

# Intergovernmental Fiscal Relations in South Africa and the Role of the Financial and Fiscal Commission A 20 Year Review

By

Jaap de Visser

&

Zemelak Ayele



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## **INTRODUCTION**

The Finance and Fiscal Commission is government's primary advisor with regard to intergovernmental fiscal relations. Its constitutional entrenchment and establishment in 1994 signalled that the post-apartheid government took serious the commonly held wisdom that national decisions on intergovernmental fiscal matters must be discussed between governments, that they must be evidence-based and that intergovernmental fiscal relations must be reasonably predictable.

This paper reviews the history of the Commission to mark its 20th Anniversary. The paper combines a thematic and a chronological approach. It contains a narrative of the development of the Commission since its establishment, which traces the development of the Commission from its conceptualisation and inception to the most recent initiatives and policy debates. It rekindles some of the debates that surrounded the inclusion of the Commission in the Constitution and the policy process that underpinned the Financial and Fiscal Commission Act of 1997 and assesses how this role unfolded in the subsequent years. Throughout this narrative, three dimensions are addressed. The first relates to the location of the Commission in the intergovernmental system, in other words the relationships between the Commission and the various component parts of the South African multilevel government system. The second dimension is concerned with the impact that the Commission has made on decision making in the realm of intergovernmental fiscal relations. Was the Commission taken seriously? To what extent did its recommendations influence government policy? The third theme examines the Commission as an institution and assesses its governance and administrative performance, given the importance of these themes in asserting the Commission's enduring relevance and impact. In examining these themes, comparisons with comparable multilevel government systems are made as and when relevant.

The authors reviewed a range of current and historic document, including annual reports, submissions, discussion documents and selected academic literature. In addition, ten in-depth interviews were conducted with current commissioners, past commissioners, Commission staff, officials representing (organised) local government, Parliament and provincial government.

## **THE ROOTS OF THE FFC**

The Commission was established in August 1994. However, its roots date back to much earlier discussions on decentralisation and regionalism, first within the ANC, as it prepared to take over power, and subsequently in the negotiations towards the interim Constitution of 1993 and the final Constitution of 1996.

The need for equitable distribution of resources lay at the root of the genesis of the Commission in the initial documentation surrounding the constitutional negotiations.

Initially, it was argued that redistribution could be achieved through demarcating “SPRs”<sup>1</sup> of equal strength and literally carrying forward the liberation movement’s slogan of “one city, one tax base”. The ten regions, proposed by the ANC, were premised on this notion ([unknown author], 1992). However, it soon became clear that this was impossible given the uneven spread of population and economic strength across the country. The proposals were rejected at the ANC Policy Conference of 1992. Subsequent to that, the notion of equitable redistribution of centrally raised revenue came to the fore and with that, the quest for fairness in the system of grant allocation. In a 1990 paper, prepared for the *National Consultative Conference on Local Government*, Van Ryneveld wrote about the necessity of grant systems to be -

“clearly laid down and widely agreed upon. Otherwise the process of allocation can be bitter, unfair and inefficient, particularly if it becomes subject to arbitrary political intervention (Van Ryneveld 1990, 23).”

The concept of a commission on intergovernmental finance first appears in early drafts of the *ANC Regional Policy*, adopted in March 1993 at a special ANC Policy Conference dedicated to the issue of regional government:

“...it would be unwise to leave such control entirely to central government...”

The ANC proposes the creation, by means of a statutory act of parliament, a permanent and independent Advisory Commission on Fiscal Decentralisation.

Such a Commission would be structured on a non-party-political basis in which certain powers for advising on the structure and mechanism of fiscal decentralisation would be vested. This Commission would be answerable to national parliament as a whole including the chamber in which the regions are represented at national level. Its powers should extend to aspects of transfers between all levels of government.

Its task would be to advise government how best to ensure that the allocation of taxes and transfers to the various levels of government takes place within guidelines laid down in the constitution. These guidelines must be consistent with the extent of political autonomy decentralised government is to have, and with the Bill of Rights. Such guidelines should ensure that transfers are made in such a way that lower levels of government are able to plan properly; that they are structured so as to enhance efficiency and local accountability and that they are open to clear and effective monitoring. The guidelines must seek, in a transparent and objective manner, to redress inequalities between regions...”

For those involved in designing South Africa’s Finance and Fiscal Commission, the Indian Finance Commission was an important source of inspiration and early engagements

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<sup>1</sup> Initial ANC documents referred to “States, Provinces or Regions (SPRs)” in order to avoid having to adopt possibly controversial names.

between India and South Africa proved very useful in crafting an endogenous institutional solution to the expected intergovernmental fiscal challenges. The Indian Finance Commission is a constitutional organ (Art 280 Constitution of India) composed of individuals appointed by the President. It makes recommendations on (1) both the vertical and the horizontal distribution of centrally generated revenue, (2) how to govern the grants in aid for states out of the consolidated fund of India and the amount to be paid to the states in need of assistance (3) measures needed to augment the consolidated fund of a state to supplement the resources of rural and urban local government in the state on the basis of recommendations made by the state finance commission. An important lesson that the South Africans took home from the early engagements with the Indian Finance Commission was the fact that it was not a permanent body but appointed every five years. This had reduced its impact and was a key reason why the South African equivalent became a permanent body.

The Interim Constitution made provision for the Financial and Fiscal Commission. Its mandate included a research orientation (“apprise itself of all financial and fiscal information relevant to...”) coupled with a role to advise legislatures, presumably at both national and provincial levels (“render advice to the relevant legislative authorities...”). The principle was established that national government should take the Commission’s recommendations into account -

- when determining a province’s equitable share (s 155(3) and (4)(d) 1993 Constitution);<sup>2</sup>
- when empowering provincial governments to impose taxes or service charges (ss 156(1)(a)(b) and (3)(a) 1993 Constitution) or guaranteeing provincial loans (s 188(b) 1993 Constitution); and
- in the design of a borrowing framework for provincial governments.

The 1993 Constitution immediately included local government into the mandate of the Commission by requiring its advice on -

- equitable share allocation to local government;
- legislation concerning local government’s taxation powers (some of which were later elevated to ‘original’ powers); and
- guaranteeing municipal loans.

The Commission comprised 18 members with each of the nine provinces designating a member in addition to the members appointed by the President (199(2) 1993 Constitution).

The existence of the Commission beyond the 1993 Constitution was guaranteed by Constitutional Principle xxvii which provided as follows:

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<sup>2</sup> In addition to recommending on allocations, the Commission was empowered to identify additional criteria to be taken into account (s 155(4)(b) Interim Constitution).

“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.”

In the Constitutional Assembly, tasked with the adoption of the 1996 Constitution, the Commission on Provincial Government recommended that -

“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” (Commission on Provincial Government 1995, para 3.2).

The constitutional and statutory framework for the Commission, as it appeared in the 1996 Constitution and subsequent legislation, is briefly outlined below.

### **CONSTITUTIONAL AND STATUTORY FRAMEWORK**

The Commission was constitutionally established with the mandate to make recommendations regarding intergovernmental financial matters to Parliament, provincial legislatures and any other authorities determined by national legislation. National legislation, dealing with the division of national revenue among spheres of government, equitable shares, national grants to provincial or local government and any conditions thereto, may not be passed before Parliament has consulted the Commission and considered its recommendations.

At least 10 months before the start of the financial year, the Commission must submit recommendations for that financial year to both houses of Parliament, the provincial legislatures and the Minister of Finance (s 9(1) IGFA). The recommendations must deal with the division of national revenue among national, provincial and local spheres, the determination of each province’s equitable share in the provincial share of that revenue and any other allocations to provinces, local government or municipalities and any conditions on which those allocations should be made. The Intergovernmental Fiscal Relations Act 97 of 1997, adopted to guide intergovernmental engagement surrounding intergovernmental finances, requires that the recommendations of the Commission take into account the matters listed in section 214(2)(a)-(f) of the Constitution. The Minister of Finance consults the Commission before introducing a Division of Revenue Bill (DoRB) in the National Assembly and has to report on how the recommendations of, and consultations with the Commission have been taken into account.

Another important advisory task for the Commission relates to its recommendations concerning assignments to local government. Before tabling a proposal for a national or provincial assignment to local government in general, the national or provincial Minister must consult the Commission. An assignment of functions or fiscal powers has no legal force

until the organ of state making such assignment has indicated the extent to which it gave consideration to the Commission's views. From becoming an advisory body in the budget process, this amendment (if enacted) is an invitation to the Commission to become actively involved in assessing the financial ramifications of the continuing restructuring of local government.

Members of the Commission are appointed by the President and must have appropriate expertise (S 221(1)-(2)). They may only be removed by the President on the ground of misconduct, incapacity or incompetence, a procedure which has never been invoked.

Initially, the Constitution replicated the 1993 Constitution's provisions with regard to the Commission's composition with an additional strengthening of the local government emphasis. It provided for a chair, deputy chair, nine provincial representatives, two local government representatives and nine additional members, totaling 22 members (S 7(a) Constitution of the Republic of South Africa Second Amendment Act, 61 of 2001). This proved to be unwieldy and made the Commission difficult to manage.

A constitutional amendment in 2001 changed this to the effect that the nine provincial representatives made way for three members, selected from a composite list of provincial nominees. The Minister of Finance collects nominations from the premiers, who must endeavour to reach consensus. The local government representation was kept at two (De Visser 2005, 242). The chairperson and his or her deputy remain exclusively appointed by the President.

The Commission's Chairperson or a delegation designated by him or her may attend meetings of the Budget Council (s 4(2)(a) Intergovernmental Fiscal Relations Act 97 of 1997, IGFRA) and the Budget Forum (s 7(2) IGFRA). The Budget Council consists of the Minister of Finance and MEC's from all nine provinces (S 2 IGFRA). The Budget Forum also comprises of the Minister of Finance and MEC's from all nine provinces and includes representatives of organised local government (s 5(1) IGRFA).

The Commission engages with intergovernmental fiscal relations through its regular, annual submission and through *ad hoc* projects. Its regular, annual engagement with the Division of Revenue Bill takes three forms. First, the Commission produces its recommendations on the equitable division of revenue among the three spheres of government (s 9(1) IGRFA). This is accompanied by a technical report. The Minister of Finance must consult the Commission 14 days prior to the introduction of the Bill in Parliament and indicate in a memorandum accompanying the Bill what account was taken of the Commission's recommendations (ss 10(3), (4) FFC Act). The Commission then produces its third document, a response to the Bill. Other submissions are undertaken by the Commission on its own initiative when it identifies a need to comment on matters affecting intergovernmental fiscal relations or when it is specifically requested by government to make a submission. The Commission also acts as a consultative body for and makes recommendations to organs of state in the national, provincial and local spheres of government on financial and fiscal matters (s 3 (1), Part 1 FFC

Act). The Commission thus produces and submits to Parliament annual proposals and briefings on fiscal framework and revenue. It also makes submissions to parliamentary committees on appropriation bills and the Medium Term Budget Policy Statement (MTBPS).

The above examination of the development of the constitutional and legal framework for the Commission brings two issues to the fore. The first is the move away from the Commission as a platform for the expression of subnational interests to an expert commission. The second is the ongoing debate about the precise contours of the Commission's mandate.

### **Move away from expression of subnational interests**

The early debates about the role and purpose of the Commission combined the role of giving expert advice with the express articulation of provincial interests. For example, the Constitutional Assembly's Commission on Provincial Government remarked that "[p]rovincial interests could be expressed most appropriately through the provinces' representatives in the second chamber (...) in the legislative process, *and through the FFC* in the administrative process" (Commission on Provincial Government 1995, para XX, *emph. added*).

The early composition, with its direct provincial representation, attested to the latter role. This created expectations. During the interviews, one past commissioner remarked that "[t]he Commission was more political at the time...It was quite formal. We were quite amazed to see that staff would be brought in and brought out, almost as if it the Commission was sitting like a cabinet".

Commissioners were also expected to make good on their provincial nomination, as one past commissioner recalled: "I was nominated by [a province] and they would ask me: why are you not fighting for us in the commission?"

Very soon however, the role as provider of expert advice eclipsed the provincial representation. In fact, one interviewee made the following remark with regard to provincial representation:

"That was wrong. That was a mistake. It was never the idea from the beginning but it ended up being written up like that in the Constitution...I remember Dullah Omar [member of the ANC Constitutional Working Group] came to me and asked me what do I think of it: I told him that it was not supposed to be representative of the regions: it has to be technical body."

During the Commission's initial, formative years, there was considerable space for the Commission to manoeuvre and make impact on the emerging intergovernmental fiscal design.

In 1997, shortly after the adoption of the 1996 Constitution, the Intergovernmental Fiscal Relations Act introduced firm intergovernmental procedures. It also established the Budget

Council and Budget Forum, which became the location for the debate among subnational governments. As one past commissioner remarks:

“Under the Interim Constitution, the Commission had a lot more say in the division of revenue because at the time, they were still structuring the system... The Intergovernmental Fiscal Relations Act was not in place yet so we had a lot more leeway.”

### **The Commission’s mandate**

The Commission defines itself as “an independent, objective, impartial and unbiased constitutional advisory institution... [and] ...a permanent expert Commission with a constitutionally defined structure...”. It sees its role as ‘the creation and maintenance of an effective, equitable and sustainable system of intergovernmental fiscal relations in South Africa’. Two themes are highlighted in relation to the Commission’s mandate, namely its role as advisor, rather than decision maker and the scope of its mandate.

#### *The Commission as advisor, not decision maker*

The debate about whether the Commission was to take decisions was resolved very early in the negotiations. The National Party, knowing it was about to lose political power, gravitated towards allocating powers over fiscal design to a technical body. Very early drafts of the ANC’s decentralisation policy also referred to a permanent fiscal commission “in which certain powers for *managing* the structure of fiscal decentralisation would be vested” and that “*ensure[s]* that the allocation...takes place within guidelines laid down in the constitution” (Van Ryneveld 1992, 4 emph. added). Later on, it was the ANC that insisted that its powers be limited to advice, as one past commissioner recalls:

“I remember Albie Sachs came to me and said something like: we can’t have this non-elected body taking all kinds of decisions: that’s not how it’s going to work.”

Aside from transitional dynamics, there was an early realisation that it would also have been counterproductive to imbue the Commission with decision making powers. In the word of a past commissioner:

“As soon as the finance commission becomes too powerful, politicians will come and destroy it.”

A current commissioner emphasised the accountability deficit that would result from the Commission having more than advisory powers: “We can’t account for the allocations, once they are made.”

### **More than just division of revenue**

It could be argued that a commission such as the FFC should limit itself to issuing advice on the division of national revenue and taxing powers, much like its Australian counterpart, the Commonwealth Grants Commission (ss 16-18 of the Commonwealth Grants Commission Act 54 of 1973). However, early comparisons with the Indian Finance Commission helped



produce the insight that the Commission should also advise on taxation issues. On the other end is the argument that the Commission is not limited to the allocation of revenue and taxing powers but should advise on the broad spectrum of issues related to the financing of public services.

The precise contours of the Commission's mandate have always been a matter for debate. For example, Wehner reports that in 1996, the Commission drafted a document, criticising government's macroeconomic policy "Growth, Employment and Redistribution (GEAR)" and that it was subsequently put under pressure by the Ministry of Finance to refrain from releasing the document. This sent out a clear signal to the Commission that it should not consider macro-economic policy as part of its mandate (Wehner 2003, 8).

Some interviewees argued that the Commission interprets its mandate too narrowly. All of them based their argument on the scope of section 214(2) of the Constitution, which contains the list of criteria to be considered in the legislation determining the division of revenue. One past commissioner remarked with respect to the factors that the Commission ought to consider:

"Section 214(2) is incredibly broad. You can't say that it restricts the Commission to IGR issues alone."

However, others were less convinced that the constitutional mandate is unequivocal in charging the Commission with the implementation mandate.

"Anyone can argue that those factors apply before the allocation and not after the allocation. That's a debate."

There was general agreement among the interviewees that the Commission's work is not just a mechanistic production of recommendations on the technical side of the division of revenue. The Commission's mandate includes the question about developmental impact: does the expenditure in a particular sector produce the value that it should? In the words of one past commissioner:

"It's not only about who receives what but also about how the money is spent."

Some interviewees went further and argued that the Commission should extend its focus beyond subnational governments and also look into the efficiency of national government.

"...central government is increasingly pouring money into areas beset with governance problems. The Commission should look into what that means..."

Or as another interviewee expressed it:

"We are constantly monitoring provincial and local government but the Commission should also assess the efficiency of national government departments."

The issue is not without its challenges, though. It is clear that the Commission is trying not to overstep its mandate also because pushing the envelope does not necessarily guarantee success. :

“When you find that money is not reaching the ground, you table a report in Parliament but then what? The person who must act on the Commission recommendations is the Minister of Finance and he can’t go into a department and tell them to fix issues. There is a cabinet colleague who is responsible for that.”

### **The independence of the commission**

Section 220(2) of the Constitution provides that the Commission is “independent and subject only to the Constitution and the law, and must be impartial”. Commissioners can be removed by the President but only on the ground of misconduct, incapacity or incompetence (s 11 FFC Act). With regard to the requirement of impartiality, commissioners are not legally prohibited from occupying any political office but there has never been a commissioner who combined his or her tenure with political office.

As indicated above, the Commission accounts to Parliament for its functioning, yet receives its budget from the National Treasury which also manages the nomination of members to the President for appointment. The interviewees held divergent views about the importance of the independence of the Commission. Some emphasised the independence of the Commission as absolutely central to its mandate and as something that needed to be asserted more, particularly in light of the Commission’s ambition to expand its focus from division of revenue to ‘value for money’. Some argued that it is not appropriate for the Commission to be financed from the National Treasury’s budget. In 2003, Wehner (2003, 15) argued that the Commission should not be financed through the very department with regard to which it is constitutionally intended as a systemic check. He argued that the Commission should be funded from a separate budget vote. This idea still resonates with some of the interviewees:

“I think also I would make ...an effort to get our budget off from the National Treasury. Because I think that is also another means of stifling us...You can’t be independent on one hand and have dependency tag on the other hand. You can’t be wielding the independence flag that side and then hoping, waiting, and praying for funding this side, to maintain your existence. I think if we have our own budget, given by Parliament, it will give us a fair opportunity that is not biased and prejudiced to state our case.”

Most interviewees took a more pragmatic line, though:

“There is no problem with that because everybody must present reports to the National Treasury. If you receive money from the national fiscus you have to report and explain.”

Or, as another interviewee expressed the same sentiment:

“The same problem would arise irrespective of where the budget is located so long as actors let non-professionalism to influence the size of the budget.”

The relationship between the Commission and the National Treasury is precious, though. A number of interviewees recounted run-ins between the Commission and the National Treasury, for example when a past Commission Chairperson started asserting the Commission's independence rather unreservedly.

“Suddenly, the Commission was beginning to use language that it ever used to use, around ‘autonomy’, ‘independence’ and ‘intruding on functions’ and no longer just about the right thing to do and to come in when you need to.”

This impacted negatively on the relationship with the National Treasury and, by all accounts, contributed to the Commission losing traction and seeing its impact diminish.

It was also argued that it is in the Commission's interest, strategically and practically, to work closely with the National Treasury: “if you only emphasise the independence, the Commission becomes isolated and rarified”. Practical mechanisms for greater collaboration, such as locating the Commission in the same building as the National Treasury and agreeing on a programme to rotate Commission staff and National Treasury staff were suggested to make sure that the Commission's work is grounded in the reality.

None of the interviewees reported any incidents of the National Treasury trying to influence or interfere with the Commission's work or research agenda. There was very little indication that the Commission ever experienced repercussions after making critical proposals. However, the management of the appointment procedure by the Treasury and the Presidency did give rise to concerns.

### **Appointment of commissioners**

The experience of the Commission has been that it seldom functioned with a full complement of commissioners. For example, from 2003 to 2004 and from 2012 to 2013 the Commission operated with only 55 per cent of the required number of commissioners. Also between 2005 and 2013 the Commission functioned with only 66 percent (Ramela 2013, XX) with critical vacancies only filled recently in 2014.

Since its inception, the Commission has been run by three Chairpersons and one acting chairperson. The Commission's first chairperson, Mr Murphy Morobe served two terms from 1994 to 2004. Dr Renosi Denise Mokate chaired the Commission from 2004 but left in 2005, before the expiry of her term. Mr Bethuel Setai was appointed in 2005 and chaired the Commission until 2010. From 2010 until the time of writing, the Commission functioned without a chairperson relying on its Deputy Chairperson, Mr Bongani Khumalo to act as chairperson (Ramela 2013, XX).

All interviewees agreed that the appointment procedure leaves much to be desired. Vacancies are left open for too long and appointment or renewal decisions seem erratic. Government's tardiness in filling vacancies, when viewed against the backdrop of section 5(3) of the FFC Act, which provides that vacancies must be filled within 90 days, constitutes non-compliance. Words and phrases such as “the law has been broken” and “really terrible”

were used by the interviewees. The mildest comment came from the interviewee who remarked:

“The appointment process seems to be somewhat of an ‘unmanaged environment’, which receives attention only when it hits the risk radar of the Minister.”

Explanations for the delay seem to be located in the need to avoid pre-empting new legislation that was going to make all the commissioners part-time. Regardless of the merits of this idea, the draft Bill of this piece of legislation was never finalised.

In the long run, the delays around the filling of vacancies may not serve government well. In the words of one interviewee:

“A wise Minister of Finance would ensure that the Commission is strong. It is like paying your medical aid: one day you’ll need it badly.”

The FFC Act places the Minister of Finance at the centre of the nomination process and at the same time the Commission spends money that is appropriated to the National Treasury Budget. Some interviewees argued that the Treasury is somewhat unresolved about its expectations with regard to the Commission, that the degree of ambiguity varies with incumbents in political and bureaucratic positions in the Finance Ministry and that this has impacted on the sense of urgency in filling vacancies. Minister Trevor Manuel received praise for instituting ‘Team Finance’, being the combination of the National Treasury, Budget Council and the Commission and, in the words of one interviewee “actively using it as a policy making process”.

Some commissioners see benefit in changing the nomination procedure, given that it remains controlled by the institution that, for all intents and purposes can be regarded as its counterpart. Indeed, the Parliamentary Commission tasked with reviewing Chapter 9 and associated institutions remarked that

“the Committee finds the selection and appointment of Commissioners solely by the Executive, as well as a total lack of parliamentary involvement, inconsistent with the principle of independence” (Parliament of the Republic of South Africa, 2007).

One commissioner explained it as follows:

“We report to Parliament but the President appoints you after a nomination by the Minister. If the Minister of Finance nominates you, it’s basically accepted (unless you’ve done something really obnoxious). Why is the Minister playing this role? Shouldn’t we have a public process with Parliament? I think that the appointment should be done by Parliament with the concurrence of the Minister of Finance.”

However, other interviewees disputed that these are pressing issues.

“We have such a wealth of smart people. Whether you get smart person A or smart person B, I don’t think that’s the issue. The issue is regular appointments and that being a managed process.”

The recent filling of critical vacancies comes as a great relief as it facilitates a better functioning of the Commission. However, the issue remains a risk that the Commission will always have limited control over.

### **Relationship with Parliament**

In terms of section 220(2) of the Constitution, the Commission makes regular representations to Parliament regarding the fiscal affairs of the three spheres of government. Parliament must also involve and consult the Commission in financial and fiscal matters (s 214(2) Constitution). The Money Bills Amendment Procedure and Related Matters Act 9 of 2009 requires parliamentary committees to consider the Commission's recommendations during their deliberations on Money Bills and local government legislation requires Parliament to consider the Commission's recommendations in matters related to the assignment of functions to local government. There is also a relationship of accountability: Parliament annually appropriates funding, on application by the Commission Chairperson (s 23(1) FFC Act) and the Commission must present its annual report to Parliament (s 26 FFC Act).

There is thus very regular interaction between Parliament's portfolio committees and the Commission. In 1999, the Commission established a Parliamentary Liaison Office to facilitate the Commission's permanent presence in Parliament.

The legislative framework has firmly embedded the Commission's role as key advisor to Parliament. However, impact is not achieved automatically and the relationship has been evolving. For example, during 1996-2006, the Commission's reports were sent to Parliament but Parliament had not yet developed protocols to deal with the Commission's recommendations and the Commission had not been proactive in assisting Parliament with that. The Fifteen Year Review remarks that the Money Bills Amendment Procedure and Related Matters Act "create[d] additional channels for the Commission's input into resource allocation processes, especially in relation to the fiscal framework and vertical division of revenue" (Mabugu 2009, 15). As of 2006, the Commission started responding in earnest to draft legislation referred to it, to supplement its role with regard to intergovernmental finance legislation.

However, it appears that the Commission's liaison office is understaffed and thus too thinly stretched to add value to all parliamentary processes that have an intergovernmental fiscal dimension. The Commission struggles to maintain a regular and effective representation in all the relevant portfolio and select committees, which often meet in parallel sessions. In practice, the Commission is forced to select meetings to attend or attend ten or fifteen minutes before leaving to be in another portfolio committee meeting.

There appears to be little structure or formalisation in the interactions between Parliament and the Commission. While the engagement is formally subject to recently instituted protocols, the extent to which parliamentary committees draw on the work of the Commission seems to vary greatly and is highly dependent on the extent to which the

committee chairperson engages the Commission. Interviewees responded that some committee chairs consistently overlooked the Commission and even reported some committee chairs being hostile towards it.

In addition, there is no structured working relationship with the South African Local Government Association (SALGA). SALGA also maintains a permanent presence in Parliament and, at a minimum, shares a concern with the Commission about the health and equity of subnational finances. The fact that the obvious synergy has not yet translated into a more structured working relationships could be due to the difference in working method and mandates but from both sides it was suggested that a stronger working relationship could be beneficial.

### **Provincial legislatures**

The Commission is constitutionally mandated to make recommendations to the provincial legislature (s 220(1) Constitution). In addition, the Constitution treats Parliament and provincial legislatures equally with regard to the Commission's duty to 'regularly report' (s 222 Constitution). It is suggested that this means that the Constitution envisages a relationship of accountability between the Commission and the provincial legislatures, which seems hard to maintain in practice, given that the Commission is funded by the central government and that provinces no longer designate specific representatives to the Commission. When it comes to engagement with provincial legislatures, one commissioner acknowledged:

“Until very recently, we really neglected the provincial legislatures. But it was from both sides. Many of them didn't see the need for us.”

Now, the Commission has agreed MOUs with the provincial legislatures and its annual recommendations are formally tabled and discussed in each of the provincial legislatures. Outside of those arrangements, the engagement between the Commission and the provincial legislatures seems to hinge on the Commission being invited by a legislature for an engagement on its work or including the legislature in a specific project. While some provincial legislatures actively pursue the advice of the Commission on matters before them, others do not seem to put a high premium on obtaining the Commission's recommendations.

### **IMPACT**

This paper examines the impact of the Commission by looking at three issues. The first is output volume and consistency, a basic measure of the Commission's quality and output. The second examines the extent to which the National Treasury responds the Commission's recommendations. The third is a more substantive examination of a number of areas where the Commission's work had a particularly high or particularly low impact.

## Output volume, consistency and response rate

Among the first and most influential of the Commission's outputs was what is called the *Framework Document for Intergovernmental Fiscal Relations*. This document, which was issued in June 1995, outlined "objectives for a new system of intergovernmental financial relations consistent with the Interim Constitution" and the envisaged role for the Commission. It identified norms to guide intergovernmental fiscal relations, all of which still bear relevance today.<sup>3</sup> Furthermore, in what is perhaps one of its most influential it announced the development of –

“...a formula, the parts of which have to be objectively agreed upon by the relevant parties. In a sense an allocation formula defines a procedure for dividing the available funds before individual issues come to the fore. In this way arbitrary allocations to the advantage of some and at the expense of others are effectively eliminated and the debate is reduced to matters of principle (FFC 1995, 25)”

The Commission also made its recommendations in its first submission for the 1996/97 budget year. These recommendations could not be considered in the 1996/97 budget proposal as the timing of their release did not provide for sufficient consultation and analysis for their formal incorporation into the expenditure planning processes.

In the initial years of the FFC, issues related to the 'timing' of submissions proved a major difficulty (Wehner 2003, 11; Mabugu 2009, 4). These were largely resolved when the Intergovernmental Fiscal Relations Act of 1997 imposed its sequencing routine and the FFC improved its protocols with Parliament and the National Treasury.

Since 1996, the Commission has produced eighteen submissions on the DoR, focusing on various themes and making a large number of recommendations, most of them linked directly to the DoR. There was one year, 1999, in which the Commission failed to produce its annual submission and thus did not live up to its statutory mandate. Wehner reports that the Commission decided that it was not 'desirable' to produce annual recommendations (Wehner 2003, 8) but the interviewees suggested the failure was occasioned by an exodus of staff and commissioners.

Before the enactment of the IGFR, the National Treasury was not required to respond to the Commissions' recommendations by way of showing to what extent it has taken the recommendation into consideration. In the memorandum accompanying the DoR, passing references were made to the recommendations. Even after the enactment the IGFR, the government did not respond to each of the recommendations specifically. It rather responded in general terms having summarised all the recommendations. It was only in 2001 that the government began responding in greater detail by summarising the

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<sup>3</sup> The norms listed were: effective resource use, accountability, nation building and fiscal autonomy, transparency, certainty of revenue, equity, development, administration, macro-economic management, loan financing, transition, resolving competing norms

Commission’s recommendations into different categories and responding per category. However recently the government has begun quoting and responding to each recommendations. This does not, however, mean that the government responds to every recommendation. For instance as the table below shows, government ignored 23 of the Commission’s 36 recommendations in its 2014/15 submissions. In the year before that, government ignored 26 of the 43 recommendations.

*Table 1: response rate*

<b>year</b>	<b>recommendations</b>	<b>responses</b>				
		<b>responses</b>	<b>no response</b>	<b>positive</b>	<b>negative</b>	<b>unspecific</b>
2014	36	13	23	8	1	4
2013	43	17	26	9	0	8
2012	23	20	3	13	3	4
2011	31	18	13	15	2	1
2010	27	12	15	8		4
<b>Total</b>	160	80	80	53	6	21

Source: DoR Bills 2010-2014

The table indicates that, in most instances where the National Treasury responded, it was largely in agreement with the Commission. In fact, over 60 per cent of the Commission’s recommendations have been accepted by government fully or in principle. In several instances, the National Treasury’s responses are unspecific, neither rejecting nor accepting the recommendation. It seems that the National Treasury is selective in formulating responses to the Commission’s recommendations. As a former commissioner remarked:

“The Treasury has become quite adept at ‘batting away’ the recommendations of the FFC. In my view, this is also related to the quality of the recommendations and the quality of the research underlying it.”

Over the years, the Commission has increased its academic output, which is testimony to the standing of its commissioners and staff and is also critical to influence the debate in the literature about intergovernmental fiscal issues. Over a five year period, it recorded a total of 34 peer reviewed articles and 7 papers at international conferences/book chapters, working papers and technical reports published in reputable internationally recognised outlets.



## **Impact stories**

### *First formula*

There is agreement across the board that the Commission made tremendous impact during its early formative years. A number of reasons can be advanced for this. First, the Commission entered the fray in a time when, in the words of one of the interviewees “the countries finances were in a total mess” and there was a knowledge vacuum in the area of intergovernmental finances. Secondly, the Commission comprised of “the young guns and people that were really enthusiastic and committed”. Thirdly, Mr Murphy Morobe, the first Chairperson took the lead, arrived with strong political credentials and was thus able to assert the Commission’s role without antagonising the politicians. Fourthly, the incoming ANC government had embraced the need to insert rationality into the debate surrounding intergovernmental finance and thus offered the Commission a platform.

The Commission was instrumental in the design of the first equitable share formula for provinces. It suggested a combination of a basic grant to establish and maintain institutions, a national standard grant to enable them to provide primary and secondary education and primary health care and a tax capacity equalisation grant. It provided illustrative calculations and specific proposals regarding the parameters, such as demography, to be included in the grant formula. These continued to serve as the basis for alterations throughout the years. The final provincial equitable allocations, included in the 1998/99 Division of Revenue Bill were derived from a formula similar in design to that proposed by the Commission and the approach taken in the Act followed the broad principles promoted by the Commission in its recommendations. The importance of the Commission inserting rationality in what could have become a very contentious process should not be underestimated:

“The role that the FFC played in the early years was incredibly important. Ask yourself: how much anger, contestation - which you get in many parts of the world – do we have about the distribution of national resources? If the discourse is about how many people are moving and about the data, then that is fine.”

Much of this work took place in a context where the odds were stacked against the insertion of rationality into the revenue allocation. First, the statutory framework for the engagement between the Commission, the National Treasury and Parliament (i.e. the FFC Act and the IGRFA) had not yet been erected. Second, with KwaZulu-Natal and the Western Cape governed by the IFP and National Party respectively, the ANC-run national government had to walk a fine line between pursuing its own electoral mandate and including two opposition-led provinces in the intergovernmental fiscal system. Thirdly, 1997-2000 was a time when provincial governments suffered from the most serious financial challenges, such as over-expenditure, vanity projects, bad financial management etc.

### *Costed norms*

In 2001, the FFC first raised the idea of a ‘costed norms approach’ to determine both the horizontal division between provinces and the vertical division between the national and

provincial spheres. This approach sought to identify ‘specific policy norms or goals for each sector’ and sought to develop an expenditure model for estimating the cost of achieving these policy objectives. It had in fact advocated the approach of “estimating the costs of achieving certain minimum standards implicit in government policies” in its 1996 submission and also raised it in its influential 1995 Framework document which stated that it is “imperative to implement a minimum standards approach, even if the categories must be phased in” (FFC 1995, 29). Inspiration was drawn from the Australian concept of ‘standardising expenditure and revenue’ (FFC 1995, 31).

“If you formulate a norm, let’s say every child without a mother or without a father must receive a grant, then you are imposing a burden on the provincial government. Given that provinces don’t raise their own revenue, that they don’t determine the beneficiary nor the amount, the transfers that go to provinces must take that responsibility into account.”

In 2001, a fully-fledged proposal was made, arguing for the definition of provincial allocations as the aggregate of the cost estimates across the different expenditure categories in the provincial budgets.

“We were saying: ‘define these norms and standards, make it minimum, make it affordable, make it comprehensive, and make the cost clear...If you define minimum norms and standards, you are not creating liability...the liability is already there. It was created with the justiciable socio-economic rights.’

This was not however accepted by the government both in 1996 and 2001. The government gave several reasons with the lack of data to support the approach, the danger it poses on provincial budgetary autonomy and the potential for distorted funding levels being key among those. The most important reason was the fear that the costed norms approach approach was “ambitious, potentially producing unaffordable expenditure projections” (XXXXX). In the words of one of the interviewees:

“Trevor Manuel’s response at the time was that the Bill of Rights allows for progressive realisation within the availability of resources.”

A different explanation was offered by one of the interviewees, to the effect that the National Treasury did not want its engagement with sector departments to revolve around norms and thereby increase its exposure to decisions that should be located within specific departments.

“The Treasury may ask for the norm to be pitched lower to become affordable. Then the [sector department] would pitch it lower, not because they want to but because the Minister of Finance says so.”

Despite this early rejection, the idea continued to percolate through the system. In any event, the National Treasury had always accepted it as an analytical tool to assess the

adequacy of allocations and spending (Magubu 2009, 6). The debate about costing these norms intensified when communities, assisted by NGOs started using the courts to claim the delivery of services according to basic norms emanating from the Bill of Rights. The remarks made by the Commission in 1995 and its efforts thereafter seem to have been validated. As some of the interviewees suggested, the Commission may have been ahead of its time:

“In many of the areas where we as the Commission were ignored, this has been because we were raising issues that confronted no other constitutional democracy.”

#### *Medium Term Expenditure Framework*

Many interviewees saw the Commission’s imprint in the ‘medium term expenditure framework’ (MTEF), government’s three-year rolling budget cycle that grew into a permanent feature of government’s fiscal system and which is appreciated all around for its contribution to predictable financing. It is argued that the idea for a multi-year planning cycle germinated in discussions between the FFC and government during the early years and was initially suggested by the Commission with a five year cycle. Explaining what led the FFC into suggesting the MTEF, a past commissioner says:

“One of the other considerations in chapter 13 ... is that there must be stability and predictability in the allocations ... So in order to achieve that we needed to have a plan...we needed to have a medium term plan under which we could work’

#### *Vertical division of revenue and top slicing of national debt*

The vertical division of revenue is a theme where the Commission has often disagreed with government. The Fifteen Year Review document notes that the Commission “began questioning not just the distribution of the national revenue cake but indeed its sheer size and whether that could be altered” (Mabugu 2009, 9).

National debt servicing precedes the vertical division of revenue. The consideration of the national debt is mentioned as one of the factors in section 214(2) of the Constitution. As the Constitution ranks it equal to the other factors, the Commission made an early argument that the vertical division should thus include and not be preceded by a consideration of the national debt:

“We raised this quite strongly: why do you have to ‘top-slice’ where the Bill of Rights has other considerations? How do you deal with what we later on called ‘constitutionally mandated basic services’? How do you balance that [constitutionally mandated basic services] against the top slicing of the national debt?”

The government did not specifically respond to the recommendation of the FFC with respect to vertical division of revenue in its 1996/97 budget statement. It did so however in the 1997/98 statement in which it rejected the proposal. The Budget Council decided that the vertical division of revenue should take place after the ‘top slice’ is made including the payment of national debt. Another interviewee stated categorically:

“You will not find a treasury around the world that will do that. Your first priority is to stabilise national finances. If we’d go belly-up like Greece or Portugal, our service delivery would become even worse...”

In 1999 the Commission argued for the vertical division of revenue to be dealt with in a formulaic manner, i.e. objectively. However, the Department of Finance insisted that the vertical split be based on ‘a political judgment made by Cabinet’ (Wehner 2003, 7). Some of the interviewees insisted that the Commission should not cease to pursue greater equity in the vertical division of revenue, particularly with regard to the share of national revenue that is allocated to local government:

“It is not the biggest issue for us but we do expect the Commission to be on our side.”

#### *Local government fiscal framework*

The review of the local government equitable share formula was cited as an example of a ‘high impact’ project. The Commission had identified the issue in its strategic planning and conducted a process, including a series of public consultations where the Commission was “forced to turn outward”. It sat as a commission and held public hearings, thereby creating an “independent, public, space”. This had positive results as “[i]t gave the recommendations that came out of that a lot more *gravitas*”.

#### *Review of the provincial equitable share*

In 2007, the Commission had the opportunity to lead the way in the process of reviewing the equitable share formula for provinces. The Commission’s work resulted in a number of recommendations, including a proposal for a block grant for key social services, such as education and health. The recommendations did not have much traction and a number of interviewees expressed disappointment at the Commission’s handling of this review. It seems that the emphasis on detail as opposed to process did not work in the Commission’s favour. In the words of one interviewee:

“They fiddled around with the minutiae and then it never really got off the ground.”

#### **Improving the impact**

The 15 year review, conducted in 2009 remarked that “provinces and local governments have had little or no influence on the allocation formulae” (Mabugu 2009, 9). Provincial and local perceptions of the impact made by the Commission vary greatly. Many underscored the importance of the Commission and its independent status but some were decidedly cynical. For example, to the question whether the provincial government would be any worse off without the Commission, a senior provincial treasury official replied: “no, except for those early years”. This seems to underscore the need for the Commission to continue occupying this space and establish stronger networks with subnational governments in order to make informed recommendations to the Parliament and the National Treasury.

In this regard, the Commission started building and structuring its consultative processes in earnest as of 1999-2000. The improvement has not been linear, with setbacks recorded due to, for example, internal difficulties and stand-offs between the National Treasury and the Commission. To improve the impact of the Commission's recommendations, some interviewees suggested more attention to constructing and following through on a more comprehensive process around the recommendations. As one past commissioner remarked:

It's not enough to simply make a recommendation. You have to stay with them, argue them, both before you table them and afterwards. You have to draw attention to them, unpack how you move ahead with them etc."

In addition, it was argued that less attention should be paid to detail and volume and more to ensuring the correct focus:

"It's better to make one recommendation that you really believe in and win the argument than making 150 recommendations that are everywhere and you then struggle to find the one that the Commission finds to be a game changer."

However, other interviewees argued that this approach, whereby the Commission actively follows through its recommendations, harbours the danger of the Commission entering the domain of politicians. They emphasised the Commission's role to "put stuff on the table" even when this only generates debate five years later.

Another dimension to this is the value in understanding why certain proposals were unsuccessful. There is no doubt that the Commission's understanding of the realities in government and its ability to achieve impact with future recommendations would be greatly enhanced if it were to understand why some recommendations were not implemented. In this regard, the recommendations with regard to closer practical relationships between the Commission and the National Treasury seem particularly worthwhile considering.

## **PERFORMANCE AND GOVERNANCE**

The next part of the paper examines the Commission as an institution and assesses its governance and administrative performance.

### **Resources**

While the Commission is independent, it does rely on an annual budget allocation from the National Treasury. The Commission's budget has seen a steady increase over the years. Wehner reports that the FFC tended to underspend its budget in the early years of its existence (Wehner 2003, 11). Between 2000 and 2014 the budget allocated to Commission grew six fold. According to the National Treasury, the increases are adjustments to inflation but they are also meant increase the Commission's capacity to conduct research. In the period 2006-2008, the volume of the Commission's work started increasing substantially which is reflected in the budget growth trends.

Table 2: budget Finance and Fiscal Commission

Year	FFC Budget (Million ZAR)	Growth percentage
2014	39.6	6%
2013	37.3	13%
2012	33	5%
2011	31.4	18%
2010	26.6	2%
2009	26.1	-5%
2008	27.5	27%
2007	21.7	11%
2006	19.6	10%
2005	17.8	41%
2004	12.6	5%
2003	12	30%
2002	9.2	16.4%
2001	7.9	36%
2000	5.8	-

Source:

While predicting expenditure required for its statutory engagement with the DoRA is not a major challenge for the Commission, predicting the expenditure required for responding to requests by various state agencies is. The Commission consistently raises this issue in its annual reports and its reports to Parliament.

In many of its reports, the Commission complains of a shortage of funds (e.g. FFC 2009, 53) but most of the interviewees were quick to point out that the Commission has not suffered any serious disadvantage at the hands of the National Treasury in this respect. In fact, on some occasions, the National Treasury appeared to have granted the Commission a greater allocation than was requested by the Commission. There were years when the Commission experienced serious financial difficulty. These even lead to concerns about the Commission's ability to operate as a going concern as its current liabilities exceeded its total assets (FFC 2012, 9; Ramela 2013, XX). In the report over 2011-2012, the Accounting Officer reported a "legacy deficit, which has been a challenge over the past six years". Interviewees suggested that this legacy can be linked to choices made by the Commission during the 2006-2010 period with regard to the 'delivery model' (see further below). For 2010-2011, the deficit

was R1.6m and the accumulated deficit stood at R3.9m. That was the last year in which the Commission accumulated debt. As of 2011, the Commission has been recording annual surpluses which started to address this 'legacy deficit' albeit slowly at the beginning. By 2012, the deficit was reduced to R3.7m. In the 2012-2013 year, the Commission achieved a 51% reduction of the deficit, bringing it down to R1.9m and bringing full eradication of the debt within reach (FFC 2013, 9 and 73). At the time of writing, the debt had been fully eradicated. This is a critically important achievement, given that lingering debt seemed to have exacted a toll on the Commission's ability continue improving the quality of its outputs.

### **Financial management**

Financial management, as measured by audit outcomes, is one important indicator of the quality of governance. In its financial reports, the Commission at times bemoans the increasing pressure imposed on it by increasingly complicated public finance regulations but the Commission's audit reports have generally been good: it has always received unqualified reports (even though for several years with findings). In the financial years between 1996 and 2001 and 2007 and 2012, the Commission received unqualified reports with outstanding matters, mainly related to issues such as failure to comply with legislation, late submission of financial statements and the like (Ramela 2013, XX).

### **Sustaining and improving quality**

While the responsiveness of actors in the intergovernmental fiscal area is a key factor that influences the extent to which the Commission is able to influence intergovernmental fiscal decision making, the interviewees were adamant that the Commission's internal ability to deliver quality is equally important. For most interviewees, this trumps concerns about funding, independence and governance. The issue is closely related to research strategy. It is clear that the Commission has grappled with the question of whether and how to formulate a research strategy guiding its term or guiding the year ahead. As one commissioner remarks:

"You literally have to find a programme for yourself on an annual basis: it's untenable! Only once and while does the Budget Council request us for assistance. If you look at the Indian Commission: they receive a Terms of Reference. The Australian Commission deals with equalisation, which is much more straightforward."

At the same time, the importance of an overall research strategy seems evident, as the Commission's track record suggests that the times were harder when a research strategy was missing. One interviewee remarked:

"Instead of running all over the place, can we sit down and identify key areas that the Commission should work on. What are the issues that this particular Commission wants to be known about?"

At the same time, the Commission also values its mandate to formulate responses to bill and policies, in the words of one interviewee:

“...an important pillar of the Commission’s work is that it has stakeholder responsibilities and rapid response outputs that need to be churned out continuously.”

Finding the ‘holy grail’ of the ideal mix of routinised research, thematic research and responding to requests from a properly funded platform, seems to be one of the Commission’s greatest challenges.

Interviewees recall that there was a time when the Commission intended to do all its research in-house. In the words of a past commissioner “...almost like a little university”. This created two difficulties. First, the required staff complement was impossible to finance. Some decisions linked to this direction violated public service regulations and contributed to the Commission accumulating debt (see above). Secondly, the individual interests of researchers started dominating the Commission’s research agenda.

In 2009, the Commission adopted a 5 Year Research Strategy for 2009-2014 which was followed by a new one for 2014-2019. This strategy provides for the Commission adopting annual themes, which has been practice since 2009.

Notwithstanding the above progress, the Commission has consistently raised the staff turnover and recruitment issue as a major challenge (Wehner 2003, 11), Staff turnover seems to have been critical risk area for the Commission with the period 2006-2009 standing out as a period with particularly high turnover numbers. For example, the Recommendations Research Program has been susceptible to high staff turnover and loss of expertise. In the words of one interviewee:

“It has been difficult to find suitably qualified individuals to serve the Commission. There are usually 3 or so extremely good ones but we lack a critical mass of these.”

Staff attrition has caused the Commission programmes to operate below capacity in an environment of increasing demands. The slow but steady decline in turnover in the last five years is encouraging in that respect.

The need to ensure a full staff complement aside, it is of paramount importance that the Commission’s research staff is competent and enabled to produce quality research outputs. Some interviewees expressed concerns in this regard. The Commission has adopted a Research Policy that sets and defines research quality and seems to have made progress in nurturing research talent:

“Researchers have ‘blossomed’ and have appreciated the space and guidance given them. Several researchers have now commenced publishing their work and write proposals meant to secure extra funding from outside sources. Yet others now sit on Government Policy and Advisory Task Teams, routinely get summons from



Parliament to give expert testimonies and regularly present research papers at experts meeting locally and internationally.”

*Table 3: Termination numbers and turnover rate 2002-2012*

Year	Employees	Termination	Turnover rate
2002/03	23	3	13%
2003/04	-	-	-
2004/05	23	4	17%
2005/06	22	3	13%
2006/07	29	7	34%
2007/08	33	12	31%
2008/09	30	7	22%
2009/10	30	4	13%
2010/11	36	4	11%
2011/12	33	3	9%

*Source: Ramela 2013*

### **Role of commissioners**

The quality of the Commission’s outputs hinges on engagement between commissioners and Commission staff. Commissioners jointly determine the research agenda, oversee research activities, engage with preliminary findings and recommendations and, finally, must assist in communicating these findings into the intergovernmental arena. In its Fifteen Year Review, the Commission notes as a weakness the inability of the FFC to ensure adequate input of the commissioners into the research and subtly points at tension between the commission and its administration. It raises this as a concern with respect to the 1998-2004 period (Mabugu 2009, 9) as well as with respect to the 2004-2009 period (Mabugu 2009, 13). In the words of one past commissioner:

“This has been an issue of tremendous frustration for both sides.”

Most commissioners are part-time and expected to perform at a very high level for very little compensation. For example, the lowest hourly rate for public sector consultants at “Chief-Director” (senior manager) level is still nine times higher than the fee a part-time commissioner receives to prepare for Commission meetings (Presidency 2012). While the comparison between commercial consultancy rates and compensation for members of constitutional bodies may not be fair, in practical terms, there is no doubt the comparison plays a role in the judgment calls made by those called upon to dedicate themselves to the Commission.

The current configuration, while probably unavoidable renders the Commission vulnerable with regard to the operations of the Commission itself. In the words of a commissioner:

“If a commissioner doesn’t show up for meetings: what can the chairperson do? The chairperson has absolutely no power over them: he can only appeal to their conscience.”

### **Conflation of Chairperson and CEO**

The fact that the positions of chairperson and CEO of the Commission are combined into one office is a long standing concern. The conflation seems to have its genesis in section 199(11) of the 1993 Constitution, which provided that the chairperson and deputy chairperson shall be the chief executive officer and deputy chief executive officer of the Commission. However, the current Constitution is silent on the issue, leaving it to Parliament to determine the functioning of the Commission (s 220(3) Constitution). This then resulted in the FFC Act providing that “[t]he Chairperson of the Commission is the chief-executive officer and also the accounting officer of the Commission” (s 19(1) FFC Act).

The bifurcated role of the Chair, aside from being in conflict with good corporate governance principles (Ramela 2013, 32), seems to prevent the Chairperson from ensuring that the Commission has maximum impact for the simple reason that the Chairperson is also busy being a manager and accounting officer. In the words of one of the interviewees:

“It drags the chair into a whole lot of management issues, out of the strategic issues.”

However, it must be said that not everyone agreed that the conflation of the two positions is necessarily negative:

“[I]t has actually been beneficial for research. This is because the conflation has meant decisions have been taken faster as the respective heads have been sympathetic towards research issues and perceived it to be the engine and lifeline of the organisation... separation of powers is not necessary for research to thrive, provided that there is no political interference in its operational decisions”.

The fact remains that the combination of roles has attracted widespread criticism from within the Commission but also from the Auditor-General and the Parliamentary Committee on the Review of Chapter 9 and Associated Institutions. The Commission has requested on a number of occasions that the issue be addressed in an amendment to the FFC Act but this has not materialised. Recently, the Commission requested an arrangement whereby one of the commissioners would be assigned the responsibility to act as accounting officer for operational issues. However, it could not obtain approval for this arrangement from the National Treasury.

As one commissioner remarks:

“Practically, you need a deputy running the research side while the chair looks outward, does the politics and the dissemination”.

## **CONCLUSION AND RECOMMENDATIONS**

A number of observations can be made on the basis of the above review of the Commission’s role in intergovernmental fiscal relations in South Africa over the last twenty years.

First, the Commission can take part of the credit for the fact that the inevitable disagreements about intergovernmental fiscal issues in South Africa are (1) disagreements about policy and numbers and (2) contested in institutions of democracy. This is remarkable because in those early years, the odds were stacked against the rationality which the Commission helped to introduce. In South Africa’s emerging democracy, where notions of subnational governance were long abused for racial ends and thus viewed with scepticism, the ingredients were present for disagreements about intergovernmental finances to completely bedevil nation-building. In the subsequent years, the Commission continued to contribute to shaping the intergovernmental fiscal system, albeit perhaps in ways less visible and in a context that was less absorbent of the Commission’s recommendations. The National Treasury built its capability to practice a rational system of intergovernmental fiscal relations and the emphasis shifted to the executive. Immediate uptake of the Commission’s recommendations was not always realistic, particularly when it was ahead of its time.

Secondly, the history of the Commission shows that it is resilient; it has shown itself to be able to weather many storms. It has seen institutional relationships falter and improve again, funding difficulties emerge and be solved after years of hard work. It has resolved internal strife only for it to reappear again, looking for new solutions. It has experienced a loss of institutional memory, followed by the entry of new talent. It has had its credibility and reason for existence challenged and has responded with remarkable poise and a consistent drive to improve its quality.

Thirdly, it seems that the various stakeholders that make up the institutional context for the Commission’s work need to be less ambivalent about what it is they expect from the Commission. While *ad hoc* requests for advice from various pockets within government are on the increase, signalling an ever-expanding role, the Commission is expected to formulate its long-term strategic agenda almost entirely from within. Given that the Commission itself is decidedly no longer a body that represents subnational governments as such, but an expert body, opportunities for finding synergy in the long term agenda are lost. Linked to this is the following observation: whatever lied behind the delays in maintaining the Commission’s composition and leadership, it somehow created the impression of a Commission ‘left to its own devices’. Recent developments in this area are encouraging but the experience has added to the picture of ambivalence.

In this era of major shifts in the role and place of subnational governments and their funding needs, there is no room for complacency about the quality of the intergovernmental fiscal

system and the role of the Commission. If anything, the early history of the Commission proves that a constitutionally recognised body with a sound pedigree of impartiality and an insistence on expert advice is absolutely essential if and when very difficult choices have to be made about the intergovernmental fiscal system. It is not unlikely that more of those difficult choices lie ahead and the Commission could again insert the much-needed rationality.

Fourthly, whether or not it is constitutionally flawless, very few seem to interpret the Commission's mandate as limited to technical advice on the division of revenue. It thus seems appropriate for the Commission to continue to point its gaze on the developmental impact of revenue allocation and not exclusively on the debate about revenue formulas and taxation powers. At the same time, the Commission needs to formulate a more strategic response to the increasing demands on its expertise. Producing quality research is at the heart of the Commission's mandate, perhaps more so than building the capacity of the various actors in the intergovernmental domain. It is incumbent on the Commission to make every conceivable effort to ensure that its research outputs can withstand the rigour of challenges from various corners of the intergovernmental area. It was not within the scope of this research to assess the Commission's research activities. However, it seems that a rebalancing is necessary of three key elements that determine the overall approach to research and research capability, namely the scale of research activities, the size of the research budget and the extent to which research is conducted internally or commissioned to research institutions. With regard to scale, the Commission may consider sacrificing some volume and detail in order to achieve more focus, better quality and greater dedication in the intergovernmental engagement process. The accounts of successful programmes such as the local government fiscal review lead on to believe that there is potential in that approach. For example, the Commission is encouraged to emulate the success of the public engagement that helped make it a success.

It is in the nature of things that both the National Treasury and the Commission need to continuously reflect on the question as to whether the manner in which the relationship is structured and practiced contributes to better decision making on intergovernmental finances. As the National Treasury built up its own formidable research capability, the Commission should never be expected to rival or second-guess that. It should rather be expected to leverage its independence and its deep roots in the various institutions of multilevel government and society to produce an alternative but credible voice. In this respect, it is argued that the Commission's independence is not irreconcilable with its linkages to the National Treasury. In fact, increased intensity in the interaction between the two may very well enhance the Commission's role, rather than diminish it. Practical solutions such as greater physical proximity and staff interaction between the National Treasury and the Commission may be worth considering.

The Commission should consider building greater synergies with SALGA's Parliamentary office to achieve greater impact on legislation and the remuneration levels of part-time

Commissioners should be reconsidered to ensure that they don't become an impediment to attracting and retaining high calibre commissioners. The bifurcated role of the Chairperson/CEO does the Commission more harm than good and the legal position in this regard should be reviewed.

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**Table 4: Outputs of the FFC 1996-2014 (Source: FFC Annual reports 1996-2013)**

Year	Proposals on DoR	Technical reports on DoR	Submission on DoR Bill	MTBPS	Other submissions	Research	Annual report	Total
1996	1	1	1			1	1	5
1997	1	1	1		1		1	5
1998	<sup>4</sup>		1	1				2
1999	-	-	-	-			1	1
2000	-	-	1	-	-	-	1	2
2001	1	1	1	1	2	-	1	7
2002	1	1	1	1	-	-	1	5
2003	1	1	1	1	6	-	1	11
2004	1	1	1	1	10	-	1	15
2005	1	1	1	1	8	-	1	13
2006	1	1	1	1	3	3	1	11
2007	1	1	1	1	3	3	1	11
2008	1	1	1	1	4	29	1	38
2009	1	1	1	1	3	8	1	16
2010	1	1	1	1	2	23	1	30
2011	1	1	1	1	5	21	1	31
2012	1	1	1	1	8	20	1	33
2013	1	1	1	1	10	34	1	49
2014	1	1	1	1	?	??	1	5

<sup>4</sup> Summary of the previous year's recommendations.

