

TERMS OF REFERENCE FOR STANDING TASK GROUP: JURIDICAL

The terms of reference of the task group will be as follows:

1. To investigate, research and report on all matters legal, juridical and legislative relating to issues arising out of re-incorporation or non-reincorporation.
2. To review Working Group 4's report to CODESA 2 and identify and research all agreements, with particular reference to item 3.3 of the report, which states:
 "Consensus was also reached on mechanisms of addressing the political, legal and constitutional implications of reincorporation. It was agreed to establish a technical committee. This committee should consult the Gender Advisory Committee. It should investigate within the context of the terms of reference of sub group 4 of working group 4 the following:
 - 3.3.1 the relationship between South Africa and the TBVC states during the transitional phase;
 - 3.3.2 consider legislation that would be required to effect reincorporation or non-reincorporation;
 - 3.3.3 consider legislation and/or measures that would level the political playing field;
 - 3.3.4 harmonisation of legislation.
3. Based on the report tabled by WG4 at CODESA 2, the identification of those agreements which require elaboration or refinement.
4. Based on the report tabled by WG4 at CODESA 2, the identification of outstanding matters as well as any other aspects arising from the Terms of Reference from Working Group 4.
5. To cover matters not yet covered by Working Group 4:
 - the exact form of authority in the TBVC territories;
 - harmonisation of legislation and taxation;
 - orderly termination of bilateral and multilateral agreements and treaties;
 - the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect reincorporation.

TERMS OF REFERENCE FOR STANDING TASK GROUPS: ADMINISTRATIVE AND PRACTICAL EFFECTS OF REINCORPORATION (OR NON-REINCORPORATION)

The terms of reference for each of these four standing task groups will be as follows:

1. Item 3.2 in the report of Working Group 4 to CODESA 2, which refers to the practical, financial and administrative effects of reincorporation:

"3.2. Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation.

3.2.1 Reincorporation

Eighteen parties share the view that reincorporation of the TBVC States into the new South Africa is desirable. However, Bophuthatswana reiterates its preference for non-reincorporation, but states that every option which promises a better future or a future at least as good as its present position will be regarded as a feasible and realistic option for consideration.

The demarcation of functions and responsibilities on the first, second and third levels of government have not yet been clarified. Where reference is made to future government responsibilities, it should be regarded as being in accordance with the constitutional proposals and interim government arrangements formulated by Working Groups 2 and 3.

3.2.2 Retention of Business Confidence and Taxation

The parties are unanimous that the process of reincorporation should be conducted in such a way that it ensures retention of business confidence. Working Group 4 recommends that:

- 3.2.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place, the details of which will be considered by a committee (see 11 below.)
- 3.2.2.2 The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.
- 3.2.2.3 Working group 4 is unanimous that there should be harmonisation of the taxation regime. The tax system of the TBVC states should be brought in line with the applicable tax laws in the RSA. This process should apply to all forms of tax structures e.g. company tax, personal tax etc. The question of tax concessions may be considered in relation to regional development issues.
- 3.2.2.4 A formal statement of intent be issued by Codesa 2, by which businesses are informed of the proposed harmonisation of legislation, specifically tax and labour legislation.

3.2.3 Land Transfers

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.
- 3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution, whereafter it will be transferred to the SA Government (successor in title.)
- 3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extention Act 2 of 1980 which has not yet been excised from South Africa.
- 3.2.3.4 This moratorium will apply to all TBVC States.

Reservation

Bophuthatswana indicates that such a moratorium could be perceived as a negative implication to be considered carefully.

Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised.

The meeting also notes the concern of the SA Government and the National Party about certain legal and contractual obligations which have to be fulfilled as well as land purchased from individual South African citizens which has not yet been transferred.

3.2.4 Disposal/Transfer of Assets and Liabilities

The parties share a common view that the assets and liabilities of these states should be transferred to the new government on reincorporation.

3.2.5 Optimal Use of Existing Infrastructure

Working Group 4 reached agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 3.2.5.1 It is recommended that all structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalized structures and operations.
- 3.2.5.2 Existing financial arrangements and transfers should continue uninterrupted until they are replaced by new arrangements.

3.2.6 Review of Development Project Priorities

On reincorporation, prioritisation of development projects should form part of the national/regional prioritisation programme. The Development Bank of Southern Africa which has been closely linked with the development projects in these states could provide a useful service in this regard.

3.2.7 Good Administration during Transition

Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service. The Subgroup proposes that:

- 3.2.7.1 Administration be reorganised around existing structures.
- 3.2.7.2 On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.
- 3.2.7.3 The TBVC Administration should operate under the supervision of the Interim Government during transition.

Reservation

Bophuthatswana reiterates that this is only applicable once a decision in favour of reincorporation is taken.

- 3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are:
 - 3.2.7.4.1 The administration of justice
 - 3.2.7.4.2 Civil service
 - 3.2.7.4.3 Parastatals
 - 3.2.7.4.4 Security and other public services.

3.2.8 Future of the Civil Service

Civil servants should retain their existing salaries, benefits, conditions of service, etc. Any adjustment in the conditions of service should be occasioned by a process of rationalisation as a result of absorption into a non-racial national/regional service. It is recommended that:

- 3.2.8.1 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.

3.2.9 Servicing and Repayment of TBVC Debts

The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated. The working group notes that a new government will have to consider how to deal with debt irregularities, if any.

3.2.10 Proposed Appointment of Committees

Working group 4 is unanimous that two committees be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

- 3.2.10.1 Composition of Committees

Each committee should be a nine-member multi-party committee consisting of:

- 3.2.10.1.1 five representatives, one from each of the SATBVC administrations.
- 3.2.10.1.2 four representatives nominated by the remaining parties at Codesa.

3.2.10.2 Terms of Reference of the Committees

A committee on the retention of business confidence and use of existing infrastructure will be tasked to investigate and make recommendations to the relevant parties on the following:

- 3.2.10.2.1 Harmonisation of tax regime.
- 3.2.10.2.2 Harmonisation of labour legislation.
- 3.2.10.2.3 Possibility of granting temporary exemptions from tax.
- 3.2.10.2.4 Introduction of export and other investment incentives.
- 3.2.10.2.5 Protection of existing tax concessions for a reasonable period.
- 3.2.10.2.6 Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.
- 3.2.10.2.7 Protection of existing investments.
- 3.2.10.2.8 Investigation of the causes and effects of mass action on business confidence.

Reservation

The ANC expressed its concern that this should not prejudice its right to undertake mass action in general.

- 3.2.10.2.9 Whether the process of harmonisation should be implemented incrementally.
- 3.2.10.2.10 Whether, where prejudices arise, exemptions should be granted for a definite period
- 3.2.10.2.11 Whether the granting of exemptions should be fairly automatic up to a certain date.
- 3.2.10.2.12 A close study of the taxation system to be undertaken.
- 3.2.10.2.13 The whole question of optimal use of existing infrastructure during transition and after reincorporation.
- 3.2.10.2.14 Any other matters relevant to the above issues.
- 3.2.10.3 A committee to look into the question of good administration during transition and the future of the civil service with particular regard to the following:
- 3.2.10.3.1 Reorganisation of administration around the existing structures.
- 3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporation.
- 3.2.10.3.3 The following questions in regard to the civil service, security service, parastatals etc.
- uniformity of salaries and conditions of service.
 - security and transferability of pension benefits.
 - assimilation and training of skilled staff.
 - appointment on merit i.e. qualifications, experience and ability irrespective of race, colour, creed or sex.
 - strict adherence to the IMF norm that the total civil service remuneration should not exceed 30% of the national/regional income.
 - rationalisation of excessive bureaucracy on a humane basis.
- 3.2.10.3.4 An extensive rationalisation programme of the public services involving the SATBVC states.
- 3.2.10.3.5 The appointment of a non-partisan body to implement the process

of rationalisation.

3.2.10.3.6 Any other matters relevant to the above issues.

3.2.11 Practical Implications

The following will be the practical implications of reincorporation:

- 3.2.11.1 The reincorporated state will again fall under the geographic jurisdiction of the RSA.
- 3.2.11.2 That state's people will be South African citizens.
- 3.2.11.3 That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.
- 3.2.11.4 The reincorporation process will have to be formally legislated through the relevant legislative bodies.
- 3.2.11.5 The "international" boundaries between that state and the RSA will fall away.
- 3.2.11.6 The need for diplomatic ties between the RSA and those states will fall away.
- 3.2.11.7 If all four TBVC states are reincorporated, South Africa would once more be undivided, thus achieving one of the main objectives of the Declaration of Intent signed by the parties to Codesa.
- 3.2.11.8 It is as well to mention that if any TBVC state were to decide not to be reincorporated, it would have to seriously consider the effects that decision would have on that state.

Reservation

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

The above should be read in conjunction with item 6, Land moratoriums and transfers, contained in the minutes of the meeting of sub committee 4 held on 8 June 1992 (as it relates to item 3.2.3):

Land moratorium and transfers

Mr Godden referred to the report of WG 4 to Codesa 2, where it is stated under item 3.2.3 Land Transfers, that "Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised." Mr Godden referred to a document which sets out outstanding land issues between the SA government and Ciskeian communities, and appealed to sub committee 4 to remove blocks preventing action by the SA government.

Mr Botha explained that land moratorium applied to land being transferred on a purely ideological basis. This did not rule out people/communities who were entitled to land that had been promised them, and stressed that 'hardship cases' must still be addressed. Mr Botha suggested that the standing

committees address this matter. It was agreed that the Ciskei government would provide the sub committee with all relevant documentation pertaining to this matter.

2. To cover matters not yet covered by Working Group 4:
- strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - the time frames for such a reincorporation and related processes;
 - the exact form of authority in the TBVC territories;
 - harmonisation of legislation and taxation;
 - orderly termination of bilateral and multilateral agreements and treaties;
 - ensuring public accountability of actions taken for the purposes of reincorporation.