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**CONSTITUTIONAL
ASSEMBLY**

**CONSTITUTIONAL
COMMITTEE**

**FRIDAY
8 SEPTEMBER 1995
09h00
OLD ASSEMBLY
CHAMBER**

***DOCUMENTATION
VOLUME TWO***

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CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2

FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

REPORT AND DRAFT FORMULATIONS ON THE

FINANCIAL AND FISCAL COMMISSION

5 SEPTEMBER 1995

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FIRST DRAFT - 5 SEPTEMBER 1995

Status: Prepared by CA Law Advisers
for CC discussion.

— referred to
replies
Take-over
Financial
Fiscal

FINANCIAL AND FISCAL COMMISSION

Establishment¹

1. There shall be a Financial and Fiscal Commission for the Republic. The Commission shall be independent and impartial and subject only to this Constitution and the law.²

Powers and functions³

2. (1) The Commission shall apprise itself of all financial and fiscal

¹ As required by CP XVII. This is per agreement of TC as reflected in Block 2 of its Schematic Summary. PAC wants relationships between levels of government clearly delineated and resolved first before giving recognition to the Fiscal and Financial Commission. See Block 28 TC Report.

² This is per agreement as reflected in Block 1 of the TC Schematic Summary.

³ There seems to be broad agreement regarding powers and functions of the FCC as reflected in Blocks 3 - 8 of the TC Schematic Summary. However, some of the parties have registered their concern on some issues:

1. The ANC has expressed the view that section 199 of the interim Constitution should be incorporated in the final constitution in an abbreviated and revised form (see Block 33 of the TC Report).
2. The NP is of the opinion that provision should be made for the FFC in much the same way as outlined in the Interim Constitution.
3. The DP does not believe there is any need to change the formulation of section 199, but it has indicated that the primary purpose of the FFC should be to make recommendations on equitable financial and fiscal allocations between different levels of government. (See also Block 27 of the TC Report).
4. The PAC and the Commission on Provincial Government submitted that the Constitution should only contain the framework of the functions of the FFC. (See also Block 28 of the TC Report).

information relevant to national, provincial and local government, administration and development. It shall render advice and make recommendations to the relevant legislative authorities regarding the financial and fiscal requirements of the national, provincial and local governments in terms of this Constitution, including -

- (a) financial and fiscal policies;⁴
- (b) equitable financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level;⁵
- (c) any form of taxes, levies, imposts and surcharges that a provincial government intends to levy;⁶
- (d) the raising of loans by a provincial or local government and the financial norms applicable thereto;⁷

*NP. -
Quoted Mrs*

⁴ This is per agreement in Block 3 of the Schematic Summary. However, the ANC holds the view that the Constitution should state clearly that the Commission has advisory powers which must be reflected in the procedures for drafting budgets and fiscal legislation. The DP believes that there is no change required in this matter. [See also Block 34 of the TC Report].

⁵ This is per agreement in Block 4 of the TC Schematic Summary. The ANC is of the view that the allocation of equities should apply horizontally and vertically; it is concerned that with the present reference there is doubt as to whether that is the case. As regards the term "revenue collected", the ANC requires a clarification of meaning. Other parties are silent, on the issue whilst the DP is of the view that no change is required. [See Block 35 of the Report].

⁶ This is per agreement reached in Block 5 of the TC Schematic Summary, but the ANC argues for a new term that would take away the distinction between taxes. The DP does not see any need for change whilst all the other parties have not commented (See Block 36 of the TC Report).

⁷ This is per consensus reached in Block 6 of the TC Schematic Summary.

- (e) criteria for the allocation of financial and fiscal resources; and⁸
- (f) any other matter assigned to the Commission by this Constitution or any other law.⁹

(2) In performing its functions the Commission shall take into account -

- (a) the national interest, economic disparities between the provinces as well as the population and development needs, administrative responsibilities and other legitimate interests of each of the provinces;
- (b) and the provisions of this Constitution dealing with the allocation of revenue to provinces.¹⁰

⁸ This is per consensus reached in Block 7 of the TC summary.

⁹ This is per agreement in Block 8 of the Schematic Summary.

¹⁰ Constitutional Principle XXVII. Par. (b) refers to the substitute for the present section 155(4)(b) (if there is to be such a provision in the new Constitution). At meetings of the TC of 1 and 5 September 1995, the DP and the FF expressed preference for the formulations in s155(4) of the I/C.

These clauses need to be looked at to light of equivalent (TC)

Appointment, qualifications, tenure and dismissal of members¹¹

3. (1)

¹¹ Blocks 10 - 19 of the Report of the Theme Committee deal with appointment procedure etc set out in section 200 of the interim Constitution, broadly covering:

- (i) Method/manner of appointment of a Commissioner;
- (ii) tenure of office;
- (iii) qualitative requirements of a Commissioner;
- (iv) dismissal and removal from office of a Commissioner.

The parties have agreed that section 200(2) of the I/C, dealing with the first appointment of the members of the Commission, should not be incorporated in the new draft. See Block 11 of the TC Schematic Summary.

There is agreement on the sentiments expressed in section 200(9) (prohibiting Commissioners from holding an office in a political party/organisation) and section 200(10) (influencing a member of the Commission). The parties have nevertheless expressed uncertainty as to where these issues should be covered in legislation or in the Constitution.

In terms of Constitutional principle XXVII each province must be represented on the FFC.

*NPS
substantive
Constitution*

Reports

4. (1) The Commission shall present regular reports to both Parliament and provincial legislatures as may be prescribed by a national law.¹²

Other provisions¹³

...

¹² As per blocks 95 and 102. The NP proposes that the Constitution should make provision for the establishment of provincial bodies similar to the FFC to attend to financial and fiscal relations between provinces and local authorities, and that provinces and local authorities should have equal representation in this body.

¹³ In Blocks 21 to 26 the Theme Committee Report deals with:

- (i) Block 21 - Section 201 of the interim Constitution, providing for Meetings of the Commission.
- (ii) Block 22 - Section 202 of the interim Constitution, dealing with Committees of the Commission.
- (iii) Block 23 - Section 203 of interim Constitution, providing for co-option of persons by committees.
- (iv) Block 24 - Section 204 of interim Constitution, dealing with remuneration for members of the Commission.
- (v) Block 25 - Section 205 of interim Constitution, providing for appointment of staff of the Commission.
- (vi) Block 26 - Section 205 of interim Constitution, dealing with regulations for the Commission.

No agreement has been reached on any of the matters covered here. Regarding sections 201 to 205, covered in Blocks 21 to 25 of the Report, the ANC is of the opinion that these should be covered by legislation. On section 201, dealing with meetings, the DP concurs, with no other party committing itself. With regards to section 202 to 205 the NP concurs with the ANC; all other parties are silent. Regarding Block 26; on regulations, the parties' views have not been finalised.

FINANCIAL AND FISCAL COMMISSION

SCHEMATIC SUMMARY

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	FURTHER CLARITY
1	General Aspects	There is consensus on the need to establish an independent and impartial FFC. This is required by CP XXV11. [See Blocks 27 & 31]	
2	Section 198	Consensus on the need to establish the FFC. [See Block 31]	
3	Section 199(1) : Financial and Fiscal Policies	Consensus on Section 199(1)(a)	The ANC proposals on the role of the FFC and relations to legislative bodies, plus its proposal on reporting to Parliament and the legislature represents a significant clarity on its views on the matter. [See Block 34]
4	Section 199(1)(b) : Equitable Financial and fiscal allocations to be national, provincial and local governments from revenue collected at national level	Consensus on s199(1)(b)	The ANC requires the term revenue collected at national level to be clarified and motivates a specific interpretation of this term. [See Block 35]
5	Section 199(1)(c) : Taxes, levies, surcharges that a provincial government intends to levy	Consensus subject to clarity needed by ANC.	ANC proposes rephrasing to remove the distinction between different forms of taxation. [See Block 36]

6	Section 199(1)(d) : Raising of loans by Provincial or local government and the financial norms applicable thereto	Consensus	
7	Section 199(1)(e)	Consensus	
8	Section 199(1)(f)	Consensus	
9	Section 199(2)	Consensus: should refer to relevant provisions on provincial and local government finance	
10	Section 200(1) : Membership of FFC		<p>Various suggestions on the membership, tenure of office, skills requirements of the members of the FFC. Consensus may be able to be achieved after discussion by the Theme Committee. [See Block 42]</p> <p>Note that the Commission for Provincial Government has proposed a two-tier FFC, which proposal if accepted will require significant change to the current provisions.</p>
11	Section 200(2)	Consensus that the clause should be deleted	
12	Section 200(3)		See comments as per section 200(1) above. [See Block 42]
13	Section 200(4)		See DP proposal: other submissions not specific. [See block 46]
14	Section 200(5)		Whether should be provided for in Legislation or Constitution. See comments as per s200(1) above. [See Block 42]
15	Section 200(6)		See comments as per s200(1) above. [See Block 42 & 48]

16	Section 200(7)		Whether should be provided for in Legislation or Constitution. DP proposes retention of similar clause
17	Section 200(8)		Whether should be provided for in Legislation or Constitution. See DP proposal. [See Block 55]
18	Section 200(9)	Consensus about sentiment	Whether should be provided for in Legislation or Constitution.
19	Section 200(10)	Consensus about sentiment	Whether should be provided for in Legislation or Constitution.
20	Section 200(11)		ANC and NP propose these matters should be in legislation. DP in favour of retention of similar clause in Constitution. [See Block 58]
21	Sections 201(1) - (4) Meetings to be held in public		ANC & DP propose that these matters should be in legislation. DP proposes matters of quorum and decision making majorities should be in the constitution.
22	Sections 202 (1) - (4)		ANC & NP propose that these matters be dealt with in legislation. See DP submission
23	Section 203		ANC & NP propose that these matters be dealt with in legislation. See DP submission.
24	Section 204		ANC & NP propose that these matters be dealt with in legislation. See DP submission.
25	Sections 205 (1) - (2)		ANC & NP propose that these matters be dealt with in legislation. See DP submission.
26	Section 206		Parties' views on this matter not yet finalised

FINANCIAL AND FISCAL COMMISSION

[MAIN REPORT]

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
27	<u>General overall comments on Sections 198 - 206</u>	<p>1. "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".</p> <p>2. "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"</p> <p>3. "At present there is considerable lack of clarity in the wording of the applicable sections of the Interim Constitution".</p>	<p>1. 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.</p> <p>2. The National Party is ... broadly supportive of the tax revenue sharing model as outlined in Section 155 of the Interim Constitution - read in conjunction with S199.</p>			<p>"The primary purpose of the FFC is to make recommendations on equitable financial and fiscal allocations between different levels of government."</p> <p>"The FFC should be composed of suitably qualified persons who fulfil their functions as technical experts impartially and independently rather than as political representatives".</p>

Filename:- CAFFC5

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP	<u>COMMISSION ON PROVINCIAL GOVERNMENT</u>
28	<u>General overall comments on Sections 198 - 206</u>	<p>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.</p> <p>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.</p> <p>The foundation for effective financial and fiscal discipline is proportional to the say people have; in where and how their taxes are being utilised.</p>	<p>The FFC should be given 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.</p> <p>The PAC is of the view that the budget allocation must be administered by the Central government wherein the FFC will be fully consulted in order for the above objective to be fulfilled.</p>	<p>The FFC consists overwhelmingly of ANC supporters and ANC policy will be recommended by the Commission. The CP accordingly does not see any utility in the FFC. If government is serious about this, skilled people should be co-opted to run the Commission. If not the FFC will again be a bureaucratic institution (NB:- TRANSLATED FROM AFRIKAANS - WORDING SUBJECT TO CORRECTION).</p>	<p>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. There is a need for an impartial institution like the FFC, independent of the executive branch of government, with expertise to advise on the equitable allocation, among all tiers of government, of revenues collected nationally.</p> <p>The CPG recommends that provisions similar to those contained in sections 198 and 199 be incorporated in the new Constitution.</p> <p>The CPG 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.</p>

Filename:- CAFFC6

BLOCK	CONSTITUTIONAL ISSUE	COSATU	<u>Advocate J. Brand</u>	<i>C.S. Friedman (Economist)</i>	<i>Johan G. Mpethe</i>
29	<u>Comments on Sections 198 - 206 from other organisations and individuals.</u>	<p>A FFC broadly representative of society shall be established to advise government of the apportionment of revenue to the provinces. Its functions should be broadly similar to the existing FFC.</p> <p>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.</p> <p>Revenue collection should be national and allocation to provinces should be based on equity considerations.</p> <p>The Constitution should not be too detailed or prescriptive in determining the functioning of the FFC.</p>	<p>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.</p>	<p>Provinces should be able to levy taxes, but only a small percentage over national income tax or VAT levels. Provincial taxes must only be used for the benefit of provincial taxpayers (not to pad provincial governments' salary or current expenditure) and provinces must provide annual reports to show the public where their tax money has gone.</p> <p>The borrowing powers of provincial and local authorities should only be done on a project or organisation basis.</p>	<p>The FFC:- its composition should be as follows:- 4 members appointed by Finance Minister; 4 members appointed by State President; 4 members appointed by big business.</p>

BLOCK	CONSTITUTIONAL ISSUE	DEVELOPMENT BANK OF SOUTH AFRICA	SACOB	COSAB
30	<p><u>Comments on Sections 198 - 206 from other organisations and individuals.</u></p>	<p>...the constitutionally established FFC (Section 198) [is] an immensely important link in the overall operation of the constitutional structure...</p> <p>Sections 200 - 205 can be considerably shortened and refocused in the new Constitution. Except for the composition of the FFC, section 200(1), the focus of the interim Constitution should shift from an emphasis on structures to ensuring the impartiality, integrity, objectivity and professional competence of the FFC. This could be done through establishing eligibility criteria for members eg. those in section 200(3 to 10) as well as through establishing principles for operation.</p> <p>Current constitutional proposals regarding its meetings; establishment of committees; cooption of persons by committees; terms of office of members and officials; remuneration and conditions of service of members and other persons; appointment of staff; and other relevant matters, could be allowed for statutorily rather than constitutionally.</p> <p>The DBSA subscribes to the principle that finance should follow expenditure function. It is proposed that section 199(1 or 2) be amended to include an in-principle statement on such functional criteria that should serve as a framework for the FFC's advice and recommendations regarding the financial and fiscal requirements of the different tiers of government. The details of such a framework and criteria should, however, be dealt with in separate legislation.</p> <p>Furthermore it is proposed that section 199... be extended to provide for the FFC to play a facilitating role regarding inter-governmental fiscal/financial relations.</p>	<p>SACOB urges that additional provisions be included in the Constitution to require the government to:</p> <ul style="list-style-type: none"> - publish all report of the FFC; and - provide detailed reasons for their decisions to accept and/or reject the recommendations of the Commission. <p>The brief described in Section 199(1) ... needs to be linked to the brief to recommend equitable allocations in section 199(1)(b). Section 199(1)(e) would appear to be meaningless in its current context.</p> <p>[Sections 199 & 200]:- ... SACOB believes that similar provisions be made in the final constitution with due regard to the dynamics involved in developing a new fiscal order over time.</p> <p>SACOB would suggest that the terms of office [of members] be lengthened to 4 years.</p> <p>SACOB believes that the imbalance in local government representation needs to be corrected.</p>	<p>The objects, functions, expertise and impartiality of this Commission have been provided for in sections 199 and 200 of the Interim Constitution and we recommend that similar provisions be retained in the final Constitution.</p> <p>In order to allow the Commission to function efficiently and to avoid a permanent polarisation between those members appointed by the central government and those appointed by the regions, we suggest that their term of office be lengthened to 5 years.</p> <p>We recommend that [the interest of local government] be given proper representation on the Commission in the same way as the first and second tiers of government.</p>

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
31	<p><u>Section 198</u></p> <p><u>Establishment</u></p>	<p><i>"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."</i></p>				<p><i>No change required.</i></p>

BLOCK	CONSTITUTIONAL ISSUE	PAC	ACDP	CP
32	<u>Section 198</u> <u>Establishment</u>	<i>The FFC should be given a Constitutional recognition, but only when the relationship(s) between the three levels of government are clearly delineated and resolved.</i>		

Filename CAFFC2

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
33	<u>Section 199 Objects and Functions</u>	<i>"The provisions relating to the establishment, objects and functions of the Financial and Fiscal Commission in Section 198 to 199 of the Interim Constitution should be incorporated in the final constitution in abbreviated and revised form."</i>				No change required.
34	<u>Section 199(1)(a):- Financial and Fiscal Policies</u>	<i>"The Constitution should state clearly that the Financial and Fiscal Commission has advisory and mediatory powers which must be reflected in the procedures for drafting budgets and fiscal legislation."</i>				No change required.

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
35	<p>Section 199(1)(b)</p> <p><i>Equitable Financial and fiscal allocations to the national, provincial and local governments from revenue collected at national level</i></p>	<p><i>"The reference to "equitable financial and fiscal allocations" leaves open to doubt whether the section refers exclusively to vertical equity or accommodates horizontal equity. It should refer to both"</i></p> <p><i>"Section 199(1)(b), which refers to revenue collected at national level, could mean one of the following:</i></p> <ul style="list-style-type: none"> <i>- Revenue collected in the nation as a whole, ie: 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</i> <i>- revenues collected at the national level, including the shares of the taxes specified in Section 155, but excluding revenue collected on an agency basis on behalf of other jurisdictions, or</i> <i>- 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."</i> 				<p><i>No change required.</i></p>

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
36	<p><i>Section 199(1)(c)</i></p> <p><i>Taxes, levies, imposts and surcharges that a provincial government intends to levy</i></p>	<p>1. <i>"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".</i></p> <p>2. <i>"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. These clauses should be consolidated into on coherent and consistent section with a formulation similar to the above proposed in Section 199(1)(c). Local government powers of taxation and borrowing should be correspondent to those of provincial governments."</i></p>				<p><i>No change required.</i></p>

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
37	<p><i>Section 199(1)(d)</i></p> <p><i>The raising of loans by a provincial or local government and the financial norms applicable thereto</i></p>	<p><i>"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 this regard".</i></p>	<p><i>The National Party proposes that the three tiers of government may not borrow to finance current expenditure.</i></p> <p><i>Borrowing by the Provinces, which may be in lieu of loans raised by the National Government, imposes demands on the South African Capital market and affects the general governments' 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.</i></p>			<i>No change required.</i>
38	<p><i>Section 199(1)(e)</i></p> <p><i>Criteria for the allocation of financial and fiscal resources</i></p>					<i>No change required.</i>
39	<p><i>Section 199(1)(f)</i></p> <p><i>Any other matter assigned to the Commission by this Constitution or any other law</i></p>					<i>No change required.</i>

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	<u>DP</u>
40	Section 199(2) Provisions of S155(4)(b) & any other Constitutional Provisions					<i>No change required</i>

Filename CAFFC3

BLOCK	CONSTITUTIONAL ISSUE	PAC	ACDP	CP	
41	Section 199(2) Provisions of S155(4)(b) & any other Constitutional Provisions				

Filename CAFFC4

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
42	<p><u>Section 200 (1)</u></p> <p><u>Membership of FFC</u></p>	<p>1. "The Constitution should provide that members of the Commission shall be appointed by the President in consultation with both the Cabinet and a co-operative 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 legislatures."</p> <p>2. While the constitution should specify the method of appointment [S200(1)] (and possibly also the method of impeachment) of commissioners to ensure their independence [S200(4)] national legislation should specify the number of members of the FFC, [S200(1)], their full-time or part-time status [S200(1)] and the manner of choosing a chair and deputy chair [S200(1)(a)], to allow for flexibility in terms of numbers and extent of participation and to take account of the experience of the present FFC and international practice."</p>		<p>S200(1)(a):- one of the Chairperson or Deputy-Chairperson must have knowledge of state finance.</p> <p>S200(1)(b):- these persons must have knowledge of Provincial financial affairs.</p> <p>S200(1)(c):- At least four of these members must have knowledge of local government financial affairs.</p>		<p>"The commission shall consist of:-</p> <p>(a) a judge or retired judge who shall be the chairperson appointed by the President after consultation with the Premiers</p> <p>(b) a person designated by the Minister responsible for national finance matters</p> <p>(c) a person designated jointly by the provinces</p> <p>(d) a person designated by a representative body of organised local government</p> <p>(e) a person designated by each of the Executive Councils of the provinces</p> <p>(f) a person designated by a representative local government body in each of the provinces</p> <p>(g) persons designated by the Cabinet, up to a maximum of nine."</p>

Note the items in square brackets [] are included by the Technical Advisor to cross-refer to existing paragraphs in the Interim Constitution.

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP	COMMISSION ON PROVINCIAL GOVERNMENT
43	<p><u>Section 200 (1)</u></p> <p><u>Membership of FFC</u></p>	"	<p>The PAC would submit that the composition of the Commission should draw representation from the Provinces, Local government structures and any other interested party.</p>		<p>The method of 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 ... role to play...</p> <p>The CPG is of the opinion... 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.</p> <p>The large number of members makes the FFC cumbersome.... In the CPG'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.</p> <p>Strong arguments have also been advanced... that the representation of local government on the FFC should be expanded significantly, relative to that of the provinces.</p> <p>To address these different sets of concerns, the CPG consequently recommends that the FFC structure should consist of two chambers:-</p> <p>(i) The core FFC - 7 members - refer CPG document for full details.</p> <p>(ii) A Plenary Chamber - representatives from each province; a representative of local government in each province; a maximum of nine national government representatives and members of the core FFC.</p>

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
44	<u>Section 200(2)</u> <u>First Appointment</u>					Delete.
45	<u>Section 200(3)</u> <u>Qualifications & Expertise</u>					No change required
46	<u>Section 200(4)</u> <u>Removal from Office</u>					The President should consult with the person or body who designated a member before removing such member. Also a message referred to in S200(4)(b) should also be sent to the person or body who designated such a member.
47	<u>Section 200(5)</u> <u>Filling of Vacancies</u>					No change required.
48	<u>Section 200(6)</u> <u>Tenor of Office</u>				The Chairperson and the Deputy-Chairperson must be appointed for a maximum of ten years. Ordinary members may serve for a maximum of ten years. If an ordinary member becomes a Deputy-Chairperson or Chairperson, that persons' total term, including their term as an ordinary member, shall not be more than 15 years.	Chairperson appointed for 5 years, other member for 3 years, but shall be eligible for re-appointment.

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP
49	<u>Section 200(2)</u> <u>First Appointment</u>			
50	<u>Section 200(3)</u> <u>Qualifications & Expertise</u>			
51	<u>Section 200(4)</u> <u>Removal from Office</u>			
52	<u>Section 200(5)</u> <u>Filling of Vacancies</u>			
53	<u>Section 200(6)</u> <u>Tenor of Office</u>			

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
54	<u>Section 200(7)</u> <i>Performance of Duties</i>					No change required.
55	<u>Section 200(8)</u> <i>Remuneration Outside of Official Duties</i>					The chairperson and those persons appointed in terms of S200(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.
56	<u>Section 200(9)</u> <i>Holding of Political Office</i>					No change required.
57	<u>Section 200(10)</u> <i>Influencing Other Members</i>					No change required.
58	<u>Section 200(11)</u> <i>Role of Chairperson & Deputy Chairperson</i>					Amend to read:- The chairperson shall be the chief executive officer of the Commission.

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP
59	<u>Section 200(7)</u> <u>Performance of Duties</u>			
60	<u>Section 200(8)</u> <u>Remuneration Outside of Official Duties</u>			
61	<u>Section 200(9)</u> <u>Holding of Political Office</u>			
62	<u>Section 200(10)</u> <u>Influencing Other Members</u>			
63	<u>Section 200(11)</u> <u>Role of Chairperson & Deputy Chairperson</u>			

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
64	<u>Section 201</u> <u>Meetings of the Commission</u>					Essential content in order.
65	<u>Section 201(1)</u> <u>First Meeting & Absence of Chairperson & Deputy-Chairperson</u>					As above.
66	<u>Section 201(2)</u> <u>Quorum</u>					As above.
67	<u>Section 201(3)</u> <u>Decision by 2/3rds of Members Present</u>					As above
68	<u>Section 201(4)</u> <u>All Decisions Recorded</u>					As above.
69	<u>Proposed New Section 201(5)</u>				Meetings of the Commission are to be open to the public.	

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP
70	<u>Section 201</u> <u>Meetings of the Commission</u>			
71	<u>Section 201(1)</u> <u>First Meeting & Absence of Chairperson & Deputy- Chairperson</u>			
72	<u>Section 201(2)</u> <u>Quorum</u>			
73	<u>Section 201(3)</u> <u>Decision by 2/3rds of Members Present</u>			
74	<u>Section 201(4)</u> <u>All Decisions Recorded</u>			

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
75	<u>Section 202</u> <u>Committees</u>					<i>Add: The members designated in terms of S200(1)(a), (b), (c) and (d) shall constitute an Executive Committee of the Commission.</i>
76	<u>Section 202(1)</u> <u>Establishment</u>					
77	<u>Section 202(2)</u> <i>Members Determined by Commission</i>					
78	<u>Section 202(3)</u> <i>Designation of Committee Chairperson</i>					
79	<u>Section 202(4)</u> <i>Delegation of Commission's Powers to Committees</i>				<i>Add to S200(4)(b):- the decision of a Committee with a two-thirds' majority can overrule the Commission.</i>	

BLOCK	CONSTITUTIONAL ISSUE	ACDP	PAC	CP
80	<u>Section 202</u> <u>Committees</u>			
81	<u>Section 202(1)</u> <u>Establishment</u>			
82	<u>Section 202(2)</u> <u>Members Determined by Commission</u>			
83	<u>Section 202(3)</u> <u>Designation of Committee Chairperson</u>			
84	<u>Section 202(4)</u> <u>Delegation of Commission's Powers to Committees</u>			

BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
85	<u>Section 203</u> <u>Co-option of Persons by Committees</u>	<i>"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."</i>				<i>No change required.</i>
86	<u>Section 203(1)</u> <u>Committee can Co-opt Any Person</u>	<i>As above</i>				
87	<u>Section 203(2)</u> <u>Person Not Entitled to Vote</u>	<i>As above.</i>				

<i>BLOCK</i>	<i>CONSTITUTIONAL ISSUE</i>	<i>ACDP</i>	<i>PAC</i>	<i>CP</i>
88	<i>Section 203</i> <i>Co-option of Persons by</i> <i>Committees</i>			
89	<i>Section 203(1)</i> <i>Committee can Co-opt Any</i> <i>Person</i>			
90	<i>Section 203(2)</i> <i>Person Not Entitled to Vote</i>			

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BLOCK	CONSTITUTIONAL ISSUE	ANC	NP	IFP	FF	DP
91	Section 204 Remuneration & Allowances of Members & Other Persons	<i>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.</i>				No change required.
92	Section 205 Appointment of Staff	As above				
93	Section 205(1) In Consultation with the Public Service Commission	As above				Staff should be "after consultation" rather than "in consultation".
94	Section 205(2) Parliamentary Appropriations to Pay for Incidental Expenditures	As above				
95	Section 206 Regulations	As above				No change required.
96	Suggested New Clauses	<i>The Constitution should provide that the FFC present regular reports both to Parliament and to provincial legislatures in a manner to be determined by national legislation.</i>	<i>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.</i>			

BLOCK	CONSTITUTIONAL ISSUE	ACDP	P A C	CP
97	<u>Section 204</u> <i>Remuneration & Allowances of Members & Other Persons</i>	<i>As above</i>		
98	<u>Section 205</u> <i>Appointment of Staff</i>	<i>As above</i>		
99	<u>Section 205(1)</u> <i>In Consultation with the Public Service Commission</i>	<i>As above</i>		
100	<u>Section 205(2)</u> <i>Parliamentary Appropriations to Pay for Incidental Expenditures</i>	<i>As above</i>		
101	<u>Section 206</u> <i>Regulations</i>	<i>As above</i>		
102	<u>Suggested New Clauses</u>	<i>The Constitution should provide that the FFC present regular reports both to Parliament and to provincial legislatures in a manner to be determined by national legislation.</i>		

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.2 FINANCIAL INSTITUTIONS AND PUBLIC ENTERPRISES

REPORT AND DRAFT FORMULATIONS ON GENERAL FINANCIAL MATTERS

5 SEPTEMBER 1995

CONTENTS

1.	Draft formulations	Pages 39 - 42
2.	Schematic Summary	Pages 43 - 51

SECOND DRAFT - 4 SEPTEMBER 1995

Status: Prepared by CA Law Advisers for discussion by CC.

GENERAL FINANCIAL MATTERS

National Revenue Fund

1. (1) There shall be a National Revenue Fund. All revenues, as determined by a national law, raised or received by the national government shall be paid into the National Revenue Fund. Parliament shall make appropriations from the National Revenue Fund in accordance with national law.¹

(2) No money may be withdrawn from the National Revenue Fund except under appropriation made by a national law. Revenue to which a province is entitled in terms of this Constitution² shall form a direct charge against the National Revenue Fund to be credited³ to the Provincial Revenue Fund concerned.⁴

¹ This subsection is based on block 1 of TC 6.2 Report on the NRF, and is a reformulation of section 185(1) of the interim Constitution. Consensus on this provision is subject to the FF's reservation that it does not preclude provinces from raising revenue themselves or retaining revenue due to them, as well as the IFP's proviso that all transfers from the national government to the provinces are to be paid directly into the relevant Provincial Revenue Fund.

² This refers to the provision in the new Constitution dealing with provinces' share of revenue collected at national level, which is a matter still under consideration by TC 3.

³ The NP requires clarity on the meaning of the word "credit". The DP prefers the words "paid into". See block 2 of the Report.

⁴ This subsection is based on block 2 of the Report and section 185(2) of the interim Constitution.

DP, MNC
NP - should
be reference
to annual
budget.

Second draft: 4 September 1995

Annual budget

2. ...⁵

Procurement administration

3. (1) The procurement of goods and services for any level of government shall be regulated by national and provincial laws. Such laws shall make provision for the appointment of independent and impartial tender boards to deal with such procurements.⁶

(2) The tendering system shall be fair, public and competitive. A tender board shall give reasons for its decision if requested by an interested party.⁷

transposing
add

⁵ The parties broadly agree that there is a need for inclusion into the new Constitution of a provision such as section 186 of the interim Constitution. However, there is no consensus on what should go into such a clause. The following are issues that have been debated in the TC:

- (a) The issue of a balanced budget;
- (b) The issue of disclosure and reporting of government accounts and budgets; and
- (c) the issue of including a statement of costs of compliance with all bills laid before Parliament.

As these issues are still under consideration, drafting would be premature at this stage.

If the substance of section 186 of the interim Constitution is to be retained, the following wording is proposed:

Annual budget

2. ✓ The Minister responsible for national financial affairs shall in respect of every financial year lay an annual budget before Parliament. The annual budget shall reflect the estimates of revenue and expenditure, which shall, among other things, reflect capital and current expenditure of the government for that year.

DP's issues
to be noted

To be reconsidered later
reflects the estimates
of revenue & expenditure
yes
not
needed

⁶ As per block 6 of the Report and a reformulation of section 187(1) of the interim Constitution.

⁷ As per block 6 of the Report and a reformulation of section 187(2) of the interim Constitution.

Add. footnote, see a, b, c. The DP

would still like to go to sub-committee

DP to give us formulation

(3) No person and no organ of state shall improperly interfere with a tender board in the discharge of its functions.⁸

(4) All decisions of a tender board shall be recorded and shall be open to public inspection.⁹

Guarantees by national government

4. The national government may not guarantee provincial or local government loans, unless -

- (a) the guarantee complies with the norms and conditions for such a guarantee as set out in a national law; and
- (b) the Financial and Fiscal Commission has made a recommendation concerning compliance of the guarantee with such norms and conditions.¹⁰

⁸ As per block 6 of the Report and a reformulation of section 187(3) of the interim Constitution.

⁹ As per block 6 of the Report and a reformulation of section 187(4) of the interim Constitution.

¹⁰ As per block 7 of the Report and a reformulation of section 188 of the interim Constitution. Consensus on this provision was with the understanding that its finalisation should await the final decisions of TC 3. Once the envisaged role of the FFC in this regard has been clarified, this provision could possibly be simplified. Further clarity was also required on the issue of national government guarantees for loans by parastatals.

Accountability of Public Enterprises

5. Any enterprise in which public money is invested or whose sources of revenue are regulated by law or which is able to raise revenue in terms of legislation may, in a manner determined by national law, be required to report to and to give evidence before Parliament.¹¹

¹¹ Formulated as per block 11 of the Report. The NP further suggests that the autonomy of the Commissioner for Inland Revenue be constitutionalised, which according to the ANC is a matter which can be dealt with by subsidiary legislation.

NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
1	<p><u>Section 185(1):</u> Establishment of a National Revenue Fund</p>	<p><i>Consensus on the need to establish the NRF</i></p>		<p><i>Consensus subject to the FF's reservations that this does not preclude Provinces from raising revenue themselves or from retaining revenue due to them.</i></p> <p><i>Also subject to the IFP's proviso that all transfers from the national government and national revenues allocated to Provinces are to be paid directly into the relevant Provincial Revenue Funds.</i></p> <p><i>The Theme Committee has mixed (but not fixed) views on whether there should be provision for establishment of dedicated funds, as suggested in a submission by SACOB. There is however consensus that any such funds should go through the budget and not be "off budget"</i></p>

<p>2</p>	<p>Section 185(2):-</p>	<p><i>All parties agree to the clause in principle.</i></p>		<p><i>1. The DP prefers the words "paid into" which would ensure access to the relevant funds. However this will almost certainly require clarification once Theme Committee 3 has finalised Sections 155(2)(a) and (b).</i></p> <p><i>2. The NP requires clarity on whether "credit" means having money available and recognises that this will need to be revisited (for wording purposes) once Section 155 has been dealt with by Theme Committee 3.</i></p> <p><i>3. Clarity is also required on whether either "paid into" or "credited" means that funds will be:- (a) made available; and/or (b) made available immediately; and/or (c) made available immediately and <u>in toto</u> (ie:- all funds upfront). Different possible categories of transfer will occur and each will require separate treatment. Collection methods will also vary - collection throughout the year vs collections at a particular time (eg:- beginning of the month).</i></p>
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NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
3	<u>Section 186</u>	<p>All parties broadly agree to the need to insert a clause of this nature. However the content of the clause is a matter of discussion and some contention. Individual issues follow:-</p>		
	<p>(a) Issue of a balanced budget being included in the Constitution as a principle and if included, the requirement for special majorities to pass unbalanced budgets.</p>		<p>The DP and IFP support inclusion of a balanced budget provision as a principle in the Constitution. The IFP argues for this in instances where government resorts to public debt. The DP provides a detailed formulation for identifying the absence of a balanced budget in the Constitution on the grounds that unacceptably high deficits are a significant abuse of economic power, in particular because the immediate detrimental effects are not obvious and there are inter-generational consequences flowing from budget deficits.</p> <p>The DP argues that the proposal is an element of economic policy, of a special category and because budget deficits represent an abuse of economic power the practice should be prevented Constitutionally. The DP argues that a Constitutional proviso of this nature could take effect at some future period (5-10 years is suggested).</p> <p>The ANC does not support this, arguing that the insertion of balanced budget provisions in the Constitution <i>inter alia</i>:- represents a particular approach to economic policy which should not be Constitutionally binding; represent a constraint which is likely to render the passage of budget almost impossible; make budgets susceptible to political manoeuvring; will confuse that current process of budgetary reform; deny the possibility that in some instances budgets may be unbalanced but which remains within parameters of fiscal discipline.</p>	

			<p><i>The NP supports the objective of a balanced budget and is in favour of it's insertion into the Constitution within a period of 5 to 10 years, but not to take effect immediately. The NP rejects the concept of financing current expenditure from long-term loans.</i></p> <p><i>The FF argues that US experience of balanced budgets has failed. The country should move <u>towards</u> a balanced budget. The FF argues that allowances need to be made for emergencies and for temporary deficits in times of recession and instead favours a Constitution that limits spending, placing a ceiling on total central government outlays, however funded. This would include budget items, credits, loan guarantees, etc. as a % of GNP.</i></p>	<p><i>The IFP stipulates detailed Constitutional criteria for the authorizing of state expenditure, for the conditions for resorting to public debt, the structure of presentation of the budget and provisions for the carry-over of funds into a new financial year. Finalisation of Section 186 is also subject to the organisation of provincial powers in fiscal and financial matters. The Theme Committee will require to comment on these proposals to determine whether consensus or contention applies with respect to these proposals.</i></p>
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Filename NRFSUMM3

NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
4	<u>Section 186</u> <i>(Continued)</i>			
	<i>(b) Issue of disclosure and method of reporting of government accounts and government budgets.</i>	<i>There is consensus on the need to improve the quality and extent of disclosure and methods of reporting of government accounts and government budgets.</i>	<p><i>The DP puts forward detailed proposals for improving the quality and extent of disclosure and reporting of government accounts and government budgets and argues that these proposals in some form should be included in the Constitution on the grounds that these are necessary in terms of Constitutional principles requiring freedom of information and open accounting administration and are principles which are consistent with practice in the second half of the Twentieth Century. The DP argues that full accounting on an accrual basis would not be practical immediately and accepts the need for a time delay before these proposals are Constitutionally binding.</i></p> <p><i>The ANC and the NP do not accept that the DP's proposal be inserted in the Constitution on the grounds that the proposals are too detailed for a Constitution; that budgetary reform is currently in progress; that a future system of accounting might not necessarily be based on the accrual method; The ANC would accept a more simple statement in the Constitution requiring full and frank disclosure, or full disclosure of the financial system of government, excluding certain secret accounts.</i></p> <p><i>The FF accepts the importance of full disclosure but does not express a firm view as to whether such proposals should be included in the Constitution or elsewhere.</i></p>	<i>There appear to be two broad approaches:- the first approach is represented by the DP, which argues for full details to be included in the Constitution. The second approach represents a consensus among other parties on the need for inclusion in the Constitution of a general phrase which requires a full and frank disclosure by government of the state of government finances, which can exclude disclosure of secret accounts, but which should include disclosure of off-budget financing.</i>

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NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
5	<i>Section 186 (Continued)</i>			
	<i>(c) Issue of including a statement of costs with all bills laid before Parliament.</i>	<i>There is consensus that a statement indicating costs of bills should be made available to decision-makers.</i>	<p><i>There is contention as to whether such a statement should be a constitutional requirement in the Constitution or whether in subsidiary legislation.</i></p> <p><i>The DP argues that the provision should be inserted in the Constitution. The NP argues that the principle of clearly stating compliance costs is an important one but does not express a firm view on whether this should be included in the Constitution or in subsidiary legislation. The ANC agrees with the principle of disclosing costs upfront as part of sound financial management but argues that this is a matter of policy and not a matter for the Constitution.</i></p>	

Filename NRFSUMM5

NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
6	<p>Section 187</p> <p>Procurement Administration</p> <p>Section 187(1)</p> <p>Section 187(2)</p> <p>Section 187(3)</p> <p>Section 187(4)</p>	<p><i>Consensus</i></p> <p><i>Consensus</i></p> <p><i>Consensus</i></p> <p><i>Consensus, with the recommendation by the DP (accepted by all parties) that the following words be added:- "and shall be open to public inspection".</i></p>		<p><i>The IFP argues that Section 187 is acceptable provided that Parliament may not legislate with respect to procurement at provincial level once the Province concerned had adopted its own legislation.</i></p>
7	<p>Section 188</p> <p>Guarantees of loans by National Government</p>	<p><i>Consensus, with the understanding that finalisation of this section should await the final decisions of Theme Committee 3.</i></p>		<p><i>There is consensus on the need to state a position with regard to guarantees by National Government to parastatals and other persons apart from Provincial and Local Government. This matter requires further clarity.</i></p>

NATIONAL REVENUE FUND

BLOCK	CONSTITUTIONAL ISSUE	CONSENSUS	CONTENTION	FURTHER CLARITY
8	<p>Section 189</p> <p>Special Pensions</p>	<p><i>Consensus that this section is no longer necessary and should be deleted.</i></p>		
9	<p>Section 190</p> <p>Income Tax of Elected Representatives</p>	<p><i>Consensus that this clause should be removed from the Constitution</i></p>		<p><i>The DP argues and all parties concur that the Section is superfluous as the Receiver of Revenue is obliged to assess the income tax returns of all persons, including elected representatives. In addition, the DP notes that the "Receiver of Revenue" is not defined in the Constitution.</i></p> <p><i>The NP argues that the constitution should contain a clause requiring the Receiver of Revenue to publish names of public representatives who have not paid their tax over two or three years, to bring this to the attention of Parliament and also the public.</i></p>
10	<p>Section 190A</p> <p>Pensions of Political Office-Bearers</p>	<p><i>Consensus that this clause should be removed.</i></p>		<p><i>Clarification sought by all parties on the motivation for including this clause in the Interim Constitution.</i></p>

11	<p>Additional Section pertaining to Financial Institutions or Public Enterprises</p>	<p><i>Consensus on the inclusion of a short Section in the Constitution which provides that any enterprise in which public money is invested or which is able to raise revenue in terms of legislation/whose sources of revenue are regulated by law, should be required to report and be available to give evidence to Parliament, in the interest of transparency, in a manner to be determined by national legislation.</i></p>	<p><i>1. The DP does not favour inclusion of Public Enterprises in the Constitution in general. However there may be a case for including Constitutional provisions for the disclosure and reporting requirements of Public Enterprises. The ANC concurs, arguing that this is particularly important where enterprises are being commercialised, becoming registered under separate Acts, instituting their own Boards and then reporting to the Minister concerned.</i></p> <p><i>Accordingly all parties concur on the formulation of an additional Section on the basis outlined in the attached block (refer Section in block on "Consensus").</i></p> <p><i>2. The NP suggests that the autonomy of the Commissioner for Inland Revenue be constitutionalised.</i></p> <p><i>3. The ANC suggests discussion on the possibility of introducing in subsidiary legislation (not in the Constitution) autonomy of the Commission for Inland Revenue.</i></p>
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