

CODESA WORKING GROUP 2

GOVERNMENT OF THE REPUBLIC OF BOPHUTHATSWANA

NOTES:
ON

CONSTITUTION MAKING AND THE CONSTITUTION MAKING PROCESS

Mr. Chairman, on behalf of the Government of Bophuthatswana, I would like to make a few comments with regard to constitution making. The issue of constitution making and a constitution making body is indeed of great importance to the people of Bophuthatswana because a new constitution in South Africa will effect the lives of all, also those living in an independent Bophuthatswana. Issues were raised in papers delivered in this working group (on the issue of constitution making) which call for a response on behalf of the Bophuthatswana Government.

The Government of Bophuthatswana is in the first instance responsible to the people of Bophuthatswana and will therefore do all it can to see to it that whatever is decided on the issue of constitution making, will be in the best interest of its people.

Bophuthatswana fully supports any proposal which will bring about a new constitutional dispensation in South Africa which will replace "apartheid" institutions and structures. This is exactly what was done in Bophuthatswana in 1977 when Bophuthatswana adopted a new constitution, with a bill of rights, and abolished all apartheid laws and structures when it became independent.

It is well known by this time that Bophuthatswana's participation at CODESA is mainly to ensure that the people of Bophuthatswana are placed in a position to make a well informed decision on their constitutional future. At the same time Bophuthatswana has a duty and responsibility to participate in designing a better future for Southern Africa, of which it forms a significant part. It is therefore important that this CODESA working group, without much further delay, gets on with formulating principles which will form the basis of a new constitution. No constitution making body, assembly or interim government will be in a position

to draft a constitution if it does not receive well defined and clear principle guidelines from this working group. Not one of the TBVC countries will be in a position to take a final decision on joining South Africa, if the principles, to be contained in a future constitution, are not clear enough to justify a well informed decision on the constitutional future of its people. It serves no purpose to rush into an interim government phase or a constitution making phase until clear cut constitutional principles for the future are placed on the table. Should this be the case, then the people, represented at CODESA by the Bophuthatswana Government, will be denied the opportunity to take a decision on a possible joint RSA/Bophuthatswana future.

Without repeating what has recently been said by political leaders from Bophuthatswana about the political history of the Tswana speaking people and the continued ideal of the people of Bophuthatswana to retain their independence, lost during the previous century, suffice it to say that neither Bophuthatswana nor its Government, are apartheid structures. This Government is democratically elected and will continue to represent the people who entrusted it with the task of governing them. There is therefore no possibility of special elections to be held in Bophuthatswana for purposes of electing a constituent assembly or similar body for SA, other than the election to be held in Bophuthatswana in the normal course of events. Incidentally, an election is scheduled in terms of the Bophuthatswana Constitution, for later this year.

The people of Bophuthatswana will therefore, as in the case of CODESA, be represented on any constitutional making body, by members of their government.

There is no need for Bophuthatswana to be represented in an interim government in SA, until such time as the governments concerned have agreed to the contrary. It is respectfully

suggested that there is no need to fuse the issues of interim government and constitutional making at this stage. The present RSA government is still the government of the day and can not be expected to hand over the responsibility to manage the country in terms of a loosely constructed interim arrangement, while the new constitution is being written. The RSA Government has shown its commitment to peaceful change to a democratic new dispensation, since Feb 1990, and can, while existing laws are amended in the interim as recommended by CODESA, only hand over the reins once the new constitution, accepted by all, is in place. The present state of unrest and climate of destabilization, created by various militant (terrorist) groups, make it highly undesirable for an interim administration to function in an administrative and executive vacuum until the new constitution is in place. If recommended by CODESA, or on its own accord, Government can call for an election of a constitution making body to draft the new constitution, and such an election will no doubt be a political milestone in the history of democracy in South Africa.

It makes good sense to have a 1% entry threshold and to take decisions by way of two third majorities. It is not practically possible for 400 people to draft a constitution and it is obvious that a 4 month period is insufficient time for drafting a new constitution. It will have to be left to a drafting committee to determine the time it will require to do its job in terms of the principle guidelines laid down by CODESA. As the elected constitutional making body will be in a position to clarify issues referred to it by the drafting committee, ultimate supervision by the Supreme Court will be sufficient to ensure that those drafting the constitution remain within the scope of their mandate. The modus operandi of the constitution making and drafting bodies, can be determined by way of consensus decisions of CODESA, to avoid as many as possible difficulties during the drafting process.

One of the factors which could have a marked influence on a decision to become part of a new South Africa, is the definition of boundaries for the various regions. Bophuthatswana believes, and considerable research has been done in this regard, that the most feasible manner for any independent state to join SA, if not by way of a confederate arrangement, is to merge with adjoining regions. Such arrangement does not only cater for geographic, historical and ethnic values but accommodates the need for economic growth and development in terms of the aspirations of the people of a given area. It further makes it possible for these countries to retain territorial integrity, especially in respect of land which historically belong to Tribes and communities.

At the stage when sufficient information on the new constitution is known, for the Bophuthatswana Parliament and electorate, to make a choice between the status quo and a proposed future constitutional dispensation, a decision will be taken by Bophuthatswana, without any interference from outside, on whether Bophuthatswana will join South Africa or remain an independent state.

BOPHUTHATSWANA GOVERNMENT