federation Account - the Federal Government takes 48.5%, States 20

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



**THEME COMMITTEE 3  
5 JUNE 1995**

Governments 24%, local Governments, 20% and Special (inaudible) ... 7.5% We have explained what (inaudible) ... under that. The horizontal location shows that the quality of States, out of the total revenue you give 40% for States to share and there is no other business taken into consideration yet. Everybody shares the 40% equally with the other. The 40% given to population - 10% to Social development and so on. You still have to take into consideration certain parameters that not all States are supposed to (inaudible) ... population, so this is also 10 (inaudible) ...

Lessons for the Nigerian experience. The experience of revenue allocated in Nigeria comprises of insights that may be used in the South African context. For instance. Using ad hoc arrangements to determine the vertical and horizontal allocation of Revenue may lead to over(inaudible) ... of the (inaudible) ... To be quite frank, in Nigeria, they use all the principles of population and (inaudible) ... of states are quite unavoidable led to 20 disputes over (inaudible) ... because and demands for the creation of new States. This is very important because since the Federal Government allocates revenue to states, it was important that (inaudible) ... was shifted from Revenue generation to Revenue generation. What you get and not what you generate.

Secondly, some areas of the Country prefer that they are being marginalised and needed their own States, so the quest for more States grew almost every year. For instance, from (inaudible) ... states in 1968, (inaudible) ... to 21 States by 1971 and currently we have 30 States and there is still a demand for more States. Ad hoc arrangements also suffer from the fact that they do not operate from (inaudible) ... changing of Political circumstances.

10

In such a situation, the relations between the various tiers of Government are (inaudible) ... units may be strained in by delays in (inaudible) ... misgivings about the revenue of the official system. Another lesson can be agreed upon in Nigerian experience that can be (inaudible) ... imperative of (inaudible) ... revenue generation and revenue allocation. (inaudible) ... exploit revenue opportunities within their territories other wise (inaudible) ... be dissipated in fighting for (inaudible) ... Closer (inaudible) ... to this is the difficulty of finding a balance between 20 equity in the (inaudible) ... and deficiency in its utilisation.

The Nigerian experience shows that once the (inaudible) ... States is (inaudible) ... to say what have you done with the funds because at the end of the day, the (inaudible) ... project they will also look at the funds and will then



continue, so that (inaudible) ... States to account for what they did with the funds by looking at them. (inaudible) ... make sure that these funds are properly utilised by the purpose they were allocates.

It is important to provide resources to enable each tier of Government to meet basic obligations and promote socio - economic development. (Inaudible) ... however, the allocation of resources has to take into account the ability to put such funds in proper use. The international 10 Community acknowledges the existence of the developing Countries and provides aid and technical assistance to them. Similarly in Nigeria, there is a recognition that some areas are less developed than others and - in the process of contributing to National wellbeing. This is particularly true of mining areas.

If there were oil wells here in South Africa, (inaudible) ... here would be very (inaudible) ... If you go to oil producing areas in Nigeria, a lot of gas first of all has to 20 be pumped out before you reach the oil and because for a long time we did that, (inaudible) ... in Nigeria. You will find that where gas is being (inaudible) ... gets squashed and you cannot talk of Agriculture there. Secondly, you will find that the water there is polluted you will find oil in the water, so it is a lot of problems for oil producing areas and that is why the Government tries to allocate such

**THEME COMMITTEE 3  
5 JUNE 1995**

areas special funds. I have tried in this paper to provide a brief (inaudible) ... of the revenue allocation process in Nigeria and mostly that the issues involved are quite extensive and I may have overemphasises our omitted to talk on some aspects and I should out here unlike the first two Speakers here I am not expert in this issue.

I have tried to give you my frank views and my experience what is happening in this area. Nevertheless, since this is a workshop, I would be delighted to answer any questions 10 that may arise. Finally, I hope that the Nigerian experience will be of use to the work of the Constitutional Assembly. I thank you all for your kind attention.

**CHAIRPERSON:**

Thank you Mr Offa. Ladies and Gentlemen, I don't know how much you are in a hurry. I am just worried that people will start leaving before we have completed. And I, therefore, ask that you bear with me and that we will get the fourth group of Speakers. I have two names here and that we then see how much time we have left to do 20 questions. If you will accept that. Mr Offa, thank you very very much and I am wondering if we should just ask you to just remain where you are seated and we are going to ask the other Gentlemen to be seated next to you and if we have the opportunity for questions at the end, then you are available.



**THEME COMMITTEE 3  
5 JUNE 1995**

I am terribly sorry that we have run out of time in this way. Can I, at this stage then, ask Professor Lebritz and Mr van Blerk to please be seated and I would like to ask that, once again also, those of you who are here will bear with us. You will have to share these documents. We only received them just after 4.00 and it was not possible to make too many copies. But this Secretary, Sandra, will quickly hand them out to you. These two Gentlemen, I understand are from the Fiscal commission and I think what we should do is, 'se ons in Afrikaans, vang maar met die deur in die huis'. Please will you, I don't know which one of the two Speakers are going to speak first and which one is that - is that Mr Loots. Mr Loots you have the floor, please. 10

**MR LOOTS:**

Thank you Madame Chair, members of Parliament. We have prepared. I have prepared a few notes which are now being circulated. Notes. Looking at inter Governmental circulations from the perspective of a financial and fiscal commission, not the official view of the financial and fiscal commission. These views are mine, but from the prospective of such a Commission and its experience over the recent months. Hopefully, it will help you in your liberations. It will not, as with the previous presentation look at specific Country situation or make a comparison analysis of countries experience in the Government fiscal relations. It more specifically addresses 20

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**

**THEME COMMITTEE 3  
5 JUNE 1995**

on the interim Constitution and highlights certain areas that perhaps need further consideration in the Constitution. I will be very brief in the light what you have said earlier with regards to time constraint.

Perhaps I should begin by pointing out that in terms of the two models which Dr Johnson, in the first presentation here today outlined the shared responsibility model is the one which is implicit in the interim Constitution and it is precisely in that kind of a model that the need for 10 something like a financial and fiscal commission arises as we just heard in the previous presentation in the Nigerian case it was after many ad hoc Commissions that eventually a more permanent Commission was created.

And I think implicitly behind these notes is the assumption that we will continue along such a model. In other words, the comments made here do not reflect on which kind of model will be preferable assumes that we will more or less continue with such a model in which there is a roll for a 20 financial and fiscal commission and the notes really addresses aspects related to -. with the inter-governmental fiscal relations and the roll of (inaudible) ... in that within such a shared responsibility. Our will skip the first few points which are just general remarks on the way in which the Constitution has been drafted. Perhaps the first point - it falls under point 3 and there I would perhaps like to

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



refer to Section 199(1)(b) which refers to extra financial and fiscal allocations.

And in the view of the many Commissioners, that is perhaps formulated in a way which lacks clarity because equitable can refer to vertical equity that is the treatment of the different levels of Government - National Government, Provincial Government and Local Government. Or it could refer to Horizontal equity that is treatment of Governments within a level - lets say 10 Provinces or it could refer to some combination of both. Moreover, allocations can also refer or be interpreted in a number of ways. It can refer to National tax revenues only, National tax revenues appropriately we find that is.

Or it can refer to National Tax Revenue and the borrowing by National Government - that constituting the total pool for allocations or it can refer to National Tax Revenue plus borrowing by the National Government plus borrowing from all or some of the public institutions for example the 20 (inaudible) ... or the IDC. And perhaps these need to be clarified in order to avoid unnecessary contestation of these issues in future. It is possible that in both cases, with respect to equitable and allocations that is that the latter interpretations were intended but that should then be clarified.

Section 199(1)(b) also refers to revenues collected at the National level again this is a formulation which is unclear. It can refer to revenues collected in the Nation as a whole. That is by all levels of Government or it can refer to the revenues collected by the National Government. Whether for its own account or as an Agent on behalf of the levels of Government that is excluding the revenues collected by the (inaudible) ... as a Government. Or it could refer to revenues collected at the National level including the shares of the taxes specified in Section 155, that is share 10 of personal income tax, Value added tax and fuel levy.

But excluding revenues collected on any - on an agency basis on behalf of other jurisdictions which go directly to those jurisdictions for example transfer duties. Or it could refer to revenues collected on the National level but excluding the specified share of income tax, income tax and the fuel levy already referred to that has to go to the Provinces.

20

This only (inaudible) ... the remainder of revenues collected nationally and excluding as well from that, revenues collected on an Agency basis on behalf of other jurisdictions. Now, whichever interpretation is attached to defrays revenues collected at the national level will make a significant difference to the outcome of the process of determining allocations to the different levels of



**THEME COMMITTEE 3  
5 JUNE 1995**

Government and that seems to require clarification, if only to avoid again - contestation in future about the interpretation of the Constitution. In a number of points now.

I will throw a few points together that is 3.3 and 3.7 and I think another point which I cannot remember now, refer to different kinds of taxes. For example, 3.3 mentions Section 199(1)(c) which refers to taxes, levies, imposts and surcharges. Now these different kinds of taxes are taxes 10 which cannot be clearly differentiated conceptually. It is not - one cannot give a definition which clearly demarcates the one from the other which again allows for different interpretations and confusion in the future. On the other hand, by mentioning specific taxes and all these things are taxes.

There is the implication or the possible interpretation that the Constitution excludes other taxes from that and in - and that of course might not be what is intended in this 20 clause. For example, not mentioning an excise such as excise tax on tobacco and alcohol does that mean that that is now excluded from this pool which is made up of taxes, levies, imposts and surcharges. So again, it seems if, for the sake of more clear and intergovernmental and fiscal relations and the objective of minimising unnecessary contestation around the sort of sharing of

**THEME COMMITTEE 3  
5 JUNE 1995**

resources. That needs to be clarified. It is also another matter which might require more clarification has to deal with - has to do with the raising of loans.

It is not clear, for example, whether that would refer to all forms of credit or financial advances or whether there is some specific meaning attached to that. It also does not refer to Agencies or Institutions under the control of or in the ownership of a Province which makes the question whether a Provincial (inaudible) ... such as a provincial 10 development agency can borrow odd side of the Provincial Constitution and in fact the - the enabling law which will eventually be passed which is now still in Bill form, so that perhaps needs to be clarified. Another issue which might raise confusion in the Constitution is the asymmetry in terms of tax files referred to in point 3.5.

Essentially, what that amounts to is that local governments is treated differently from Provincial Governments in the sense that there are certain conditions and constraints 20 imposed on the fiscal powers of Provinces which apparently do not apply to Local Government. For example, in terms of taxes certain constraints are imposed on Provinces with respect to the levying personal income tax and value added tax and the fuel levy, but not on Local Government. Now, if there is a good rational for prohibiting Provincial Governments from raising those

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



taxes, it apparently would also apply to local Government where there is this asymmetry and perhaps this needs to be clarified.

The same applies to borrowing powers. Certain constraints imposed in the Constitution on Provinces borrowing powers. Now if there is a sound reason for that, presumably that should also apply to local governments. In fact the Bill on Provincial borrowing powers makes no reference to Local Government borrowing powers, so once again there is a asymmetry there which - of which the reason is not clear. And in practise, such asymmetry might for example result in Provinces putting pressure on or creating a census for local Governments to raise certain taxes or borrow to fund certain things which ordinarily might be the responsibility of the Provincial Government. Another issue which is perhaps not clear enough in the Constitution and touches on very much, I think, an important way on the demarkation of fiscal powers to the different levels of Government is one which is coded Section 1561 dealing with surcharges on taxes and the phrase in the Constitution there talks about - refers to the imposition of surcharges on taxes. 10 20

Now again it is not clear whether that refers to all taxes or not and secondly it is not clear whether surcharges on taxes should be literally interpreted as a surcharge on the

tax paid in other words if one is paying 45% income tax, whether that surcharges on the 45% or whether it also allows for a surcharge on the base. That is, your income earned.

Should there be a surcharge on that. For example, to illustrate this point a bit more clearly, in the case of Canada, Dr Johnson did not have time to get to that, but in the case of Canada, for example, personal income tax is a tax - is a surcharge on a tax, that is a tax on a tax. 10  
Corporate income tax is a tax on the base on Corporate income rather than tax on the income tax paid by Corporations.

Now, the personal income tax which is a surcharge on a tax has been found to involve all sorts of undesirable consequences. For example, there are more technical difficulties, administrative difficulties in implementing that than having a surcharge on the base. Moreover, it affects equity considerations. If the, for example, if you have a 20  
Progressive income tax and that progressive tax is put together in such a way that a desire progression is achieved, then to give Provinces the right to impose a surcharge on tax will distort the progressivity, in either direction, will distort the progressivity of - of the tax and it might be distorting it in an undesirable way. It might also affect revenue certainty.



For example, it - if the Provinces could levy certain a surcharge on the tax. The if Central Government reduces the tax or reduces its tax rate. It automatically reduces the Revenue which accrues to the provinces without the provinces of having any decision. Therefore, it undermines their autonomy. It undermines the transparency of the tax process because their taxes are changed without them having made any transparent decision about it.

10

It also undermines (inaudible) ... so they are now changing in Canada. And in the process of changing their personal income tax surcharge from a surcharge on the tax to a surcharge on the base. So just, I think what this illustration is trying to illustrate is the need to formulate the Section of the Constitution in such a manner that it cannot be interpreted as only allowing the surcharge on the tax paid or on the tax rate, in fact also a surcharge on the base itself, which is preferable for a number of reasons. I will leave at our last point about the composition and 20 functioning of (inaudible) ... because that is not your main concern here today.

I will conclude by referring to point 4 and the - the important point about that is that in Section 155(2), there is a stipulation that the Province shall be entitled to a percentage of income tax on individuals a percentage of

**THEME COMMITTEE 3  
5 JUNE 1995**

Value Added Tax or other sales tax and a percentage of any national levy on the sale of fuel. It refers to a percentage with respect to each of those taxes. Without going into too much detail, let me suffice by saying that if the intention of that is to give certainty to the Provinces about their tax revenue, then it would be preferable for administrative taken for other reasons to perhaps just specify a percentage as an Act of Parliament.

All taxes collected by the National Government and not specifically linking to those taxes. That would give promises a certain income, but would avoid the administrative other complications of mentioning those other taxes specifically. It will also avoid, if you wish, political game-playing in - in lets say National Government. Manipulating the tax system in such a way, that the taxes on which it has to - of which a certain percentage will automatically go to the Provinces of reducing the relative weight and importance of those taxes in favour of other taxes.

20

In question time, we can go into this in much more detail, but I think, let me stop here and leave you with these few comments.

**CHAIRPERSON:**

Professor Loots. Thank you very much for that. It is exactly half past five now. And I am just wondering

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



whether we shouldn't allow just one question each to perhaps Mr Offa and then also to Professor Loots. Yes. Mr Carrim.

**MR CARRIM:**

I just wanted to ask Mr Offa. On page 6 of your text. Under 4 - Local Government independent revenue. You speak of sources as being donations and communal levies. If you could kindly explain that further and then on page 14. Point 23. You speak of a need between balance between equity and efficiency in utilisation of funds. And 10 you also point out that the allocation of resources. You say has to take into account the ability to put such funds to proper use.

If I understand you correctly, I think you are saying basically that the states sometimes draw money but are unable to use it. Now, how - in what sense do the States have difficulty in using that money. And what, if at all, does the Central State do to put pressure on the States to spend the money appropriately. 20

**UNKNOWN:**

I was just going to suggest. When do we allow Mr van Blerk - perhaps he wanted to say something and then we start asking question when he has made submission. Was he not supposed to make a submission.

**CHAIRPERSON:** Sorry, you are quite right. I did actually suggest Mr van Blerk. Mr van Blerk would you like to say something as well. Or should we now - now we really have everything mixed up. (inaudible) ...? and then get Mr van Blerk to

**MR VAN BLERK:** I would suggest that lets run with the questions first of all to keep the flow going. I have a little bit to say, but not much. So lets rather get the flow going.

**CHAIRPERSON:** Okay. Can we have the reply from Mr Offa, please. 10

**MR OFFA:** Thank you. The first question concerning the investment of funds in business concerns donations and communal levies. Local Governments because there are very limited ways of generating revenues as I have explained somewhere. Because of the nature of rural community there, they (inaudible) ... of generating funds. Our Government (inaudible) ... this funds to them. Most of these funds go into providing basic amenities for this Communities. 20

Therefore, it is left for Local Government to look of ways of creating a incentives for themselves and most of them usually go into what is called Corporative ventures. We are talking about business concerns. We are talking basically of corporation ventures.



**THEME COMMITTEE 3**  
**5 JUNE 1995**

We have to have, what do you call, Corporative Bank to - banks that are set up to take care of the banking problems of the rural communities (inaudible) ... has been also make their own profits they have to declare their profits after taxes. So there are investments. Donations come by way of maybe grants to some of these (inaudible) ... somebody decides to donate agriculture equipment which they should use to generate funds.

Somebody might donate sums of money to help them 10  
generate funds and these are areas from which local government make their own moneys and is what we are having here is not all inclusive. I have given examples from areas from which they can generate funds. I don't know if that answers any questions Now the second one. We are talking about equity and the provision of funds (inaudible) ... utilisation and the point I am trying to make here is the Government has a responsibility to show that every state government has his own fair share of funds.

20

We have talked about certain funds being distributed on the basis of equality and certain funds are distributed on the basis of waiting. But it is necessary that any Government gets their fair share of the allocation should be able to show what it has done with it. It is not enough that they allocate so much to a State for certain purposes

and that at the end of the day, those things are not achieved.

Sometimes, some States use funds to enter into certain projects that at the end are not beneficial. There is no profit for it. If a State is given funds, it should be able to utilise those funds to create revenues for the State and not use it on something that will end up being a loss. At the end of the day, it is written off as a bad loss. When the new budget comes, it gets a another allocation. I mean, 10  
it is not to say that - it is difficult to talk about penalising States for not using the funds the way the should be used.

It is very difficult, because there are all sorts of reasons that they can give for not making that - for not making the money working the way it should have been allocated. The people of the State - but then there is a need to find some (inaudible) ... make it necessary for States for Central Governments to be able to use these funds as judicially as possible. 20

**CHAIRPERSON:**

Thank you very much Mr Offa and I am sorry that we have to cut you off at this stage. Mr van Blerk, would you like first of all something before I ask Professor Venter who has asked us a question, but we will give you an opportunity first.



MR VAN BLERK:

Thank you Madam Chair. Members and guests. I just want to mention one fundamental item and to stress as well, in the same way as Professor Loots. What I am saying is not an official view of the FFC, but my personal view at this stage.

It is important that this concern as to the exact meaning of revenues collected nationally is sorted out fairly soon because it does have a fairly fundamental difference on the way the rest of the Constitutional fiscal provisions can be interpreted. If you, in fact, this term refers to revenues collected by the National Government (inaudible) ... for its own account then the implication, the very strong implication is that the Constitution does not provide for equalisation in the sense that we have heard earlier today, but rather provides that certain categories of Revenue - being very major categories of Revenue, but certain categories of Revenue are to be shared between all tiers of Government, but just to the extent necessary that enables them to perform their allocated functions. 10 20

The functions which the Constitution allocates to them to the degree that the Constitutional - sorry, that the Constitution requires. It also means that taxes which are raised through their own taxing powers that is Provinces and local Government are entirely separate in this

equation and are complete for the accounts of the level of Government that raises them.

Now, we will have to clearly have to consult with Constitutional Lawyers in getting opinions in this area, but it would be interesting to us if members of the teams who drew up these aspects of the Constitution could also give us feedback. So in a way, I am not putting out an appeal for that at this point. Thanks very much.

10

**CHAIRPERSON:**

Yes, I am afraid that I don't know how many of the original team who was working on it is available here at this date. To me it is actually very sad because - I think that this is the important part of the discussion and that we should have it at the end and being pushed so much.

I am just wondering whether in the Theme Committee - Core Committee we should not have another discussion how we handle this. Professor Venter, you wanted to ask a question.

20

**PROF VENTER:**

Thank you Madame Chair. I would just like to make a remark or two regarding my understanding of the present provisions concerning the Financial and Fiscal Commission and hear the response of Professor Loots or Mr van Blerk. My understanding of the provisions of the Constitution.



**THEME COMMITTEE 3  
5 JUNE 1995**

If one looks at the composition and the functions of the financial and fiscal commission. It would appear to me that the Commission has been established ready to advise the Government, make recommendations to Parliaments, specifically regarding legislation which deals with the allocation of funds and fiscal capacity to the Provinces.

That is why, as I understand it, the Commission specifically has Representatives of - not that is not quite correct - at least one half of the membership of the Commission is supposed, according to the Provisions of Section 200 of the Constitution to enjoy the confidence of the Provincial Government. 10

The recommendations the Commission makes deal with the percentages of financial and fiscal allocations to the Provinces. It deals with the budget in which the Commission must be consulted and specifically regarding the financial position of the Provinces.

20

Now, this seems to me to have been lost in the process. And I think it is quite important for the purposes of the finalisation of these provisions of the Constitution to be clear on what the purpose of such a commission is. It really deals with, as I understand it, is often referred to as fiscal federalism, if you will excuse the word. But the balancing, financially speaking, of the National and

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**

Provincial levels of Government and also in some instances local government.

I was, therefore, a bit surprised that Professor Loots did not say more about the composition and functioning of the Commission because I really think that that is the most important aspect. The Commission is composed, it seems to me, to a number of highly qualified experts in the field of finance and economics and so on, but the purpose of it is not really to enhance Governments capacity to deal 10 with financial and economic functions and problems, but to obtain recommendations to balance the position between the different levels of Government. Am I completely wrong? Or has this been approached differently by the Commission.

**PROF LOOTS:**

Madam Chair, let me briefly respond to the first positive question, by saying that the Constitution, the interim Constitution is very clear that the FFC is responsible for giving advise, making recommendations with respect to 20 allocations to all three tiers of Government.

Section 199 begins as (inaudible) ... It says the objects and functions of the Commission shall be to comprise itself of financial and fiscal information relevant to National, Provincial and Local Government and further it says - well it talks about recommendations regarding the financial and



fiscal requirements of the National, Provincial and Local Governments.

It's also in the Constitutional Principles. So it is not just concern only with the National and Provincial splits it were. It is also concerned with the third tier of Government, which in fact raises asymmetry in the sense that the Constitution requires that one member of the Commission be - have expertise in the area of the local government whereas nine members presumably would have some 10 interest in the expertise of provincial government financing in terms of the Constitutions composition.

I did not address - there is some reference to the composition in the notice circulated, but because of time I did not go into that. I don't know whether you want me to go into it now. Perhaps, I can leave it up to you, but suffice it to say that - I think the fundamental question here is whether the confidence which all tiers of Government should have in such an independent body is necessarily 20 enhanced by having a huge Commission in which each tier has a nominated member. Each Province sort of has a nominated member.

I don't think that will necessarily follow especially if those nominees might be renominated on the basis of party political considerations rather than expertise and that also

**THEME COMMITTEE 3  
5 JUNE 1995**

seems to turn the Commission into some type of negotiating body and each tier of Government has a representative there which might imply some type of negotiating model, but in fact it should not be that, but perhaps I should leave it at this and leave you with the problem of sorting out what the new Constitution should say in terms of its composition and functions, but we are aware of certain problems that might arise in future in that regard.

10

**CHAIRPERSON:** Thank you very much Professor Loots. Professor Davis. You are supposed to round off and I told you five and a half minutes.

**PROF DAVIS:** Thank you. I do not need five and a half minutes - two and a half will be more than enough. Let me start. I would have hoped actually quite frankly that we would have got something from the financial and fiscal commission about the actual composition of taxes in South Africa.

20

I think that is actually quite relevant to our deliberations, the balance, etc. Be that as it may. In relation to that issue, I think there are two important points that come up firstly in relation to the papers that we have received today, Madame Chair. Firstly, it is interesting to see the kind of percentages of tax collected nationally compared to locally

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



or provincially should I say more accurately. (inaudible) ... the German and Canadian experience. Why that is relevant, because although they might differ from Country to Country.

It does give some type of indication when you look at what's on the ground as to the administrative competence as to the raising of taxes and the policing of the tax system and the economic (inaudible) ... I don't think one can run away when we formulate our responses as the 10 parties will have to do to what is on the ground. There are two factors which I think need to be taken into account. The Nigerian experience is well worth looking at. One because, you have to look at the different disparities of all the Countries. I think it would be ill-advised to simply transplant the German system into the South African when you are dealing with a very different society.

Oh, that the German problems are our solutions. We would be in a very good way economically. And the 20 second one - Nigeria. We need to look at that one as well. The second aspect is that the Administrative competency ability to collect taxes where they are collected and how they are collected is going to make quite substantial - I think - has serious implications for us in our deliberation and my now four and a half minutes relates to simply the kinds of questions that I think we

**THEME COMMITTEE 3  
5 JUNE 1995**

need to ask ourselves when members of this Theme Committee put forward their submissions as they would have to do relatively shortly on the financial and fiscal powers for the Constitution.

Let me just make two or three points of the questions which I think is important other than the one I have already mentioned. I think the - what we need to ask ourselves. Should the allocation of financial distribution, financial allocation be set out in detail. What we have had from 10 Professor Loots, although I profoundly disagree with most of his interpretation for reasons I will give to you in a moment.

I do think we do need to set out in detail - we needed to settle whether we want a detailed specified series of sections in our income tax act - in our Constitution elegantly set out which clarify the difficulties he spoke about - if there are difficulties, I am not sure. Be that as it may. Or do we want to leave the whole issue of the 20 allocation of taxation with regards to provinces in a far more broad based way. Which to some extent is case of Section 155 am following at the moment.

We have already heard from the Nigerians and I think, certainly, the - and from the Germans the difficulty with regard to leaving things in an open ended way. That is

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**



the (inaudible) ... of matters which might otherwise not be politicised. I think we then need to ask ourselves whether we are going to specify the formulae what percentage of taxes should go to the Provinces and what should go the Federal Government. In other words, if you want something detailed you have got to ask yourself that question and then thirdly one needs to ask oneself - wealth.

If we are going to have an equalisation formula - are we 10  
equalising on the fiscal capacity side of the expenditure side. And then also in relation to equalisation. What about equalisation through the Centre alla the Canadian scenario or through the Provinces themselves alla the German scenario and then we need to ask ourselves in regard to this. What about retention for National expenditure. What kind of percentage do we need to have held back for national expenditure bearing in mind - (inaudible) ... a very profound question, namely, if you have a Central override over provincial powers, what about 20  
the finances which are required for Central National Standards, etc. In short, questions about equalisation link up with questions relating to the issue which we have just finished.

The block which we have just finished - namely the powers of the Provinces versus the Centre and I think if you are

**THEME COMMITTEE 3  
5 JUNE 1995**

going to be consistent, you are have got to puzzle your way through those particular sets of questions as well. The fourth set of questions is - are we going to give greater freedom for Provincial taxes. I suspect the answer to that is determined to a large degree from your answers you have already given with regard to the other questions in the block that we have just finished.

It might not be so and you might be able to tell me why, but nonetheless the reality is that are we going to allow 10 provincial Provinces to levy taxes on a broad based level such as in the Canadian scenario and are we going to give them the broad based borrowing powers which I think the questions which were closely answered by the Deputy Minister of Finance, so I assume that must be of some concern in the Department of Finance that Provinces can go and borrow on that basis. I don't know, but I think that is - Or alternatively, is Section 155 (inaudible) ... whether in its amended form or its present form appropriate. That then - and then finally on this level. What about conditional 20 grants and its roll. Particularly as an incentive and incentive for Nation building, etc, because that certainly came out on some of the deliberations particularly the Canadian.

And so, I think are the central questions that need to be asked and finally, I suppose, looking at - when we look at



**THEME COMMITTEE 3  
5 JUNE 1995**

155, etc, are we going to at the end of the day, come down and say we want a formula and that formula is Constitutionalised. . That in essence, I suppose the big question which has emerged out the deliberations of this afternoon.

If I can, in one minute, make some points about this last session. Quite frankly, I suppose, it might well be useful for the financial and fiscal commission to have a Constitutional Lawyer amongst staff. Because I don't think 10 that any of the points that Professor Loots made are insurmountable under the present reading. That is not to say that I defend the present reading.

But as a Lawyer, I must point out to you that I don't honestly think that any of these issues are insurmountable and let me tell you why. Under Section 199. It is quite clear that all the points made are not in fact exclusive. A to F are not exclusive at all. They talk about including and, therefore, it is quite clear that this is merely an 20 indication of what should be considered rather than exclusive list. I think that is a fairly right proposition and therefore, that 199 is in a sense is a major obstacle to the kinds of issues that were raised. Likewise, if one turns to 178, it is quite clear that when you talk about the Local Government, there is no ace in the tree at all. Because the word, property, qualifies quite clearly the words, rates,

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**

levies, taxes and tariffs and, therefore, this is not talking at all about income tax, but (inaudible) ... of the property levies and imposts, if you will.

Again, it could be more elegantly stated again it could be clarified not saying that. But, I think, in all fairness, I should point out, as a lawyer and I don't think that these issues are insurmountable or that, indeed, the difficulties are as great as they were made out. I do think, however, that there is one issue which is of substantial importance 10 in Professor Loot's paper, with regard to the levying of taxes and that relates to Section 155 and following, particularly the issues of surcharges because I think that needs to be clarified.

I think there is a great deal of confusion as to whether in fact surcharges could be income tax or surcharges and Company tax and allow the Provincial Governments to go through the back door - they cannot go through the front door and I think that he is quite right. With respect to 20 point that our as a major difficulty. I am not saying that Section 155 and following are correct.

I am not saying that the issues that the issues that he has raised don't need to given careful concern and attention. But I am saying, lets not run away with the fact that these are insurmountable objects if you feel if the members feel



**THEME COMMITTEE 3  
5 JUNE 1995**

that you could perhaps rephrase 155, if that is what you wish. I am just giving you advise from it. There is one other issue which I think is very important. He has raised it and I am thankful and grateful for him to have raised it and that it the issue of the composition of the FFC which, with respect, I think is an issue of importance to this Theme Committee and I think we need to again - we need to work out whether one a small committee is better with a full time members should be given greater prominence, but also, I suppose the representativity of this.

10

Whether, in fact, it is only for the Provinces or indeed local government needs to be on a much more substantial way. Which of course, then gets you into an even bigger Committee, so I think we need to work out for ourselves or new members do, the roll and the composition of the FFC. In this, of course, I think it is wise to refer to Constitutional Principle number 27, which refers to the Financial and Fiscal Commission which each province shall be represented shall recommend equitable fiscal and financial allocations, etc.

20

There is no question about it, that we are talking here about a FFC which was recommended - recommendatory powers. It is not a binding point and, therefore, I think that Professor Venter's question is a good one because - my final point, at the end of the day your powers re merely to

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**

**THEME COMMITTEE 3  
5 JUNE 1995**

recommend, in a sense you are going to read a Constitution very differently, I think, to what you would do. If these were powers which (inaudible) ... powers and were actually laying down the criteria.

I think what we need to ask ourselves when we deal with the FFC is whether in fact the criteria which are given to them insofar as their recommendations are concerned, are - need to be changed. My own view, for what is worth is that there are one or two points which are wrong, but I 10 don't actually think that the majority of points raised here are in fact Constitutionally valid arguments. In short, I think that all of these can be dealt with under the present wording. So I do think that when we go and draft this framework document, we have to, in summary, think about the composition of the FFC, its powers and then to what extent we want to actually specify in detail in the Constitution - an equalisation formula 1 and 2 whether we are prepared to give wise taxation powers and borrowing powers to the Provinces. 20

That is really, in essence, what has come out what I think has been a very useful series of papers and will help us, I think, greatly when the Technical experts have to - try to puzzle out the submissions which are doubtless going to come to us shortly. Thank you.



**THEME COMMITTEE 3  
5 JUNE 1995**

**CHAIRPERSON:**

Thank you, Professor Davis. I would like to say thank you very much to all of our guests. Especially those who have stayed to the end and I am very sorry that we have had to cut you short. Unfortunately, because of a time problem. To the members who have sat here. Some of us have had a seven our session today and I, myself, must tell you that at this time now, fiscal and financial to me seems almost of a threat.

I am not quite sure that I can cope with it any longer, but 10  
I thank you very much for your patience and for those who also joined us this afternoon. And we adjourn.

**[ END ]**

**CONSTITUTIONAL ASSEMBLY  
FISCAL AND FINANCIAL  
WORKSHOP:**

**TRANSCRIBER'S CERTIFICATE**

I, the undersigned, hereby certify that in so far as it is audible, the foregoing is a true and correct transcription of the proceedings recorded by means of a mechanical recording of the:

**THE CONSTITUTIONAL ASSEMBLY**

**THEME COMMITTEE 3**

**5 JUNE 1995**

.....  
**TRANSCRIPTIONIST: S. COLEMAN**

.....  
**EDITOR: H POTGIETER**