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CODESA WORKING GROUP 4
(FUTURE OF THE TBVS STATES)

MEETING ON 6 FEBRUARY 1992
AGENDA ITEM 5
OPENING STATEMENT BY THE SOUTH AFRICAN GOVERNMENT

In the Terms of Reference of Working Group 4, the Parties in CODESA "recognise the need to provide for the meaningful and democratic participation of the people living in the TBVC states in the process" of drafting a new constitution for South Africa.

The right to choose whether or not to opt for re-incorporation into South Africa under an interim constitution or a final new constitution remains that of the Governments and the people of the TBVC states.

The views of the people of the TBVC states on these two alternatives must be tested in a democratic manner before the decision is made.

The South African Government respects this right~~s~~ which belongs to each of the TBVC states and will not exert pressure on any party to choose either re-incorporation or the retention of the status quo.

The effects of any such decision will have to be negotiated between the South African Government and the TBVC Governments concerned.

The consequences of the choice made by each of the four states will be for this Working Group to determine and to analyse, in order to enable it to advise CODESA.

The South African Government Delegation remains ready to make a full positive contribution in Working Group 4.

SUBMISSION OF THE A-N-C
ON THE FUTURE OF THE TBVC STATES

22ND APRIL 1992

1. INTRODUCTION

The ANC has considered the stage reached by Working Group 4, the work done by the 4 Sub-Committees as well as the report of the Rapporteers dated 21 April 1992.

The ANC is deeply concerned that the process of creating a united, non-racial, non-sexist, democratic S A envisaged in the Declaration of Intent adopted at CODESA I, may be derailed by the position of the S A Government.

The ANC rejects the contention of the S A Government that the words "united" and "undivided" referred to in the Declaration of Intent exclude the TBVC States and that United S A only refers to the 4 existing provinces of the R S A.

The Transkei, Venda and Ciskei are amongst the parties who have signed the Declaration of Intent. The Declaration also provides for the participation of the TBVC States in the "... drafting of the texts of all legislation required to give effect to the agreements reached in CODESA.

Clearly the parties envisaged that the CODESA process will eradicate apartheid and all apartheid structures.

Indeed, in the period leading to CODESA I the issue of the participation of the TBVC States was descussed and resolved in favour of their participation. In this regard we remind this Working Group of the following provisions in the Declaration of Intent:

declare our solemn commitment:

"**to bring about** an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia"

a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

Of crucial important too is the provision in the Terms of Reference of Working Group 4 which reads as follows:

> **AND WHEREAS** the parties recognise the need to provide the meaningful and democratic participation, of all the people living in the TBVC states in the process of drawing up and adopting a new constitution for South Africa as well as in all possible transitional arrangements.

Accordingly we cannot now reopen the issues resolved prior to and at CODESA I

The implication of the S A Government position is serious. It means that the people in the TBVC States will not be allowed to participate in the Transitional and Constitutional Making process. The S A Government is asking CODESA to put the stand of legitimacy on a system that stands condemned by the entire International Community and for which it has never been able to win legitimacy.

In addition the process to be followed for possible reincoporation as proposed by the S A Government is equally

unacceptable. It is in conflict with the Declaration of Intent and the Terms of Reference for Working Group 4 and is designed to undermine the role of CODESA in this process

In the view of the ANC all the participants have a duty to ensure that the process of democratization of S A is not delayed or derailed. We appeal to all parties, in particular the S A Government to adopt a positive attitude which will ensure that a united, non-racial, non-sexist, democratic S A is realised in the shortest possible time. We accordingly appeal to all parties to support the proposals outlined herein.

2. IMMEDIATE RESTORATION OF S A CITIZENSHIP

It is the view of the ANC that CODESA II agreements should provide for S A Citizenship to be restored to the people of the TBVC States without delay. The effect of this would be that people of the TBVC States would be able and empowered to take part in all transitional and constitution making process.

This course will have advantage that the Sovereignity of the TBVC States will be unaffected and no de-scaling of status will be necessary. In the same way, the S A Government is not being asked to disolve itself in the initial place of Interim Government. The same must therefore apply to the administration of the TBVC States. Not only will the restoration of citizenship redress the gross historical injustice, it will also facilitate the CODESA process to move forward.

3. NO TESTING OF THE WILL FOR REINCORPORATION

In the light of recent developments it is clear that the testing-of-will as proposed by the S A Government, is no

longer necessary and therefore a futile exercise. Firstly, Transkei and Venda consider it unecessary. Secondly, the Boputhatswana Government has reserved its position and has indicated that it will decide on its attitude in its own time and in its own way.

It appears that the demand that each of the TBVC States embark on the process of testing the will of its people is designed to frustrate, if not to deprive, these people of the right to participate in all the transitional and constitutional processes.

4. THE PROCESS OF REINCOPORATION

Reincorporation is not a single event but a process and in the view of the ANC, CODESA agreements should provide for the various steps in the process. Appropriate legislative measures will have to be identified and drafted. This process must, take into account, inter alia, the following:

4.1 citizenship to be restored immediately as outlined above.

4.2 steps in the interim arrangement which will be in tandem with the recommendation of Working Group 3 will have to be identified.

4.3 participation in the Interim government processes by the Administrations of the TBVC States shall form part of such arrangements.

4.4 the stage at which legal reincorporation takes place must be idenified.

4.5 there is a need for harmonisation of legislation, orderly sorting out of financial arrangments, unfinished contracts etc in the transitional phase. Thus, during this period bi-latiral discussions between the TBVC States and the S A Government may take place on such issues as may be identified and supervised by CODESA. There shall be report-back to the Working Group.

5. FUTURE OF THE SUB-COMMITTEES

The ANC proposes that sub-committees 1 and 2, having taken their tasks as far as possible, should now disband and that Sub-commitees 3 and 4 be reconstituted to complete their original tasks as well as the tasks described in 4 above.

6. The Terms of Reference of 1.1.4 of Working Group 4 requires the Working Grop to consider strategies to keep the people of the TBVC States fully informed especially to avoid unfortunate misunderstandings.

The ANC proposes that immediate steps be taken in this regard, e.g. Voice of CODESA as agreed and the issue of a weekly publication for distribution in the TBVC States.

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1) Making latent legal rights patent.

(2) Enforce undoubted rights.

Litigation re a R of Rt, is done to establish not only its extent but its limits.

Choose your issue carefully
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