

2/4/3/8/04

**CONSTITUTIONAL  
ASSEMBLY**

**THEME COMMITTEE 3**

**FINANCIAL & FISCAL  
RELATIONS**

**DRAFT 3**

**BY**

**TECHNICAL ADVISORS**

**15 AUGUST 1995**

*Embargoed until 14h00 Tues 15/8/95*



## TABLE OF CONTENTS

1	Schematic Report	Pages 1 - 7
2	Party Submissions ACDP ANC DP NP PAC	Pages 5 - 8 Pages 9 - 13 Pages 14 - 19 Pages 20 - 29 Pages 30 - 32

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**REPORT THEME COMMITTEE 3  
REPORT: AREAS OF AGREEMENT & CONTENTION:  
FINANCIAL & FISCAL RELATIONS<sup>1</sup>**

<b>Constitutional issues</b>	<b>Agreement</b>	<b>Contention</b>	<b>Further clarity</b>
<b>1. Constitutional restrictions on capacity of provinces to levy taxes.</b>	The provinces should not have an ineffectual power to levy taxes.		1. The ACDP submission is not totally clear ie whether they favour the so-called Canadian option ie. parallel tax power for provinces and central government.

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<sup>1</sup> Certain of the party submissions impact upon the workings of Theme Committee 6.2. Only those financial and fiscal issues which relate to provincial and national powers have been included in this report.



Constitutional issues	Agreement	Contention	Further clarity
<p><b>2. Nature of restriction <sup>(2)</sup> ie should there be changes to S156 of the Interim Constitution?</b></p>	<p>The provinces should at least be entitled to levy non-national taxes such as in:</p> <ul style="list-style-type: none"> <li>(a) casinos</li> <li>(b) gambling</li> <li>(c) vehicle levies</li> </ul>	<p>Whether provincial tax power should be constitutionalised in express terms</p> <ol style="list-style-type: none"> <li>1. DP &amp; NP say yes, ANC say no.</li> <li>2. PAC says that the Constitution should only grant provinces administrative powers.</li> </ol>	<ol style="list-style-type: none"> <li>1. NP submits that Financial &amp; Fiscal Commission should be able to recommend an extension of list of provincial taxes. With respect to stamp &amp; transfer duty the NP suggest that the rate should be determined by national government in consultation with the provinces <del>and</del> shall have right to abolish those duties upon recommendation of the FFC.</li> <li>2. The DP submits that provinces should be competent to levy taxes, levies other than income tax, VAT as well as surcharges &amp; retail sales tax after consultation with Minister of Finance &amp; the FFC, that there is adherence to &amp; compliance with principle of non-discrimination against non-residents of the province. A provincial legislature shall not be entitled to levy taxes, levies &amp; duties which materially &amp; unreasonably prejudice the national mobility of goods, services, capital &amp; labour.</li> <li>3. The ANC suggests that it is more efficient for provinces (or local government) to collect taxes. They should be allocated those powers as well as the power to use the revenue as collected.</li> </ol>

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Constitutional issues	Agreement	Contention	Further clarity
			4. The ACDP wants greater tax powers for the provinces
3. Constitutional restrictions on loans raising by provinces.	1. S157 should be retained.		<p>1. The NP suggests <sup>the</sup> establishment of Loans Authority to co-ordinate issue of loan stock. (This Authority would also determine policy for management of the debt of the 3 levels of government) - Constitution to provide legislation therefor.</p> <p>2. ANC suggests an amendment to S157(2) - loans referred to in S157(1)(a) may be raised for bridging finance in the fiscal year subject to reasonable conditions as may be described by an Act of Parliament passed after recommendation by the FFC. [S157(1)(a) deals with current expenditure].</p>



Constitutional Issues	Agreement	Contention	Further clarity
<p><b>4. Should the Constitution have a specific formulation to ensure an equitable revenue share to provinces?</b></p>	<p>1. There is agreement that there should be an equitable share of revenue to provinces. The Constitution relates to the formulation &amp; determination of the formula.</p> <p><i>Contention</i></p>	<p>1. ANC submits that formula should not be stipulated in the Constitution but be provided for in national enabling legislation.  2. The NP and DP suggest an express provision in Constitution  3. The ACDP &amp; PAC are silent.</p>	<p>1.1 The ANC suggests the establishment of a Budgetary Co-operative Council to give the provinces greater role in co-ordination of fiscal matters. The BCC will operate under the auspices of the Council of Provinces (Senate).  1.2 Constitution to provide for framework legislation empowering national government to pass legislation facilitating intergovernmental co-operation on fiscal matters.  1.3 The Constitution should provide that the determination of the revenue formula should be determined through specified process in which the FFC make recommendations on the formula to parliament &amp; provincial legislatures: recommendations subject to appropriate inter-governmental consultation &amp; the final formula passed by national parliament.  2.1 The NP supports S155 read in conjunction with S199.  2.2 All taxes to be deposited in National Revenue Fund for sharing with provinces after having raised by means of a budget presented by the National</p>



Constitutional issues	Agreement	Contention	Further clarity
		<p style="text-align: center;"><i>definite</i></p>	<p>Government.</p> <p>2.3 Servicing of national debt should have first claim on taxes collected nationally before the balance is shared in terms of the formula recommended by FFC. [See S155(4)].</p> <p>2.4 Servicing of provincial debt to have first claim on revenue accruing to provinces.</p> <p>2.5 The NP submits that the Constitution should prohibit withholding of province's share of revenue other than by Parliament following report by Auditor General confirming gross mal-administration by a province.</p> <p>3. The DP proposes <del>different</del> formula to determine equitable share - each province's 25% of income tax on individual, VAT, fuel levy &amp; 50% of other taxes collected nationally in proportion to population size; 25% of individual invoice tax VAT, fuel levy in proportion to amounts collected in provinces; 2% of all taxes raised by national government to be distributed to</p>



Constitutional issues		Contention	Further clarity
			local governments in proportion to their population size & conditional or unconditional grants as defined. 4. The PAC submit that central government after consultation with FFC allocate the budget.

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**5. Expenditure by provinces: should the Constitution provide for regulation of provincial expenditure?**

Various <sup>party</sup> ~~part~~ proposals impact upon the expenditure process.

1.1 NP proposes that national government should have power to take over financial management of a province ~~if Parliament~~, after report from the Auditor General that the province is incompetent to ~~perform~~ <sup>to be</sup> ~~this~~ <sup>per-</sup> task.

1.2 S126 amended so that provinces <sup>n</sup> granted greater autonomy to determine spending priorities in respect of their functions, in particular ~~National~~ <sup>government</sup> power to withhold tax revenue of province which doesn't maintain minimum services ~~of standards~~ <sup>or</sup> to be scrapped.

2. ANC recommends constitutional framework legislation to provide for effective role of legislatures in budgetary process.

3. PAC submit that budgetary allocation be administered by central government with consultation by FFC.

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