



TO : MEMBERS OF THE MC - SUB-COMMITTEE 4  
FROM : CODESA ADMINISTRATION  
QUERIES : LOVEDALIA / DEPHNE  
RE : DRAFT MINUTES - 17 JUNE 1992  
PROGRESS REPORT TO MANAGEMENT COMMITTEE  
TERMS OF REFERENCE FOR STANDING TASK GROUPS

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MANAGEMENT COMMITTEE SUB-COMMITTEE 4

M Phosa	ANC	011-333-4509
B E Keikelame	Bophuthatswana Gvt	0140-21851
G F Godden	Ciskei Government	0401-91375
F T Mdlalose	Inkatha Freedom Pty	0358-20-2470
	or c/o	S Felgate
		0358-20-2167
J M Matsana	Inyandza Nat Mvmnt	013140-606
T Abrahams	Labour Party	021-403-3402
R F Botha	SA Gvt c/o J Jacobs	012-343-8043
A T Meyer	SA Gvt c/o J Jacobs	012-343-8043
S N Sicgau	Transkei Gvt	
	c/o Z Titus	0471-23876
S Makhuvha	Venda Government	0159-22971
		and c/o Chief
		Gvt Liaison
		Officer
		0159-23173
Also to :		
P J Gordhan	NIC/TIC	031-309-2278
S Albertyn	Sec - MCSC4	011-838-5088

TO: MEMBERS OF THE MC - SUB COMMITTEE 4  
FROM: CODESA ADMINISTRATION  
QUERIES: LOVEDALIA / DEPHNE  
RE: SUB COMMITTEE 4

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The following documents follow:

- \* Minutes of meeting of sub committee 4 held on 17 June 1992
- \* Progress Report to Management Committee
- \* Terms of Reference for Standing Task Groups

Please take particular note of paragraph 6.2.1.1 in the minutes, wherein it is recorded that it was agreed to work on the assumption that the MC will approve the establishment of the standing task groups at its next meeting on 29 June 1992, and that the secretariat should be advised of the names and fax numbers of nominees for the five standing task groups by **Friday 26 June 1992**. This is in order to facilitate arrangements for the first meeting of the standing task groups, which is scheduled to take place on Tuesday 7 July 1992.

**DRAFT AGENDA FOR THIRD MEETING OF SUB COMMITTEE 4 TO BE HELD  
AT THE WORLD TRADE CENTRE ON WEDNESDAY 29 JULY 1992 AT 10H00**

- 1 Opening Prayer
- 2 Welcome by Chairperson and Introduction of delegates
- 3 Apologies
- 4 Adoption of Agenda
- 5 Consideration of Minutes of meeting of sub committee 4 held on 17 June 1992
- 6 Matters arising from Minutes
- 7 Reports from Standing Task Groups
- 8 Report from Management Committee (if any)
- 9 Land Moratorium
- 10 Progress report to Management Committee
- 11 General
- 12 Closure

**DRAFT AGENDA FOR FIRST MEETING OF STANDING TASK GROUPS OF SUB  
COMMITTEE 4 TO BE HELD AT THE WORLD TRADE CENTRE ON TUESDAY  
7 JULY 1992 AT 10H00**

- 1 Opening Prayer
- 2 Welcome by Chairperson and Introduction of delegates
- 3 Apologies
- 4 Adoption of Agenda
- 5 Briefing to Standing Task Groups
- 6 Work Programme
  - including identification of short, medium and long term issues in terms of reference, in order to facilitate setting of priorities, and to report on this to sub committee 4 as soon as possible.
- 7 Closure

THESE ARE DRAFT MINUTES, AS APPROVED BY THE CHAIRPERSON. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF SUB COMMITTEE 4, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO RATIFICATION BY THE SUB COMMITTEE AT ITS NEXT MEETING.

**MINUTES OF THE SECOND MEETING OF SUB COMMITTEE 4 (THE FUTURE OF THE TBVC STATES) HELD AT THE WORLD TRADE CENTRE ON WEDNESDAY 17 JUNE 1992 AT 10H00**

PRESENT (see Addendum A)

GF Godden (chair)

S Albertyn (secretary)

M Durrheim (minutes)

**1 Opening prayer**

The meeting was opened with prayer.

**2 Welcome by chairperson**

2.1 As six of the nine delegates expected to attend the meeting were present, thus constituting a quorum, it was agreed to proceed with the meeting.

2.2 The chairperson informed the meeting that at the MC meeting on 15 June 1992:

2.2.1 as sub committee 4 is a sub committee of the MC, it is necessary, before implementing any action or setting up any structures, to first make recommendations to this effect to the MC.

2.2.2 the unratified minutes of the meeting of sub committee 4 held on 8 June 1992 had been tabled. As they were unratified the MC had decided not to debate the minutes, but members were permitted to comment thereon.

2.2.3 he had presented a progress report, which was required in terms of paragraph 2.8 of the terms of reference of sub committee 4.

2.2.3.1 Mr Phosa stated his objection in principle to the submission of a progress report which had not been approved by other members of the sub committee, and which had caused him some embarrassment. Mr Godden accepted Mr Phosa's censure and offered an apology.

2.2.3.2 It was later agreed that future progress reports would be drawn up by the secretaries and faxed out to delegates for comment prior to MC meetings.

**3 Apologies**

None

**3a Approval of Agenda**

The following item was placed on the agenda, under General:  
Land Moratorium

The agenda was adopted with the above amendment.

**4 Consideration of minutes of meeting of sub committee 4 held on 8 June 1992**

It was agreed to amend the final sentence of item 6, **Land moratorium and transfers**, to read as follows:

It was agreed that those TBVC governments with outstanding land issues should provide the committee with all relevant documentation pertaining to this matter.

The minutes were adopted with the above amendment.

**5 Matters arising from the minutes**

- 5.1 Mr Godden referred to the final paragraph of item 5.1 regarding the possible reconvening of WG 4. He reported that the MC had clarified at its meeting on 15 June 1992 that, upon the recommendation of sub committee 4, WG 4 could be reconvened, should procedures require this. A discussion ensued regarding whether or not WG 4 should be reconvened. It was agreed that it was not necessary to reconvene WG 4 now, but that the question would be addressed again when the need arose.
- 5.2 Mr Phosa referred to item 4.1: the proposals presented by Mr RF Botha, and reported that the principle of forming two standing committees was acceptable to the ANC, with the following provisos:
- the standing committees should operate under the auspices of Codesa and retain the Codesa character i.e. include representatives of all parties at Codesa;
  - the phrase 4.1.2.2 "each committee would consist of representatives acceptable to the respective TBVC state and the SA Government" needed to be amended. He suggested that each delegation represented on sub committee 4 should nominate their own delegates to sit on the standing committees.
  - the standing committees should continue to operate after Codesa 3, when they could operate under the auspices of the transitional executive councils (TEC), but should continue to retain their Codesa character, including representatives of all the TBVC states.

The ANC would be happy with one standing committee to consider the juridical aspects of re-incorporation of the TBVC states, and would accept separate standing committees to consider the administrative and practical effects of re-incorporation for each of the TBVC states. Sub committee 4 should decide about the chairpersonship of each standing committee, and reports from each of the standing committees should be channelled to the MC through sub committee 4.

It was agreed that the SA Government and the respective TBVC states would have to sign the final documents on reincorporation, but prior to this, all parties at Codesa should participate in the process and in the drawing up of the final agreements.

## 6 Work programme

6.1 It was agreed to recommend to the MC the establishment of the following Standing Task Groups:

### 6.1.1 Standing Task Group: Juridical

6.1.1.1 A Standing Task Group: Juridical, incorporating the proposals made by Mr RF Botha as recorded in the minutes of the meeting of sub committee 4 held on 8 June 1992 should be constituted.

6.1.1.2 Composition: the Standing Task Group: Juridical would consist of nine members. Each of the parties represented on sub committee 4 will nominate an individual with particular knowledge and expertise in the field of law, legislation, constitution-making and the juridical process.

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

6.1.1.3.1 To investigate, research and report on all matters legal, juridical and legislative relating to issues arising out of re-incorporation or non-reincorporation.

6.1.1.3.2 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.

6.1.1.3.3 Based on the report tabled by WG4 at CODESA 2, the identification of those agreements which require elaboration or refinement.

6.1.1.3.4 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.

6.1.1.3.5 To cover matters not yet covered by Working Group 4:  
- the exact form of authority in the TBVC territories;  
- harmonisation of legislation and taxation;

## SUB COMMITTEE 4/MINUTES/17 JUNE

- 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.

6.1.2 Four Standing Task Groups: Administrative and Practical implications of Reincorporation (or non reincorporation)

6.1.2.1 Standing task groups: Admin. would consider the administrative and practical implications of reincorporation (or non reincorporation) for each TBVC state.

6.1.2.2 Composition: The task groups should bear the CODESA character and consist of nine members each. The organisations represented on sub committee 4 will each nominate one delegate per task group.

6.1.2.3 The names of the standing task groups will be as follows:

1. Standing Task Group: Administrative and Practical implications - Transkei
2. Standing Task Group: Administrative and Practical implications - Bophuthatswana
3. Standing Task Group: Administrative and Practical implications - Venda
4. Standing Task Group: Administrative and Practical implications - Ciskei

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

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

6.1.2.4.2 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.



The MC is also requested to note the following recommendations with regard to the appointment of the standing task groups:

- 6.1.3 It was agreed that the current chairperson of sub committee 4 would convene the first meeting of the standing task groups, and at the first joint meeting brief all delegates simultaneously. Members of sub committee 4 will also be present at the joint meeting. The task groups should thereafter determine from time to time how each would be chaired, bearing in mind the principle that the chairing of meetings should be rotated.
- 6.1.4 It was agreed that the minutes of the standing task groups should be tabled regularly in sub committee 4, and that where it is deemed necessary for the full standing task group to report to the sub committee, a joint meeting will be convened.
- 6.1.5 It was agreed that members of sub committee 4 need not necessarily serve on one of the standing task groups, but are not precluded from doing so.
- 6.1.6 It is likely that experts appointed to serve on the standing task groups by the various organisations may need to be remunerated. If so, the MC is requested to advise whether the cost could be met by CODESA.
- 6.1.7 It was noted that some of the standing task groups may wish to address the question of reincorporation on a regional basis. It was agreed not to prescribe in this regard to the standing task groups and to leave out any reference to 'regional solutions' in the terms of reference.

## 6.2 Review of terms of reference for sub committee 4

### 6.2.1 The way forward for sub committee 4

Mr Godden reported that he had been advised by the MC that it was up to sub committee 4 to set its work schedule.

6.2.1.1 It was agreed to work on the assumption that the MC will approve the establishment of the standing task groups at its next meeting on 29 June 1992, and that:

6.2.1.1.1 the secretariat should be advised of the names and fax numbers of nominees for the five standing task groups by **Friday 26 June 1992;**

6.2.1.1.2 the five standing task groups would meet on the 7, 14 and 28 July at 10h00, and that members of sub committee 4 will be present on 7 July during the joint briefing of the task groups by the chairperson of sub committee 4;

6.2.1.1.3 the standing task groups would be requested to identify short, medium and long term issues in their terms of reference, in order to facilitate the setting of priorities for their work, and to report on this to sub committee 4 as soon as possible.

## 6.2.2 Establishing a modus operandus for sub committee 4

6.2.2.1 It was agreed that sub committee 4 is a sub committee of the MC, and that the standing task groups are in turn mandated by sub committee 4. The standing task groups can only make recommendations to sub committee 4 and in turn sub committee 4 will make recommendations to the MC.

6.2.2.2 It was further agreed to point out to the MC that while in all probability sub committee 4 will not function beyond CODESA 3, the standing task groups may well need to continue with their work after CODESA 3 and within the framework of transitional arrangements as agreed by WG 3.

6.2.2.3 It was agreed that it may be necessary to reconvene WG 4 to present the reports of the standing task groups. The date for this meeting will be decided upon in due course.

## 6.2.3 Schedule of meetings

It was agreed that sub committee 4 will meet again on the following dates:

- Tuesday 7 July 1992 at 10h00 (the first joint meeting of the standing task groups)
- Wednesday 29 July 1992 at 10h00.

It was agreed that special notification would be sent to absent members regarding the:

- recommendations forwarded to the MC,
- anticipated first meeting of the standing task groups on 7 July,
- terms of reference for the standing task groups
- modus operandus for sub committee 4
- schedule of meetings

## 7 Report to Management Committee as per terms of reference paragraph 2.8

It was agreed that when sub committee 4 reports to the MC, both Ms SN Sigcau and the chair of the last meeting of sub committee 4 would attend the MC meeting. This is in accordance with the decision taken in the meeting of sub committee 4 held on 8 June 1992 and minuted at paragraph 4.2.3 i.e. that Ms SN Sigcau would be the permanent representative of sub committee 4 at MC meetings, and that the second representative would be appointed on a rotational basis.

It was agreed that progress reports would be drawn up by the secretaries and faxed out to delegates for comment prior to MC meetings.

## 8 General

### 8.1 Land moratorium

Mr Godden referred to the "Ciskei Position Paper to Codesa Working Group 4 on the RSA Land Moratorium as it relates to compensatory land issues with the Republic of Ciskei" (Addendum B). He requested that as the issue related to land transfer promises made between the SA Government and the relevant communities, sub committee 4 agree to the document being forwarded to the SA Government together with the request that these outstanding land issues be settled as soon as possible. After some discussion it was agreed that members of the TBVC government delegations on sub committee 4 would

take up the matter of outstanding land transfer issues with their respective governments. Any claims should be tabled at the meeting of sub committee 4 on 29 July 1992, when they will be reviewed.

#### 8.2 Role of chairperson

Mr Matsana pointed out that in principle the person in the chair should focus on steering the meeting rather than contributing to the proceedings. It was agreed that in future the member appointed to chair meetings should be accompanied by a substitute who could then contribute on behalf of the organisation concerned to allow the chair to only guide the meeting and not present his or her party's particular point of view.

#### 8.3 Identity documents to be used in elections

Ms Sigcau raised the matter of forms of identification to be used in future elections, pointing out that the issuing of documents could take a considerable amount of time to complete. It was agreed to refer the matter to the electoral commission.

### 9 Closure

The meeting was closed at 14h10.

## ADDENDUM A

The following persons were present at the meeting of sub committee 4 held on 17 June 1992:

M Phosa	African National Congress
BE Keikelame	Bophuthatswana Government
GF Godden	Ciskei Government
JM Matsana	Inyandza National Movement
AT Meyer	SA Government
SN Sigcau	Transkei Government
S Makhuvha	Venda Government

## PROGRESS REPORT TO MANAGEMENT COMMITTEE ON MEETING OF SUB COMMITTEE 4 HELD AT THE WORLD TRADE CENTRE ON WEDNESDAY 17 JUNE 1992

### 1 Matters arising from the minutes

- 1.1 It was agreed that it was not necessary to reconvene WG 4 now, but that the question would be addressed again when the need arose.
- 1.2 It was agreed that the SA Government and the respective TBVC states would have to sign the final documents on reincorporation, but prior to this, all parties at Codesa should participate in the process and in the drawing up of the final agreements.

### 2. Work programme

- 2.1 It was agreed to recommend to the MC the establishment of the following Standing Task Groups:
  - 2.1.1 Standing Task Group: Juridical
    - 2.1.1.1 A Standing Task Group: Juridical, incorporating the proposals made by Mr RF Botha as recorded in the minutes of the meeting of sub committee 4 held on 8 June 1992 should be constituted.
    - 2.1.1.2 Composition: the Standing Task Group: Juridical would consist of nine members. Each of the parties represented on sub committee 4 will nominate an individual with particular knowledge and expertise in the field of law, legislation, constitution-making and the juridical process.
    - 2.1.1.3 The terms of reference of the task group will be as follows:
      - 2.1.1.3.1 To investigate, research and report on all matters legal, juridical and legislative relating to issues arising out of reincorporation or non-reincorporation.
      - 2.1.1.3.2 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.

- 2.1.1.3.3 Based on the report tabled by WG4 at CODESA 2, the identification of those agreements which require elaboration or refinement.
- 2.1.1.3.4 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.
- 2.1.1.3.5 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.
- 2.1.2 Four Standing Task Groups: Administrative and Practical implications of Reincorporation (or non reincorporation)
- 2.1.2.1 Standing task groups: Admin. would consider the administrative and practical implications of reincorporation (or non reincorporation) for each TBVC state.
- 2.1.2.2 Composition: The task groups should bear the CODESA character and consist of nine members each. The organisations represented on sub committee 4 will each nominate one delegate per task group.
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- 2.1.2.4.2 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.

The MC is also requested to note the following recommendations with regard to the appointment of the standing task groups:

- 2.1.3 It was agreed that the current chairperson of sub committee 4 would convene the first meeting of the standing task groups, and at the first joint meeting brief all delegates simultaneously. Members of sub committee 4 will also be present at the joint meeting. The task groups should thereafter determine from time to time how each would be chaired, bearing in mind the principle that the chairing of meetings should be rotated.
- 2.1.4 It was agreed that the minutes of the standing task groups should be tabled regularly in sub committee 4, and that where it is deemed necessary for the full standing task group to report to the sub committee, a joint meeting will be convened.
- 2.1.5 It was agreed that members of sub committee 4 need not necessarily serve on one of the standing task groups, but are not precluded from doing so.
- 2.1.6 It is likely that experts appointed to serve on the standing task groups by the various organisations may need to be remunerated. If so, the MC is requested to advise whether the cost could be met by CODESA.
- 2.1.7 It was noted that some of the standing task groups may wish to address the question of reincorporation on a regional basis. It was agreed not to prescribe in this regard to the standing task groups and to leave out any reference to 'regional solutions' in the terms of reference.

## 2.2 Review of terms of reference for sub committee 4

### 2.2.1 The way forward for sub committee 4

Mr Godden reported that he had been advised by the MC that it was up to sub committee 4 to set its work schedule.

2.2.1.1 It was agreed to work on the assumption that the MC will approve the establishment of the standing task groups at its next meeting on 29 June 1992, and that:

2.2.1.1.1 the secretariat should be advised of the names and fax numbers of nominees for the five standing task groups by **Friday 26 June 1992**;

2.2.1.1.2 the five standing task groups would meet on the 7, 14 and 28 July at 10h00, and that members of sub committee 4 will be present on

7 July during the joint briefing of the task groups by the chairperson of sub committee 4;

2.2.1.1.3 the standing task groups would be requested to identify short, medium and long term issues in their terms of reference, in order to facilitate the setting of priorities for their work, and to report on this to sub committee 4 as soon as possible.

## 2.2.2 Establishing a modus operandus for sub committee 4

2.2.2.1 It was agreed that sub committee 4 is a sub committee of the MC, and that the standing task groups are in turn mandated by sub committee 4. The standing task groups can only make recommendations to sub committee 4 and in turn sub committee 4 will make recommendations to the MC.

2.2.2.2 It was further agreed to point out to the MC that while in all probability sub committee 4 will not function beyond CODESA 3, the standing task groups may well need to continue with their work after CODESA 3 and within the framework of transitional arrangements as agreed by WG 3.

2.2.2.3 It was agreed that it may be necessary to reconvene WG 4 to present the reports of the standing task groups. The date for this meeting will be decided upon in due course.

## 2.2.3 Schedule of meetings

It was agreed that sub committee 4 will meet again on the following dates:

- Tuesday 7 July 1992 at 10h00 (the first joint meeting of the standing task groups)
- Wednesday 29 July 1992 at 10h00.

It was agreed that special notification would be sent to absent members regarding the:

- recommendations forwarded to the MC,
- anticipated first meeting of the standing task groups on 7 July,
- terms of reference for the standing task groups
- modus operandus for sub committee 4
- schedule of meetings

## 3 Report to Management Committee as per terms of reference paragraph 2.8

It was agreed that when sub committee 4 reports to the MC, both Ms SN Sigcau and the chair of the last meeting of sub committee 4 would attend the MC meeting. This is in accordance with the decision taken in the meeting of sub committee 4 held on 8 June 1992 and minuted at paragraph 4.2.3 i.e. that Ms SN Sigcau would be the permanent representative of sub committee 4 at MC meetings, and that the second representative would be appointed on a rotational basis.

It was agreed that progress reports would be drawn up by the secretaries and faxed out to delegates for comment prior to MC meetings.

## 4 General

### 4.1 Land moratorium



Mr Godden referred to the "Ciskei Position Paper to Codesa Working Group 4 on the RSA Land Moratorium as it relates to compensatory land issues with the Republic of Ciskei" (Addendum B). He requested that as the issue related to land transfer promises made between the SA Government and the relevant communities, sub committee 4 agree to the document being forwarded to the SA Government together with the request that these outstanding land issues be settled as soon as possible. After some discussion it was agreed that members of the TBVC government delegations on sub committee 4 would take up the matter of outstanding land transfer issues with their respective governments. Any claims should be tabled at the meeting of sub committee 4 on 29 July 1992, when they will be reviewed.

#### 4.2 Role of chairperson

Mr Matsana pointed out that in principle the person in the chair should focus on steering the meeting rather than contributing to the proceedings. It was agreed that in future the member appointed to chair meetings should be accompanied by a substitute who could then contribute on behalf of the organisation concerned to allow the chair to only guide the meeting and not present his or her party's particular point of view.

#### 4.3 Identity documents to be used in elections

Ms Sigcau raised the matter of forms of identification to be used in future elections, pointing out that the issuing of documents could take a considerable amount of time to complete. It was agreed to refer the matter to the electoral commission.

**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.