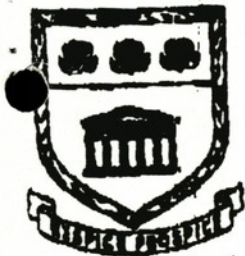


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28th October 1993

Colin Coleman  
Consultative Business Movement  
Johannesburg

Dear Colin

Here are my arguments on the role of the Financial and Fiscal Commission, and how it should be appointed, as outlined in the discussion I had with you. Please pass them on to anybody you think fit.

I intend to do a redraft of the relevant parts of chapter 11 of the constitution, but that is unlikely to be complete before Monday. There are more issues than I expected that need to be thought about.

Best wishes

Philip van Ryneveld

**EPRP**

The Fiscal and Financial Commission, and its position in the governance of inter-governmental fiscal relations

There appears to be some confusion amongst constitution makers about the role of the Fiscal and Financial Commission. This memo is an attempt to help clarify the issues.

It is increasingly being accepted that writing highly detailed provisions relating to inter-governmental fiscal relations into the constitution will not be possible. The uncertainty of how decentralisation will actually work is too great to tie the system down in this way.

Instead it is necessary to establish a few key principles and a process for fleshing out the detail in an ongoing way. This is not only necessary for the process of restructuring of the coming decade or so, but would be a useful approach subsequently too. Many of the fiscal anomalies which arise in existing federations may have been avoided with this approach. Unitary systems which do not have the same problem of inflexibility could perhaps also have benefitted from such an approach.

The key principles which need to be established are

- 1) The level of government most effectively able to perform a particular function should be the one made responsible for it.
- 2) The sharing between each level of government and each government on each level of both revenue and the right to raise revenue should be fair, and in accordance with where responsibilities for performing functions lie.
- 3) Revenue transfers should not be used to compromise unduly the proper functioning of any government on any level.
- 4) The fiscal system must operate in a manner which enhances efficiency.

Power should essentially be given to the national parliament to decide on the detail of the main issues, including which governments should have which powers to raise revenues; how much revenue should be transferred to the regions and on what basis, etc. Giving particular powers over any aspects of this to lower levels of government becomes too complex, without any significant advantage. The need for national government to be able to conduct economic policy soundly also requires this.

However, any action by central government which contradicts these principles would be rejected by the constitutional court.

This is a far better way of protecting lower levels of government than trying to give them detailed powers in the constitution.

Nevertheless, the problem remains that deciding on what are 'fair' shares of revenue, what distribution of the rights to tax compromises the capacity of government to carry out its role, whether a government's proper functioning has been 'unduly

compromised', etc requires a large amount of accumulated knowledge about the fiscal system and systematic gathering of information over substantial periods of time for correct decisions to be made. This cannot be done by the constitutional court.

Thus the system of inter-governmental fiscal relations needs an ongoing, impartial, legitimate, technically competent monitoring process, which cannot be performed either inside government or by the courts. The Financial and Fiscal Commission is thus required to ensure this process. A large duplicate bureaucracy need not be required; but the process of information collection and analysis by all government institutions must be open and transparent to the commission.

Its monitoring should be such as to allow it to make sound recommendations in relation to all aspects of inter-governmental fiscal relations, including a mechanism for fair allocation of revenue collected nationally to lower levels of government.

However, the Financial and Fiscal Commission should not be expected to take political decisions. Political decisions should be taken by political representatives, and if these decisions contradict the constitution, it is the role of the constitutional court to make judgements in this regard. If government wishes to reject the recommendations of the Financial and Fiscal Commission aggrieved parties can take the issue to the constitutional court where government would be expected to show that it has not contradicted the provisions of the constitution (ie the principles laid out above.)

What presumably will happen will be an ongoing interactive process of bargaining between governments so as to avoid the need to take the issue to court. This bargaining would involve inputs from the Financial and Fiscal Commission on an ongoing basis.

The essence of most of the four principles outlined above are already contained in the constitutional principles, although some additions may be necessary. However there may be a problem in relation to the appointment of the Financial and Fiscal Commission.

From the role outlined above, this commission needs to be made up of public finance experts who would be regarded collectively as impartial in making sound technical recommendations in relation to conflict between different levels of government as well as each governments on each level.

Constitutional principle 23 states that 'A Financial and Fiscal Commission, representing inter alia each of the SPRs shall make recommendations etc...'

In terms of the latest draft of the interim constitution the Financial and Fiscal Commission shall be made up of a chair and deputy chair appointed by the President on the advice of the cabinet, and one public finance expert appointed by each region.

It is logical to expect that each region will appoint a technical expert who will promote the interests of that region. This makes

the commission into a body for political bargaining and one which will favour these regions which can form a majority in the commission. The likelihood is that regions which are run by parties which are not widely supported elsewhere will be unfairly treated, and even if not, will regard themselves to be so.

The interests of local government, on the other hand, will not be represented at all, and national government, directly, only to a small degree through the appointment of the chair and vice-chair.

There seems little reason why this type of process could not be better conducted by politicians in the senate (or in some equivalent body such as a council of regional finance ministers), which represents each region equally.

A different way of appointing the Financial and Fiscal Commission is thus required, which would entail interpreting more loosely the provision that the commission 'represent' each of the regions.

There should be representation from each level of government, as well as from other interest groups in society.

A possible way of doing it would be for each level of government to have two representatives, and organised business and labour each to have one representative. The president should appoint a chair, giving nine people altogether.

For the regional and local levels, each region and local authority should put forward nominations. The constitutional court would then decide which person is to become a commissioner. This would mean that regions and local authorities will have an incentive to put forward competent, impartial people if they wish to have them appointed.

While each commissioner could be appointed for four years, appointments should be staggered so that there is a continuous flow of people through the commission, to ensure continuity.

It may not be necessary for the commissioners to work full time on the commission. There must, however, be a full time properly resourced secretariat.

The commission must have the power and ability to get any information necessary for carrying out its tasks effectively.

Philip van Ryneveld  
28th October 1993.