

# **CODESA**

## **WORKING GROUP 4**

### **ASSIGNMENT:**

**Future of TBVC states**

**Submission  
by**

**THE DIKWANKWETLA PARTY  
OF SOUTH AFRICA**

#### 4. **FUTURE OF TBVC STATES**

As raised in the terms of reference, we, **THE DIKWANKWETLA PARTY OF SOUTH AFRICA**, wish to submit point by point as follows:

1.1.1 It is our considered opinion that this momentous blunder of grand apartheid would be best redressed if all the TBVC states could be constitutionally reverted back to South Africa. In other words, with such re-incorporation the territory of South Africa would be re-established as it was in 1961 with the transition of the Union to the Republic of South Africa. However, it would be short-sighted to ignore for the people concerned the principle of self-determination. Thus we deem it fair that the people of the TBVC states be thoroughly consulted on their wishes and that those wishes be respected. For our part, however, we propose and accordingly advise that the South African government be urged, to facilitate through Parliament, for the process of the orderly dissolution of the independence of the TBVC states . Thus a remedial **TBVC States Invalidation and Re-Incorporation Act** should be promulgated by which South Africa should, prior to the new constitutional order for South Africa, take over and resume overall authority over the general administration, good government and accountability of the affected territories. Once the TBVC states have effectively been re-incorporated into the mainstream of South Africa's polity, they should be integrated into alternative, carefully mapped out regional and local geo-political entities with greater socioeconomic viability and potential with the ultimate goal of a new South Africa founded on the principles of constitutional federalism.

1.1.2 In the preceding paragraph above the key issues and problems have by and large been touched upon.

1.1.3 The identification of areas of commonality and agreement would in our view require further deliberations with other delegations and the studying of their proposals.

1.1.4 Having recommended in favour of the re-incorporation of the TBVC states, we therefore advise further that this item, because of the relative similarities, as much as it can be relevant, be treated together with item 1.1.5 of the Terms of Reference.

- (a) The proposals for the re-incorporation into South Africa of the TBVC states have been dealt with in our paragraph 1.1.1 above.
- (b) As regards transitional arrangements preceding incorporation, we recommend that the South African government, through the present Parliament, urgently work towards enabling the orderly dissolution of the independence granted to the respective TBVC, and *pari passu*, promulgate a remedial TBVC states **Invalidation and Re-Incorporation Act** by which South Africa shall, prior to the new constitutional order, take over and resume overall authority over the general administration, good government and accountability of the affected territories.
- (c) The time frames for the re-incorporation should be entrusted to a trilateral team comprising of the South African government, the government of the affected TBVC state, and a team duly assigned for the purpose by CODESA, on condition that, as prescribed under item 1.1 of the Terms of Reference:

"to provide for 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;"

such re-incorporation shall have been fulfilled *in toto* prior to the envisaged new South Africa.

(d) As regards the transfer of assets of TBVC governments, we wish to point out the following:

- Any property or assets which immediately before the commencement of the Act are vested in the present administration of the TBVC states for the purpose of governance should, from the commencement of the Act, or from an appointed day after the commencement of the Act, vest in the South African government.
- Any property which, before the commencement of the Act, or the appointed day after the commencement of the Act, is liable to escheat or to be forfeited to any of the TBVC state governments shall, from the commencement of the Act, or from an appointed day thereafter, be liable to escheat or to be forfeited to the South African government.
- Where, before the commencement of the Act, or the appointed day thereafter, any person holds any property or assets in trust for any of the TBVC governments, such person shall, from the commencement of the Act, or from an appointed day thereafter, hold such property or assets on the like trust for the South African government.

(e) The issue of optimal use of existing infrastructure should, after re-incorporation, be entrusted to the South African government as the caretaker administration.

- (f) The status of development projects is to be discussed bilaterally between the South African government and the affected TBVC state, in order to determine which projects must continue without interruption; which must be reviewed for possible alteration; and which may be frozen for future re-consideration.
- (g) The good administration of each TBVC state shall immediately after the re-incorporation and after the coming into effect of the TBVC States Invalidation and Re-Incorporation Act, be vested in the South African government as the *de jure* administration.
- (h) The appropriate measures and steps to be taken should be formulated in relation to the South African government resuming full legislative, executive and legal control over the affairs of each territory, and re-coopting the various administrative structures within its operations in such a way that where any interruption or disruption of the administration and the people's daily lives should exist, it should be the barest minimum.
- (i) As regards the civil service, we recommend that every person who immediately before the coming into operation of the Act holds or is acting in a public office should, as from the coming into operation of the Act, be deployed as much as it may be possible, in the same capacity or in a corresponding office established by the Constitution of South Africa as if he had been appointed to do so in accordance with the provisions of the constitution: Provided that any person who under the existing law would have been required to vacate his office at the expiration of any period, should vacate his office at the expiration of that period. All relevant pension benefits should be honoured.

- (j) The legislative, executive and judicial authority of former TVBC states should be vested in the South African government.
- (k) All existing laws in each TBVC state should, from the commencement of the Act, or from an appointed day thereafter, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them in conformity with the laws of the Republic of South Africa. The South African Parliament or any other appropriate authority may by regulations made at any time from the day of the commencement of the Act, make such amendments to any existing law, in each state, as may be expedient for bringing that law into conformity with the provisions of the constitution of the Republic of South Africa or otherwise for giving effect or enabling effect to be given to those provisions. For the purpose of this exercise, the expression "existing law" means any proclamation, law, rule, regulation, order or other instrument made or having effect as part of the law of each state immediately before the coming into operation of the Act.
- (l) Hand in hand with the review of development projects, we advise that bilateral and multilateral agreements and treaties be reviewed with the purpose of adoption by the South African Government.
- (m) All rights, liabilities and obligations of each TBVC state should, from the commencement or the coming into operation of the Act, be rights, liabilities and obligations of the Government of the Republic of South Africa and, subject to the provisions of any law, should be enforceable by or against the government accordingly. Rights, liabilities and obligations include rights, liabilities and obligations arising from contract, treaty, convention or agreement with another country, organisation or individual.

(n) The question of public accountability of actions taken for the purposes of re-incorporation should be vested in the South African government, the TBVC states and CODESA.

(o) We propose that the issue of identification of specific constitutional, legal and political measures and steps to be taken to effect re-incorporation, be referred to a special team of legal advisors and political analysts appointed by CODESA in conjunction with the TBVC states.

1.1.5 While consensus has still to be reached through compromises and other means on the question of whether South Africa should retain the *status quo*, in the form of unitary state (i.e. a political system in which the central government has the final say on the legislative and executive powers of regional and local governments) or, on the other hand, to adopt a federalist approach (i.e. a political system in which the decision-making and administrative powers of regional governments are constitutionally entrenched, and may not be removed without agreement of those governments); there are, nevertheless, considerable areas of commonality between the various participating parties, but most importantly with the TBVC states - on the future state of a South Africa we would all wish to realise and to be part of.

- The acceptance of bicameralism.
- The lower house be the engine of legislation and that its members be elected by universal franchise, chosen by some yet unspecified system of proportional representation, thereby entrenching both multi-party democracy and regular elections.

- The upper house be more contemplative, and be composed by a second system of election and/or nomination which make some type of concession to regional representation.
- There be three tiers of government, viz. central, regional and local.
- South Africa's constitution be rigid in some respects, and that certain clauses of the constitution only be changed by weighted majorities.
- South Africa should have a bill of rights protecting the fundamental human rights and freedoms.
- The independence of the judiciary
- South Africa to have a constitutional court to interpret constitutional issues.
- An impartial civil service that more accurately reflects our population mix than it does at present; that an independent body, a public service commission or the upper house, supervise senior civil service appointments; and the need for an ombud.

There being such vast areas of commonality in the adoption of political jargon, it would be of paramount importance (towards minimising whatever misunderstanding, suspicion on motives, and uncertainty) that the popular concepts such as, "united", "unitary", "undivided", "federalism", "confederation", "regionalism", "constitutionalism", and possibly others, could be referred to a special "political science court" to assist CODESA in defining and providing uniform lexicology to these terms.



1.1.6 and

1.1.7 These points have been dealt with extensively and in detail by us and that should suffice at this stage. We would like to discuss it with other delegations.

Meanwhile, we end our proposals with a benign plea that in all good things we the retiring generation should remember that for our beloved South Africa, we must always "work with the kids".