INTERGOVERNMENTAL FISCAL RELATIONS CONFERENCE REPORT

Ten years of the Financial and Fiscal Commission (FFC): Consolidation for greater equity

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CONTENTS

ACRONYMS

Capex	capital expenditure
CMBS	constitutionally mandated basic services
DPLG	Department of Provincial and Local Government
DPSA	Department of Public Service and Administration
FFC	Financial and Fiscal Commission
IDP	Integrated Development Plan
IGFR	intergovernmental fiscal relations
LES	Local Government Equitable Share
MEC	Member of the Executive Committee
MFMA	Municipal Finance Management Act
MTEF	Medium-Term Expenditure Framework
MTSF	Medium-Term Strategic Framework
NCOP	National Council of Provinces
Nepad	New Partnership for Africa's Development
PES	Provincial Equitable Share
PFMA	Public Finance Management Act
PGDS	Provincial Growth and Development Strategy
SALGA	South African Local Government Association
Stats SA	Statistics South Africa

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So to, indeed, the role and support of the Commissioners, was invaluable in shaping the conference agenda. Some volunteered to present papers on themes of the conference encouraging debate and discussion on intergovernmental fiscal relations issues. Their participation was greatly appreciated.

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INTRODUCTION AND BACKGROUND

The Financial and Fiscal Commission (FFC) is a product of the multiparty constitutional negotiations that led to the 1994 elections. The inequalities and divisions that characterised South Africa for many decades, as well as the inherent uncertainty of political outcomes, led to a unique settlement. The South African Constitution, finally promulgated in 1996, is a living document that contains political compromise, a range of checks and balances, and establishes innovative institutions with the specific purpose of serving as guardians of our young democracy.

The FFC must be viewed in this context. It was instituted to provide advice with respect to the equitable sharing of revenue and other intergovernmental fiscal issues, and to limit subjective political decisions regarding the allocation of public resources in the spheres of national, provincial and local government. Institutionally and functionally, the FFC has no real precedent in South Africa or elsewhere in the world.

The FFC was established in terms of Section 220 of the Constitution of the Republic of South Africa, and of the Financial and Fiscal Commission Act (99 of 1997). The powers and functions of the FFC are contained in the Constitution and the FFC Act.

The FFC is required to render advice and make recommendations to all relevant legislative authorities (local, provincial and national) regarding their financial and fiscal requirements. The advice and recommendations concern issues such as:

- Fiscal policies (of government at all spheres);
- Fiscal allocations to government;
- Taxes which provinces intend to impose;
- Borrowing by local and provincial government; and
- Criteria to be considered in determining fiscal allocations.

The precise points of institutional interfacing are not constitutionally determined and are in the process of being defined by practice. The first point of contact with the legislatures would generally appear to be the standing committees of finance, at both the provincial and national level.

Key objectives of the conference

The year 2004 also marked the tenth anniversary of South Africa's democracy. The FFC celebrated this anniversary through the hosting of a major conference on intergovernmental fiscal relations (IGFR). The conference was held on 10–12 August 2004 at the Cape Town Convention Centre. The purpose of the conference was to highlight the FFC's contributions to South Africa's democracy, in particular the IGFR system and processes in South Africa and the world, to reflect on its ten years of experience, to develop a consolidated view of that experience, and to share this information with the broader community.

The conference was planned to serve as an information-sharing opportunity. Documentation arising from the conference will be compiled so that it can serve as useful reference material for new members of the legislatures, the conference target audience and academic institutions.

Key focus areas of the conference

In reflecting on the ten years of the existence of the FFC, it is essential to assess how it has contributed to meeting the concerns that shaped its origins, whether or not those concerns have changed, and what the answers to both these question mean for the future of the institution. In the light of this, the FFC's ten-year celebration conference focused on three broad areas.

1. The FFC's key contributions to the body of knowledge on IGFR, particularly in South Africa, from a technical, institutional, process and systems point of view

The ten-year mark of South Africa's democracy provides an opportunity for all its institutions to reflect on the past, learn from it and prepare for the future. It is also an opportunity to acknowledge and celebrate their successes and contributions. Over the past ten years, the FFC has managed to effectively contribute to the maintenance of a sound system of IGFR in South Africa. It has been a key contributor to innovations in the system and has been at the cutting edge of the issues that need to be addressed and the formulation of answers to those issues. The FFC has also become recognised as an important sounding board and neutral broker on the fiscal implications of policy issues that affect the three spheres of government, as well as those that impact on meeting the constitutionally mandated basic needs of South African society.

2. Stakeholder relationships and interface, particularly as they impact on the positioning of the FFC and the effectiveness of the IGFR system

On its establishment in 1994, the FFC had to start from scratch in terms of designing and defining how to give effect to its mandate. In large measure, it had to do this under conditions of limited time, resources and information, as well as within an evolving legislative, institutional, policy and political environment. While the FFC was established with a clear constitutional mandate, it still had to give practical effect to that mandate, guided by national imperatives, sound fiscal and IGFR principles and an understanding of the political milieu within which it was operating. These factors have been key in the evolution of the FFC and its positioning and effectiveness in fulfilling its mandate. This has been an important learning process, which has been marked by constraints, challenges, successes and, at times, tensions. It was intended that the conference would provide an excellent opportunity for the FFC and its stakeholders to take stock of these matters, identify what has been learned and how the manner in which each stakeholder exercises its role can be shaped to create an IGFR system that can meet South Africa's national goals even better going forward.

3. Identifying, together with stakeholders, what the key challenges for the FFC and South Africa's IGFR system will be over the next ten years

South Africa's democracy is young in relative terms. The years ahead, therefore, will present new challenges. In this regard, having reflected on where the Commission has come from, and what it has done over the past ten years, there is a need to anticipate its future challenges. The FFC intended that the conference identify the following key issues:

- What are the emerging issues with which the Commission and IGFR system stakeholders should be engaged?
- Are there institutional changes and improvements that need to be reviewed and/or effected?
- What contribution can the FFC make towards meeting the goals of the New Partnership for Africa's Development (Nepad)?
- How are the national and international political and economic landscapes likely to evolve, and what challenges will this present for the FFC and the IGFR system as a whole?

Target audience of the conference

The target audience of the conference were members of the South African national, provincial and local legislatures and their officials, political parties, multilateral agencies, and national, African and other international scholars, students, practitioners and civil society stakeholders, who are in the field of IGFR.

Keynote address

Mr Murphy Morobe, former Chairperson of the FFC, delivered the keynote address at the conference. Mr Morobe served in the capacity of Chairperson of the Commission for ten years (1994–2004). Aside from reflecting on the past ten years of IGFR, Mr Morobe provided a personal story of championing the aims and objectives of the FFC through what may be described as a vast canvass of political views and opinions during the first five years of democracy in South Africa.

In his address, he highlighted the importance of the role of the Commission. He referred to the critical aspect of maintaining the independence of the FFC and building trust among all stakeholders in its endeavours to recommend financial and fiscal solutions for the IGFR system. Undoubtedly, this entails navigating the past and present political landscape with a great deal of skill.
In the main, he referred to the creative tension between nation building and fiscal autonomy, in which it would be important to consider the strategic imperative and tactical way of securing the former while streamlining an ongoing consultative process for the latter.

In the context of the above, he located the role of the FFC and the IGFR system within the ambit of balancing political power with the credibility and imperatives of the Constitution. In making a case for the continued existence of the FFC, even as the democratic and fiscal system matures over time, he cautioned: ‘If the rain stops do not throw away the umbrella.’

Ten-year review report

The new Chairperson of the Commission, Dr Renosi Mokate, presented the conference with a ten-year review of the FFC. In addition to providing a summary of the work of the Commission, she highlighted the following:

- The need to co-ordinate and streamline the collection of data to inform fiscal and other policy decisions with respect to the IGFR system and, in particular, the special focus in the use of data for linking the Integrated Development Plans (IDPs) to the equitable share formulae;
- Strengthening the link between the Commission and primary stakeholders;
- The establishment of protocols with the national, provincial and local legislatures and the executive;
- The critical importance of the role of the FFC with respect to the assignment of functions;
- The role of the provinces versus local government in service delivery; and
- Other stakeholders’ concerns such as
    - addressing the problems of previously disadvantaged provinces,
    - emphasising ‘financial issues’ in the future work of the FFC,
    - rethinking the revenue assignment to sub-national governments, and
    - addressing inter-provincial migration, particularly with regard to its impact in provinces such as Gauteng and the Western Cape.

The Chairperson traced the history of recommendations of the FFC and its contribution to the intergovernmental fiscal systems over the last ten years. Her input also charted a set of challenges for both government and the Commission over the next ten years.

CONFERENCE THEMES AND SESSIONS

A. The evolving role of local government in the IGFR system

Objective of the session

The objective of the session was to review the evolution of the Local Government Equitable Share (LES), its current impact and how it should continue to be shaped in order to meet the needs of local government.

The session was chaired by Ms Qedani Mahlangu, MEC for Local Government and Land Affairs, Gauteng. Ms Mahlangu is the former Chairperson of the NCOP's Select Committee on Finance and has extensive experience in local government matters.

Presentation of papers

Dr Hildegarde Fast presented the first paper (co-authored by Denver Kallis), titled *Local government asymmetry and the intergovernmental fiscal system in South Africa*. The paper described the historical processes that resulted in the considerable socio-economic disparities that are found in South Africa. Owing to the spatial orientation of much of apartheid policy, these disparities have a distinctive geographic form, with significant socio-economic contrasts within rural and urban areas and, more broadly, between urban and rural areas. It was inevitable that these disparities would find expression in asymmetrical circumstances in municipalities, particularly the contrasting conditions of municipalities located in the former 'white' South Africa, on the one hand, and those in the former Bantustans, on the other.

The paper provided an understanding of the various facets of this asymmetry and the challenges it poses for the system of local public finance. The paper first explained how the asymmetry developed over time, and described its specific ramifications with respect to systems of local governance and finance. The paper then summarised the various local government reform initiatives and assessed their success in addressing the issue of asymmetry. In conclusion, it outlined some challenges that remain.

The second paper, titled *Decentralisation of powers and functions: The impact of uncertainty on the local sphere*, was presented by an FFC commissioner, Kam Chetty. In essence, Chetty argues that given that it is only the fourth year of the new local government system, many matters pertaining to powers and functions between the spheres of government have yet to be resolved. This has resulted in:

- So-called 'unfunded mandates', where functions are mandated without requisite resources (e.g. libraries, housing, sports and museums);
- Shared functions without clear delineations of responsibility regarding the components that each sphere should finance (e.g. roads, health, planning and tourism);

- Additional responsibilities for municipalities, without concomitant legal authority and financing arrangements;
- National or provincial departments creating assignments without serious consideration of the impact on municipalities;
- Uncertainty about the nature of the transfer of a function (i.e. whether it is an assignment, delegation or agency), creating municipal planning, governing and budgetary difficulties;
- Increased financial accounting and reporting responsibilities for municipalities dealing with a number of agency and delegation functions; and
- Misalignment between municipal powers and functions and municipal fiscal powers.

While the President's 2004 State of the Nation address committed the government to building the capacity of the local sphere, resolving the issue of powers and functions is essential to achieving this objective and stabilising local government finances.

The third paper, presented by Prof. Andrew Reschovsky, was titled *Local government in a decentralised system of government: A comparative analysis*. He observed that compared with many other countries that have established decentralised systems of public finance, South Africa's efforts have been quite successful. What is needed now is to look at ways in which the decentralised system of local government can be improved – and, in this regard, it is important to learn from the experiences of other countries.

Having outlined a number of areas in which South Africa has excelled in promoting elements of 'good practice' for strengthening decentralisation to local government, Prof. Reschovsky posed the following critical challenges for the future:

- Guaranteeing that all local governments have the capacity to provide basic municipal services;
- Reforming the Regional Services Levy;
- Expanding property rates to all local governments;
- Reforming the local government equitable share;
- Within newly demarcated local governments and within the metros, striking a balance between devoting resources to the provision of basic public services to areas that lack them or are under-served and the maintenance of high quality services where they already exist;
- Improved monitoring of the actual provision of public services by local governments;
- Maintaining simplicity and transparency in the intergovernmental system;
- Maintaining flexibility in the system of local government finance; and
- Preventing the imposition of unfunded mandates and revenue limits by higher levels of government.

Prof. Reschovsky highlighted the need to take these lessons and recommendations seriously in efforts to stabilise and consolidate the decentralised local government system in South Africa.

Questions and comments

Government officials from the Departments of Housing and Water Affairs and Forestry, the North West Province and Kanalla District Municipality raised a number of questions and made some comments.

In summary:

- The Department of Housing raised questions concerning the transfer of the housing function to municipalities via the accreditation process. Most municipalities do not have the capacity to deliver housing. Is there confidence that metros have the capacity to deliver housing?
- The Department of Water Affairs and Forestry was concerned about the appropriateness of the local government boundaries. Are the boundaries appropriate for all municipalities? What would the appropriate boundaries be? What sort of interventions could ensue at the local level if failure to deliver a function such as housing occurs?
- The North West Province commented on the need to devolve more powers to local government. The unitary state must be strengthened. Yet how can local government be strengthened without compromising the unitary state?
- The Department of Water Affairs and Forestry explained that it is responsible for the transferring of water functions. The biggest challenge concerns what competencies are required at the relevant level of service provision.
- A councillor for the Kanalla District Municipality asked which municipalities have the capacity to deliver. Have any studies been done?
- A question was raised about the definitions of 'capacity' and 'rural'.

Responses to comments and questions

The responses of the presenters to the issues raised were as follows.

Hildegarde Fast noted that the point on inappropriate boundaries was made in the context of service delivery and the lack of infrastructure. On the comment concerning unfunded mandates, she indicated that legislation such as the Municipal Structures Act has been enacted. The Act provides for consultation with the FFC when any sphere of government intends to shift or delegate a function to another sphere of government. In such a consultation, a costing of the function must be provided for the assessment and recommendation of the FFC.

Kam Chetty acknowledged that capacity is uneven across municipalities and, when transferring functions such as housing, not all municipalities have the capacity to deliver. Newer districts, developed from the year 2000 onwards, characteristically have limited capacity. The older districts are more developed and thus have greater capacity to deliver.

The problem with the transference of functions involves transactions. The key issue concerns getting the IGFR system to work smoothly and in a co-operative, consultative manner. Sound intergovernmental relations and co-ordination are vital in order to achieve this objective.

Mr Chetty noted that delivery and policy co-ordination are better achieved at the local level and that if a function is devolved, government must ensure that sufficient capacity is in place to deliver. If better provision of the service can be rendered at the provincial level, then the function should remain there.

An 'audit of capacity' study has been conducted by the Demarcation Board. However, Mr Chetty noted that the study had a number of shortcomings.

Prof. Reschovsky responded to the question about local governments that fail and need intervention. He suggested that the solution would be to first determine the reason for failure and then find solutions. Failure could be a result of lack of knowledge on how to deliver services, or lack of capacity. One example of a solution is to bring in a team of experts to temporarily take over and train the existing staff.

B. The provincial equitable share: Review and perspectives

Objective of the session

The objective of the session was to review the Provincial Equitable Share (PES) and the impact of its implementation on provinces. The session was designed to address the following issues:

- Evolution of the PES system and the PES formula;
- Operational strengths and weaknesses of the system;
- Impact of the PES on provincial spending patterns; and
- Challenges that need to be addressed.

This session was chaired by the Honourable Mr Jabu Moleketi, Deputy Minister of Finance. Mr Moleketi is the former MEC for Finance in Gauteng Province and has extensive experience of provincial financial matters through his membership of the Budget Council.

Presentation of papers

Dr Govinda Rao and Bongani Khumalo presented a paper titled *Sharing the cake: A review of the Provincial Equitable Share formula*. The design and implementation of the PES formula used for allocating revenues to the provinces is of critical importance for the delivery of social services in the Republic of South Africa. The Constitution assigns the responsibility of providing basic social services (education and health) and administering social security grants and welfare schemes to the provinces. The expenditure implemented by provinces constitutes about 44 per cent of total government expenditure incurred at all levels although the provinces raise only about 1.3 per cent of revenues. Thus, over 97 per cent of the provincial expenditure is financed by transfers from the national government, and almost 90 per cent of this is received by way of the PES.

The authors outlined a number of reasons for undertaking the review of the PES formula at the present juncture. First, by the end of the 2004/05 fiscal year, the prevailing formula would have been fully phased in. Second, a new medium-term cycle would start from 2004/05 and it would be opportune to fit in any changes in the formula to coincide with the new cycle. Finally, given the new census data, which became available in 2003, the formula requires an assessment of the appropriateness of the current weights assigned to the different components, since it is heavily driven by demographic patterns.

The paper reviewed the PES formula from its inception in 1999/00 to 2003/04, and evaluated the performance of the formula with respect to the stated policy objectives of the government, taking into account the provisions of Section 214(2)a-j and other relevant sections of the Constitution.

Employing an econometric analysis, the paper identified a number of challenges, such as provincial fiscal autonomy and accountability, the need to augment provincial revenues, design issues of the formula, and equity aspects of the formula. The conclusions of the paper highlighted the following:

- The need to augment provincial own revenue –
    - provinces need to be incentivised in order to exercise their revenue raising powers to give effect to the Provincial Tax Regulation Process Act;
- The formula serves the purpose of equalising per capita expenditure on social services across provinces;
- There are still problems with equitable access to services due to certain cost disabilities not being taken into account –
    - in the case of education, children who are from poor rural families generally fall outside the school age population and are penalised in the formula,
    - in the case of health services, the medically vulnerable population groups are not taken into account, and
    - while it is recognised that the formula should be kept simple, it is also necessary to take into account some of the cost-disability factors;
- In the case of social development, social security grants that mainly provide transfer payments are better implemented outside the PES formula; and
- The economic activity component is poorly specified –
    - it is a poor indicator of revenue raising capacity and also is arbitrarily related to infrastructure maintenance.

Overall, the paper indicated that the issues listed above constitute important areas of review for the PES formula.

The second paper, *Provincial growth and development through the equitable sharing of infrastructure finance*, was presented by Jeff Petchey, Jaya Josie, Garry Macdonald and Rathipe Nthite.

Since 1999, the FFC has worked on the development of a capital grant model for the allocation of intergovernmental infrastructure funding to provinces. The aim of the model was to allow policy-makers at the national sphere of government to distribute a pool of funds on the basis of relative need to the provinces for capital expenditures on services such as education, health, welfare, transport and housing. In this paper, the authors described some of the background to this work, outlined its rationale, described the formulas underlying the grant model in detail and, finally, provided preliminary simulations.

The paper also highlighted how province-specific capital cost disabilities can be derived from the notion of cost functions used in economics. It has been shown that differences in population dispersion, or the incidence of diseases such as AIDS, can differentially affect the minimum cost of providing a given level of public service output between provinces. Furthermore, the authors argued that cost disabilities can be amalgamated into a disability function and used to construct an aggregate disability variable for each province.

In addition, the paper showed how one can construct a grant model that allocates a capital grant pool to the provinces in two components. The first is a per capita allocation to all provinces. Here the particular grant to each province is dependent on its population share and its disability. The second type of allocation is designed to address historical capital backlogs. The share of a province in this part of the grant pool is determined by a comparison of the capital stock that a province should have, based on a domestic standard, and the capital stock that it actually has, adjusted for cost disabilities.

Finally, the paper discussed how the formulas of the model can be constructed within a computer simulation model, and presented the results of two preliminary simulations based on various assumed parameter values.

The authors urged the conference to note the following arising from the simulations:

- Once disabilities were included in the model, more provinces shared in the backlog component of the grant;
- However, the inclusion of cost disabilities increased the size of the calculated backlogs and the 'pie' of the backlog component of the grant was shared by more provinces, so backlog elimination took longer; and
- In the model, there is a policy parameter called δ.[1] As this parameter declines in the simulation exercise, the relative share of grants for provinces with larger backlogs decreases.

Respondents: Constraints and opportunities in the formulation and implementation of the PES – A provincial perspective

The two respondents, Mr Enoch Godongwana (MEC for Finance, Eastern Cape Province) and Mr Thaba Mufamadi (MEC for Finance, Limpopo Province), addressed the constraints and opportunities in the formulation of the PES formula.

Mr Godongwana highlighted problems and issues relating to the revenue assignment, infrastructure backlogs and the vertical imbalances in the IGFR system. In conclusion, he supported the submissions by the FFC. He expressed disagreement with the notion that the costed-norms approach should wait for new data before it is implemented, and reiterated the assertion that if the state is serious about eradicating poverty it needs to move significant resources in line with such an objective. Mr Godongwana highlighted the failure of the two papers to deal with the vertical division of resources between the three spheres of government. He expressed quite strongly the view that the vertical division of the resources is the central pillar of IGFR. While not denying the role of political processes in influencing the IGFR system, Mr Godongwana encouraged the FFC to engage more and to make recommendations on the vertical division of revenue. The issue of the horizontal and vertical division should be of concern even to national government, rather than to the other two spheres alone.

An issue related to the vertical division of revenue that was raised is the proliferation of unfunded mandates. This was identified as an issue arising mainly from unintended consequences of national policies such as those on the payment and administration of social security grants. These were identified as a potential area where the risks are carried by the provinces and, in the process, provinces end up subsidising national government at the expense of executing their constitutional mandates with respect to delivery on the other basic services. The impact of migration needs to be taken into consideration, especially in the allocation of resources for social security.

There was reluctance on the side of poorer provinces to implement their tax powers as provided for by the Provincial Tax Regulation Process Act because of a general lack of capacity to comply with the requirements of the Act. There is also a degree of uncertainty about what would happen to the overall resource envelope for provinces should tax room be opened for them to collect more taxes. Mr Godongwana indicated that the FFC might be a useful vehicle to assist provinces with the capacity that they lack. With respect to specific taxes, the Eastern Cape would not support the imposition of a surcharge on personal income tax due to the fact that it has a low potential base and would be very reluctant to tax the limited skills that it has, which might migrate if the rate is set too high.

The issue of linking provincial planning with IDPs was raised by Mr Mufamadi, who also indicated the importance of such an approach in assessing the impact of measures designed to address poverty, especially in poorer provinces.

Finally, it was noted that the extent to which the provinces agree with the FFC proposals needs to be tested, as opposed to leaving the decisions to National Treasury alone. In particular, provincial views on factors other than demographic factors, such as poverty and scale economies, need to be taken into consideration in reviewing the formula.

General comments made and questions asked in the session

- There was general agreement with the proposed capital expenditure (Capex) model if it would result in poor provinces being allocated enough funds to deal with their infrastructure backlogs.
- Mr Gondogwana argued strongly for the FFC to engage and make recommendations on the vertical division of revenue, emphasising that the vertical split of allocations had not been given any attention by the FFC.
- Efforts should be made to incorporate Human Development Indicators into the Capex model.
- The possibility of extending the Capex model to cover local government should be investigated.
- Infrastructure per capita, as used in the Capex model, omits the impact of differential economic activity that requires more resources for maintenance of infrastructure assets.

C. Key challenges in the progressive realisation of constitutionally mandated basic services (CMBS) in an IGFR system

Objective of the session

An important goal of South Africa's IGFR system is facilitating the achievement of the progressive realisation of CMBS. The purpose of this session was to assess the extent to which this was being achieved and to highlight key challenges arising out of the current implementation of the IGFR system and the changing policy and rights landscape.
The session covered two themes. The first theme, *Decentralisation, equity and poverty reduction: (In)compatible partners?*, was chaired by Prof. Vivian Taylor, Department of Social Development, University of Cape Town. The second theme, *The courts and policy-makers: Who sets the pace?*, was chaired by Bethuel Setai, Director, Setai and Associates.

Theme 1: Decentralisation, equity and poverty reduction – (In)compatible partners?

Presentation of papers

The first paper, presented by Prof. Lieb Loots, was titled *Equity and the Local Government Equitable Share in South Africa*. Since 1998, a certain share of revenues collected nationally (i.e. by the central government) has been allocated to local authorities as their 'equitable share'. This is done on the basis of a formula.

The paper responded to the announcement by National Treasury that the Local Government Equitable Share (LES) formula will be reviewed for implementation in the 2005/06 fiscal year. This paper focused on only one aspect of the LES formula. It investigated the 'equitability' of the formula, and attempted to find some initial answers to two questions: What is 'equitable' in the context of revenue sharing in South Africa? How do the actual allocations that were derived from the LES compare with the requirement of 'equitability'?

The author argued that the LES undermines an important principle of fiscal equity (i.e. the principle of horizontal equity). Furthermore, in order for this principle to apply to municipalities it must also apply to individuals (or households). Moreover, in addition to the concern with equity *per se*, it was argued that if the principle of horizontal equity in this context is not applied across municipalities, it can have seriously undesirable economic and social consequences for municipalities, as well as compromising the very objective of the equitable share allocations, namely to ensure that all citizens of the country are provided with at least the basic services.

The paper concluded that the well-established principles of equity developed in the fiscal literature are normally applied to a tax when considering whether such a tax is a 'good' tax. It is surprising, therefore, that these principles, in particular the principle of horizontal equity, have not been applied to the definition of ‘equitable’ in the context of determining revenue shares in South Africa.

However, the paper demonstrated that the failure to do so would probably result in municipal allocations that are arguably not equitable. It follows that there is an apparent need to ensure the compliance of the LES formula with the principle of horizontal equity if the outcome of the formula is to be ‘equitable’. It is likely that this would require that, in addition to poverty alleviation and the actual provision of basic services to the poor, the formula must at least incorporate, in some appropriate manner, a measure of revenue raising capacity, if not also income distribution capacity.

Dr Govinda Rao presented the second paper, *Poverty alleviation under fiscal decentralisation*. This paper attempted to analyse the design and implementation of a poverty alleviation strategy in a multi-level fiscal system. It argued that an anti-poverty intervention strategy comprises of three sets of measures: first, to provide opportunities to the poor; second, to empower the poor to take advantage of the opportunities; and third, to provide protection against vulnerability. These involve both direct and indirect anti-poverty interventions.

The paper showed that the system required for anti-poverty interventions involves a combination of both general purpose and specific purpose transfers. While the former are necessary for ‘capacity improvement’, which helps to accelerate economic growth and impact on poverty, the latter are required to provide a ‘safety net’ for the poor in the short term. The paper examined the appropriate design and implementation strategy for general purpose and specific purpose transfers.

Poverty alleviation is not merely a redistributive function. It involves both capacity improving and safety net policies. While policies aimed at accelerating growth and directing the benefits of growth will help to reduce poverty in the long term, direct redistribution policies, such as providing basic education, healthcare and employment, provide safety nets for the poor in the short term. In addition, the old and disabled poor need to be provided with financial support.

The poor are concentrated in poor regions. Poverty is also associated with low levels of human development and access to social services. In improving the conditions of the poor, therefore, public expenditure policy has to play a critical role. To accelerate growth, it is important to ensure that the fiscal disabilities of poorer regions, which arise from low revenue capacity and high unit cost of providing public services, are compensated. Similarly, it is necessary to ensure that certain minimum standards of service, which have a direct bearing on poverty, or ‘categorical equity’ services, are provided in poorer regions.

In small city-states with a single layer of government there is no ambiguity in carrying out the task of poverty alleviation. The central government itself has to design and implement capacity improving and safety net policies. This could be done by directly reallocating the resources through various expenditure programmes or by making transfer payments.

In a multi-level fiscal system, however, solutions to poverty alleviation problems have to be found within the principles of co-operative federalism. While redistribution is primarily a central government function, there is much to be gained by involving the sub-national governments in the task of poverty alleviation. The proximity of sub-national governments to the poor, and familiarity with and understanding of varying institutional situations and hostile environs in which the poor live in different regions, provide distinct advantages to the decentralised governmental units in designing and implementing anti-poverty policies. Thus, while the resources for the programmes have to be generated by the central government from redistributive taxation, local governments will have the predominant responsibility of designing and implementing anti-poverty policies due to their information and transaction cost advantages. This implies that the central government will have to find much of the resources for poverty alleviation programmes, whereas the local governments will undertake actual design and implementation of these programmes. This makes intergovernmental transfers an important policy instrument in the poverty alleviation strategy.

The importance of the design of general purpose and specific purpose transfer schemes relevant to a poverty alleviation strategy cannot be underestimated. General-purpose transfers are meant to augment capacity and, therefore, should be designed to offset fiscal disabilities of poorer regions. This would enable them to provide social and physical infrastructure at levels comparable to those in richer jurisdictions at equivalent tax rates. Such transfers will enable the depressed regions to fully utilise their growth potential, and this impacts on poverty. In order to design and implement effective anti-poverty programmes, in addition to the general-purpose transfers, it is necessary to provide specific purpose transfers. These transfers are intended to ensure that the services required to combat poverty directly (or ‘categorical equity’ services) are provided in the required quantities. The ‘wealth neutrality’ condition of these anti-poverty programmes requires that they be provided within the framework of a cost-sharing scheme between the central and local governments. The shares to be paid by the local governments should vary inversely with the wealth position or fiscal capacity of the local governments. Thus, specific purpose transfers are recommended with matching ratios varying inversely with the fiscal capacity of the localities.

Dr Renosi Mokate presented a paper on *The progressive realisation of constitutionally mandated basic services (CMBS), poverty reduction and the IGFR system*. This paper covered key elements relating to the progressive realisation of services, the nature and causes of poverty, poverty eradication, targeting, effective and efficient implementation, and monitoring and evaluation. The author highlighted the following important elements with respect to the IGFR system and their linkages to poverty eradication:

- The allocation of powers and functions;

- The need for a clear definition of the basket of CMBS goods to be realised by each sphere of government, particularly the provincial and local spheres;
- The need for an effective match between powers and functions and the IGFR grants system and own revenue raising powers; and
- The need for an IGFR system that enhances accountability and greater efficiency in the allocation and utilisation of resources.

While recognising that a solid IGFR foundation has been established for tackling poverty in poor regions, Dr Mokate observed that many challenges remain such as:

- Improvements in the assessment of failures arising from asymmetrical capacity to deliver, and implementation of the necessary interventions to eradicate poverty;
- Better resource allocation (e.g. through a costed-norms approach); and
- Developing an effective system of monitoring and evaluating performance, both vertically and horizontally.

The paper concluded with the following remarks:

- Progressive realisation of CMBS is an essential goal that focused government on key elements aimed at poverty eradication;
- The process needs to be given substance through effective delivery and performance monitoring;
- There is a need for more nuanced targeting and prioritisation of service delivery; and
- The demands of a co-operative system of governance that is supported by an IGFR system presented additional challenges that must be taken fully into account in the delivery and performance management and monitoring processes.

Presentation issues raised in discussion

- Greater investment is required in the collection of data with which to monitor performance in respect of policy outcomes (e.g. income poverty, literacy, malnutrition, life expectancy and disease burdens).
- Special purpose revenue sources (e.g. conditional grants) are best suited to ensuring desired outcomes, because conditionalities would include the measurement of outcomes.
- General purpose revenues (e.g. unconditional grants) can be used to level the playing fields between provinces or municipalities, but cannot ensure the desired outcome of poverty reduction.
- The impact of different government delivery programmes on poverty reduction should be measured. In this way, the effectiveness of government spending can be measured.
- Policy instruments should be evaluated in terms of the effectiveness of targeting (e.g. errors of inclusion and exclusion). Public works programmes tend to be most effective where the poor self-select the participants.

- Provincial, municipal or departmental differences in effectiveness may be due to inefficiency, lack of capacity or corruption. Each of these factors needs to be measured more thoroughly and precisely.
- Affordable minimum standards of service delivery (or basket of goods and services) should be determined by national government for each sphere and basic service.
- The LES formula should be designed to recognise the wide socio-economic differences between municipalities. This can be done through introducing a revenue raising capacity element in the LES.
- Capacity is developed through experience. There is no reason to assume that one or other sphere of government need be more capacitated than another.

Additional points raised in presentation

- The poor need to be given political voice, freedom to migrate and recourse to the courts (to ensure socio-economic rights).
- The poor are without permanent jobs, security/insurance against setbacks and title to property, especially land. Women are disproportionately poor.
- Due to wide differences between municipalities in their socio-economic conditions and revenue raising capacity relative to expenditure needs, local governments cannot be expected to finance poverty reduction. This is best achieved through intergovernmental transfers.
- Local governments are best suited to target the poor in delivering basic services because information and transaction costs can be minimised.

Theme 2: The courts and policy-makers: Who sets the pace?

Presentation of papers

The first paper, presented by Tania Ajam (and co-authored by Christina Murray) was titled *The courts and the intergovernmental fiscal relations system in South Africa*. Currently, aggregate public resource allocation processes (such as the annual division of nationally collected revenue among the three spheres of government[2]) and macro-prioritisation acknowledge the Constitution and the Bill of Rights. In particular, the National Treasury and, to a lesser extent, provincial treasuries, have fulfilled the constitutional requirement of transparent government through excellent reporting and by providing increasingly sophisticated information on budgeting process, provincial and municipal revenue and expenditure patterns as well as service delivery outputs. Nevertheless, in many areas, the impact of the Constitution is uneven. First, although multi-level government and the fiscal constitution have had a far-reaching effect on national budgeting, the evidence suggests that the demand of the Bill of Rights that socio-economic rights are not only acknowledged but prioritised in budgeting has not had the same impact. Secondly, although an obligation to implement socio-economic rights might be recognised at the strategic level, it does not always seem to be taken into account adequately at operational level.[3]

The failure of government to develop and assess its policies in the context of the Bill of Rights can be attributed to many things, including the newness of the constitutional system, the huge challenges facing administrations established only ten years ago, the complexity of the processes and the silence of academic economists and public finance practitioners on the impact of the Bill of Rights on budgeting *per se*, and intergovernmental relations by extension. This paper attempted to open a debate among public finance academics and practitioners in South Africa on the impact of the fiscal constitution in general, and socio-economic rights in particular, on the intergovernmental fiscal system. It did so from just one of many possible perspectives. It looked at the implications of the power of the courts to make decisions that concern the allocation of public resources.

The paper commenced by examining how the courts, in enforcing socio-economic rights and the provisions of the fiscal constitution, could potentially impact on public resource allocation processes and outcomes in the context of multi-sphere government. This introduction was primarily conceptual, drawing from the fields of law, political science and economics. The second part of the paper examined how the Constitutional Court has responded to these issues to date. The third section provided a few concrete examples of how court decisions could impact on the intergovernmental fiscal system. The final section attempted to draw tentative conclusions, as follows:

- The issues dealt with are extremely complex. To even begin to do them justice, a multidisciplinary analysis with legal, political science and public finance dimensions was essential. How the courts actually respond to these questions over time, and how other political stakeholders anticipate judicial behaviour, will create incentives that may alter the behaviour of both elected and appointed officials. The decisions that they make and their actions (conditional on the incentives they face) will ultimately affect the substantive outcomes of the intergovernmental fiscal system – fiscal discipline, equity, allocative efficiency and operational efficiency of service delivery.
- Similarly, though, courts will inevitably be influenced by the programmes and approaches developed in the political branches of government, the legislature and executive, and by the thinking that has gone into them. If the actions of government are based on a thoughtful attempt to fulfil the promise of the Constitution and particularly the Bill of Rights, the courts are unlikely to second-guess them. For these reasons, it is crucial that academic economists and public finance theorists join a debate that, to date, has been dominated by the legal fraternity.[4]
- Institutions are not only created through conscious design in formal constitutions and legislation. They also evolve though the myriad decisions and actions of independent role-players who co-create the formal and informal institutional norms underpinning institutional culture. This is as true for the development of constitutional jurisprudence as it is for policy. It is, therefore, even more important that politicians as well as all public managers with control or oversight responsibilities over public resources[5] should engage with these issues, so that they exercise their authority fully conscious of the constitutional implications, the fiscal

institutions they are creating and maintaining, and their implications for the societal vision embedded in the Bill of Rights.

Rod Alence presented the second paper, titled *Democratic politics and constitutional accountability in South Africa: Implications for developmental governance in South Africa*. The paper argued the following issues:

- While the South African election outcomes have become marginally less competitive between 1994 and 2004, the institutional foundations of constitutional democracy have become stronger;
- Constitutional accountability ultimately involves more than just enforcing formal limits on arbitrary governmental authority, it also includes the promotion of a 'culture of answerability' in the exercise of state power;
- The FFC and other institutions such as the Human Rights Commission and the Commission on Gender Equality contribute to constitutional accountability by encouraging public deliberation about the major social and economic challenges facing South Africa; and
- South Africa's record of democratic contestation and constitutional accountability, though imperfect, provides a solid institutional platform for developmental governance – in forms such as coherent policy formulation, effective public administration and limited corruption.

The third paper, from a human rights perspective, was presented by Adv. Tseliso Thipanyane and was titled *The courts as policy-makers in the realisation of socio-economic rights: Implications for the doctrine of separation of powers.* One of the concerns in the realisation of economic and social rights in the context of a constitutional state, where the judiciary is required to pronounce on the constitutionality of measures taken by other branches of government, especially legislative and policy measures, is the extent to which the judiciary can discharge its constitutional mandate without unduly interfering with the functions of the other branches of government. The issue of who makes policies and laws in the realisation of economic and social rights is an important issue, and the role the judiciary plays in this regard, especially in the context of the separation of powers between the legislative, executive and judicial branches of government, needs to be explored, more so when the judicial branch is composed of persons who are not chosen by the electorate and thus are not directly accountable to them.[6]

This paper, therefore, discussed the role played by the judiciary in the realisation of economic and social rights from a policy-making and implementation perspective, and considered the challenges faced by the judiciary in this regard. The paper also discussed how these challenges – the extent to which the judiciary can influence or shape policy formulated by the executive – impact on the realisation of economic and social rights.

The paper focused on the following:

- How the judiciary envisaged its role in ensuring the realisation of economic and social rights, from the perspective of pronouncing on the constitutionality of government policy and the implementation thereof;
- An analysis of the actual role played by the judiciary in policy formulation and implementation; and

- A discussion of some of the key challenges facing the judiciary in its role of policy-making and how to address these challenges, which include the position of the court on the issue of 'availability of resources' when adjudicating over socio-economic rights matters, the implementation of court orders on socio-economic rights issues from the perspective of policy formulation and implementation, and other related matters.

The paper concluded that:

- Our Constitution has provided the judiciary with the means to make policy in the furtherance of socio-economic rights and the delivery of basic services in instances where the executive branch of government does not do so within acceptable constitutional parameters. Though this might be seen in some quarters as a departure from a narrow definition of the doctrine of separation of powers,[7] it is a useful and a necessary mechanism in instances where the executive has failed to meet its constitutional mandate of formulating and implementing reasonable and effective policy measures to ensure the realisation of socio-economic rights and thus the delivery of basic services for our people.
- It is important, nevertheless, that policy formulation should still be a major focus of the executive, which due to its technical know-how should set the pace in this regard. But where the executive branch of government has failed to do so or has formulated unconstitutional policies, the judiciary is mandated by the Constitution to intervene. In so doing, however, the judiciary should exercise this power in a very responsible manner,[8] taking into account the constitutional system of separation of powers between the three branches of government.

General comments and issues raised by the presentation

Impact of the Constitutional Court's decisions. Decisions taken by the court obviously have an impact on the ability of the government to deliver; an issue was raised on how contradictions between the court's interpretation of policy and that of government are handled. It was mentioned that Parliament does possess the power to remove judges if they are found wanting. It was also mentioned that in certain instances the Constitutional Court has judged against government because the cases were poorly prepared by government. However, some of the cases, especially those in which the court found in favour of government, seem to have been well argued.

It was also maintained that some of the decisions by the Constitutional Court appeared inconsistent. An example was the case of *Prince vs State*, where an individual wanted to smoke marijuana as part of his religion. It was indicated that at least the court should have allowed him to do this within the confines of his religion. Divisions between judges were also brought to the fore and it was stated that the ideological underpinnings of the judges are also a factor of influence. Therefore, an important consideration is who sits on the bench. Why the Constitutional Court is venturing into the policy-making arena was also raised as an issue. It was maintained that this needs to be understood in the context of the constitutional body seeking to develop jurisprudence on human rights in the new dispensation.

Accountability of the Constitutional Court. The question of whether judges can take responsibility for their decisions, especially where these had negative ramifications, was raised as an issue for consideration. The decision to provide nevirapine to pregnant women, which has recently been proven to have negative side-effects, was mentioned as an example. It was stated that the courts cannot take responsibility for their decisions. This is not legally possible.

Supremacy between Parliament and the courts. The question of which is supreme, Parliament or the courts, is another issue that was put on the table. It was indicated that South Africa follows the separation of powers theory in which the three arms of government (parliament, the judiciary and the executive) perform different roles. No one is supreme but the Constitution. The judiciary is responsible for ensuring that each arm of government performs within its functional area. The judiciary also understands that in certain circumstances the executive may defer some decisions to it and it treats this with caution. It was again indicated that no clear line of demarcation exists in the policy-making process, since the public bureaucracy also makes policy in the form of regulations. Thus, policy-making can be a large grey area. The view was expressed in discussion that where decisions have been made that impact on the budget, the legislature has not used the power at its disposal to change the budget accordingly.

Rights and their limitations. Access to rights and their progressive realisation also formed part of the discussion. It was asked whether the availability of resources acts as a limitation or not. In response, it was stated that human rights can be limited through justifiable cause. It was also indicated that in its decisions the Constitutional Court normally gives government adequate time to ensure that provisions are put in place for the implementation of any right. It was also inquired whether, in the context of mass unemployment, individuals could take government to court on the basis of being unemployed. In reply, it was asserted that the Bill of Rights says nothing about the right to work. However, South Africa has signed international conventions providing for the right to work, but these are not binding. They can only be binding if Parliament declares them to be binding.

Finally, a question was raised as to how many of the cases brought to court were around socio-economic rights. It was indicated that out of the majority of cases studied, those pertaining to socio-economic rights were quite few. Among reasons for this was the good relationship that still exists between government and the electorate. It was maintained that in the future the situation might change and we could begin to see many people taking government to court on issues concerning socio-economic rights.

D. Comparative analysis of the IGFR system in developing economies: India, Mexico, Nigeria

Objective of the session

The objective of this session was to obtain a view of how other IGFR systems in selected countries were evolving, in order to share lessons learnt and to establish a basis for future collaboration.

Authors of the different papers and presentations were requested to address the following:

- The origins and context within which the system was established;
- The nature of the system with respect to how it addresses
  - the assignment of powers and functions,
  - sound fiscal principles (e.g. equity, efficiency, simplicity, revenue adequacy, predictability and transparency),
  - policy imperatives (e.g. norms and standards), and
  - political stability; and
- An assessment of the country's IGFR system with respect to key challenges, recommendations and conclusions.

The meeting was chaired by Prof. Nehemiah Osoro, Department of Economics, University of Dar es Salaam.

Presentation of papers

Prof. Nirvikar Singh presented a paper titled *India's system of intergovernmental fiscal relations*. The paper examined several aspects of India's system of IGFR. It first reviewed the origins and context within which the IGFR system was established, and then examined how it has evolved. It described the nature of the system, including assignment of powers and functions, intergovernmental fiscal transfers and the principles that guided their design. It reviewed several other dimensions of the IGFR system, such as its interface with policy imperatives, evolution of norms, and recent institutional developments. The paper concluded with an assessment of lessons learnt thus far, and the key challenges that lay ahead.

The assessment concluded that:

- India's IGFR system has the virtues of stability, history and precedent;
- Along with these come complexity and inertia;
- The system can be simpler, more transparent and more effective;
- The nature of institutional channels for transfers, as well as specific transfer formulae, can be re-examined;
- The reform of the transfer system should be the main part of an overall package of fiscal reform, including tax and expenditure assignments; and
- There is a need for hard budget constraints.

Some of the challenges highlighted were as follows:

- Systemic reform is complex and difficult, even when done in a piecemeal fashion;
- Diversity and regional inequality create political hurdles and exacerbate internal political tensions;
- Therefore, there is a need to build a coalition for governmental reforms; and
- Other simultaneous developments that heightened the challenges, namely
    - increasing fiscal deficits,
    - major local government reform, and
    - liberalisation and the move away from government intervention, including re-evaluation of government economic planning.

The second paper, titled *Intergovernmental fiscal relations: The Nigerian experience*, was presented by Prof. Akpan Hogan Ekpo. Nigeria's fiscal federalism emanated from historical, economic, political, geographical, cultural and social factors. In all of these, fiscal arrangements remained a controversial issue since 1946. Therefore, there existed unresolved issues on this matter. When the country was under military rule, it was thought that this type of governance exacerbated the fiscal arrangements among the three levels of government. During military rule, the federal structure existed only on paper, while the government was unitary.

The introduction of the democratic experiment in 1999 echoed the problems of intergovernmental fiscal arrangements among the different levels of government. The issues of revenue allocation and the sharing formula generated such intense debate that it led to the demand for a national conference. It was during this period that the 'resource control' phenomenon rose to an unprecedented level, such that the struggle for political power became the fight for resource control. Hence, the democratic experiment has created 'new' problems. The interference by the executive arm of government in the functions of the National Revenue Mobilisation and Fiscal Commission concerning the appropriate revenue sharing formula among the different levels of government, and the debate regarding the correct interpretation of the section of the 1999 Constitution affecting the derivation principle, among others, have posed challenges for Nigeria's fiscal federalism.

This paper examined IGFR in Nigeria, focusing on its evolution and challenges. It also discussed the principles of fiscal federalism. Finally, the paper outlined the challenges for the reform of the IGFR system in Nigeria.
The following challenges were identified:

- Non-correspondence – the lack of correspondence between spending responsibilities and tax powers and, therefore, the need to resolve the imbalance between assigned functions and tax powers;
- Fiscal autonomy and independence – the need to reduce the dependency of the states on the centre, i.e. on the Federation Account and the concomitant unpredictable fluctuations in the shares of the Account;

- The Federation Account and the Derivation Fund – the need to define what constitutes the Federation Account and the need to assign to the federal government all first-line charges, the obligations of which should be financed solely from the federal government's revenue;
- Oil producing areas and the derivation principle – this plays an important role in the national economy but neglects regions such as the Niger Delta, thus there is a need to re-examine the issue of derivation in line with the new democratic dispensation in the country; and
- IGFR and the economy – there is a need to ascertain whether development has taken place, across sectors and in terms of social development and capital development, given that large amounts of resources have been transferred from the centre to both state and local governments.

The paper concluded that IGFR in Nigeria was:
- Subject to frequent changes in Revenue Commissions;
- Not a smooth process; and
- In need of constant fine-tuning of the revenue sharing formula.

The third paper, presented by Prof. Xavier Perez Torres, *The fiscal relations system among levels of government in Mexico*, examined the following aspects of the Mexican fiscal system:
- The origins and evolution of the fiscal relations system among different levels of government in Mexico;
- The expansion of the national system of fiscal co-ordination to include public expenditure and public debt;
- Characteristics of the IGFR system;
- The transfer system derived from the system of fiscal co-ordination; and
- Challenges for the future.

Prof. Torres highlighted the following challenges for the Mexican system of IGFR:
- The need to solve the problems of low revenue collection and public resistance, and the reluctance of legislatures to create and impose taxes;
- The need to promote the financial autonomy of districts and states;
- The need to decentralise fiscal policy;
- The need to offer response capacity to the governments of districts and states;
- The need to promote local development; and
- The need to achieve fiscal efficiency.

The lessons learnt from the Mexican experience were outlined as follows:
- Modifying fiscal federalism in order to achieve administrative efficiency resulted in centralisation;
- The expense of some transfers and their associated problems became the responsibility of the centre;
- The federal legislature has annulled the local legislatures;

- Many sub-national administrations prefer the flow of funds first with respect to fiscal correspondence;
- Intergovernmental co-ordination had the consequence of annulling the effects of federalism;
- Local legislatures have received greater support from the public, but still are reluctant to create the necessary taxes; and
- A decentralised system needs to be established early in the development of an IGFR system.

Cross-cutting issues

In the development of IGFR systems, all countries identified common issues that were critical. Cross-cutting issues were:

- How the IGFR system evolved;
- Difficulties in setting up the institutions;
- Assignment of responsibility and taxing power; and
- Continuous evaluation of the system.

Other responses from the discussant indicated that in Nigeria the vertical division is based upon the responsibilities of different spheres of government. Amongst other factors, population is taken into account.

E. Round-table discussion on macroeconomic and global economic influences on IGFR systems

Objective of the session

South Africa's IGFR system is being implemented in the context of an open macro-economy. The objective of this session was to assess the impact of the macroeconomic and global influences on South Africa's IGFR system, with specific reference to their impact on sub-national government economies, their service demands and intergovernmental fiscal transfers.

This session was chaired by Dr Iraj Abedian, CEO, Pan African Advisory Services, and a renowned economist who comments regularly on macroeconomic issues that impact on South Africa's economy.

Presentations

As this was a round-table discussion, formal papers were not presented, with discussants making presentations on issues related to the theme of the discussion.

Bongi Gasa of the National Institute of Economic Policy reflected on the impact of economic policies currently pursued by the South African government. The presentation gave a summary of the evolution of macroeconomic policy design since 1994, and also noted changing domestic and external factors that have informed policy design in the post-1994 period. The presentation highlighted that intense debates governing the design of fiscal and monetary policies are largely centred on the need to balance (investment and export driven) economic growth with the objective of addressing socio-economic inequalities deriving from the apartheid era.

The discussant argued that government's fiscal policy has ensured that government deficit as a percentage of GDP is globally competitive and has not crowded out the private sector, while greater efficiency in tax collection has enabled government to channel significant resources to priority programmes. Gasa was, however, of the opinion that sound fiscal policy needs to be balanced by a more flexible monetary policy. He suggested that monetary policy should adequately take into account the fluid nature of the global economy and should complement the competitiveness of South Africa's industrial sector, a sector crucial to economic growth and job creation.

This discussion was followed by a presentation made by Lesetja Kganyago, Director General, South African National Treasury. His presentation focused on how the design of and activities within South Africa's IGFR system and spheres of government impact on overall macroeconomic stability. In comparison with other developing countries like Brazil and the transitional economies of Eastern Europe, the share of sub-national government debt to GDP in South Africa remains relatively low and, thus, has enhanced macroeconomic stability. The low share of sub-national debt was attributed to a unique system of co-operative governance as well as sub-national governments being barred from borrowing in foreign markets.

Kganyago highlighted that the current macroeconomic framework needs to take into account certain key factors if long-term stability is to be maintained. Provincial and local governments are constitutionally mandated to deliver services essential to improving human development and human capital, both of which are crucial in fostering long-term economic growth, but the provinces raise very little own revenue and rely heavily on intergovernmental transfers of nationally collected revenue. At present, nationally collected revenue is sufficient to cover transfers. However, questions arise about how this situation would impact on macroeconomic stability in the event of an economic downturn that lowers revenue and requires an expansionary fiscal policy that negates the gains made from current policies.

Kganyago also observed that while the fiscal autonomy of the local government sphere needs to be upheld, caution must be exercised in situations where levying of taxes by local governments could overburden taxpayers and impact negatively on employment creation. From the premise that microeconomic fundamentals, in terms of the direction of sub-national government revenues and expenditures, are significant drivers of overall macroeconomic stability, there is a need to:

- Enhance discussions linking the intergovernmental fiscal system with macroeconomic stability/objectives;
- Ensure that the roll-out of services by sub-national spheres occurs in a manner that is both sustainable and does not compromise long-term macroeconomic stability; and
- Grow the economy at a rate that ensures delivery of essential social services in a virtuous and not vicious cycle.

Mandla Gantsho, CEO, Development Bank of Southern Africa, focused his discussion on the need for South Africa's intergovernmental system to adapt to the growing globalisation of economies and distribution of resources. Noting that globalisation has spawned both positive and negative effects, Gantsho argued that South Africa's IGFR system should adapt in a manner that takes advantage of the positives of globalisation while ensuring that negative aspects are mitigated. To achieve this, Gantsho suggested that the policy response of South Africa's IGFR system to globalisation should include:

- Maintaining sound mechanisms that enhance co-operative governance and the attainment of set socio-economic objectives;
- Increasing capacity building, planning and implementation, particularly at the level of provincial and local government;
- An expanded public works programme that addresses critical infrastructure backlogs and encourages labour intensive employment; and
- Enhancing the borrowing capacity of viable sub-national governments, especially where such borrowing is intended to fund capital projects and promote service delivery.

The final presentation was made by Jaya Josie, Deputy Chairperson of the FFC. The presentation addressed the issue of how macroeconomic policies, variables and constraints impact on the operation of IGFR in South Africa and on the delivery of CMBS. Josie opined that given the constraints of debt, fiscal and delivery capacity of sub-national governments, coupled with sustainability of government expenditure, it would be more useful to focus on policies that promote the growth of nationally raised revenue. In addition, there is a growing need to provide a greater understanding of the vertical division of revenue within an extensive macroeconomic framework, where the macroeconomic framework balances revenue collection with the cost/constraints of providing CMBS.

Audience responses

The debate that followed the presentations concentrated primarily on three key issues:

- Finding alternatives to the present monetary policy of inflation targeting, which some of the audience felt impeded overall macroeconomic growth;
- Alignment and integration of critical sectors and spheres of government (especially sub-national governments) in line with macroeconomic policies that take advantage of the positive impacts of globalisation; and
- The urgent need for rural development and transformation using pro-poor initiatives developed by both government and private sector, as well as the need to address the socio-economic problems facing an increasing urban subsistence sector.

Summary of responses from discussants

- There is always a need to closely adhere to the tenets of whatever macroeconomic policy is adopted by government. This ensures that investors and other economic agents are aware that the policy is not simply one that will be subject to frequent changes on the whims of one lobby group or another, a factor that can be very destabilising.
- With particular reference to the current situation, discussants noted that it is very difficult to have both inflation (interest rate) and exchange rate stability prevailing in an economy. The macroeconomic situation in South Africa requires that emphasis be placed on ensuring that the rand is at a stable and competitive rate.
- Intervention in the foreign exchange rate market should be seen in the context of such interventions aimed at increasing South Africa’s foreign reserves having significant tax implications. These tax implications, in turn, have an impact on the transfers of nationally raised revenue and the delivery of services by different spheres of government.
- Rather than focusing debate on how macroeconomic policies influence the way that nationally raised revenue is shared, the focus should be on formulating policies that will grow the national revenue and enhance both savings and real investment, given the increased demands for social expenditure across the three spheres of government.

- The need exists to extensively define and properly cost free basic services in the light of growing demand not only in rural areas but also in the urban subsistence economy. Sectors of comparative advantage in rural areas (notably tourism and agriculture) should be promoted by way of pro-poor initiatives.

F. IGFR systems, processes and institutions: Key challenges and opportunities

Objective of the session

The IGFR system is given effect through various structures, institutions and processes. The objective of this session was to review the IGFR system in all its dimensions, including its evolution and effectiveness in enabling the relevant stakeholders to influence policy decisions and resource allocation, and its capacity to monitor and evaluate performance. The session covered two themes.

This first theme, *The evolution of South Africa's IGFR institutions and systems: Key successes and challenges for the future*, was chaired by Mr John Douw, a member of the SALGA Finance Working Group and Commissioner of the FFC. Mr Martin Kuskus, CEO, South African Bureau of Standards and Commissioner of the FFC, chaired the session on the second theme, *Performance monitoring, evaluation and data management for IGFR*.

Theme 1: The evolution of South Africa's IGFR institutions and systems: Key successes and challenges for the future

Overview

This section looked at the historical evolution of the South African IGFR system since its inception and the democratisation process in 1994. It covered a range of areas, including the policy framework, revenue and expenditure assignment between spheres of government, fiscal management and the co-ordination of IGFR reforms. The main message emanating from the discussions and presentation of papers points to the fact that key strides have been made that should be celebrated with pride, looking back to ten years ago when the system was conceptualised. Equally important to note, however, is that there are still areas where further work is needed to consolidate the successes that have been realised so far.

Presentation of papers

Prof. Anthony Melck, Myron Peter and Conrad van Gass presented the first paper, titled *The evolution of the intergovernmental fiscal relations system in South Africa*. This paper used the following criteria to assess the development of the IGFR system in South Africa:

- The existence of policy frameworks such as the legal and statutory frameworks, and national, provincial and local government fiscal frameworks;
- The revenue assignment;
- The expenditure assignment;
- The ability of the system to deal with fiscal imbalances;
- The ability of the system to adjust to fiscal imbalances in terms of the specific conditions of particular sub-national governments;
- Fiscal management;

- The co-ordination of IGFR reforms and processes;
- Stabilisation policy; and
- Simplification and modernisation of the IGFR system.

In providing a balanced assessment in terms of the criteria highlighted above, the presenters also outlined the following challenges for the next ten years:

- Deficit targeting versus an expansionary budget;
- Centralisation/decentralisation, and the appropriate assignment of expenditure responsibilities;
- The resolution of vertical and horizontal imbalances;
- No 'one size fits all' policy approach;
- The need for improvement in the information/knowledge management of IGFR systems;
- The need for synergy between policy co-ordination, diverse state structures and mechanisms for the delivery of services; and
- The need to resolve issues around the spatial economy and the revenue base of sub-national governments.

The second paper, presented by Jackie Manche, was titled *Ensuring the effective participation of each sphere of government in the processes and structures that determine intergovernmental fiscal arrangements*.

While Ms Manche acknowledged that substantial progress has been made in overhauling the budgetary process, initiatives that were undertaken to improve co-ordination across the three spheres of government have yet to bear fruit. The author pointed out that the above issue needed to be urgently addressed in order to successfully combat the massive developmental challenges that exist in the country. In addition, Ms Manche highlighted the need to focus on institutional transformation, with the following requiring attention:

- The Department of Provincial and Local Government (DPLG) must take the lead in implementing the President's Co-ordinating Council's resolution that municipal IDPs form the basis for engaging the priorities, plans and expenditures of all spheres of government. This will require some form of planning process to co-ordinate municipal priorities, and feed them together with the provincial and national priorities into a coherent government-wide programme for discussion by Cabinet.
- Each province must prepare a Provincial Growth and Development Strategy (PGDS) as its key development plan, reflecting a province-wide developmental perspective. Similar to the IDPs, sectoral plans should be part of the PGDS.
- Provinces must establish structures that include organised local government, and in some instances certain mayors, to co-ordinate and align provincial priorities.
- The role and nature of the existing intergovernmental fiscal structures should be reviewed and clarified. The proposed Intergovernmental Relations Bill provides an opportunity to review and align the policy setting and budget processes.

- The role of organised local government, and the other co-ordinating departments, i.e. the DPLG, the Department of Public Service and Administration (DPSA) and the Presidency, should be clarified in the budget process. These departments should participate in the intergovernmental fiscal structures, the Budget Council and the budget forums. The author pointed out that another area requiring further clarification is the role of the clusters in the budget process. Currently, local government, through SALGA, participates only marginally in the budget process. National Treasury consults SALGA with regard to the LES, but there is a strong sense that this consultation appears to be more procedural than substantive. Thus, there is a need for local government to be more strongly represented in the budget process.
- Improved co-ordination across the three spheres of government would be greatly enhanced by the provision of budget and other information, including capital expenditure, per municipal area. To achieve this, the author suggested that various government departments, both national and provincial, must over time strive to make such information available to facilitate inter-sphere planning and implementation.
- Ms Manche also reflected on the issue of the vertical distribution of nationally collected revenues. She argued that, thus far, the vertical distribution of nationally raised revenue has been a result of political decisions taken at the national level. The author argued that some level of objectivity in decision-making on this issue is required. For instance, some countries even have formulae, determined by national government through rigorous consultations, and implemented by independent commissions (similar in nature and function to the FFC), that determine this vertical division. The author further pointed out that the FFC's costed-norms approach to determining both the provincial and local government equitable share could go a long way towards reducing the fiscal gap (between expenditure need and revenue raising capacity) that exists in both the provincial and local spheres.

Ron Neumann, in his capacity as discussant for the session, presented a paper titled *The role of the Financial and Fiscal Commission within the intergovernmental fiscal relations system in South Africa: Evolution, key successes and challenges*. In his analysis, Mr Neumann traced the history of the FFC and its various recommendations presented to government over the past ten years. The author proposed that the FFC has successfully charted a course through its first ten years, which has enabled it to play a significant role within the IGFR system of the democratic Republic of South Africa. As this role of the Commission is evolving, it faces both existing opportunities and some constraints. To preserve its integrity, the author argued that the Commission must retain its bearings and adhere to sound practices. The author highlighted that confidence in the FFC should be strong, given its commendable past record.

Mr Neumann also referred to some of the key recommendations made by the FFC in its June 2001 Submission on the Division of Revenue, wherein the FFC outlined a set of operational guidelines to steer it in its work and recommendations to government. To this end, the FFC should:

- Continue to respect the constitutional status of each sphere of government;
- Adhere to constitutional principles, and always be mindful that the Bill of Rights mandates the provision of basic services;
- Consider other principles of good intergovernmental relations and, to preserve its integrity, must undertake extensive research to inform the basis of its recommendations; and
- Consider the stated government programme objectives and priorities.

Achievements

The following issues emerging from the presentations and discussions identify the key achievements of the past ten years:

- The Constitution has successfully laid a profound basis for the strides that the South African IGFR system has made so far. For instance, it sets out the basic framework, and provides for the establishment of other key pieces of legislation (Intergovernmental Fiscal Relations Act, Division of Revenue Act, Public Finance Management Act, Financial and Fiscal Relations Act, etc.) to enable the implementation of its goals and objectives. Classic cases in point in this regard include
  - the Bill of Rights (Chapter 2) guaranteeing each individual citizen a set of (socio-economic) rights on which government must deliver,
  - the three spheres of government, which are autonomous, interrelated, and independent, within a framework of co-operative governance, in order to achieve the goals of a unitary state with a decentralised system of governance, characterised by the distinctiveness, interdependence and interrelatedness of all spheres, and
  - granting the local government sphere the constitutional right of existence, rather than local government being the creation of provinces, as is the case in some other countries, and further granting this sphere the right to elect its own leadership, to budget and to plan, with the role of the national and provincial spheres being that of supporting, monitoring and playing an oversight role in the context of the macroeconomic agenda.
- With respect to institutional mechanisms, it is broadly acknowledged that much progress has been made. In this respect, indications are that useful intergovernmental forums[9] have been established to co-ordinate and integrate the work of various sectors/clusters in the context of integrated planning. These intergovernmental forums include
  - various MinMecs (meetings of the national minister and MECs) and joint MinMecs,
  - organised local government (SALGA),
  - the Budget Council,
  - the Budget Forum,
  - the Minister's Committee on the Budget,
  - the Technical Committee on Finance, and
  - the President's Co-ordinating Council.

- The establishment of an impartial and independent body to serve an advisory and a 'watchdog' role is also cited as one of the milestone strides in the evolution of the system. Unlike in some countries (e.g. India), where such bodies are established and dissolved every five years, the South African model, which establishes the FFC as a permanent body, is praiseworthy in the sense that it ensures continuity of research and advice to government. In particular, this enables the Commission to interact with stakeholders and government, as well as building rapport and working relationships, in a fluid and continuous manner.
- Several underpinning reforms have been introduced to modernise the way government conducts its day-to-day operational business and strategic planning. Among others, these include
    - The Medium-Term Expenditure Framework (MTEF), which entails a three-year rolling budget, and endorses the principles of predictability, accountability and responsibility in the budget process. This also includes strategies to ensure a clear synergy and synchronisation between budgeting and planning within the medium-term framework.[10] Plans are also afoot to extend the MTEF approach to the local sphere, including the publication of the allocations to each individual municipality in the Annual Division of Revenue legislation.
    - The promulgation of the Public Finance Management Act (PFMA), together with other reforms, established additional institutional mechanisms to strengthen financial management and foster accountability. The promulgation of the Municipal Finance Management Act (MFMA) will extend such reform to the local sphere of government.
    - Strengthening political participation in the allocation process, which includes the role of Parliament, select committees, portfolio committees, and so on, in the monitoring of expenditures and outcomes[11] of organs of state.
- The fact was highlighted that the local sphere of government has undergone major restructuring since 1994, moving from over 1 000 to 843 transitional local and rural councils, and subsequently reduced to 284 municipalities in the year 2000. The reality is that prior to the restructuring process, the vast majority of municipalities had little or no revenue base and were largely dependent on grants from national government. This restructuring process, although not without turbulences, has somewhat managed to accelerate the achievement of economies of scale in administration and service delivery.

Areas for improvement

While the basic foundation for intergovernmental fiscal machinery is well in place, the processes and structures that determine it are not immune from weaknesses. These include:

- Data systems/management and the outcomes-based performance management system. Theme 2 below reports on performance monitoring, evaluation and data management for IGFR in greater detail. Thus, it suffices to make two points here –

  - very few departments are able to provide information regarding budget priorities, spending levels, budget allocations, utilisation rates, etc. per municipality, or associated information/data about each municipality, and
  - despite several years of medium-term planning at departmental level, in many cases, measurable objectives are either not measurable or not objectives, or are rolled over and are mainly de-linked from cluster priorities.

- Effective synchronisation of budgeting and planning. International experience shows that 'the failure to link policy, planning and budgeting may be a single most important factor contributing to poor budgeting outcomes at the macro, strategic and operational level in developing countries'.[12] In the case of South Africa, indications are –
  - Firstly, while in principle Cabinet has endorsed the Medium-Term Strategic Framework (MTSF), in practice its implementation has not yet been achieved. For instance, there is a compelling case for the municipal IDP to form the basis for the PGDS and the MTSF – a bottom-up developmental approach. At present, observations are that the opposite seems to be the practice.
  - Secondly, as the current status quo stands, the budget is a hard constraint, forcing policy priorities to be disciplined by fiscal and budgetary realities. While, on the one hand, the three-year (indicative) allocations bring about certainty and predictability in funding, on the other hand, each organ of state is required to set priorities and plan expenditure programmes within the parameters of voted allocations.

There still exists confusion about the roles of some state departments/offices in key aspects of intergovernmental relations. A classic example in this regard is the considerable variation and uncertainty in provincial conceptions of the role of the Office of the Premier, the Provincial Treasury and the Office of the MEC for Local Government in strategic planning.

In addition to the above, it was argued that the other issue that needs to be flagged in order to ensure that all three spheres participate effectively and meaningfully in the intergovernmental relations system relates to the vertical distribution of the nationally collected revenues. Thus far, it was argued, all indications are that this has been a political decision taken at a national level. As a result, the required level of objectivity in decision-making on this issue appears to be absent. It was suggested that South Africa could learn from other countries that have switched to a formula approach in determining the vertical split. In such cases, the utility of independent bodies such as the FFC becomes very instrumental to ensure transparency, openness and fairness in the process. The FFC's 2001 proposal on the costed-norms approach could be used as a basis for the work required on the vertical split.

Proposals/Recommendations

Emanating from the presentations and discussions, some of the key sets of proposals/recommendations include:

- A need to strengthen the substantive consultation process with the local government sphere (SALGA);
- The urgent need to consider ways of improving data/information collection and management across all sectors;
- The realistic use of IDPs and PGDS in the budget planning process to inform the national priorities;
- A realistic process of linking strategic planning and budgeting – doing away with an approach that sets budgets as hard constraints, with priorities having to be modelled to fit budgets;
- Strengthening the monitoring of outputs;
- Beginning a constructive process of engaging discussions on the vertical split, rather than leaving it entirely in the hands of political judgment at the expense of objectivity;
- The role and nature of some of the existing intergovernmental fiscal structures should be reviewed and clarified – the draft of the Intergovernmental Relations Bill offers an opportunity to review and align the policy setting and budget processes;
- The role of organised local government and other co-ordination departments such as the DPLG, DPSA and the Presidency should be clarified in the budget process; and
- Provinces need to establish provincial structures, which include organised local government, and in some cases certain mayors, to co-ordinate and align provincial priorities.

Theme 2: Performance monitoring, evaluation and data management for IGFR

Presentation of papers

First, Ismail Momoniat presented on *The role and significance of an effective compliance and performance monitoring and evaluation framework in a decentralised system*. He highlighted that:

- Effective compliance and performance monitoring and evaluation play a significant role in ensuring efficiency in delivery of services and in enabling accounting officers to act where there are failures. The PFMA and MFMA lay the basis for sound financial management, but legislatures are failing to exercise effective oversight.
- Government information, financial and non-financial, whether good or bad, should be published in the public domain. This information will be of good quality if the public have access and are using the information.
- There is a need for uniformity in performance monitoring, evaluation and reporting. National departments should monitor both financial and non-financial reports and outcomes of provincial departments. Annual

reports for all spheres should outline budget outcomes and also indicate if targets were met.
- There is a need to decentralise management and for all role-players to be involved for South Africa to have an effective performance monitoring system. Decentralisation should be built around budget reforms in all spheres of government and should be linked to service delivery.
- Fiscal powers, such as revenue collection, should be fully exercised by most sub-national governments.

Second, Pali Lehohla presented on *Data collection and monitoring performance*, and made the following points:

- There is a need to adopt the Development Index Framework (DIF) as a working approach. The DIF is aimed at addressing issues of space economy, i.e. how we lift municipalities towards development and how we break the spatial framework that is dominated by metros.
- A statistical system should be strengthened to eliminate fragmentation of statistics and data.
- ‘Data needs indaba’. This proposal aims to address data problems and also for all role-players to agree on certain indicators (e.g. poverty).

The final presentation, delivered by Vincent Makinta, was on *Developing a robust system of data collection: Monitoring and evaluating performance in the IGFR system*.

This paper raised concerns about progress towards improving data supply for the IGFR’s equitable share formula. It drew its background from the reality that there is a lack of adequate and quality data to support the IGFR and the equitable share allocation formula. Further, the fiscal arrangements in South Africa are such that oversight bodies like the FFC require credible and reliable data to make reliable recommendations, without which not only are such institutions going to give incorrect advice but their credibility will suffer.

The paper aimed at developing a framework through principles and guidelines for developing a solid base of data and information, aimed at enriching the formula allocation mechanism of government. It began by reflecting on practices elsewhere like Nigeria, India and Australia.

The principles advocated speak to a reliable framework of data collection and analysis that is consistent with the constitutional requirement. A collective arrangement, where an overlapping repository of data, housed in various data agencies like Statistics South Africa (Stats SA) and other data collection institutions and government departments, is employed to provide support to policy formulation. This collective data system should be able to stand the test of time in as far as being able to deal with any aspect of the Constitution or other legislation is concerned.

The collection of data should focus on the key list of services in the Bill of Rights, and it should facilitate the assessment of the progress or achievement of CMBS over time. Over and above the Bill of Rights, this data system needs to acknowledge that the list in Section 214(a)-(j) of the Constitution can only be balanced if the data generated promote an easing of the tension and contestation between priorities.

Such a system must be dynamic and sensitive to the needs within the evolving IGFR system. For instance, an introduction of new acts like the PFMA requires changes in the reporting formats. The dynamic system should be able to timeously facilitate the closure of data gaps as policy develops and allow monitoring of progressive realisation. The alignment of Stats SA's relevant statistical outputs with the IGFR policy data needs will go a long way in meeting some of these requirements.

The paper concluded by highlighting that a robust data system would depend largely on these principles. The extent to which they are adhered to could directly affect the degree to which the equitable share can be based on a reliable and unquestionable information base.

The following issues were highlighted during the discussion of the paper:

- With respect to the definition of poverty, it was emphasised that a single defendable cut-off-line definition of income poverty is required. At the sane time, it was acknowledged that there are various forms of poverty.
- A need exists to have Stats SA's offices work closely with municipalities, since, at this level, they are in a better place to inform the collection of data. Decentralised data collection is necessary to be able to assess progress with and performance levels of service delivery.
- Stats SA must acknowledge that there is already a big gap and delay in the release of census data. This problem can only be overcome if Stats SA adopts the ten-year census cycle.
- The existing management information systems of a department can play a significant role in kick-starting the process. Development of complex systems will only complicate things, especially if people are not willing to go an extra mile in ensuring that the systems work.

Conference closure: The Chairperson's closing remarks

The Chairperson thanked all for attending the conference, paying special tribute to the speakers and the organisers of the conference. In her brief summary, she reiterated the following:

- There is a need to have a collective method of data sourcing and management; and
- Delivery of CMBS is not about money, and everyone must ensure that the efforts to deliver basic services are not compromised.

ENDNOTES

[1] δ is a policy parameter meant to allocate the pool of funds into two portions: (i) a portion for eradicating backlogs; and (ii) a portion in which all provinces partake irrespective of backlogs or not – this portion is a function of population size.

[2] In terms of Section 214 of the Constitution, which governs the allocation of nationally collected revenues among the national government, the nine provincial governments and the 284 municipalities.

[3] The South African Human Rights Commission's reports note numerous instances where certain government departments or specific programmes fall short of constitutional muster in their design, financing and implementation. For instance, the 2004 SAHRC report concludes that 'many people, and children in particular, had their right to food violated during the reporting period as they lost access to affordable food due to high prices and/or unreasonable plans devised and supervised by government'. During the reporting period, 101 152 children were admitted to hospital with severe malnutrition and it was not possible for the SAHRC to state how many children died of malnutrition. However, the Commission notes that 'it is alarming that case fatality rates for severe malnutrition in two under-resourced hospitals in the Eastern Cape ranged from 21% to 38%' (SAHRC 2004: xv). The Minister of Housing has acknowledged that the adoption of the Emergency Housing Policy was conceptualised as a result of the *Grootboom* case (which pointed out that housing policy fell short of constitutional requirements) and recent floods. The same applies to social security. 'Though the State has an obligation to respect, protect, promote and fulfil the right of access to social security, the reality of the matter is that the State has not fully complied with its obligations as set out in the Constitution and binding international instruments. Most vulnerable and marginalised groups are excluded from social security legislation mainly because they do not form part of the formal workforce of the country.' (SAHRC 2004)

[4] The FFC is one of the few exceptions, since the implications of the progressive realisation of social and economic rights has been one of the Commission's preoccupations since its inception ten year's ago.

[5] Accounting Officers at national, provincial and local level, their Chief Financial Officers and other senior management, as well as senior management in national and provincial treasuries as outlined in the Public Finance Management Act of 1999 and the Municipal Finance Management Act of 2003.

[6] See Thomas J Bollyky (2002) R if C > P + B: A paradigm for judicial remedies of socio-economic rights violations, 18 *SAJHR* 161 (outlining some of the debates around judicial function and the doctrine of separation of powers).

[7] See, for example, *S v Dodo* 2001 (5) BCLR 423 (CC) at paras 12–26.

[8] In the *TAC* judgment, above fn 12 at para 129, the Constitutional Court declined to confirm an order of the High Court to include a structural interdict against the government on the basis that it was unnecessary to do so as the 'government has always respected and executed orders of this Court [and that] there is no reason to believe that it will not do so in the present case'.

[9] Acknowledgement, however, is made that much more work is still needed to ensure that these structures do function properly and effectively to deliver on their mandates. One key criticism of such structures has been their inability/lack of authority to take key decisions, with their role ultimately reduced to a mere secretarial one.

[10] This is an area that needs further work at a pragmatic level. While the rudimentary work in the form of principle has been well received, it is felt that, in reality, the allocations precede the planning process and, in the final analysis, plans are adjusted to fit the allocations.

[11] Monitoring of outcomes is one of the key areas that require further work. Although this principle has been welcome in general, unavailability/inaccuracy of data in many respects still poses a threat.
[12] The World Bank (1998) *Public expenditure management handbook*, p. 31.