

SUBMISSION BY AFRICAN NATIONAL CONGRESS TO SUB-COMMITTEE 4 OF
W.G. 4 ON THE POLITICAL, LEGAL AND CONSTITUTIONAL IMPLICATIONS
OF THE REINCORPORATION OF THE TBVC STATES INTO SOUTH AFRICA.

1. INTRODUCTION

The African National Congress submits the following general statements on political, legal and constitutional implications. Specific detailed proposals will be made after there has been full disclosure in respect of the matters set out hereunder.

2. STATEMENTS OF TBVC

The African National Congress has never recognised or accepted the fragmentation of South Africa into the R.S.A. and Bantustans in the same way in which we have rejected the tri-cameral approach in the so-called R.S.A. In considering the implications of reincorporation, the issue of international recognition or non-recognition as well as the status of the TBVC States in international law are crucial and provide us with guidelines as to how we should approach the issues facing this sub-committee.

It is hardly necessary to repeat that not one of the TBVC States has been able to win international recognition. Indeed there is active non-recognition in that all the major international organisations discovered dealings with the TBVC States.

In addition international law, the TBVC States have no status. Sovereignty is an international issue as much as a national issue.

- Annexed hereto is a document which in some measure deals with the states of the TBVC States of international law. The universal non recognition of the TBVC States, as well as the unanimous international law view that the action by the South African Government in creating and establishing Bantustans was illegal, must, in our view, inform our approach to reincorporation.

3. POLITICAL SETTLEMENT

In the light of illegality, and non-recognition set out above, a repeal of the various Status Acts will have to be given consideration. However, in South African courts it has been successfully argued that "independence once conferred cannot be withdrawn." Whilst we bear this in mind in the current situation, this route to reincorporation (i.e. a simple repeal measure) cannot be excluded.

At the same time, the ANC takes into account that reincorporation will proceed by way of agreement. As we understand it Transkei, Venda and Ciskei administrations have already declared themselves in favour of reincorporation. The implications of reincorporation in these three cases are therefore simplified. Reincorporation proceeds by agreement. Coupled with this, the parties have signed the Declaration of Intent in which the signatories have committed themselves to implement agreements. With regard to reincorporation, this commitment imposes a duty to take appropriate steps. The ANC is of the view that CODESA should decide on the steps to be taken by the various parties who should then implement them.

In this regard also, the ANC believes that the question of reincorporation of the TBVC States is part of the process of dismantling the Apartheid system. It constitutes a reversal of an act of illegality which was perpetrated by the South African Government a great responsibility therefore rests on the South African Government to ensure speedy reincorporation.

4. DISCLOSURE REQUIRED

To enable the sub-committee to give further detailed consideration to the various implications, this sub-committee will require full and immediate disclosure of all documents and information in respect of each Working Group relating to all matters affecting reincorporation, including ;

- (i) Existing infrastructure, administrations, civil service, armed forces, police forces, judiciaries and other state institutions.
- (ii) Differing legislation and policies
- (iii) Agreements and treaties
- (iv) Financial transactions
- (v) Other relevant matters

The sub-committee will be able to consider what further steps should be taken what further information required, what research should be conducted and what expert advice is needed after the above full disclosure has been made and considered.