



WG4 SG4/MINUTES/23 MARCH

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO MEMBERS OF THE WORKING GROUP, THE MANAGEMENT COMMITTEE AND THE DAILY MANAGEMENT COMMITTEE.

MINUTES OF THE TWO-DAY MEETING OF WORKING GROUP 4 SUBGROUP 4 HELD AT WTC ON MONDAY 23 MARCH 1992 AT 10H00 AND ON TUESDAY 24 MARCH 1992 AT 10H30

(ADOPTED AT THE MEETING OF THE SUBGROUP ON TUESDAY 05 MAY, 1992)

- PRESENT: Delegates (see Addendum A and B)
D Govender (Chairperson)
W Antoine (Minute taker)

1. Chairperson's opening remarks

- 1.1 Delegates were welcomed by the chairperson and the meeting was opened with a minute of silent prayer.
- 1.2 An apology by the administration office for their failure to fax the submission by the Ciskei Government to the delegates was registered.
- 1.3 An appeal was made for a concerted effort to get as much done as possible.

2. Confirmation of Minutes

The minutes for the previous meeting were ratified.

3. Agenda

The agenda was adopted.

4. Presentation of submissions by TBVC states

The delegates from the Transkei Government, Venda Government and Ciskei Government tabled documents that identified the problems that would be encountered and the actions that would be required if reincorporation was to take place.

The delegate from the Bophuthatswana Government tabled a position statement relating to paragraph 6.4 of minutes of the meeting of Working Group 4 Subgroup 4 held on 09 March 1992. The information that had been requested of the delegate from Bophuthatswana was also tabled.

Discussion ranged over the two days. At the end of the first day, it was agreed that in the absence of the Rapporteur, who was yet to join the Subgroup, three delegates, namely T Abrahams, P David and G.F. Godden, would draw up a synthesis of the day's proceedings in order to take stock of all that had emerged.

The meeting was adjourned at 16h00 and resumed at 10h30 the following day, when the Rapporteur, Mr B Ngcuka, was welcomed.

5. Presentation of synthesis

A synthesis of attitudes to reincorporation by TBVC states was presented and its accuracy was confirmed after two amendments were noted. A copy of this report, as agreed, is herewith attached (see Addendum C).

6. Discussion

6.1 Delegates debated the succession of necessary events in the TBVC states. There was general agreement that testing the will of the people would have to take place first. [The delegate from the Inkatha Freedom Party took up a point made by the delegate from the South African Government and framed the motion twice that there was agreement in the group that "testing of the will of the people should happen first, then reincorporation". The delegate from the Labour Party took the point, and the delegate from the Democratic Party stated "his being in favour of the previous three speakers". The delegate from NIC/TIC interjected several times during this particular debate to strongly register his point of view, which was not in agreement. Having previously noted its reservation, the delegate from Venda accepted the probability that it may be necessary to "go through a legal process".]

6.2 It was recommended that work on harmonisation of legislation should begin immediately in preparation for the eventuality of reincorporation. It was noted that laws relating to gambling, property rights and marriage would need to be standardised.

7. Mapping a blueprint

7.1 It was agreed that in order to devise a blueprint that would order the succession of events leading to reincorporation the following points would need to be considered.

7.1.1 Harmonisation of legislation of the five different Governments.

7.1.2 The matter of transitional arrangements for an interim government with respect to the TBVC states and connected with this is the matter of sovereignty.

7.1.3 The matter of the constitutional-making body with respect to the TBVC states.

7.1.4 The point at which the testing of the will of the people should occur.

7.2 It was agreed that at the next meeting of the Subgroup all delegates may present a "suggested blueprint" which considers these points.

7.3 It was agreed that the delegate from the South African Government would give their response to the various scenarios discussed, and that he would present a paper on their idea of what stages could be followed in the process of reincorporation.

7.4 It was recommended that cognisance be taken of the decisions of Subgroups 1, 2 and 3 of Working Group 4, and that those taken by Work Groups 2 and 3 will also impact on how the task of drawing up the blueprint can be approached. It was agreed that a request for feedback on progress in Working Group 2 should be requested at the next plenary session of Working

Group 4.

8. Documents

8.1 The following documents were tabled.

- 8.1.1 Transkei. "Implications of reincorporation on the various state departments: additional data."
- 8.1.2 Bophuthatswana. "The future of TBVC states. Position statement by Bophuthatswana: paragraph 6.4 of minutes of meeting of Working Group 4 of Subgroup 4 held on 09 March" 1992.
- 8.1.3 Bophuthatswana. "Urbanisation Trends in Bophuthatswana (1980-1989)"
- 8.1.4 Venda. "The problems and solutions to be encountered in case of reincorporation or non-reincorporation into the R.S.A."
- 8.1.5 Ciskei. "A memorandum prepared by the Ciskei delegation to CODESA on the identification of problems and actions required if reincorporation of the Republic of Ciskei into the Republic of South Africa is required and possible solutions to some of the problems"
- 8.1.6 United People's Front. "Submission to Subgroup 4 of Working Group 4 on 23/03/1992. The future of the TBVC states - reincorporation."
- 8.1.7 Report by Subgroup 4 of Working Group 4. "Synthesis of attitudes to reincorporation by TBVC states."

8.2 The following documents were circulated.

- 8.2.1 South African Government. CODESA Working Group 3. 23 March 1992. "Proposals for transitional arrangements."
- 8.2.2 CODESA Secretariat. Memorandum dated 23 March 1992 re timeous ratification of minutes.

9. Future meetings

- 9.1 The next Subgroup meeting will be held on Monday 30 March, 1992 at 14h00 or depending on when the plenary session ends.
- 9.2 There will also be a meeting on Tuesday 31 March, 1992 at 09h30 to 13h00.

Note: At its meeting held on 24 March 1992 at 13h00, the WGSC 4 decided that the plenary session of Working Group 4 should meet until 16h00. Therefore, Subgroup 4 will not meet on Monday 30 March. Instead the meeting scheduled for Tuesday 31 March will continue until 16h00.

10. Closure

The Chairperson closed the meeting at 13h10.

DELEGATES PRESENT AT THE MEETING HELD ON MONDAY 23 MARCH 1992

ANC	B Mabandla
Bophuthatswana Govt	JJ Tlholoe
Ciskei Govt	GF Godden
Democratic Party	NJ Olivier
Dikwnakwetla Party	S Manyane
Inkatha Freedom Party	VT Zulu
Intando Yesizwe Party	JS Mabena
Inyandza National Movement	H Motaung
Labour Party	T Abrahams
National Party	PC McKenzie
NPP	B Jayraj
NIC/TIC	P David
SA Govt	NP Van Heerden
Solidarity Party	GN Naidoo
Transkei Govt	NG Makanda
UPF	JM Nonyane
Venda Govt	AN Mphaphuli
Ximoko Progressive Party	TB Shimbambu

or similar structure charged with the task of drawing up the constitution.

- 4.1.3 The TBVC states could continue to operate during the Interim arrangements to ensure smooth administration in these areas.
 - 4.1.4 The practical, financial, land transfer matters, constitutional and legal problems can be sorted out by the Interim Government in consultation with the TBVC states.
- 4.2 From submissions made up to this point, it is clear that lists of legislation exist which have been enacted by the legislatures of the TBVC states on the one hand and the South African Government on the other. Some of the laws which exist are in conflict. The need for the five legislatures to start immediately with efforts towards harmonising legislation has become very evident. To this end, Subgroup 4 wishes to recommend that a consultative mechanism be created expressly with this aim in mind in preparation for and interim government.

DELEGATES PRESENT AT THE MEETING HELD ON TUESDAY 24 MARCH 1992

Bophuthatswana Govt	JJ Tlholoe
Ciskei Govt	GF Godden
Democratic Party	NJ Olivier
Dikwnakwetla Party	S Manyane
Inkatha Freedom Party	VT Zulu
Intando Yesizwe Party	JS Mabena
Inyandza National Movement	H Motaung
Labour Party	T Abrahams
National Party	PC McKenzie
NPP	B Jayraj
NIC/TIC	P David
SA Govt	CJ Streeter
Transkei Govt	NG Makanda
UPF	JM Nonyane
Venda Govt	AL Mphaphuli
Ximoko Progressive Party	TB Shimbambu

Addendum C

SYNTHESIS OF ATTITUDES TO REINCORPORATION BY TBVC STATES. A REPORT BY SUBGROUP 4 OF WORKING GROUP 4.

1. The TBVC states.

1.1 Transkei

The Transkei Government has declared itself ready and willing for immediate reincorporation into South Africa. No constraints or qualifications have been applied to this process except that existing bilateral agreements between South Africa and Transkei should continue in force during the transition period.

The Transkei Government has also agreed that the will of the people be tested on the issue of reincorporation notwithstanding its firm declaration for reincorporation.

The Transkei Government is willing to scale down sovereignty to a position of self-governing.

The main reason advanced by Transkei for immediate reincorporation has been stated as its desire that all Transkei citizens participate in all electoral processes associated with constitutional reform.

Transkei has not expressed its views on the state of government or constitution that it would wish to see and join with in the "new" South Africa.

Transkei has declared emphatically that it wishes to participate in all transitional arrangements.

The Transkei Government has also made mention of a commitment to Regional Development but without implying any prerequisite in terms of a constitutional framework.

1.2 Venda

The Venda Government has also called for immediate reincorporation into South Africa without qualification. The Venda Government has declared itself for a unitary state in South Africa with one central government. They do not favour a federal-type government for the stated reason that the wealthy will continue to be wealthy and the poor will remain poor.

The Venda Government has reservations about testing the will of the people on the issue of reincorporation because it would be superfluous.

The Venda Government has also expressed a view on its desire to participate in all transitional arrangements.

Venda Government is willing to scale its sovereignty during the interim arrangements to self-government status.

1.3 Bophuthatswana

The Government of Bophuthatswana has stated unequivocally that at the present, weighed up

against the backdrop of strife-torn present-day South Africa, it has no intention of seeking reincorporation into R.S.A. However, in making this statement the Bophuthatswana Government has reserved its position to participate in CODESA, on the basis of the open invitation extended and within the parameters set out in their position paper submitted to Subgroup 4 on 23 March, 1992, entitled "The future of TBVC States" (pp. 1-2) and which are as follows.

- 3.1 There are presently neither political, legal and constitutional problems experienced between Bophuthatswana and the present South Africa, nor do we want to anticipate any under the yet unknown "New South Africa Constitution".
- 3.2 The present Bilateral as well as Multilateral Agreements between the South African Government and the other members of the Economic Community of Southern Africa (ECOSA) respectively, have fostered such cordial political, legal, constitutional and economic relationships that we in Bophuthatswana wish to have such relationships strengthened rather than weakened or severed with the advent of the unknown "New South Africa"
- 3.3 As a Sovereign Independent State politically, legally and constitutionally, our position has been stated consistently and repeatedly since CODESA 1. It might be worth re-emphasizing the premises or conditions under which we participate in the negotiations as were submitted during February at one of the meetings of Working Group 4:
 - 3.3.1 Our right to be allowed to choose freely, without external pressure or threat, the best possible solution for the future;
 - 3.3.2 Our right to be fully informed on the contents of various options for consideration and an objective evaluation of the likely implications resulting from these options (Political, Legal, Constitutional etc);
 - 3.3.3 The opportunity to assess freely and objectively the merits and demerits of each proposal for our specific situation as a Sovereign Independent State;
 - 3.3.4 The application of democratic principles and approaches in allowing the people of Bophuthatswana themselves a final say in determining the desired outcome.

1.4 Ciskei

The Ciskei Government is anxiously seeking a suitable and acceptable regional framework as a prerequisite to reincorporation. Ciskei's view is that the present independent state is non-viable and needs to be greatly enlarged to constitute existing Region "D" industrial area with possible minor boundary amendments. This larger regional unit coincides within reasonable terms of agreement with the ANC view and various other bodies. We see this area ads being identified as the Greater Kei region. The Ciskei Government would wish to participate in and be part of a unified federal state of South Africa in which strong autonomous regional government would prevail and be well represented in the central federal government. Ciskei perceives that such an arrangement would immeasurably contribute to a stable, peaceful and prosperous Untied States of South Africa.

Regional government would provide the most practical solution to the diversity of South Africa's people and enable communities who have lived and worked together for centuries to govern, to a large extent, their own future destinies and social structures within a federal framework.

The Ciskei Government is concerned about the interim government concept and while not opposed to the idea, would wish to secure an ongoing commitment to existing South Africa/Ciskei bilateral and ECOSA multilateral agreements. This would ensure that Ciskei does not suffer in the transitional period as it has in the past. The Ciskei Government would wish to retain its sovereignty during the transitional period until such time as proper arrangements have been made for

- (a) a structured regional government,
- (b) an approved constitutional proposals for a united federal state, and
- (c) The establishment of an interim government in which Ciskei can participate and help shape the future new South Africa.

The Ciskei Government would also wish to ensure that its membership of the South African Commerce Customs Union will continue, and that Ciskei will continue to receive its financial share of the customs pool of revenue; as well as its share of all other financial transfers in terms of the comprehensive fuel levy, the rand monetary area and tax returns (that is, VAT clearing house) until effective reincorporation has taken place.

Ciskei has also proposed that harmonisation of legislation and taxation may well take place on a regional basis as well as the rationalisation and restructuring of the civil service.

The Ciskei Government has also agreed that the will of the people should be tested on reincorporation. While agreeing to this process, Ciskei has already canvassed the reincorporation issue with the rural communities via meetings with the body of traditional chiefs (some 43 chiefs have been consulted). Opinion of urban communities has not been tested.

1.5 Summary

The situation on the issue of reincorporation as at 23 March, 1992 is as follows.

- 1.5.1 The Republics of Transkei and Venda are seeking immediate reincorporation with the Republic of South Africa, and wish that all necessary actions be instituted to accomplish this goal. Existing bilateral agreements to remain in force during the transitional period.
- 1.5.2 The Transkei Government has, however, qualified the above position by agreeing to a referendum to test the will of the people.
- 1.5.3 The Bophuthatswana Government has eloquently expressed its desire to positive participation in the CODESA arrangement and to keep its options open.
- 1.5.4 The Ciskei Government has consistently pursued its position within a greater viable regional unit to be part of the South African commonwealth within a United Federal State of South Africa.
- 1.5.5 Ciskei has reserved its position on reincorporation with qualification and constraints being applied to the two issues of (a) the establishment of strong regional government and (b) the adoption of a constitution for a United Federal State of South Africa.

- 1.5.6 The Government of Ciskei has advanced views on other issues too relating to harmonisation of legislation, taxation and rationalisation of the civil service.

2. The South African Government.

The Governments's representative said that he was opposed to the notion of the TBVC states taking part in the interim government process. He later clarified this position. The States were welcome to "design the house", that is, take part in all the initial processes to set up the interim arrangement, but could not be part of structures or sub-structures in the actual arrangement once it is in place. Only South African citizens could take part. He was against the concept of *dual citizenship*.

3. Other views.

- 3.1 The Labour Party stated its viewpoint on the matter of the participation of the TBVC states in transitional arrangements. In essence, the Labour Party position is that the TBVC states should be included in transitional arrangements despite their currently enjoying sovereign status, but only if a commitment to reincorporation is obtained from such states. Under no circumstances should any one of the TBVC states be permitted participation in such arrangements without such a commitment to reincorporation.

If the matter of sovereignty should become a legal/constitutional problem, the states themselves would have to consider scaling down their status to the of self-governing status (as suggested by the delegate from Inyandza National Movement) with commitment given to prevent any economic hardship during the transitional period.

- 3.2 Anxieties have been expressed on different occasions about the inadvisability of testing the will of the people on the desirability or otherwise of a constitutional arrangement for a new South Africa before the writing of such a constitution has even commenced.

In this regard, it is important to note that such a testing of the will of the people is based on a principle rather than on specific detail. Once the principle of the reincorporation of the TBVC states into a new South African constitutional arrangement is accepted, the qualifying participants are enabled to participate and make their contributions towards the beating out of a constitution which would accommodate as far as possible their fears and aspirations.

4. Assessment of the situation on the issue of reincorporation.

- 4.1 The NIC/TIC representative attempted to record the points on which there was approaching consensus.

- 4.1.1 South African citizenship should be accorded formally or informally to all citizens of the TBVC states to enable them to take a meaningful part in all aspects of the interim arrangement. Dual citizenship was an internationally recognised phenomenon and was practised by the South African Government in the recent whites-only referendum.

- 4.1.2 Thus, the testing of the will of the people of South Africa (including the TBVC states) could be achieved in the election for the Constituent Assembly

or similar structure charged with the task of drawing up the constitution.

- 4.1.3 The TBVC states could continue to operate during the Interim arrangements to ensure smooth administration in these areas.
 - 4.1.4 The practical, financial, land transfer matters, constitutional and legal problems can be sorted out by the Interim Government in consultation with the TBVC states.
- 4.2 From submissions made up to this point, it is clear that lists of legislation exist which have been enacted by the legislatures of the TBVC states on the one hand and the South African Government on the other. Some of the laws which exist are in conflict. The need for the five legislatures to start immediately with efforts towards harmonising legislation has become very evident. To this end, Subgroup 4 wishes to recommend that a consultative mechanism be created expressly with this aim in mind in preparation for and interim government.

SCHEDULE OF MEETINGS FOR WORKING GROUP 4

Monday 30 March 1992 - Working Group 4 meeting : 10:00 to 16:00

Monday 30 March 1992 - Working Group 4 Steering Committee to take place after the conclusion of the working group 4 meeting

Tuesday 31 March 1992 - Working Group 4 Sub Group 1 : 10:00 to 16:00

Tuesday 31 March 1992 - Working Group 4 Sub Group 2 : 10:00 to 16:00

Tuesday 31 March 1992 - Working Group 4 Sub Group 3 : 10:00 to 16:00

Tuesday 31 March 1992 - Working Group 4 Sub Group 4 : 10:00 to 16:00

THESE ARE DRAFT MINUTES, AS APPROVED BY THE CHAIRPERSON. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF SUBGROUP 3, THE WORKING GROUP STEERING COMMITTEE, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO RATIFICATION BY THE SUBGROUP AT ITS NEXT MEETING.

MINUTES OF THE FIFTH MEETING OF SUBGROUP 3 (THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL EFFECTS OF REINCORPORATION OF THE TBVC STATES) HELD AT THE WORLD TRADE CENTRE ON MONDAY, MARCH 23, 1992.

PRESENT **Delegates** **(See Addendum A)**

JL Mahlangu **(Chairperson)**

WJ Viljoen **(Minutes)**

1. Chairperson's opening remarks and adoption of draft agenda.

The Chairperson welcomed the delegates and a special word of welcome was extended to Mr GM Memela (Rapporteur) and Mr N Singh of Solidarity, who has replaced Dr Bagwandeem.

Mr Memela was wished well on his role as Rapporteur.

The draft agenda was adopted.

2. Ratification of minutes of the meeting of Subgroup 3 held on March 9, 1992.

The minutes of the fourth meeting of Subgroup 3 were ratified subject to the following amendments that were agreed upon:

- 2.1. 6.2. Add: "A list of all outstanding information will be supplied to the Subgroup by the minute taker."
- 2.2. 5. Add: "Since the National Party decided to withdraw their nomination of a Rapporteur in the interest of progress, it was agreed..."
- 2.3. Names in Addendum A were corrected.
- 2.4. 3.2.4. substitute "delay" for "attitude"

3. Progress on assembling material identified in the minutes of Subgroup 3 meeting held on February 18, 1992.

- 3.1. SA Government

 1 Document was tabled.

 See: 9: Information received.
- 3.2. TBVC Governments

3.2.1. Transkei Government

3 Documents were tabled

See: 9: Information received.

3.2.2. Bophuthatswana Government

No additional information was tabled.

3.2.3. Venda Government

2 Documents were tabled.

See: 9: Information received.

3.2.4. Ciskei Government

A comprehensive document was tabled structured according to the minutes of the meeting of 18 February 1992.

See: 9: Information received

The delegate from the Ciskei Government apologized for not being present at the previous meeting and for the time delay in providing information.

The meeting accepted the explanation and thanked the delegate for the information provided.

3.3. The Development Bank of Southern Africa

It was noted that the DBSA will be providing comprehensive information which will be available at the next meeting.

3.4. Other information

3.4.1. Three SECOSAF documents were tabled.

See 9: Information received.

3.4.2. The delegate from the Venda Government noted that information on the retention of business confidence was still to be submitted by the Venda Government.

4. Identification of further information needed.

It was agreed that this will be investigated as the work of the Rapporteur proceeds.

5. Submissions

Position papers/discussion papers were submitted by:

5.1. The ANC (Addendum C)

- 5.2. The SACP (Addendum D)
- 5.3. The Democratic Party (Addendum E)
- 5.4. The Labour Party (Addendum F)
- 5.5. The Bophuthatswana Government (Addendum G)

It was agreed that all parties/organizations will submit position papers to the minute taker by no later than 14:00 on Thursday, 26 March 1992, for distribution to the Rapporteur.

The SA Government and Inkatha delegates indicated that they will not be able to submit their position papers by the deadline agreed to.

Objections were raised and noted to the Bophuthatswana delegate leaving the meeting prior to closure.

The SACP delegate noted their disappointment at not being able to raise and discuss certain issues at this meeting.

6. Production of report for Subgroup 3.

It was agreed that this will be left till the next meeting.

7. Any other business

7.1. Land Moratorium

It was agreed that the Rapporteur will submit a draft agreement on the Land Moratorium to the next meeting of Subgroup 3, so that this issue can be finalised at the next meeting of Subgroup 3.

7.2. Participation of Advisors in Working Group 4 Plenary sessions.

It was reported that advisors can interchange their positions to allow advisors to participate in Plenary Session debates. In this situation the previous delegate would assume the seat of the advisor. Heads of delegations should guide the procedure.

8. Date of next meeting

The next meeting will be on Tuesday, March 31, 1992 at 10:00 to 16:00.

9. Information received

Information received from the SA Government

- 9.1. Government Pension Funds Paragraph 11.6. of the minutes of the meeting held on 18 February and State Debt - Paragraph B.6. of the same minutes.

Information received from the Transkei Government

- 9.2. Transkei Status Report
- 9.3. Transkei Electricity Supply Corporation: Financial Statements 31 March 1991.

- 9.4. Transkei Airways Corporation: Statements: 31/12/91.

Information received from the Venda Government

- 9.5. Status of the Republic of Venda Pension Fund.
9.6. Venda Comparative Indicators.

Information received from the Ciskei Government

- 9.7. Comprehensive document as supplied to all delegates.

Information received from SECOSAF

- 9.8. Multilateral agreement between the Governments of TBVCSA for the avoidance of double taxation, the prevention of fiscal evasion, the rendering of mutual assistance and co-operation, and the establishment of a transfer system, with respect to VAT.
9.9. Manual on the implementation of the Regional Industrial Development Incentives introduced on 1 April 1982.
9.10. RSA Regional Industrial Development Programme Incentive Package applicable from 1 May 1991.

10. Closure

The meeting was adjourned at 16:00.

REPORT ON THE JOINT MEETING BETWEEN SUB-GROUP ONE AND SUB-GROUP TWO OF WORKING GROUP FOUR: 24 MARCH 1992

- 1 On 24 March 1992 sub-groups 1 and 2 of WG 4 held a joint meeting. The meeting was chaired by Mr S Verveen (Acting Chairman, Sub-Group 2) and Mr E Moorcroft (Chairman, Sub-Group 1).
- 2 The purpose of the meeting was to enable the sub-groups to inform one other of the results of their deliberations, and to establish whether the results of each sub-group's deliberations could assist the other in fulfilling its mandate.
- 3 It emerged that there was in fact little direct connection between the work done by the two sub-groups:
 - 3.1 Sub-group 2 ('Citizenship') had discussed the question of restoration of South African citizenship. Some members of the group felt that the restoration of citizenship should depend on the outcome of a prior testing of the will.
 - 3.2 However, sub-group 1 ('Testing of the will of the people') had discussed testing of the will with regard to re-incorporation, and not with regard to restoration of citizenship.
- 4 The reason for this lack of direct connection between the work of the two sub-groups is that there is not consensus within either sub-group whether restoration of citizenship should be dependent on re-incorporation:
 - 4.1 One view is that restoration of citizenship is simply returning to South Africans what they were deprived of when the four Status Acts were passed. In other words, it is simply a question of restoring the status quo, in the same manner as that by which citizenship was removed. On this view, there is no necessary connection with re-incorporation: it is not uncommon for citizens of one state to live in another state.
 - 4.2 Another view is that there is an absolute and unbreakable logical link between restoration of citizenship and re-incorporation. On this view, the logical and necessary first step is to test the will of the people on the question of re-incorporation. If the result is in favour of re-incorporation, then the restoration of citizenship will follow. This could take place before other aspects of re-incorporation have been completed.
- 5 This conclusion emerged from the reports presented by the two sub-groups on the results of their deliberations to date, and from the discussion of those reports.

The report of Sub-group 2

- 6 The Acting Chairman of sub-group 2 reported that the sub-group has reached sufficient consensus that South African citizenship be restored. In this regard there are two views:
- 6.1 Citizenship should be restored immediately;
 - 6.2 Citizenship should be restored after the testing of the will of the people and if such expression of the will is in favour thereof.
- 7 The Bophuthatswana Government recorded its position that
- 7.1 Citizenship should not be imposed upon people
 - 7.2 The will of the people at all time be tested in terms of the procedures that might be agreed upon.
- 8 Sub-group 1 further reported that, with regard to the mechanics of the restoration of citizenship
- 8.1 It was agreed that the question of subjecting the restoration of citizenship to the will of the people be referred to sub-group 1 of WG 4.
 - 8.2 It was further agreed that the question of the mechanics, time span and implementation of the restoration of citizenship be referred to WG 5.
- 9 At the joint meeting, some participants asked whether this reflected any consensus at all, in the light of the two differing views set out in paragraph 6 above. Members of the sub-group explained that the sub-group had indeed reached consensus amongst themselves that citizenship should be restored; but that some members felt that they should not be the final judges on this question, and that the people should express a final view on this through a testing of their will.

The report of sub-group 2

- 10 The Chairman of the sub-group presented a 'Final Summary' of the proceedings of this sub-group, recording that sufficient consensus had been reached on various of its terms of reference, with the exception of Bophuthatswana which had expressed certain reservations. (This 'Final Summary' is Addendum C to the minutes of the sub-group's meeting of 9 March 1992.)
- 11 The sub-group had agreed inter alia that the will of the people in the TBVC states be tested concurrently with the rest of South Africa, and that this be by way of referendum.

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- 12 One of the matters recorded in the 'Final Summary' was that sufficient consensus had been reached that the will of the people in the TBVC states be tested. In a longer document headed 'Preliminary Summary of Proceedings' (Addendum B to the minutes of the sub-group's meeting of 9 March 1992), which gave a fuller account of the discussions of the sub-group, it was stated that it was agreed that 'if [it was suggested that this should read 'when'] the will of the people in the TBVC states is to be tested, then it will be necessary to count the votes of the people in those states separately from those of people in the rest of South Africa'. Certain parties had specifically recorded that they would not accept a referendum in which separate counting was done on the basis of race or ethnicity.
- 13 At the joint meeting, it emerged that contrary to the prior discussions of the sub-group, there was in fact not consensus on the question of separate counting of the votes of the people in the TBVC states. Certain parties opposed a separate counting. They stated that if a general testing of the will was to take place, in their view the people in the TBVC states should be able to participate in this testing. However, the votes of people in the TBVC states should not be separately counted.
- 14 It was pointed out that the terms of reference of sub-group 1 specifically require the sub-group 'to consider testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means'. This, and other parts of the terms of reference, necessarily implied a separate counting. As in fact there was not consensus on the question of a separate counting, the sub-group could not give effect to its terms of reference. It was agreed that this should be reported to the Steering Committee of WG 4 and, if the Steering Committee thought it appropriate, to the plenary meeting of WG 4.
- 15 As a result of the deadlock on this issue, the joint meeting did not reach the question of who constitute 'the people concerned' in relation to the TBVC states. If a separately counted testing of the will of 'the people concerned' is to be undertaken, a decision would have to be taken as to which of the following groups would be included:
- 15.1 Citizens of a TBVC state resident in that state;
 - 15.2 Non-citizen residents of a TBVC state;
 - 15.3 Citizens of a TBVC state not resident in that state;
 - 15.4 Citizens of a TBVC state who are dual citizens, having acquired SA citizenship through the Restoration of SA Citizenship Act.

The sub-group had deferred discussion on the eligibility of voters until it had heard the recommendations of sub-group 2 of WG 4, and WG 2 and 3. As mentioned above, sub-group 2 did not deal with this question as it dealt only with restoration of citizenship.

Report: WG 4 SG 1 & 2

24 March 1992

General

- 16 It also emerged from the joint meeting that the matters being discussed by certain other Working Groups are directly relevant to the issues discussed by sub-groups 1 and 2. For example, the underlying assumption of the discussions of sub-group 1 was that an all-encompassing referendum will be held. The question was raised whether the rest of the Codesa process, as it is currently developing, actually contemplates this.

G M Budlender
Rapporteur

IMPLICATIONS OF REINCORPORATION ON THE VARIOUS STATE DEPARTMENTS:

Additional data.

A. Military Council:

(See earlier document)

Additionally, it must be stated that the future of all parastatals will have to be considered. The majority of these parastatals owe their existence to the Corporations Act, 1985, an Act administered by the Department referred to above.

Planning Strategies will have to be reconciled.

B. Agriculture and Forestry:

General policies on agriculture, agricultural development and products and the protection of animals must be reconciled.

Recognition will have to be given to the veterinary officers employed, and registered, in Transkei.

C. Auditor- General:

(See earlier document)

Means of ensuring that recommendations dealing with losses by the State are followed up will have to be devised.

D. Defence:

(See earlier document)

E. Education:

(See earlier document)

A uniform education policy will have to be adopted.

F. Finance:

Tax laws, particularly those relating to income, will have to be made uniform.

The current liabilities and assets of the Government will have to be evaluated and a decision should be taken on their fate. These liabilities are both contractual and delictual.

Outstanding claims which have been instituted as well as those which, as of right, may be instituted, should also be identified.

The registration by South Africa of public Accountants and Auditors presently registered in Transkei will have to be considered.

A State lottery is also in operation in Transkei under the aegis of this Department. There is no such lottery in South Africa.

G. Foreign Affairs and Information:

(See earlier document)

The future of consular and diplomatic missions will have to be considered and a decision must also be taken as to the vesting of property (both movable and immovable) owned by these missions.

H. Health:

The future of a number of Councils, committees and associations established under the relevant laws will have to be considered. The recognition of the registration accorded to Transkeian health practitioners will have to be given attention to.

I. Interior:

This Department administers all the laws relevant to citizenship. Before reincorporation the citizenship question will have to be looked into.

This Department also administers marriage laws and other laws regulating various aspects of family life. The Transkeian laws which, to some extent authorize bigamy, will have to be examined to see how they will be modified on reincorporation.

The Transkeian law of parent and child is lagging behind those laws applicable in South Africa.

J. Justice:

J. Justice:

The laws relating to Crime, Sentencing procedure and jurisdiction as well as the question of the death penalty will have to be examined and, where possible, reconciled. This relates to both civil and criminal law.

The structure of the courts administered by this Department is more or less the same as the structure of South African courts. However, in Transkei courts presided over by Paramount Chiefs and Heads of Regions enjoy the same status and jurisdiction as Magistrates' courts.

This Department is also responsible for gambling matters. It administers the legislation dealing with casinos. In South Africa there are no casinos.

The incorporation of companies currently registered in Transkei must be considered. The financial implications thereof must be considered.

K. Local Government and Land Tenure:

The lack of a uniform system of land tenure in Transkei will have to be addressed. Restrictive legislation such as the Acquisition of Immovable Property Control Act No. 21 of 1977 will have to be examined closely.

A uniform housing and urbanisation policy will have to be adopted.

L. Commerce, Industry and Tourism:

Legislation on mining will have to be harmonised.

The idea of deregulation in respect of business operations has not yet been accepted in Transkei. Small businesses are still treated in the same way as big businesses.

The hire- purchase laws have not kept pace with the changes in South Africa.

The general policies of the two governments on commercial, industrial and tourism development will have to be reconciled.

The acquisition, and transfer, of business formerly owned by "Whites" will have to be looked into.

The economic development of the Transkeian territory will have to receive priority.

M. Posts and Telecommunications:

(See earlier document).

The concept of commercialising this Department will, if approved take off on 1 April 1992.

N. Prison:

(See previous document)

O. Police:

(See previous document)

The security legislation in the two countries is not the same and will have to be looked at.

P. Transport:

(See previous document)

Q. Works and Energy:

(See earlier comment)

Road traffic legislation in South Africa has been changed quite often and Transkeian law is lagging behind in this respect.

The supply of electricity by the Transkei electricity Supply Corporation may have to be stopped and ESCOM, which charges lower rates, will have to be considered as an option.

The upgrading of the Transkeian road network will have to receive attention at reincorporation.

The recognition of the qualifications of quantity surveyors, architects and professional engineers practising in Transkei will have to receive attention.

R. Public Service Commission:

(See earlier document)

The future of all currently serving as Civil Servants will have to be considered and certain guarantees should be agreed to for purposes of preserving their rights.

S. Welfare and Pensions:

Transkeian social workers will have to be brought under the control of the South African controlling body. The pension rights and benefits of the present public servants will have to be preserved.

Social pensions and other Social benefits will have to be on par and no one must be placed in a better position than his counterpart.

T. Manpower:

Manpower policy in the two countries will have to be harmonised. The training of all those covered by the legislation administered by the two manpower Departments will have to be equal and uniform in all respects. The laws governing the recognition of trade unions, industrial action and bargaining will have to be harmonised.

THE FUTURE OF TBVC STATES

POSITION STATEMENT BY BOPHUTHATSWANA : PARAGRAPH 6.4 OF MINUTES OF MEETING OF WORKING GROUP 4 SUBGROUP 4 HELD ON 09 MARCH 1992.

1. It is a fact that the Bophuthatswana delegation presented " a purely factual summary of the structure of the government" of Bophuthatswana at the meeting referred to above.
2. It is also a fact that Paragraph 1.1 of the Terms of Reference (With specific reference to Bophuthatswana) requires an investigation and report upon all proposals and recommendations with regard to the relationships between Bophuthatswana and its people "under a new South African Constitution".
3. We in Bophuthatswana cannot address the issues which were decided upon under paragraph 6.4 at this stage of the negotiations process for the following reasons:
 - 3.1 There are presently neither political, legal and constitutional - problems experienced between Bophuthatswana and the present South Africa, nor do we want to anticipate any under the yet unknown "New South Africa Constitution".
 - 3.2 The present Bilateral as well as Multilateral Agreements between the South African Government and the other members of the Economic Community of Southern Africa (ECOSA) respectively, have fostered such cordial political, legal, constitutional and economic relationships that we in Bophuthatswana wish to have such relationships strengthened rather than weakened or severed with the advent of the unknown "New South Africa".
 - 3.3 As a Sovereign Independent State politically, legally and constitutionally, our position has been stated consistently and repeatedly since Codesa I. It might be worth re-emphasizing the premises or conditions under which we participate in the negotiations as were submitted during February at one of the meeting of Working Group 4:

- 3.3.1 Our right to be allowed to choose freely, without external pressure or threat, the best possible solution for the future;
- 3.3.2 Our right to be fully informed on the contents of various options for consideration and an objective evaluation of the likely implications resulting from these options (Political, Legal, Constitutional etc),
- 3.3.3 The opportunity to assess freely and objectively the merits and demerits of each proposal for our specific situation as a Sovereign Independent State;
- 3.3.4 The application of democratic principles and approaches in allowing the people of Bophuthatswana themselves a final say in determining the desired outcome.

4. CONCLUSION

Against this brief background, we therefore wish to dispel any false impressions which might be created by paragraph 6.1 of the minutes of Wa4SC4 of 09 March 1992 that Bophuthatswana's "purely factual summary of the structure of the government; " (5.2) "would undermine the contribution of the Subgroup and limit its influence in decisions affecting a future South Africa" (6.1).

We in Bophuthatswana believe that reality and factual information are synonymous and could be the best bricks for the foundation upon which, we together, could build a brighter and happier future for all the peoples of this sub continent. The strife-torn present South Africa is not casting an attractive image to Bophuthatswana, most unfortunately. Hence our keeping our options open and restating our basic premises. In our legitimate participation in the negotiations therefore, we wish to re-affirm our support of the Codesa negotiations process in seeking " not our own nor individual organisational benefit, but to sincerely and truly seek the future wellbeing of, and peace for all our peoples "(President L.M. Mangope's position paper of 20/12/91 at Codesa I).

Urbanization Trends in Bophuthatswana (1980 - 1989)

1992 3. 20.

(Population in 1 000's% represents % of de facto population)

	1980		1985		1989	
	Pop.	%	Pop.	%	Pop.	%
De facto population	1511	-	1741	-	1921	-
<u>Urbanization</u>						
<u>Official urbanization</u>						
Urban	239	15,8	277	15,9	300	15,6
Rural	1272	84,2	1464	84,1	1621	84,4
<u>Functional urbanization</u>						
Urban	1083	71,7	1198	68,8	1341	69,8
Rural	428	28,3	543	31,2	580	30,2

Percentage average annual increase

De facto population	:	1980 - 1985	:	2,9%
		1985 - 1989	:	2,5%
Official Urbanization	:	1980 - 1985	:	3%
		1985 - 1989	:	2%
Functional Urbanization	:	1980 - 1985	:	2%
		1985 - 1989	:	2,9%

The defacto population of a country includes all persons physically present at the reference date, i.e the date(s) on which a census was held. Official urbanization refers to areas classified as "urban" in the official census programme. Functional urbanization includes urban areas, peri-urban areas (concentrations of people who commute to proclaimed towns for employment, shopping, etc.) and semi-urban population concentrations (in excess of 5 000 people).

Official urbanization

Official urbanization has maintained a constant level of 16% throughout the period 1980 - 85 and 1985 - 1989, and consequently a rural level of 84%. In absolute terms, however, the urban population dropped by a difference of 38 000 (1980-1985) to 23 000 (1985-1989) 15,8, 15,9% and 15,6%. The rural population dropped by a difference of 192 000 (1980-1985) to 157 000 (1985-1989).

Functional urbanization

Rural population dropped from a difference of 115 000 (1980 - 1985) to 37 000 (1985-1989). Urban population rose from a difference of 115 000 (1980-1985) to a spectacular 143 000 (1985-1989). Functional urbanization has maintained an urban population level of about 69% throughout the period 1980 - 1989.

Evaluation

Despite a constant official urbanization level of 16%, a functional urbanization level of 69% implies that a great majority of the population of Bophuthatswana is engaged in non-agricultural activities for a living. It should, however, be borne in mind that the average annual population growth rate declined from 2,9% (1980-1985) to 2.5% (1985-1989).

P/S : These are DBSA figures. The HSRC has calculated urbanization distributions of 20% urban, 24% semi-urban and 56% rural in 1988.

SUBMISSION BY THE VENDA GOVERNMENT WITH REGARD TO THE PROBLEMS AND SOLUTIONS TO BE ENCOUNTERED IN CASE OF REINCORPORATION OR NON- RE-IN-CORPORATION INTO THE R.S.A.

1. LEGISLATION

As far as legislation is concerned, if Venda is re-incorporated into RSA there can be no problems because only one legislation will be passed which will be applicable to Venda as well. This was the position before Venda became independent. This was also applicable to Bophuthatswana, Transkei and Ciskei before they became independent.

In the case of the TBVC states not re-incorporated to RSA the existing problem of harmonisation of legislation will continue and all the TBVC states will lag behind as far as legislation is concerned.

2. CONSTITUTIONAL

At the present moment each TBVC state has its own Constitution different from that of RSA. If all the TBVC states are re-incorporated there will be one constitution. Some of these constitutions do not have a provision of the entrenched bill of rights e.g. Venda.

There is also a general outcry by the TBVC states in that they are not recognised by the international communities.

3. POLITICAL :

In the meantime there are no easily defined boundaries between RSA and each of the TBVC states. In the case of re-incorporation, political parties may be formed which will effectively represent the people of all the regions. This representation may no longer be based on the ethnic groupings which is the current position. On the other hand if TBVC states are not re-incorporated to RSA the problems which are in existence will continue which may ultimately bring chaos to this whole region.

4. FEDERAL STATE :

At the present moment the federal form of government is not favoured by the citizens of the independent homelands because of its disadvantages. If a federal government is formed by the RSA and the existing TBVC states the poor homelands governments will not be in a position to share in the wealth of this country.

5. UNITARY STATE

The most favoured form of government is the Unitary state in which one central Government will be formed. The economy of this form of government shall be centralised. Whether a region is poor or not it will be able to participate in the whole economy of the country. Economical stability may be maintained unlike in the present situation where homeland governments are not economically viable in that some of them depend wholly on the RSA economy.

CISKEI PROFILE

FOR SUB-COMMITTEE 4 OF WORKING GROUP 4

"THE POLITICAL, LEGAL AND CONSTITUTIONAL ISSUES

RELATED TO THE FUTURE OF THE TBVC STATES"

FOR SUBMISSION TO CODESA

VOLUME 2

A MEMORANDUM PREPARED BY THE CISKEI DELEGATION TO CODESA ON THE IDENTIFICATION OF PROBLEMS AND ACTIONS REQUIRED IF RE-INCORPORATION OF THE REPUBLIC OF CISKEI INTO REPUBLIC OF SOUTH AFRICA IS REQUIRED AND POSSIBLE SOLUTIONS TO SOME OF THE PROBLEMS.

INTRODUCTION AND HISTORICAL BACKGROUND TO THE REPUBLIC OF CISKEI.

It will be recalled that the Ciskei delegate serving on Sub-Committee 4 of Working Group 4 reserved the right to table a historical background to the Ciskei profile document which was presented on March 1992. The Ciskei delegation to Codesa would wish the Sub-Committee 4 of Working Group 4 to take note of the circumstances which applied to the Ciskei people in the 18th and 19th centuries in seeking to retain and defend their heritage. It should be relatively easily understood why the Ciskeian people of today are not persuaded to give over their hard won independence to any unproved popular political movement without hard cold facts being placed on the table relating to constitutional dispensation and safeguards.

The descriptive narrative which follows is fact based on written historical fact and is testimony to a courageous and noble people who sacrificed everything in their desperate bid to save their national heritage. To attribute Ciskei's independence to the evils of "apartheid" is to do the people and leaders of Ciskei a gross injustice and insult. They struggled for restitution, they were an independent and free people and they have no wish to fall into further bondage to the new emancipators of Southern Africa.

HISTORICAL BACKGROUND

For centuries prior to the intrusion of the white man into the Eastern Cape the Ciskeian people enjoyed their freedom, their land, their traditional society and government. In their own way they were blessed with the essential requirements of life and were content. There are records describing the experiences of shipwrecked Portuguese sailors in the 16th and 17th centuries who were cared for by these people and who passed through this land en route to the Cape of Good Hope; all speak in glowing terms of the warm hospitality and friendliness of the communities who received them and cared for them. While the white man came in peace as a visitor he was well received; when he arrived on the scene in 1772 in the vicinity of the Gamtoos river in the Mossel Bay district bearing arms with the intent of occupying the land, this attitude changed to one of complete hostility and the stage was set for continuous conflict which was to last for more than a hundred years.

There is no doubt that the clash that followed between black and white on the Eastern Frontier greatly influenced the history of South Africa. It fashioned certain attitudes on the part of Boer and Briton towards British colonial authorities and the black man himself. As examples of dogged, tenacious defence and resistance to the invasion of their fatherland, the courageous campaigns waged by the great warrior forefathers for a period of more than a hundred years are without parallel in the annals of history. It was in this theatre of warfare that the leaders and people of the Ciskei gave birth to African nationalism, which is today a force to be reckoned with in the shaping of the future of Southern Africa. For two hundred years the Ciskei has been a symbol in the minds of the African nationalist. It is a spiritual heartland for warriors fighting for freedom and redemption.

It can truly be claimed that the country and the people enjoy a special place in the history of Southern Africa. Donovan Williams said "the confrontation between black and white along the Eastern Frontier of the Cape Colony during the first half of the 19th century was crucial for later relations between the races". After the initial contact between white settlers and blacks on the Gamtoos river in 1772, the white settlers continued pushing eastward and by 1806 had extended the boundary of the Cape Colony to the Great Fish river. Behind their forward line they were busily engaged in occupying and settling into the Zuurveld. In 1811, with superior arms and mounted troops, they succeeded in pushing the great Ndlambe with some 20 000 followers, together with other sterling chiefs such as Ntinde, Dange, Mbalue and Gqunukwebe, across the Great Fish river and so came to occupy the whole of the Zuurveld.

Not content with the huge tract of country already occupied, some eight years later the British administrators of the Cape Colony with paternalistic arrogance declared the heartland of the Ciskei - the land between the Fish and Keiskamma rivers - to be a neutral territory. In other words, they conceded that by their own decree Ciskei would be permitted to continue to live in their own remaining land areas and that this area between the two rivers would be a sort of buffer zone to prevent further conflict and warfare. You can imagine with what dismay the people witnessed the entire occupation of the Zuurveld with the 1820 settlement in Albany of some 6 000 settlers from British Isles. This followed immediately after Makanda's attack on Grahamstown in 1819, seeking to drive out the settlers in the Zuurveld and re-occupy their former lands.

Even so, the colonial administrators were not content with the occupation and settlement of the Zuurveld. In 1817 Lord Charles Somerset finally abandoned the fiction of the 'neutral territory' and permitted further incursions and settlement of colonialists beyond the Great Fish river.

As the consolidation of Albany had been achieved with the introduction of the British Settlers in 1820, so the need to

consolidate the occupation of British Kaffraria lay behind the British Government's decision in 1856 to establish a settlement of German immigrants between the Fish and Keiskamma rivers. Some 4 000 to 5 000 Germans were introduced into the very heartland of the Ciskei in 1857. Prior to this, in 1829, another area of the Ciskei, the Kat river valley, from which Ngqika's right-hand son, the great warrior Chief Maqoma, had been evicted, was handed over to 250 coloured and Khoikhoi families. During the course of a hundred years, notably in 1822, 1854 and 1864, the frontier of white penetration shifted eastward as the whites sought ever more farmland; there is no doubt that the outbreak of wars can be linked to the insatiable desire on the part of the white farmers for more land in the better-watered western areas. After Ntinde, Dange, Mbalue, Gqunukwebe and Ndlambe had been driven eastward over the Fish river, Ngqika's chiefdom was exposed to the frontier and the defence of the remaining Ciskei came to rest on the shoulders of his right-hand son, Maqoma. Maclean describes this great man in these words "by all allowed to be the greatest politician, the best warrior in all Kaffraria in 1835". It was this great chief who came nearest to forming an effective military alliance against the whites but his capture by the British brought an end to his valiant resistance. He was banished to Robben Island by the British administration of the Cape Colony, where he was confined for 17 years and where he died in 1873.

By 1870 the present-day tribes of the Ciskei, alone among the Bantu-speaking people of Southern Africa, had a full century of continuous contact and conflict with the white invaders. They had suffered a series of defeats in which, time after time, their huts were burned, cattle captured and their fields devastated. Successive blocks of land were taken from them and turned into white-occupied farms. Whole communities had been expelled from their homes and shunted about the country. The cattle-killing and national suicide of 1857, which was motivated by their obsession to drive the whites into the sea, had been a shattering blow to them. Poverty had become endemic through the loss of their land and cattle. The only way they had to alleviate the situation was by going out to work for the white man. Thus, a century after they had first begun to interact with the white settlers in the Fish river areas, the Ciskeian were finally conquered. In the process they had lost most of the land they had occupied for centuries, south-east of the Great Fish river.

The prestige of Ciskeian chiefs had been seriously affected by a series of military defeats and the lamentable consequences of the cattle-killing and the national suicide. As a result the colonial magistrates were able to become the effective administrators of the various districts. Having borne the brunt of white pressures and modern influence for so long, the Ciskeians were beginning by the end of the 19th century to adapt to their role as a conquered people. At the time of the annexation of British Kaffraria in 1866, the High Commissioner Sir Phillip Wodehouse, was left in no doubt by the Secretary for the State for the Colonies about the policy he was to follow in

the administration of the Cape Colony. The Secretary of State wrote; "The welfare of our own civilised neighbours and, not least, the welfare of the colonialists require that the Kaffir tribes should no longer be left in possession of the independence they have so long enjoyed and abused". In this manner, the Ciskeians lost the greater part of their land to the white settlers. They fought bitterly to retain it but inequality in arms - most tribesmen fought with spears; all whites with firearms - the fact that the white were mounted whereas the tribes mostly fought on foot, and above all, the power of an organised state as opposed to fragmentary chiefdoms, outweighed superiority of numbers - 12 000 Ciskeian warriors crossed the Fish in 1834, but were defeated within five months. The frontier wars, however, differed from the raids described in oral tradition or early records, in that they were more prolonged and more devastating. The Ciskeians were fighting, not primarily for booty but for survival as an independent people. Such a history of dispossession on the frontier by the settlers, better armed and organised, is not unique; a trail of tears forms part of the history of many nations.

Before leaving the past and turning to the present, reference is made to one recorded interview between the Rev. Samuel Young, a Wesleyan missionary, and Chief Cungwa of the Gqunukwebe, which took place in 1845. The narrative proceeds; "Chief Cungwa called at my residence in Grahamstown to inform me that he wished to have some conversation with me on the subject of war, which was then going on between the British and the Kaffirs. Cungwa commenced by stating that the brothers Pato and Kama and himself greatly lamented the war then going on, but that they had no power to prevent it. I then asked him if he knew anything about it before it broke out and he replied; 'Yes, we were requested by Maqoma and Tyali to join in the war, but we had positively refused.' I then asked him to inform me what the messengers said when they came to request Pato's people to join them. Cungwa then stated that the different chiefs, viz. Maqoma, Tyali, Botman, Eno, Qasana and others, were talking of attacking the colony and that these messengers were particularly sent to inform Pato and his brothers to urge them to assist in the war, stating that they must have the help of the Gqunukwebe tribe. Cungwa then asked them: 'Why do you want to go to war with the English? Is it because they have been into the Kaffir country and taken away the cattle?' Answer: 'No.' 'Is it because of the late misunderstanding which took place with the young officer, Ensign Spargs, and the Kaffirs when he came after colonial cattle?' Answer: 'We were much grieved at that circumstance, but that is not the reason why we wish to go to war.' 'What then is the reason?' 'The great reason is the land (meaning the neutral or Ciskeian territory), for our children have increased and our cattle have increased and we must have the land, as it was formerly our country. We are determined to fight for it sooner than be without it any longer.'"

Although at one time during the governorship of Sir Harry Smith it appeared the sovereignty of the Ciskei might come to be

recognised - when the land between the Fish and the Keiskamma rivers was declared a neutral area and designated first the Province of Queen Adelaide and then British Kaffraria, and reserved exclusively for occupation by the Ciskeian people - this was not to be. Sir George Grey rejected the policy of territorial separation and in his speech opening the session of the Cape Parliament in March 1855 he advocated a paternalistic type of intergration in these words: "I propose we should dismiss from our minds the idea of attempting to establish or maintain a system of frontier policy based upon the idea of retaining a vacant tract of territory intervening between ourselves and the barbarous race beyond it, who are to be left in the existing state without any systematic efforts being made to train and civilise them." Sir George Grey's policy (which British administrators described as benevolent) brought some benefit to the Ciskeians, but effectively subordinated them to the white man and did not prove in the long run to resolve racial conflict, which revived around the parameters of white settlements in the Ciskei during the 1870s and early 1880s, thereby proclaiming the continued strength of the African tribal systems. The wars therefore continued and it was as a result of these wars that the power of the African tribal system was finally broken. Under these circumstances the black man ceased to be militarily dangerous to the whites and it was under these altered circumstances that white men could begin to advocate territorial separation of black and white without fear.

The following quotation from an article by Donovan Williams, entitled "African nationalism in South Africa, origins and problems", concisely summarises the situation: "The eastern frontier and its contiguous areas provide a strong traditional area of Ciskeian resistance and a spiritual home for African nationalists for whom the frontier seems to have acquired a mystical significance. This area had a unique blend of black-white confrontation and interaction involving both missionaries and military which generated certain attitudes among the Ciskeians. These attitudes were sustained with the help of the Christian church and are a powerful underlay to present thinking among African nationalists - a common factor in all these attitudes is the fear of the loss of land - from the time of the acquisition of the ceded territories in 1819 to the Bantu Land Act of 1913. During the last few decades this defensive attitude against further dispossession has given rise to an aggressive demand for possession of all the land."

The Ciskei today continues to make its contribution to the struggle for restitution and freedom in Southern Africa. From its institutes of learning, Lovedale College and the University of Fort Hare, it is providing the nation and other African nations with political leaders raised in a truly spiritual environment. It is through the spirits of the great warriors of the past that Enoch Sontonga was inspired at Lovedale College in 1921 to compose the national anthem of the Ciskei, "Nkosi

Sikelel'i - Afrika", which means, of course, "God bless Africa". Few, if any, political organisations or people of Southern Africa are aware of the powerful and courageous history of the Ciskeian people. It is well to bear these facts in mind in approaching and promoting a New South Africa.

The Ciskei was formely divided into 9 regional authority areas namely Herschel, Hewu, Glen Grey, Keiskammahoek, Mdantsane, Middledrift, Peddie, Victoria East and Zwelitsha. The Regional Government in each of these areas was a function of a Regional Authority consisting mainly of Chiefs and the Traditional Councillors. The Ciskeian Territorial Authority was the central authority with little more than advisory powers. The Regional Authorities were never really strengthened into dynamic institutions and were declared defunct by a proclamation dated 30th of November 1968. The assets of these authorities were absorbed into a new territorial authority which was granted more power.

On 1st - August 1972 the Ciskei was constitutionally declared a self governing territory with 20 elected members and 30 Chiefs including the Paramount Chief. This new status constitutionally empowred the Ciskei to make Laws and act executively within a defined field. The Ciskei Government Service and the Ciskei Legislative Assembly were thereupon established and this system of government operated up until independence which was inaugurated on 4th of December 1981. Full description of the Constitutional, Structural and Legislative status of the present Ciskei government was represented to Working Group 4 in a comprehensive memorandum prepared by the Ciskei delegation to Codesa.

RE- INCORPORATION

In proceeding logically towards a program for the possible re-incorporation of the Republic of Ciskei into the Republic of South Africa it has already been agreed that the will of the people will be tested in this regard. Hence in logical progression the first exercise to be undertaken is the holding of a national referandum amongst the Ciskeian people to determine their attitude on this issue. Needless to say the prerequisite for such a referandum will be for the Ciskeian authorities to be placed in a position to describe the constitutional frame-work that will be applicable to the so-called new South Africa. Obviously the people will need to know and understand the constitutional frame-work that will apply to the new South Africa.

It follows that the Working Group 4 will need to maintain a close liaison with Working Group 2 in order to facilitate the process of re-incorporation.

Assuming that the will of the people will have been tested and that the desire of the majority is for re-incorporation it will then be incumbent upon the Governments of the Republic of Ciskei and South Africa to engage in bilateral negotiation on the constitutional arrangements that would be necessary between the two States to proceed to re-incorporation.

Bilateral negotiations and discussions between the Republics of South Africa and Ciskei will need to concentrate on the following key issues.

- a) The nature of the constitutional arrangements between South Africa and Ciskei.
- b) The nature of the constitutional arrangements within Ciskei.
- c) The position regarding rights created under Ciskei legislation which do not exist under South African legislation e.g. more favourable taxes, land ownership and land use, casinos, censorship.
- d) Issues of general interest.
- h) The time frame for re-incorporation, this latter point will be dealt with by Working Group 5.

In regard to (a) above the nature of the constitutional arrangements between South Africa and Ciskei, it will be necessary to examine relevant legislation. In this regard legislation that will need the attention of the Republic of South Africa is as follows:

- A) Status of Ciskei Act, 1981 (Act 110 of 1981).
- B) Financial arrangements with Ciskei Act 1981 (Act 118 of 1981).
- C) Borders of particular States, Extension Act, 1980 (Act 2 of 1980) as amended by Act 25 of 1983.
- D) The Supreme Court Act, 1959 (Act 59 of 1959).
- E) University of Fort Hare Act, 1969 (Act 40 of 1969).

It should be noted that it is not for the Ciskei Department of Justice to suggest what legal procedures or (other procedures for that matter) are to be followed on the South African side for dealing with the financial implications of the Appeal for Amendment of the afore going statutes. The implications are formidable.

Legislation for the attention of the Legislature in the Republic of Ciskei:

- A) Republic of Ciskei Constitution Decree, 1990 (Decree 45 of 1990) as amended by Decree 20 of 1991.
- NB. This decree includes a Bill of Rights
- B) Supreme Court Decree 1990 (Decree 43 of 1990).
- C) Definition of State Liability Decree, 1990 (Decree 34 of 1990).
- D) Administrative Authorities Act, 1984 (Act 37 of 1984).
- NB. Act 37 of 1984 provides for the appointment of chiefs and headmen and their powers and functions, the establishment of tribal and community authorities and chiefs and headmen's courts.
- E) Immigration, and Aliens Act 1988 (Act 9 of 1988).
- F) Ciskeian Citizenship Act 1984 (Act 38 of 1984) as amended by Act 7 of 1987 and 16 of 1988.
- G) Municipal Act, 1987 (Act 17 of 1987).
- H) Public Service Act 1981 (Act 2 of 1981).
 - H a) Police Act of 1983 (Act 32 of 1983);
 - H b) Prison Act 1983 (Act 36 of 1983).
- I) Governments Service Pensions Act, 1989 (Act 4 of 1989).
- J) Black Land Act, 1913 Act 27 of 1913 (See para M below).
- K) Development Trust and Local Act, 1936 (Act 18 of 1936) (See para M below).
- L) Land Regulations Act, 1982 (Act 14 of 1982).
- M) Removal of certain Restrictions Act, 1984 (Act 7 of 1984).
- NB. This Act abolishes racial restrictions in Acts 27 of 1913 and 18 of 1936
- N) Land Use Regulation Act, 1987 (Act 15 of 1987)
 - N a) Land Survey Act, 1988 (Act 22 of 1988)
- O) State Lotteries Act, 1984 (Act 14 of 1984)
- P) Income Tax Act, 1984 (Act 44 of 1984).
- Q) Ciskeian Development Tax Act, 1978 (Act 5 of 1978).

- R) Company Tax Amendment Act, 1984 (Act 16 of 1984).
- S) Licences Act, 1982 (Act 22 of 1982).
 - S a) Liquor Act, 1983 (Act 13 of 1983).
- T) Small Business Deregulation Act, 1984 (Act 27 of 1984)
- U) Private Companies Act, 1985 (Act 36 of 1985).
- V) Diamond Cutting Act, 1985 (Act 9 of 1985).
- W) Copy Right Amendment Act, 1984 (Act 9 of 1984).
- X) University of Fort Hare Act, 1969 (Act 40 of 1969).
- Y) Technical Act, 1984 (Act 15 of 1984).
- Z) Education Act, 1985 (Act 27 of 1985).
- AA) Ciskei Library Services Act, 1980 (Act 19 of 1980).
- BB) Fort Cox College Decree, 1991 (Decree 5 of 1991)
- CC) Ciskeian Apprenticeship Act, 1973 (Act 7 of 1973).
- DD) Workmen Compensation Act, 1982 (Act 11 of 1982).
- EE) Unemployment Insurance Act, 1983 (Act 11 of 1983).
- FF) Manpower Training Act, 1984 (Act 33 of 1984).
- GG) Machinery and Occupational Safety Act, 1984 (Act 35 of 1984).
- HH) Manpower Placement Act, 1987 (Act 19 of 1987).
- II) Wage Act, 1989 (Act 1 of 1989).
- JJ) Labour Relations Decree, 1990 (Decree 15 of 1990).
- KK) Conditions of Employment Regulation Act, 1984 (Act 34 of 1984).
- LL) Ciskei Nursing Association Act, 1978 (Act 7 of 1978).
- MM) Health Act, 1986 (Act 24 of 1986).
- NN) Mental Health Act, 1986 (Act 23 of 1986).
- OO) Health Professions and Related Health Practices Act, 1984 (Act 36 of 1984).
- PP) Nursing Act, 1984 (Act 13 of 1984).

- QQ) Hazardous Substances Act, 1985 (Act 15 of 1985).
- RR) Abortion and Sterilisation Act, 1985 (Act 16 of 1985).
- SS) Exhumation Act, 1982 (Act 10 of 1982).
- TT) Human Tissue Act, 1985 (Act 17 of 1985).
- UU) Historical Monuments Act, 1989 (Act 10 of 1989).
- VV) Multilateral Motor Vehicle Accident Fund Act, 1989 (Act 7 of 1989).

The Republic of Ciskei continues to administer a considerable number of statutes inherited from the Republic of South Africa at the time of independence. Some of these have been amended in part or in their entirety, to keep abreast with developments in the RSA. The following are examples:-

- 1) Administration of the State Act, 1965 (Act 66 of 1965) - several attempts have been made to have the amendments adopted by the legislature, but without success.
- 2) Criminal Procedure Act, 1977 (Act 51 of 1977) this Act, sans the death penalty is virtually up to date.
- 3) Magistrates' Court Act, 1944 (Act 32 of 1944) - proposed amendments have not yet been promulgated. The jurisdiction authorised in the RSA is in excess of the jurisdiction of the Ciskeian Court.
- 4) Deeds Registry Act, 1937 (Applied appropriately to Ciskei), the Deeds Office procedure has been kept up to date to coincide with that in the RSA.
- 5) The Ciskeian Road Traffic Act, 1989 (Act 18 of 1989), this moves the road traffic Act, 1989 of the RSA but without proposed privatisation of vehicle testing stations or examiners for drivers licences.
- 6) Acts relating to Deposit Taking Institutions or Building Societies and other financial Institutions - these are in the process of being substituted by Ciskeian Laws. Virtually identical with their RSA counterparts at present. etc, etc,.

Many of the foregoing ~~major~~^{matters} have (as in ^{the} case of the Statutes mentioned in the list for the RSA) formidable financial implications eg., the Public Service Act 1981 and the Police Imprisonment Acts (The Government Service Pensions Act, 1989 with its funds fortunately controlled by Sanlam). The Income Tax Act, 1984 and the Company Tax Amendment Act 1984. There are also a number of Parastatal bodies, eg, the Ciskei Peoples Development Bank - which is a Development Co-operation, an Agricultural Co-operation, a Tourist Organisation etc, etc.

BILATERAL AGREEMENTS

At the time of the assumption of independence by the Republic of Ciskei some 81 Bilateral agreements were entered into with the South African Government. These Bilateral Agreements have been listed in the documents submitted to Codesa by the South African Government on 10th of February 1992, the agreements cover all possible aspects of government administration and establish a wide field of Economic and Socio-economic Co-operation.

In the event of an acceptable constitution for a new South Africa being drafted and accepted by Working Group 2 then the Republic of Ciskei will seek to engage in further bilateral negotiation with the South African Government with a view to establishing a further agreement for the re-incorporation of the Republic of Ciskei into the new South Africa. In this event all the 81 mentioned "independence agreements" will need to be reviewed and either abolished or incorporated into national legislature. The 81 Bilateral Agreements are listed on pages 123 through to 154 of the above referenced publication.

MULTILATERAL AGREEMENTS

The Republic of Ciskei has engaged in the Multilateral Process in entering into some 15 multilateral agreements with various other Member States of the ECOSA Region. These Multilateral Agreements cover the following fields:-

- A) The establishment of the Development Bank of Southern Africa.
- B) The appointment of a South African Tourism co-ordinator.
- C) A control of pollution of water resources.
- D) The establishment on the Secretariate for the ECOSA Region.
- E) A convention on extraditing the contracting parties RSA, Bophuthatswana, Venda and Ciskei one regional security and co-operation between Transkei and Ciskei.
- F) The Jurisdiction of Municipal Courts over foreign States.
- G) Standards of life-stock and the importation of breeding animals, in Southern Africa between RSA, Venda and Ciskei.
- H) The establishment of a Multilateral Motor Vehicle Accident fund.
- I) Convention on Human Immune Difficiency Virus, and AIDS between all five Member States.

- J) Convention with regard to energy and energy related matters signed by RSA, Transkei, Venda and Ciskei.
- K) Agreement regarding social pension grants and allowances signed by RSA, Transkei, Venda and Ciskei.
- L) Agreements regarding Social Welfare Services between RSA, Transkei, Venda and Ciskei.
- M) Agreement for the avoidance of double taxation, the prevention of physical evasion, the rendering of mutual assistance in-incorporation, the establishment of a transfer system with regard to Value Added Tax.

In dealing with the issues of re-incorporation in respect of the Republic of Ciskei being re-incorporated into the Republic of South Africa it is of considerable merit and interest to record the circumstances pertaining to the interim constitutional development of the Ciskei; as recorded in the Interim report on the Constitutional Development of the Ciskei dated 29th September 1980.

The members of the Committee which produced the report were appointed by the Prime Minister of the Republic of South Africa, viz the Honourable P.W. Botha, and the Honourable Chief L.L.W Sebe, Chief Minister of Ciskei.

"Confederal Agreement"

3.1 The following was recorded in the report.

As was indicated by the Prime Minister in the no-confidence debate in Parliament in 1980 a Confederation of States could be linked by a Council of States. All independent national States would qualify for full membership on a basis of equality.

Consequently the Governments of the Republic of South Africa and Ciskei decided to enter into a Confederal Agreement, the structure of which is to be negotiated concomitantly with the attainment of independence by Ciskei.

Various important matters such as the matter of nationality, citizenship, passport and travel documents which are the subject of investigation by committees or commissions will upon finalisation be incorporated in the confederal agreement.

From this provision it will be realized that the Government of Republic of Ciskei has at all times been consistent in its concept that it has never sought to irrevocably divorce itself from the SA Commonwealth but in its independent status remain firmly associated with the parent South African body.

In other Submissions and Position Papers submitted to Codesa the Ciskei government has clearly defined the basis and preference for its re-incorporation into South Africa.

In this context it has stated its wish that Ciskei should become part of a regional state, province, far greater regional unit within a United Federal State of Southern Africa. Ciskei has long realised its inability to stand economically independent on the basis of its present boundaries and is convinced of the necessity for it to join a greater economic unit.

In the same manner, as previously, where Ciskei was intending that it should take its place in Southern Africa within a Confederal arrangement with other States, Ciskei would wish to see its participation in the future South African dispensation within a regional context and in this respect deal with the various issues relating to harmonization of Legislation and Taxation in a regional context.

Where Ciskeian Legislation has produced rights which do not exist under South African Legislation i.e, in regard to more favourable tax base, the granting of free-hold land ownership and land use, the establishment of casinos etc., Ciskei would wish to see these matters harmonized in the first instance in the context of being part of a greater regional unit. Such an approach would ensure that maximum economic benefits continue to accrue to the regional environment without causing major disruption to the economy of the region and thus lead to a position of destabilisation and loss of confidence.

In proceeding to deal with areas of commonality Ciskei would again promote the concept of a regional approach in dealing with issues relating to the legal system, the public services, language, and the system of public administration and financial management. All of these issues would need to be negotiated and harmonized for maximum regional benefit.

Any legal system adopted would need to cater for existing traditional common law practices which prevail as well as consolidating the existing practice applying in Roman Dutch Law which is presently used in South Africa.

A regional dispensation would also make it possible for official languages to be adopted which would meet the needs of the regional population and in the case of Ciskei within its envisaged region, English and Xhosa would become the official languages.

A regional approach would also cater for the rationalisation of the existing civil services and their utilisation throughout a greater region. In this respect the trained and experienced civil servants of the Independent States would be available for

disbursement throughout a greater region and thus bring immediate benefit and improvement in the administration and services to the community as a whole, without a delay in having to train for the expansion of the civil service.

Other positive implications of Ciskei incorporating into a Federal/Regional model are listed below:

- historical borders are not necessarily entailed or required
- homogeneous population (putting people together who belong to the same region)
- regional structures are to be determined by the national constitution, thus all regional structures will be the same
- all regional governments must have the same powers and functions
- pragmatism is to play a bigger role
- people in general will be more conscious of themselves, the regional economy and issues affecting them more directly
- leadership development and accountability of leaders possible
- offers opportunities to accommodate group diversity not available in a centralised state
- healthy competition with other federal units/regions
- greater scope for self-determination and local decision-making
- the bigger towns/cities would be part of the regional economy, whereas they have been excluded to date
- no regional citizenship will be imposed as all people will probably be South Africans
- availability of "checks and balances" to ensure consensus
- inclusiveness vs exclusiveness
- multi-party democracy and participation of all
- coalitions are possible to strengthen minorities
- immediate needs of communities more likely to be met
- easier to boost nations morale on federal basis

In considering the question of a transitional arrangements during the process of re-incorporation the Republic of Ciskei would wish to remain a sovereign independent state until such time as re-incorporation became clearly identified by way of bilateral agreements and harmonization of legislation. In this manner the Republic of Ciskei would be able to ensure that it played a significant role in the determination of its own future and secured the best possible dispensation for its people.

In regard to the proposals for the establishment of an interim government currently being investigated by Working Group 3, Ciskei would wish to retain its sovereign independent status until such time as it was able to evaluate the nature of the constitutional dispensation proposed for the "new South Africa".

Naturally as is currently the position between South Africa and the TBVC States, it would expect and anticipate, that in matters of economic co-operation and in all other matters addressed by bilateral agreements, that it would be consulted by the interim government of South Africa.

Thus in matters relating to policy issues, economic co-operation, public service administration, constitutional affairs, referendums etc., Ciskei would wish to be consulted.

As has already been identified in the submission an innumerable number of bilateral agreements have been entered into between the present South African government and the government of the Republic of Ciskei. It goes without saying that these bilateral agreements will need to be entrenched into any interim government arrangement entered into by the South African government so as to ensure that the provisions of the agreements are observed and honoured by the interim government. The situation could not be created whereby these bilateral arrangements would simply fall away because of the change of status of the South African government. The government of the Republic of Ciskei has taken note of the assurances given by the State President, the Honourable F.W. De Klerk that all existing agreements, treaties arrangements etc., will be honoured in full.

Other issues which will also required to be addressed by the government of the Republic of South Africa prior to the inauguration of a sharing of power in an interim arrangement will be as follows:

- a) The entrenchment of the existing financial arrangements whereby South Africa provides financial aid to the Republic of Ciskei and through the Joint Financial Arrangements Committee has assumed responsibility for the Ciskei National Debt and has undertaken to provide a Annual Bank Guarantee for overdraft facilities.
- b) Maintain the operation and allocation of the Revenue Resources arising out of the Common Customs Union for Southern Africa.
- c) Conclude all outstanding land issues relating to compensatory land to the Ciskei government and to identified communities.
- d) An exhaustive study will need to be made of all existing Bilateral Agreements so as to ensure that none of the provisions of these agreements are overlooked and fall into disrepute following the change in status of the existing South African government.

POLITICAL ISSUES

1. Whatever political and/or constitutional model is to be decided upon for the future, this model should guarantee a peaceful resolution to the multifaceted problems left to us by decades of apartheid. The highly centralised political system of the past makes it difficult for communities to adopt a system of decision-making at community level.
2. The Constitution of the new negotiated Southern Africa should bear clauses to prevent the abuse of state power. The Ciskei is not interested in joining South Africa if it is going to be a unitary state with a highly centralised government on all spheres. A large bureaucracy is not a guarantee for sound administration and a good effective government.
3. The implication of reincorporation concerning the lives of the ordinary Ciskeian should be considered. The people expect a system whereby they have a direct input in issues affecting their daily lives. Government by discussion and consent is thus to be considered as a priority.
4. People (Ciskeians) have over the years developed a natural opposition to a system where they have no influence on decision making and the process of government. They also expect a sound administration and an efficient government.
5. Resolving differences between potential hostile organisations should be a priority of this region as these ongoing differences might implicate a situation of winner-takes-all rather than that of cooperation, consensus and competition.
6. The incorporation of Ciskei is subject to the fact that the importance of a participatory model of democracy is not just that it gives us an alternative way of understanding democratic life, but also that it provides us an alternative model of nation-building under conditions of multi-ethnic and religious diversity. If the above is not guaranteed, the Ciskei has no reason to re-incorporate, as there is no nation-building and an understanding of democracy.
7. For many years, under apartheid, leaders were not always made accountable for decisions and actions. People should be given the opportunity after re-incorporation, on a regular basis, of a referendum on certain issues to ensure that not only the leaders, but also the people at large are made accountable for the execution of their daily lives.
8. The consequences of different policies should be taken into account as no policy can guarantee a success. Policies referred to are merely economic and social development policies; those which affect our lives on a daily basis .

9. When democracy is generally discussed by people, they understand the following:-

- freedom of religion, assembly and denomination
- freedom of speech and expression
- freedom of movement
- freedom of political activity
- right to vote
- free market economy and private ownership

If the above is not guaranteed in the constitution or in a Bill of Human Rights, then the implication might be that people will systematically object to the system and demand these rights. Therefore, neither Ciskei nor its people are interested in settling for less than the above.

10. There is no need for the Ciskei and/or any CODESA delegate to reinvent the wheel. We only have to make it more perfect. People at large need to know and to be informed about issues affecting them, even now during this transitional process. Democracy is the ultimate, and the smaller the unit of government and the more restricted and functions assigned to government, the less likely it is that its actions will reflect special interest rather than the general interest. Spending of government has thus to be reduced in order to survive.
11. Ciskei has opted for a federal constitutional model. Therefore, each regional government should have a clearly defined and sensible demarcated geographic area. The power of the state should thus be distributed vertically, in a practical manner between the various levels of government, without culminating in the weak or fragmented exercise of power. The above implicates a sound research to be done on the geographic boundaries and economic viability of each region.
12. The implications of democracy and its contribution towards this region can never be overlooked. The more people are allowed to vote, after re-incorporation, the better. Direct democracy reflects public opinion, ensures that elected leaders remain accountable and it reduces the importance of party politics, to which most people have become used. This should also avoid polarisation, conflict and violence. If party politics is pressed too hard then a "winner-takes-all" situation develops. Under direct democracy, where people vote on a regular basis, losing party members can still share in decision-making. By implication everybody participates in deciding on issues affecting their lives.
13. Direct democracy also has implications such that some people believe that power is transferred from the educated to the ignorant. Some people also believe that democracy favours the elite and the Black South Africans lack the knowledge and experience to participate. However, these are misguided perceptions.

14. The negative implications of Ciskei, incorporating into a unitary state with a highly centralised government, could be the following:-

- domination of minority groups is possible
- access to government and government privileges is very difficult, especially in rural areas
- alienation between government and individuals could develop
- the potential for corruption, bureaucracy, inefficiency and nepotism is increased
- concentration of power might lead to abuse of power
- discrimination on basis of race, colour, creed and class is not excluded
- minority groups might be excluded from participation, leading to confrontation and violence.

18 March 1992

U N I T E D P E O P L E ' S F R O N T

SUBMISSION TO SUB-GROUP 4 OF WORKING GROUP (WG) 4 ON 23/03/1992

" THE FUTURE OF THE TBVC STATES - REINORPORATION "

1. According to the terms of reference to the four subgroups of working group 4, sub-groups 4 is assigned the investigation of the Legal, Constitutional and Political implications relating to the Reincorporation of the TBVC States - (The independent states in South Africa).
2. The independent state of Bophuthatswana has not agreed to reincorporation while the other three independent states are in favour of reincorporation into South Africa.
3. The United People's Front suggests that the reincorporation of the TBVC state be approach from two different angels:-
 - (a) The implications of reincorporation of the three independent states;
 - (b) The implications of non-reincorporation of the independent state of Bophuthatswana.
 - (c) The legal, contitutional and political documents requested, studied and investigated must relate to identified problems for purposes of resolving such problems relating to reincorporation in respect of the three independent states and non-reincorporation in respect of Bophuthatswan.
 - (d) All legal, constitutional and political questions arising for resolution in other sub-groups of working group (WG) 4, relating to reincorporation of the three independent states and non-reincorporation in respect of Bophuthatswana must be referred to sub-groups 4 of working groups (WG) 4 for cordinated approach and consideration.

PROPOSALS FOR TRANSITIONAL ARRANGEMENTS

1. Since 1910 South Africa has had consecutive constitutions that gave only certain sections of her population representation in national structures of government. That era of our constitutional history came to an end with the steps announced by the State President on 2 February 1990, and sanctioned in the referendum of 17 March 1992. With the mandate of those who elected it, the Government can now proceed with vigour on the road of reform to a new negotiated democratic constitution securing equal representation for every South African citizen and eliminating domination.
2. In continuation of the process the Government proposes that negotiations should begin as soon as possible with a view to the formulation of a transitional constitution amending the *Republic of South Africa Constitution Act 110* of 1983. In order to make the necessary preparations for the implementation of such a transitional constitution, it is proposed that structures with broadly representative membership be created by statute without delay. This will ensure that all interested parties can be assured of an opportunity of participating in the preparation, planning and implementation of a transitional constitution.
 - 3.1 With a view to meaningful discussion, consideration and negotiation thereof in CODESA, the Government will make its proposals for a transitional constitution available in the form of draft legislation towards the end of April.
 - 3.2 It is accepted that the parties participating in the negotiations concerning a transitional constitution, do so under the following conditions:
 - Decisions in this regard are taken by consensus.
 - The question of political violence in general and the bilateral understandings in inter alia paragraph 3 of the Pretoria Minute and the DF Malan Accord, are solved decisively.

- Everything that can harm South Africa and all its people is effectively opposed by participants.
- The transitional constitution is implemented only when a general and satisfactory situation of order and stability has been established in the South African community.

3.3 The draft transitional constitution that will be presented to CODESA, will be formulated within the following framework:

Parliament

Parliament is composed of two Houses, namely a National Assembly and a Senate.

The National Assembly is elected according to a system of proportional representation. Every South African citizen above the age of 18 can vote and be elected.

If sufficient progress is made with the negotiation process concerning a system of regional government, the Senate is composed of regional representatives. Should sufficient progress not be made in this regard, the Senate can initially be composed of members of existing legislative bodies.

The Head of State

A Presidency is formed by the leaders of the three to five strongest political parties jointly representing a majority in the proposed National Assembly as determined by a general election. The Presidency is the executive head of the Republic and it takes its decisions by consensus. The chairmanship of the Presidency rotates on a six monthly basis.

The Cabinet

The members of the Cabinet are appointed by consensus by the Presidency and need not be members of Parliament. The Cabinet functions under the direct guidance of the Presidency.

Charter of Fundamental Rights

The Constitution, including an enforceable Charter of Fundamental Rights, is the supreme law of the Republic. The Constitution and Charter are justiciable by the Supreme Court of South Africa.

Further Transitional Measures

In order to maintain good government and to provide for the responsible management of the transition process, the Constitution contains extensive transitional provisions.

4. The following arrangements for the preparatory phase are now proposed for negotiation. As soon as the discussion and negotiations have proceeded to the point where the details can be discussed, a draft bill thereon will also be presented:

Transitional Councils

- 4.1 Transitional Councils are established for facilitating the planning and implementation of a next constitutional dispensation. Each Council is composed of six members designated by the Management Committee of CODESA and appointed by the State President together with one additional member appointed by the State President on the grounds of his expertise after consultation with the Management Committee of CODESA.
- 4.2 A person may be appointed as a member of more than one Transitional Council and the number of persons who are members of Transitional Councils may at no time exceed thirty.
- 4.3 A person who is a Minister or Deputy Minister in the present constitutional dispensation or who is a member of the Executive Committee of a Province, may also be appointed as a member of a Transitional Council.

- 4.4 Members of Transitional Councils receive the remuneration and benefits determined by the State President after consultation with the Management Committee of CODESA.
- 4.5 No one who is a member of more than one Transitional Council, or who is a member of a Transitional Council and holds an office mentioned in 4.3, is entitled to receive remuneration and benefits in respect of more than one of the capacities in which he serves.
- 4.6 The State President may, on the recommendation of the Management Committee of CODESA or the relevant Transitional Council, terminate the appointment of any member of a Transitional Council and appoint another person in his place. The State President may in the same manner appoint a member of another Transitional Council to act for a member of a Transitional Council who is temporarily indisposed or who is for any other reason incapable of attending meetings of that Transitional Council. The State President may dismiss any member of a Transitional Council on grounds of proven misconduct.
- 4.7 Transitional Councils take decisions by way of the consensus of all their members and they themselves decide on matters such as chairmanship and procedure.
- 4.8 Two or more Transitional Councils may meet together to discuss matters of mutual interest or of interest to any specific Transitional Council, or in general concerning the transitional process towards a new democratic constitution.
- 4.9 All the Transitional Councils meeting together constitute the Joint Transitional Council, which does not have any of the specific duties and functions of any of its constituent Transitional Councils, but may by way of consensus reach agreements on resolutions.
- 4.10 Detailed definitions of the duties, functions and activities of Transitional Councils can be described in the proposed legislation after negotiation. This may include the studying of existing legislation and making of

recommendations thereon and on new legislation in the area for which a Transitional Council is responsible.

4.11 The following Transitional Councils are proposed:

(a) The Transitional Council for Elections.

that is charged with the preparations and planning for the holding of elections under the transitional constitution and to ensure that they will be free and fair. The Transitional Council may adopt resolutions by consensus about any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(b) The Transitional Council for Regional Government

shall, having regard to existing provincial boundaries as well as political, geographic, demographic and economic determinants and after consultation with existing government authorities as well as knowledgeable persons and institutions, formulate proposals regarding the delimitation of the territory of the Republic into a number of provinces or federal component states which is politically and economically justifiable. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(c) The Transitional Council for Local Government

shall, having regard to provincial and federal component state boundaries that may be proposed by the Council for Regional Government and the boundaries of existing local government areas as well as geographic, demographic and economic determinants and after consultations with existing government authorities as well as knowledgeable persons and institutions, formulate proposals regarding the delimitation of local

government areas in such a way that no local government area will be in more than one province or component state. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities.

(d) The Transitional Council for Government Finance

shall do planning and preparations relating to the handling of government finances in a next constitutional dispensation. The Transitional Council may adopt resolutions by consensus regarding any matter concerning its activities and shall initiate and co-ordinate those negotiations that it may consider necessary for the purposes of its activities, and more specifically regarding intergovernmental financing. This Transitional Council may be given the opportunity of making inputs regarding budgeting.

4.12 The possibility of instituting Transitional Councils for Law and Order (or Police) and for Defence can also be considered. In negotiations in this regard the progress made in Working Group 1 and in various bilateral negotiations will have to be taken into account. The institution of such Transitional Councils can not be properly discussed in Working Group 3 in isolation from those developments.

4.13 The possibility of instituting further Transitional Councils functioning in areas such as education, housing, health and international relations, can also be investigated.

5. The Government is convinced that these proposals are fair, constructive and justifiable. It is trusted that the proposals will contribute to the early reaching of agreement on the next step in the transition towards a fully representative democratic constitution.

MEMORANDUM

TO: ALL MEMBERS OF WORKING GROUPS
FOR SPECIAL ATTENTION: ALL EXISTING CHAIRPERSONS AND WGSCs

FROM: CODESA SECRETARIAT

RE: TIMEOUS RATIFICATION OF MINUTES

DATE: 23 MARCH 1992

As you are aware, CODESA has set a Wednesday 12h00 deadline for receipt of Working Group minutes by the Administration, in order that said minutes may be timeously faxed to Working Group and other CODESA delegates.

We believe there has been an improvement in the timeous distribution of minutes. However, there are still some documents coming in up to a day after the deadline.

The main cause of delays seems to be delayed communication between Working Group secretaries/minute takers and their Chairpersons, who ratify the minutes before they are distributed.

We would like to suggest that immediately after any meeting/s to be minuted, Chairpersons make a point of discussing contact details with the relevant secretary/minute-taker, so that they may be contacted without any problems during Tuesday or on Wednesday morning. In this way, it should be possible to have all minutes ratified by the Chairperson in time for the deadline.