

MR. N. MORRISON

VIA PAT

2/4/6/4/1/10

NO. 24

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS & PUBLIC ENTERPRISES

MONDAY 1 AUGUST 1995 - V475, OLD ASSEMBLY WING

09H00

DOCUMENTATION

**Embargoed until 09h00
1 August 1995**

TABLE OF CONTENTS

Item	Title	Pages
1.	Agenda	1-2
2.	Minutes: 14 & 23 June 1995	3-7
3.	SUBMISSIONS - POLITICAL PARTIES	
i)	ACDP: Financial & Fiscal Relations	8-10
ii)	ANC: Financial & Fiscal Relations	11-14
iii)	DP	15-22
iv)	FF: FFC	23
v)	NP: Govt Finance & Intergovernmental Fiscal Relations	24-28
vi)	PAC: FFC	29-30
	ORGANISATIONS	
i)	CPG: Financial & Fiscal Affairs	31-38
ii)	Southern Life Association Ltd: Fiscal Responsibility	39
iii)	Cosatu: FFC	40-41
	INDIVIDUALS	
i)	Brand, J Adv	42
ii)	Friedman CS	43
iii)	JG Mpetha Mr	44
iv)	Northard SG	45-46

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

Please note that a meeting of the above Committee will be held as indicated below:

Date: 1 August 1995
Time: 09h00
Venue: Room V475, Old Assembly Wing

AGENDA

1. Opening and Welcome
2. Notice of meeting and Agenda (p1-2)
3. Adoption and noting of previous minutes
 - 3.1 TC6.2 Minutes 14/6/95 (p3-5)
 - 3.2 TC6.2 Minutes 23/6/95 (p6-7)
4. Matters arising from minutes
 - 4.1 Report on presentation of the Auditor General to the Constitutional Committee
 - 4.2 Report from the Core Group of 31 July 1995 on the South African Reserve Bank
5. Work plans for the sub-committee
 - i) Financial and Fiscal Commission
 - ii) National Revenue Fund and other matters

6. Submissions

6.1 Political Parties

- i)* *ACDP: Financial & Fiscal Relations* (p8-10)
- ii)* *ANC: Financial & Fiscal Relations* (p11-14)
- iii)* *DP: a) Intergovernmental Financial & Fiscal Relationships* (p15-19)
b) FFC (p20-22)
- iv)* *FF: FFC* (p23)
- v)* *NP: Government Finance & Intergovernmental Fiscal Relations* (p24-28)
- vi)* *PAC: FFC* (p29-30)

6.2 Organisations

- i)* *Commission on Provincial Government: Financial & Fiscal Affairs* (p31-38)
- ii)* *Southern Life Association Ltd Fiscal Responsibility* (p39)
- iii)* *Cosatu: FFC* (p40-41)

6.3 Individuals

- i)* *Advocate J Brand: Provincial Finance & Fiscal Affairs* (p42)
- ii)* *CS Friedman (Economist): Financial & Fiscal Relations* (p43)
- iii)* *Mr JG Mpetha: FFC* (p44)
- iv)* *SG Nothard: Financial & Fiscal Relations* (p45-46)

7. Any Other Business

**H EBRAHIM
EXECUTIVE DIRECTOR**

Enquiries: Mr S Nyoka and Ms P Fahrenfort, Regis House, Adderley Street
Tel.: 24-5031

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

WEDNESDAY 14 JUNE 1995

PRESENT

Hogan B (Chairperson)

Andrew K
Botha WJ
Jacobsz F
Makgothi H
Marais G
Marcus G
Nair B
Welgemoed P

Apologies

Davies R
Jordaan JA

Absent

Woods GG

In attendance: P Fahrenfort

1. Opening and Welcome

The Chairperson opened the meeting at 14h15 and welcomed the members present.

2. Notice of meeting and agenda

The agenda was adopted.

3. Adoption of previous minutes

The minutes of the meetings held on 5 and 12 June 1995 were adopted subject to the following correction:

5 June 1995

Item 4(b) : Matters arising

The minute to read as follows: *members be given 48 hours during which to consider and finalise the revised draft before transmission to the Constitutional Committee;*

4. Matters arising

4.1 5th Draft formulation on the Auditor General

The Committee agreed to and accepted the draft formulation subject to the following correction/changes:

s1(4) Establishment, independence and impartiality

the word *impartiality* be substituted for the word *impartially*

s3(1) Reports

The two options under this section was considered and the Committee agreed to Option 2 agreeing to the reformulation of the final paragraph to read as follows:

Provided that, whenever the Auditor General deems it to be in the public interest, or in special circumstances as prescribed by law, to any other level of government, institution or person.

s4(6) Appointment, qualifications, tenure and dismissal

that this section to read as follows:

The president may suspend the Auditor General from office when his or her removal from office is under consideration by Parliament, and shall forthwith dismiss him or her from office upon adoption of the said resolution.

Following the discussion of the draft formulation on the Auditor General, the following resolution was adopted by Theme Committee 6.2

NOTING that its members are not lawyers

NEVERTHELESS RESOLVES to submit its unanimously agreed legal draft in respect of the Auditor General, and

DRAWS ATTENTION to the importance of specific wording used in the draft and to the danger of destroying the consensus reached if alternative wording is proposed.

4.1 South African Reserver Bank

The Committee recommended that the law advisors prepare a draft for consideration at the next meeting.

There being no further business the meeting ended at 15h30.

.....
CHAIRPERSON

.....
DATE

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

FRIDAY 23 JUNE 1995

PRESENT

R Davies (Chairperson)

Hogan B
Jacobsz F
Makgothi H
Marais G
Marcus G
Nair B
Welgemoed P

Apologies

Andrew K
Botha WJ

Absent

Woods GG

In attendance: P Fahrenfort

The meeting scheduled for today did not take place due to the following reason:

The Committee was informed that since the Chairperson, Dr R Davies, had been subject to a spate of attacks, it was necessary for the ANC to place a resolution before the Committee (see Annexure).

Following a discussion it was agreed that the resolution placed before the committee be regarded as a statement from the ANC and that the resolution be recorded as follows: *Theme Committee 6.2 refers the matter of a dispute between Dr Francois Jacobsz and Professor Rob Davies to the Core Group of Theme Committee Six for resolution.*

.....
CHAIRPERSON

.....
DATE

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

FINANCIAL AND FISCAL RELATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 July 1995

[FINFIS.WPS]



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FINANCIAL AND FISCAL RELATIONS

CONSTITUTIONAL ASSEMBLY
SUBMISSION TO THEME COMMITTEE 3
PHASE 5

Final Draft 3.

FINANCIAL AND FISCAL POWERS

Discussion

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

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

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

Two inter-related questions are raised in this regard:

- The content of the formula for equitable shares, and
- the role of provinces in the implementation thereof.

The ANC proposes that the formula not be stipulated in the final constitution, but be provided for in national, enabling legislation. The constitution should provide that the determination of the formula should be arrived at through *joint consultation between the provinces and national govern-*

1 Sect 92(2), Canadian Constitution.

ment, based on recommendations of the Financial and Fiscal Commission.

The ANC's view is that South Africa should have a predominantly unified legislative and administrative fiscal and public financial system. It should be a *joint* fiscal system, under leadership of national government, and not a rigidly *divided* system between national and provincial levels of government. In this regard there should be a *co-operative* rather than a *competitive* relationship between national and provincial governments. This would amount to the provinces being involved/ incorporated into decision-making in regard to the budget. In return provinces would be required to accept greater responsibility for acting within agreed policy frameworks.

Proposals

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

1. The final constitution should provide that the new Senate be given an appropriate role in the passage of money bills. Any recommendations in this regard should fit in with proposals to broaden and strengthen the role of the legislature in the passage of money bills.
2. Mandated political and departmental representatives of the provinces should be suitably involved in executive and administrative intergovernmental structures² responsible for preparing the national budget.
3. A national *Budget Cooperative Council* should be established by national legislation to achieve greater coordination over fiscal matters, and to give the provinces a role in the determination of the parameters of the national budget. All provinces should have equal representation on the Budget Cooperative Council, which would be chaired by the national Minister of Finance.³
4. The constitution should provide that the bulk of revenue should be apportioned at national level after participation⁴ by the provincial and local levels of government. This implies horizontal and vertical financial equalisation.
5. Autonomous/Unfettered (?) provincial tax powers, in so far as non-national taxes are concerned, are supported. Where it is more efficient to collect a tax locally and regionally, this level should be allocated this power and the right to use income thus collected. In general, however, the ANC is of the view that original taxing powers for the provinces should not be constitutionalised.
6. Clauses similar to Sections 156(2), 157(1)(a), (b), (3) and 158(a) and (b) in the Interim Constitution should be carried over to the final constitution.
7. A clause similar to Section 157(2) of the Interim Constitution should be included along the following lines:

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

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

3 The national Minister of Finance should be given an overrule on terms to be defined in the case of a dispute. A mediating function should, however, be reserved for the Financial and Fiscal Commission.

4 Also by way of the new Senate.

FINANCIAL AND FISCAL COMMISSION

Discussion

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

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

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

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

- The reference to “equitable financial and fiscal allocations” leaves open to doubt whether the section refers exclusively to vertical equity⁵ or accommodates horizontal equity. It should refer to both.
- Section 199(1)(b), which refers to revenue collected at national level, could mean one of the following:
 - Revenue collected in the nation as a whole, i.e. by all levels of government, or revenues collected by the national government, whether for its own account or as an agent on behalf of the other levels of government, or
 - revenues collected at the national level, including the shares of the taxes specified in Section 155, but excluding revenues collected on an agency basis on behalf of other jurisdictions⁶, or
 - revenues collected at the national level, but excluding the specified shares of income tax, VAT and the fuel levy that has to go to the provinces, and excluding revenues collected on an agency basis on behalf of other jurisdictions.
The ANC submits that it should refer to the third definition.⁷
- It is uncertain as to what distinction should be drawn between taxes, levies, imports and surcharges in Section 199(1)(c).
The ANC submits that an alternative phrasing to the effect that “any form of tax regardless of the name given to it” is more precise.⁸
- Section 199(1)(d) speaks of the “raising of loans”. The Financial and Fiscal Commission has submitted that this ought to cover any form of credit or advance to a provincial or local government or any agency owned or controlled by such a government. The ANC concurs in

5 Sect 199(1)(b).

6 E.g. transfer duties.

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

8 *Ibid.*

this regard.

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

Proposals

8. The provisions relating to the establishment, objects and functions of the Financial and Fiscal Commission in Sections 198 to 1999 of the Interim Constitution should be incorporated in the final constitution in abbreviated and revised⁹ form.
9. The constitution should provide that the Financial and Fiscal Commission shall be an independent statutory body, composed of persons with knowledge, experience and expertise in the fields as defined in Section 200(3)(b) of the Interim Constitution.
10. The constitution should provide that members of the Commission shall be appointed by the President in consultation with both the Cabinet and a cooperative council composed of representatives of the Executive Committees of the provinces, provided that if representatives of provinces in which the largest majority party is different from that in the National Assembly are dissatisfied with the composition of the Financial and Fiscal Commission as it emerges from this process, they may nominate persons of their own choice that meet the requirements in terms of expertise, in accordance with the number of seats in their provincial legislature as a proportion of the total number of seats in all provincial legislature.
11. National legislation should specify the number of members of the Financial and Fiscal Commission and the manner of choosing a chair and a deputy chair, to allow for flexibility in terms of numbers, to take account of the experience of the present Financial and Fiscal Commission and international practice.¹⁰
12. The provisions for meetings, remuneration, co-optation and length of office that are covered by Sections 200 to 206 of the Interim Constitution shall be provided for in national legislation.
13. The constitution should state clearly that the Financial and Fiscal Commission has advisory and mediatory powers.
14. The constitution should provide that the Financial and Fiscal Commission present regular reports both to Parliament and to provincial legislatures in a manner to be determined by national legislation.

⁹ See the above discussion.

¹⁰ It would also reinforce the position that the FFC is an independent, expert body, in which all the members have the same function and lines of accountability.



PARLEMENT
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Demokratiese Party
Democratic Party

**Democratic Party Submission
to Theme Committee 3**

INTERGOVERNMENTAL FINANCIAL AND FISCAL RELATIONSHIPS

1. Fundamental Points of Departure

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

2. Constitutional Principles

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

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

3. Shares of revenue collected nationally

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

- (d) any other conditional or unconditional allocations out of taxes raised by the national government, provided that not more than fifty per cent of such allocations may be conditional.
- 3.3 All transfers to provincial and local governments shall be effected expeditiously and without any deduction therefrom, with the national government acting simply as a collecting agency for the provincial and local governments in respect of the monies referred to in paragraphs 3.2 (a), (b) and (c).
- 3.4 The amounts and conditions referred to in paragraph 3.2(d) shall be fixed reasonably in respect of the different provinces and local authorities after taking into account the recommendations of the Financial and Fiscal Commission and the national interest.
- 3.5 Allocations referred to in paragraph 3.2(d) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account -
- (a) the recommendations of the Financial and Fiscal Commission, and
 - (b) the sufficiency of revenues of provincial and local governments to provide reasonably comparable levels of public services at reasonably comparable levels of taxation and efficiency of utilisation of revenue.
- 3.6 Notwithstanding anything to the contrary contained in paragraphs 3.2 (d), 3.4 and 3.5, for a period of ten years the national government may, after consultation with the Financial and Fiscal Commission, make special conditional grants to provincial and local governments for capital works to enable them to reduce or eliminate infrastructural backlogs.

4. Levying of taxes by provinces

- 4.1 A provincial legislature shall be competent to raise taxes, levies and duties, other than income tax or value added tax, and to impose surcharges on the taxable income of individuals and companies, and to impose a sales tax, provided that -
- (a) it has consulted with the Minister responsible for national financial matters and the Financial and Fiscal Commission; and
 - (b) there is no discrimination against non-residents of that province who are South African citizens.
- 4.2 A provincial legislature shall have exclusive competence within its province to impose taxes, levies and duties (excluding income or value-added tax) on -
- (a) casinos;

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

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

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

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

5. Levying of taxes by local governments

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

6. Raising of loans by provinces

Section 157 of the 1993 Constitution should be retained.

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

7. Financial allocations by national government

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

8. Provincial Revenue Funds

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

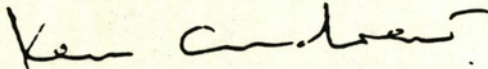
9. Local Government Revenue Funds

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

10. Conclusion

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

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



Ken Andrew MP
15 June 1995



DEMOCRATIC PARTY SUBMISSION

TO THEME COMMITTEE 6.2

FINANCIAL AND FISCAL COMMISSION

1. Introduction

The Financial and Fiscal Commission (FFC) should be composed of suitably qualified persons who fulfil their functions as technical experts impartially and independently rather than as political representatives.

The primary purpose of the FFC is to make recommendations on equitable financial and fiscal allocations between different levels of government.

2. Constitutional Principle

Constitutional Principle XXVII requires there to be an FFC and describes its primary purpose as mentioned above. The criteria to be used in recommending allocations are set out in the Constitution in the sections dealing with provincial financial and fiscal affairs.

3. Section 198 of 1993 Constitution

No change required.

4. Section 199

No change required.

5. Section 200(1)

The Commission shall consist of -

- (a) a judge or retired judge who shall be the chairperson appointed by the President after consultation with the Premiers

- (b) a person designated by the Minister responsible for national finance matters
- (c) a person designed jointly by the provinces
- (d) a person designated by a representative body of organised local government
- (e) a person designated by each of the Executive Councils of the provinces
- (f) a person designated by a representative local government body in each of the provinces
- (g) persons designated by the Cabinet, up to a maximum of nine.

6. **Section 200(2)**

Delete.

7. **Section 200(3)**

No change required.

8. **Section 200(4)**

The President should consult with the person or body who designated a member before removing such member. Also, a message referred to in s 200(4)(b) should also be sent to the person or body who designated such a member.

9. **Section 200(5)**

No change required.

10. **Section 200(6)**

Chairperson appointed for 5 years, other member for 3 years, but shall be eligible for re-appointment.

11. **Section 200(7)**

No change required.

12. **Section 200(8)**

The chairperson and those persons appointed in terms of 200(1)(b), (c) and (d) shall be full-time members of the Commission and not perform or commit himself or herself to perform remunerative work outside his or her official duties.

13. **Section 200(9)**

No change required.

14. **Section 200(10)**

No change required.

15. **Section 200(11)**

Amend to read: The chairperson shall be the chief executive officer of the Commission.

16. **Section 201**

Essential content in order.

17. **Section 202**

Add: The members designated in terms of s 200(1)(a), (b), (c) and (d) shall constitute an Executive Committee of the Commission.

18. **Section 203**

No change required.

19. **Section 204**

No change required.

20. **Section 205**

Staff should be "after consultation" rather than "in consultation".

21. **Section 206**

No change required.

KEN ANDREW

95.06.15

FAKSMEMO

AAN: PAT FAHRENFORT

FAKSNO: 021-4614339

VAN: DR. W.J. BOTHA, LP VRYHEIDFRONT

RE: TEMAKOMITEE 6.2 1. NASIONALE INKOMSTEFONDS EN 2. FINANSIELE EN FISKALE KOMMISSIE - KOMMENTAAR

Verskoon my asseblief van die vergadering op 19/6/95.

	Artikel	Kommentaar
1	185	Die regering moet die tekort voor lenings binne die volgende vyf jaar op 'n egalige wyse uitwis waarna 'n gebalanseerde begroting voorgelê moet word.
2	200(1)(a)	Een van hierdie lede moet oor kundigheid oor staatsfinansies beskik
	200(1)(b)	Hierdie lede moet oor kundigheid oor provinsial owerheidsfinansies beskik
	200(1)(c)	Minstens vier van hierdie lede moet oor kundigheid oor plaashke owerheidsfinansies beskik
	200(6)	Voorsitter en Onder-Voorsitter aangestel te word vir 'n maksimum van tien jaar. Gewone lede mag vir 'n maksimum van tien jare dien. Indien 'n gewone lid Onder-Voorsitter en/of Voorsitter word mag sy totale diens, insluitend diens gedoen as gewone lid, nie vyftien jaar oorskry nie.
	Byvoeging 2 01(5)	Vergaderings van die Kommissie is vir die publiek toeganklik
	202(4)(b)	voeg by: "...besluit van 'n komitee met 'n twee-derde meerderheid wysig of tersyde stel".
	Algemene opmerkings	Die Vryheidsfront sal by 'n later geleentheid insette lewer oor die wyse en formule(s) waarvolgens bedrae tussen die verskillende owerheidsvlakke toegeedeel behoort te word.

Not signed
Electronically send

15 JUNE 1995

NATIONAL PARTY SUBMISSION

THEME COMMITTEE 3

GOVERNMENT FINANCE AND INTERGOVERNMENTAL FISCAL RELATIONS

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

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The fiscal competences of Local Authorities

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

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

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

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

Provincial FFC's

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



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15 June 1995

Preliminary submissions

THEME COMMITTEE 3

The Financial and Fiscal Commission

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

This stems from the central belief in the PAC that the Provinces and Local government structures should only have administrative powers and nothing else. If one were to look at the provisions of Constitutional Principle XXV11 the following emerge amongst others :

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

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

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

Ms Patricia De Lille (MP)

COMMISSION ON PROVINCIAL GOVERNMENT

PRELIMINARY RECOMMENDATIONS ON PROVINCIAL
FINANCE AND FISCAL AFFAIRS
RECOMMENDATIONS - DOCUMENT 7

1. INTRODUCTION

- 1.1 See introductory notes under recommendations on provincial legislative competence (Recommendation 2).
- 1.2 Constitutional provisions relating to the financial and fiscal affairs of provincial and local governments are extremely important because they determine not only the measure of autonomy but also the effectiveness of those governments in executing the powers and functions allocated to them. (See Constitutional Principles XX and XXI.)
- 1.3 Detailed provisions should not be dealt with in the Constitution, but rather in other national or provincial laws as required.
- 1.4 The new Constitution therefore need contain only general provisions which will determine how a provincial government may acquire the revenue (taxes, allocations, loans and other income) required for its activities; the methods by which revenues may be appropriated for expenditure; and mechanisms to ensure the proper accounting for such collection and expenditure of revenue.
- 1.5 Provisions in regard to local government financing (especially in so far as it involves allocations from national revenue), also need to be included in the new Constitution. However, this matter will be dealt with in a later document dealing with local government in general.

2. CONSTITUTIONAL PRINCIPLES AND PROVISIONS

- 2.1 The provisions of the new Constitution relating to the financial and fiscal affairs of provincial governments shall, in terms of section 91 of the interim Constitution, comply with the applicable Constitutional Principles. The main relevant Principles are the following:

XX

Each level of government shall have appropriate and adequate legislative and executive powers and functions that will enable each level to function effectively. The allocation of powers between different levels of government shall be made on a basis which is conducive to financial viability at each level of government and to effective public administration, and which recognises the need for and promotes national unity and legitimate provincial autonomy and acknowledges cultural diversity.

XXV

The national government and provincial government shall have fiscal powers and functions which will be defined in the Constitution. The framework for local government referred to in Principle XXIV shall make provision for appropriate fiscal powers and functions for different categories of local government.

XXVI

Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them.

XXVII

A Financial and Fiscal Commission, in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally, after taking into account the national interest, economic disparities between the provinces as well as the population and developmental needs, administrative responsibilities and other legitimate interests of each of the provinces.

- 2.2 The implications of Constitutional Principles XXVI and XXVII as crystallised in sections 155 and 156 of the interim Constitution are that each provincial government has a constitutional right to:

- (a) revenue which may be apportioned and spent at its discretion, derived from the following sources:
- (i) an equitable share of revenues collected nationally, that will ensure its ability to provide the services and execute the functions allocated to it;
 - (ii) the transfer duties on property situated within the province;
 - (iii) taxes, levies, duties and surcharges on taxes as determined by section 156(1) of the interim Constitution;
 - (iv) taxes, levies, and duties on casinos, gambling, betting, etc, as determined in section 156 (1B); and
 - (v) other unconditional allocations out of national revenue; and
- (b) conditional allocations which, as the term implies, are subject to direction by the national government in regard to their spending.

In the Commission's view these provisions allow provincial governments a degree of autonomy, consonant with CP XX, especially in regard to expenditure of unconditional allocations set out in sub-paragraph (a) above.

The determination of allocations under both (a) and (b) above will have to be made in terms of the considerations set out in CP XXVII.

- 2.3 The general requirements relating to effectiveness, financial viability, accountability and responsibility contained in various other Principles also need to be provided for in the new constitutional provisions.
- 2.4 The Commission is required by section 164 (3) of the interim Constitution to take into consideration the provisions of the interim Constitution relating to financial and fiscal matters, which are contained mainly in sections 155 to 159, 187, 188, 193 and 198-200. The text of these sections is appended for easy reference.

3. DISCUSSION

- 3.1 In order to obtain information required to formulate its viewpoints and recommendations in regard to financial and fiscal matters relating to provincial systems of government, the Commission organised a special workshop in which the views of foreign and local experts and representatives from a large variety of institutions, including Parliament, the national government (state departments), provincial legislatures and executives, local governments and local government bodies, the Financial and Fiscal Commission and many others were solicited. Written submissions from a number of institutions were also obtained and considered and literature on the subject was studied. The Commission was assisted during its deliberations by a task group consisting of economists, lawyers and other persons with knowledge of and experience in dealing with financial matters.
- 3.2 From the discussions, submissions and literature studies, there appears to be a general consensus that -
- (i) only limited taxing powers could be assigned to provincial governments, and that these will not render sufficient revenue to finance the expenditure which the governments will have to incur in order to carry out their powers and functions effectively;
 - (ii) because most major taxes would be imposed by the national government and revenues collected nationally, each province is entitled to a fair share of the revenues so collected to fund its legitimate expenditure;

- (iii) there is a national responsibility to distribute a portion of nationally collected revenues to the provinces in an equitable manner that will put each province in a position to provide the public goods and services for which the provincial level of government is responsible, subject to certain conditions such as the effective and efficient exploitation of the provinces' own tax bases and the effective, efficient and accountable expenditure of provincial revenues;
- (iv) a portion of the total allocations to provincial governments could be in the form of conditional allocations to finance activities which are deemed to be in the national interest. (Such allocations may also be differentiated according to the ability of provinces to contribute towards such activities from their own resources.);
- (v) while a portion of the allocations referred to in (iii) and (iv) above should be aimed at addressing disparities among provinces (i.e. for the broad purposes of "equalisation"), there is no perfect or uncontested method for determining such allocations. There must, however, be a manifest concern to ensure fairness. At the same time, wealthier provinces which generate most of the country's wealth should not be deprived of income needed to sustain and develop their economies, since to harm that could ultimately be detrimental to all;
- (vi) there are circumstances in which all levels of government should be allowed to borrow, namely for capital expenditure (which will also benefit future taxpayers, who should consequently pay their fair share of the capital costs), or to afford temporary relief if the revenue of a government drops to an extent which jeopardises the continuation of essential normal services. It is acceptable that the national government should regulate borrowing on the part of sub-national levels of government both in the interest of the national economy, and to dispel any misplaced expectations that (even in the absence of specific guarantees of loans) the national government will bail out sub-national levels of governments unable to meet their debt commitments. In order to enhance fiscal and financial discipline in regard to borrowing, access to financial markets by sub-national governments should not be distorted by instruments (e.g. subsidies) or mechanisms (e.g. special financial institutions) which could be detrimental to such discipline;
- (vii) the Constitution should contain only the framework for financial and fiscal relations between the levels of government. The detail should be dealt with in other laws. However, such laws should provide for as much predictability as is feasible concerning the amount of allocations to other levels of government, so that the recipient governments will be able to formulate plans and budgets on a multi-year basis;

- (viii) central government's allocations to local authorities should in general be channelled through provincial governments, but there might be circumstances in which the implementation of central government programmes may justify direct specific allocations to local governments; and
- (ix) there is a need for an impartial institution like the Financial and Fiscal Commission, independent of the executive branch of government, with expertise to advise on the equitable allocation, among all tiers of government, of revenues collected nationally.

3.3 The Commission assessed the appropriateness of the interim constitutional provisions in the light of the abovementioned considerations, *inter alia*, and the Constitutional Principles in order to formulate its recommendations enumerated below.

3.4 Provinces' share of revenue collected nationally

3.4.1 Section 155 of the interim Constitution provides that a province shall be entitled to an equitable share of revenue collected nationally to enable it to exercise and perform its powers and functions. Section 155 then goes on to specify how such a share should be constituted, namely -

- (a) a percentage, fixed by an Act of Parliament, of income tax on individuals, Value-added tax or other sales tax, and any national levy on the sale of fuel;
- (b) transfer duty on the acquisition, sale or transfer of any property (presumably fixed property) situated within the province concerned; and
- (c) conditional or unconditional allocations out of national revenue to a province.

An Act to provide for the abovementioned percentages shall be passed by the National Assembly and the Senate sitting separately. Reasonableness is required in fixing the percentages and conditions for allocations in respect of the different provinces after taking into account the national interest and the recommendations of the Financial and Fiscal Commission (FFC). The determination of both conditional and unconditional allocations is subject to considerations relating to interest and other payments in respect of the national debt, the fiscal capacities and performance, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, development needs, administrative responsibilities and other legitimate interests as well as other objective criteria identified by the FFC, the legitimate needs and interests of the national government and the recommendations of the FFC.

3.4.2 As far as the revenue sharing provisions (Section 155(2) (a) to (c)) and the entitlement to transfer duty are concerned, the Commission is of the opinion that the provisions of the interim Constitution should be retained. It would be unwise to fix percentages in the Constitution because many circumstances could arise requiring the percentages to be changed from time to time and this might then necessitate continual amendments of the Constitution. Such matters should be dealt with in ordinary laws, subject to the principle of reasonableness and on the advice of an independent institution such as the FFC. The determination of such percentages by Acts of Parliament should be after consultation with the provinces and organised local government, and should generally be determined on a continuous (overlapping) multi-year basis in order to provide provinces with a significant measure of predictability with regard to revenues. On the other hand, on the grounds of reasonableness and legitimate provincial autonomy (CP XX), the Commission is of the opinion that the right of the provinces to receive either percentages or all of the respective taxes enumerated in the section, should not be diminished in the new Constitution. It could also be argued that the omission of such entitlements from the new Constitution would negatively affect the powers and functions of the provinces and therefore conflict with CP XVIII:2

The Commission therefore recommends that the provisions of section 155 (1) to 155 (3) or similar provisions should be incorporated into the new Constitution, with the addition that provision should be made for consultation with the provinces and organised local government as suggested above; and that the fixing of percentages should as far as possible be on a multi-year basis.

3.4.3 In regard to other conditional or unconditional allocations, section 155 (4) of the interim Constitution requires Parliament to take into account a considerable number of matters, some of which are not easily quantifiable and are difficult to assess reliably as between provinces, such as fiscal performance, efficiency in the utilisation of revenues, developmental needs, etc. This places an onus on Parliament to specifically consider each of the elements mentioned in the subsection, and subjects the resulting discussions and Acts to possible review by the Constitutional Court if all are not manifestly addressed before the law is passed. In some countries, such as the United States of America, the constitution is silent on such matters. In others, like Canada, the commitment in the constitution to make grants is purposely vague. The Canadian constitution merely states that "Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation".

The Commission is of the opinion that section 155 (4) should be replaced by a new subsection which in essence contains a similar general commitment towards the principle of equalisation. Provincial interests could be expressed most appropriately through the provinces' representatives in the second chamber (see CPG document 4) in the legislative process, and through the FFC in the administrative process. The Commission recommends that the new equivalent of section 155 (4) should read as follows -

- "(4) Allocations referred to in subsection 2 (e) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account -
- (a) the recommendations of the Financial and Fiscal Commission, and
 - (b) the sufficiency of revenues of provincial governments to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

3.5 Levying of taxes by provinces

3.5.1 Section 156 of the interim Constitution empowers provincial legislatures to raise taxes, levies and duties, other than income tax or value-added or other sales tax, subject to authorisation in an Act of Parliament. Such taxes should not detrimentally affect national economic policies, inter-provincial commerce or the national mobility of goods, services, capital or labour. In terms of CP XVIII.2 this power may not be substantially less or inferior in the new Constitution. Provincial legislatures must therefore be empowered in the new Constitution to impose any tax other than income, value-added or other sales tax within their areas of jurisdiction subject to the above-mentioned limitation. Provinces may also impose surcharges on taxes (presumably both national and local), provided they are authorised to do so by an Act of Parliament and that there is no discrimination against non-resident South African citizens. There are sound economic reasons why Parliament should specifically have to authorise the imposition of surcharges on taxes which fall within its exclusive powers, such as income tax and value added tax, e.g. in order to limit the possible negative effects of high provincial surcharges on the national economy. This power of provincial legislatures will have to be retained in view of CP XVIII.2. However, the Commission is of the opinion that the levying of a surcharge on local government taxes could not have been intended in section 156 (1) and that greater clarity in this regard should be provided in the new Constitutional text.

3.5.2 Section 156 (1B) vests provincial legislatures with the exclusive competence to impose taxes, levies and duties, (excluding income tax, value-added or other sales tax) on casinos, gambling, wagering, lotteries and betting. This competence should be included in the new Constitution in view of CP XVIII.2.

3.5.3 Section 156 (2) provides that provincial legislatures shall not be entitled to levy taxes detrimentally affecting national economic policies, inter-provincial commerce or the national mobility of goods, services, capital and labour. The Commission considers it necessary that this limitation should continue to be applicable in the new Constitution in the national interest. However, other levies and duties imposed by provincial legislatures could also have such detrimental effect and should be included in the relevant limiting provisions of the new Constitution.

3.5.4 Section 156 (3) empowers provincial legislatures to enact legislation authorising the imposition of user charges, subject to consideration of recommendations by the FFC concerning the criteria according to which such charges should be determined and further subject to there being no discrimination against non-resident South African citizens. In the Commission's view it would be sensible to continue to apply objective criteria for the imposition of user charges and to forbid discrimination against South Africans not resident in the particular province. However, the provision in section 156(3)(a) requiring a recommendation by the FFC for every enactment which imposes a user charge may prove to be too cumbersome. A provision requiring the FFC to recommend general guidelines which will be applicable to all such enactments would be more appropriate and practical. Because user charges should be a legitimate source of revenue for provinces, similar provisions should be incorporated into the new Constitution in view of CP XVIII.2, subject to the abovementioned amendment relating to the role of the FFC.

3.6 Raising of loans by provinces

The empowerment of provinces to raise loans was addressed in paragraph 3.2 (vi) above. Section 157 (1) appears to address both the needs and the concerns in regard to borrowing powers for provinces.

Section 157(3) provides that a province may not guarantee a loan unless the FFC has verified the need for a guarantee and recommended that it be given.

The Commission is of the opinion that the restraints on the borrowing power of provinces are necessary and adequately dealt with in the present section and recommends that similar provisions be incorporated into the new Constitution. It could prove to be too

cumbersome for the FFC to verify the need for a guarantee in each individual case. The Commission recommends that the FFC be required to provide only general guidelines for the guaranteeing of loans by provinces.

3.7 Provincial Revenue Funds

Section 159 provides for the establishment of a Provincial Revenue Fund in each province, the payment of all provincial revenues and allocations into such Fund and the withdrawal of money from the Fund only by virtue of an appropriation made in accordance with a law of the provincial legislature concerned. The Commission recommends that similar provisions be incorporated into the new Constitution.

3.8 Procurement administration

The proper management of the procurement of goods and services for any level of government is extremely important in order to guard against corruption, inefficiency and wastefulness. The Commission is of the opinion, therefore, that the new Constitution needs to contain provisions providing for orderly procurement management for goods and services at all levels of government. Section 187 of the interim Constitution stipulates that such procurement shall be regulated by an Act of Parliament and provincial laws, provides for independent and impartial tender boards and for a fair, public and competitive tendering system. The provisions appear to regulate state procurement of goods and services adequately and the Commission recommends that similar provisions should be included in the new Constitution.

3.9 Guarantees by national government section 188 of the interim Constitution prohibits the guarantee of provincial and local government loans by the national government unless the guarantee complies with norms and conditions set out in an Act of Parliament and the FFC has made a recommendation to that effect. The Commission recommends that similar provisions be incorporated into the new Constitution.

3.10 Powers and functions of the Auditor-General

3.10.1 Section 193 of the interim Constitution requires the Auditor-General to audit and report on all the accounts and financial statements of accounting officers at national and provincial levels of government and of all other persons in the national and provincial public services entrusted with public assets, trust property and other assets. Similar provisions apply in respect of local governments, boards, parastatals, etc. The Auditor-General may also conduct performance audits at the

request of the President. Other provisions relate to process, including his reporting to Parliament on the accounts examined by him and the duty to make such reports public after the expiry of 14 days from the date of their submission.

3.10.2 The power of the Auditor-General appointed by Parliament to audit accounts at all three levels of government is considered to be of the utmost importance to assure accountability for the collection and expenditure of government revenues. His authorisation to conduct performance audits at the request of the State President is equally important to ensure the effective and efficient spending of revenues. The Commission recommends that similar provisions be incorporated into the new Constitution.

3.11 Financial and Fiscal Commission

3.11.1 Section 198 of interim Constitution establishes the present Financial and Fiscal Commission. Section 199 stipulates that its objects and functions shall be-

"to apprise itself of all financial and fiscal information relevant to national, provincial and local government, administration and development and, on the basis of such information, to render advice and make recommendations to the relevant legislative authorities in terms of this Constitution regarding the financial and fiscal requirements of the national, provincial and local governments,

including-

- (a) financial and fiscal policies;
- (b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;
- (c) taxes, levies, imposts and surcharges that a provincial government intends to levy;
- (d) the raising of loans by a provincial or local government and the financial norms applicable thereto;
- (e) criteria for the allocation of financial and fiscal resources; and
- (f) any other matter assigned to the Commission by this Constitution or any other law.

In performing its functions the Commission shall take into consideration, *inter alia*, the provisions of section 155 (4) (b) and other provision of the interim Constitution."

- 3.11.2 From what has been noted in paragraph 3.2 and succeeding paragraphs, it is clear that the financial and fiscal relations between levels of government in any state are complex.

Two sharply contrasting views may be taken of the appropriate role and function of a body such as the FFC. On the one hand, it may be seen as a negotiating forum; on the other, as an independent and impartial body.

In the opinion of the CPG, a body with responsibilities such as those of the FFC, as envisaged in the interim Constitution, should be impartial and independent of the executive and administrative structures of government. It should command the expertise necessary to fulfil its functions judiciously and to secure credibility and respect for its recommendations, particularly at the second and third levels of government. It should be able to take the long view in the national interest. There should be provision for a reasonable degree of continuity in its membership. Its size and modus operandi should be conducive to efficiency and coherence. At the same time, however, the requirements of transparency in its operations and representivity in its composition must be taken into account.

- 3.11.3 Constitutional Principle XXVII compels the Constitutional Assembly to include provisions relating to a Financial and Fiscal Commission in the new Constitution. The Commission is of the opinion that even if the provisions of this Principle were not so compelling, it would have been in the national interest to protect the institution and role of the FFC in the new Constitution. It therefore recommends that provisions similar to those contained in sections 198 and 199 be incorporated into the new Constitution.

- 3.11.4 Some doubt has been expressed whether the composition of the FFC should be prescribed in the Constitution itself or in a separate Act of Parliament. The Commission is of the opinion that the FFC's role in intergovernmental relations is so important that some matters besides those contained in sections 198 and 199 should be incorporated into the new Constitution. Furthermore CP XXVII requires that the representation of each province in the FFC should be addressed in the new Constitution.

- 3.11.5 The method for the appointment of members should be provided for in the Constitution in order to guarantee the continued independence, impartiality and acceptability of a body that has such an important (and probably unpopular) role to play in an area of intergovernmental relations which is fraught with contention. In terms of section 199 the FFC must advise and make recommendations to the relevant legislative authorities. In order that its advice and recommendations may enjoy their respect, at least, if not their unqualified support in all cases, the FFC needs to be acceptable to all levels of government. The Commission is of the opinion, therefore, that the members of the FFC should be appointed by the President from nominations by national and provincial governments and a representative local government forum.

- 3.11.6 At present the FFC consists of a chairperson and deputy chairperson and another seven members (at least one of whom shall have expertise in local government finance), all appointed by the President either in consultation with or on the advice of the Cabinet; and nine other members, with each of the provinces' Executive Councils designating one of these, who are then appointed by the President (section 200 (1)). Only the chairperson and deputy chairperson are full-time members. They are appointed for a period of five years. Other members of the FFC are appointed for a period of only two years, but are eligible for reappointment. The large number of members makes the FFC cumbersome. This could also hamper its effectiveness in the long run, because of the large proportion of part-time members appointed for short terms, and possibly representing divergent interests. Its present composition could obviously make it difficult for the FFC to reach consensus or even to obtain the two-thirds majority required for decisions (section 201 (3)), should each provincial representative seek to obtain the most favourable treatment for his or her province - or else risk incurring the province's displeasure. Provincial representatives would appear to be in an invidious position, since section 201 (7) requires members of the FFC to act impartially and independently. It can be foreseen that the FFC members might find themselves engaged in interprovincial negotiations on allocations, which could be dealt with more effectively, and more properly, in a different forum.

- 3.11.7 CP XXVII stipulates that each province shall be represented in the FFC, but does not specify that each should have a separate representative. In the Commission's view, the FFC could function more effectively if it were to be comprised of

a smaller number of members though still commanding sufficient expertise to deal with its complex tasks.

There is, however, some uncertainty about the interpretation of CP XXVII. Furthermore, the CPG is aware that both the provinces and local government have a clear interest in their having direct access to the FFC, in the determination of percentages of revenue sharing. Strong arguments have also been advanced (in workshops organised by the CPG, and elsewhere) that the representation of local government on the FFC should be expanded significantly, relative to that of the provinces. These considerations must be set against the case for reducing the FFC's membership in the interests of efficiency and effectiveness.

To address these different sets of concerns, the CPG consequently recommends that the FFC structure should consist of two chambers:

- (a) the "core" FFC, and
- (b) a plenary chamber.

3.11.8 The "core" FFC. In accordance with the considerations set out at 3.11.2 above, the Commission would recommend that the FFC consist of seven members altogether. A chairperson should be appointed by the President. The six other members should be appointed as follows: 2 nominated by the national government, 2 by the provinces jointly, and 2 by a constituent body from local government. The nominations could be made from panels of suitably qualified and experienced persons for each of the three tiers of government. The persons so appointed to the FFC would be expected to act fairly and impartially and should not be regarded as representatives of particular interests.

To enhance the perception of the FFC as an independent and impartial body, and strengthen its ability to act in an equitable manner, its chairperson should manifestly possess qualities consonant with these requirements. Consideration should be given to appointing as its chairperson an eminent individual with a judicial background (such as a judge, or a retired judge).

The FFC should be provided with staff commanding the requisite experience and ability to undertake preparatory work for the Commission. If this is done, it might not be necessary to have any full-time members on the Commission. However, the CPG is of the opinion that this

is not a matter for the Constitution but rather for an Act of Parliament, and even this should not be too prescriptive since the long-term needs of the FFC can only be established in the light of experience.

3.11.9 The plenary chamber of the FFC. Such a chamber could comprise the following elements:

- (a) a representative of each province,
- (b) a representative of local government in each province,
- (c) representatives of the national government, up to a maximum of nine, and
- (d) members of the "core" FFC.

This chamber would be a forum in which revenue allocations could be negotiated, in an attempt to reach consensus on the percentages to be allocated to provinces and local government, and on how these should be distributed among the provinces. If consensus cannot be reached, the "core" FFC will then have to formulate recommendations to the national government, which in turn will have to consult provincial governments (in terms of the recommendation at 3.4.2 above) before embodying these in an Act of Parliament.

3.11.10 As far as the further distribution of revenue to local governments is concerned, the CPG recommends that provinces should institute provincial negotiating forums, comprising representatives of the province and its local governments, to make recommendations on the allocations to each local government. It would be virtually impossible for one central body such as the FFC to deal with the detail of distribution among local authorities.

3.11.11 The "core" FFC should deal with all other matters assigned to the FFC by the Constitution or by Acts of Parliament. Interested parties should be able to make submissions on such matters to the FFC, and to present their views to it in an open forum.

3.11.12 It would be desirable to establish broad principles for the operation of the FFC, *inter alia* to foster transparency, to provide for interaction with interested parties in making their views known to it, and to ensure that reporting is done fairly, clearly, and comprehensively.

3.11.13 The Commission is of the opinion that the new Constitution need contain provisions regarding only the general composition of the FFC. Details on the method of selection of members and other procedural matters could perhaps be dealt with more appropriately in an Act of Parliament. It is to be expected that the provisions in any such Act would be formulated after consultation with provincial governments and organised local government.

md551

multiplicity of regulators, which would be costly and thus impose very real restrictions on inter-provincial commerce.

7 **Fiscal Responsibility**

7.1 The Southern firmly supports an independent Reserve Bank with autonomous decision making powers. However, the Southern also endorses the need for co-ordination within the political authorities to install a sense of co-operation, without detracting from the autonomy of the Bank. Accountability of the Bank is to the public and not the government, and is best achieved by such mechanisms as public hearings.

7.2 Although recognising that this matter is not a proper subject for the constitution, the Southern supports the submission by SACOB that transparency and consultation would be achieved by a system similar to that which exists in Britain where the minutes of the monthly meeting between the chancellor of the exchequer and the governor of the Bank of England are published. The Southern would prefer a process of public involvement in the Reserve Bank.

vol 51 2000/01

- 3 National legislation should be adopted to ensure merit, equity and representivity in appointments and promotions, and create ability for change, development and administrative reform.
- 4 The rights of public sector workers at all levels of government, as well as the terms and conditions of service of its members, should be regulated by national labour law. Provision should be made for an ombud relating to the Public Service.
- 5 The extent of the Public Service Commission's powers and functions shall be compatible with democratic governance and accountability. Provision shall be made for limited executive appointments, only at senior levels of the Public Service, and with posts requiring confidentiality. The composition of the Public Service Commission needs to be reviewed.
- 6 During their tenure of office no public official shall use his or her position to directly or indirectly enrich themselves or to directly or indirectly benefit any person in a manner which is not fit and proper in the circumstances.
7. The police shall be regarded as part of the public service.

6. FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

6.1. Financial and Fiscal Commission

1. A Financial and Fiscal Commission (FFC) broadly representative of society shall be established to advise government of the apportionment of revenue to the provinces. Its function should be broadly similar to the existing FFC.
2. National government shall not guarantee loans by Provincial and Local Government unless the FFC confirms that such loans comply with national norms as set out in an Act of Parliament.
3. Revenue collection should be national and allocation to provinces should be based on equity considerations.
4. The Constitution should not be too detailed or prescriptive in determining the functioning of the FFC.

6.2. The Reserve Bank

There is inevitably a tension between the independence of a central bank

on the one hand, which is designed to obviate problems of corruption, lobbying, and manipulation of interest rates, and the problem of an independent central bank subverting national economic policy on the other hand. In Germany, the Central Bank is completely independent, while in France it falls under the control of the Ministry of Finance, while the Central Bank of Canada is quasi-independent.

COSATU would favour a constitutional provision on the Reserve Bank which incorporates the following principles:

- * representivity of the Reserve Bank Board
- * while having operational autonomy, the Reserve Bank would have the obligation to promote the socio-economic development of the entire society
- * the Reserve Bank should be open and transparent, subject only to limitations acceptable in a democratic society based on freedom and equality.

VII COMMENTARY RE DOCUMENT 7 - PROVINCIAL FINANCE AND FISCAL AFFAIRS.

1. The recommendation in 3.4.2 is supported on condition that the future constitutional provision explicitly includes:

(i) the "national interest" in the percentage scheme; and

ADV. J BRAND

(ii) a mechanism to prevent a president from applying the provision in question in forcing provinces to perform in a desired manner.

2. The recommendations contained in 3.5, 3.6 and 3.7 are supported.

3. Sec 187 (1) of the Constitution refers to "any level of government with reference to the appointment of tender boards. It is submitted that the participation of local governments in the impartial provincial tender boards could not have been intended here. The position is however not quite clear and greater clarity should be provided in the new Constitution.

4. The recommendation in 3.9 is supported.

5. With respect to the Auditor-General it is submitted that provision should be made for reporting, not only to Parliament, but also to a provincial parliament. If a report by the Auditor-General deals with a specific province, it is necessary that that report is labelled and discussed in that provincial parliament.

6. The recommendations in 3.11 are supported.

7. The method of selection of members of the FFC and other procedural matters relating to the FFC should be dealt with in an Act of Parliament. Reasonable representation by provinces in the selection process and on the actual Financial and Fiscal Committee should be provided for in such an act.

ADV J BRAND

FINANCIAL AND FISCAL RELATIONS

The Reserve Bank must be independent. This is the only way inflation will be brought under control. In the interest of transparency, the Reserve Bank governance can be asked to justify decisions in parliament. If the SARB loses its independence, we will lose a lot of foreign investment - and this is, in the medium term at least, the only way SA will grow fast enough to make a dent in unemployment.

Provinces should be able to levy taxes, but only a small percentage over national income tax or VAT levels. An example: central govt should drop the fuel tax, and provinces can increase VAT or add their own Fuel levy dedicated to road maintenance.

Provincial taxes must only be used for the benefit of provincial taxpayers (not to pad provincial government's salary or current expenditure) and provinces must provide annual reports to show the public where their tax money has gone. In addition, national taxes could-and should- be reduced somewhat if provinces take over responsibility for eg road maintenance.

The borrowing powers of provincial and local authorities should only be done on a project or organisation basis (example and latter = Umgeni Water Board stocks) - we cannot have provinces borrowing and using the money wastefully. Eg if there is a major infrastructure project to be undertaken, loans can be issued for that and the proceeds to be used for that only.

C S Friedman
(Economist)

THEME COMMITTEE 6

1. I believe an independent body should organise and oversea our elections.

Reasons (I) Neutrality is of essence for a free and fait elections which the same could not be said of an incumbent Government department.

(II) Civil wars mostly emanate from government conducted elections that fail to get acceptability.

(III) Remove onus from Government for results' acceptance.

(IV) Remove the responsibility of dealing with large numbers of election personnel.

(V) Results are reality accepted by the International Community.

FROM: JOHAN G MPEIHA

SUBTHEME COMMITTEE 6.2

(a) The Financial and Fiscal Commission: Its composition should be as follows:

- 4 Members appointed by Finance Minister
- 4 Members appointed by State President
- 4 Members appointed by Big Business

the commission should supervise spending of public money in all Government departments. Public Watch Dog (end pg 1)

(b) while public enterprises could be privatised the constitution should provide mechanism for the Government to re take them if the need arise , e.g in times of War or during National Strikes.

SUBTHEME COMMITTEE 6.3

South Africa needs this commission and must be on Central Government level.

- Functions
- (I) To appoint inspectors for Public and Private Sectors
 - (II) Provide training and empowerment of these inspectors.
 - (III) Regulate Gender Equity in all spheres of Society.

- Powers
- (I) Power to act in all 9 provinces without inhibition.
 - (II) Impose stiff fines to transgressors
 - (III) Close Businesses who refuse to comply.

delusion that they were the masters and the ratepayers the servants.

S.G. NOTHARD

FINANCIAL AND FISCAL RELATIONS

There is no doubt that excessive and unfair taxation discourages production and restricts business expansion, the very hub of wealth and job creation. People simply will not work if they are unable to enjoy the fruits of their labour. Therefore, if we wish this country to prosper, then the New Constitution must restrict the government from destructive taxation. Yes, taxes are necessary for the provision of basic services namely the police force, the defence force and the judiciary, but when they are raised beyond a certain level, it becomes a tool of destruction.

As far as local government is concerned, the constitution must prohibit it from taxing people. The time has come for local government to provide services on a competitive basis at a price that consumers are willing to pay.

If there is anything that bureaucrats love, it is spending money, in particular money that they have not earned. When money is not available, the tendency is then to borrow and spend. Therefore the New Constitution should severely limit the borrowing powers of government.

Most important of all is that local government be transparent. Should any arrogant official stand in the way of a member of the community wishing to inspect council records and documents, he should be dismissed with immediate effect. We have had enough of such treatment.

ACCOUNTABLE GOVERNMENT

The Economy

The right to one's life is the most fundamental of all rights, and as such every individual has the right to sustain his life through the pursuit of economic activity. Therefore the New Constitution must allow all people to do so. However, each has his own skills and limitations, and the rewards will be in direct proportion to how many customers one is able to satisfy.

It is now common knowledge that the root cause of inflation is the printing of money and the granting of easy credit, particularly when it is given at levels of interest which are below those that would exist on the free market. The New Constitution must ensure that the money supply is maintained at a level that will not result in the loss of our currency's purchasing power.

Interference in the operation of the free market system in the form of control boards and the like must be stamped out. They do nothing but to increase the cost of goods to the detriment of all.

Protectionism in the form of import tariffs must be phased out. Certain industries have become fat and lazy while enjoying the handsome profits resulting from the inflated price of their goods. We have had enough. The time has now come for them to start being competitive, and if they can't take the heat then they must get out of the kitchen.

As for exchange controls, they too, must be eliminated, even if it means risking a temporary outflow of capital. Money will only be attracted once people are confident that they will be able to move their money out again, should they ever wish to do so.