



**COMMENTS RECEIVED FROM PRINCIPALS
ON REPORT OF WORKING GROUP 4 TO CODESA 2
(these comments do not affect the consensus reached in Working Group 4)**

1. Ciskei Government comments
2. Democratic Party comments
3. National Party comments
4. South African Government comments
5. South African Communist Party comments

CISKEI GOVERNMENT COMMENTS

1. In regard to the first draft of the report of Working Group 4 to CODESA 2, Ciskei wishes to comment as follows:
2. "Ciskei has consistently on all previous occasions stated its position clearly on reincorporation into South Africa.

In regard to Ciskei's participation in an interim Government, our position is clear in that Ciskei will not participate in an interim Government at this stage but will remain a participant at Codesa and be part and participate in the constitution-making body.

Until the constitutional principles have been clearly stated and approved by Codesa, Ciskei will keep its options open. At that stage Ciskei will decide on reincorporation into South Africa.

The fundamental considerations on the part of the Ciskei Government is that Ciskei must be better off in the "New South Africa" than has been its circumstances."

DEMOCRATIC PARTY COMMENTS

COMMENTS ON

FIRST DRAFT REPORT OF WORKING GROUP 4 TO CODESA 2

We wish to submit the following comments on the first draft report of Working Group 4 to Codesa 2:

1.1 AD PAR 3.2:

We think it is inadvisable simply to state that: "A copy of the report is attached marked annexure F"; the main points contained in the annexure, reflecting consensual agreements arrived at in Working Group 4, should be presented to Codesa 2 so that their acceptance by Codesa 2 could represent final decisions with respect to the issues dealt with therein.

We therefore propose that par. 3.2 should be amended to read as follows:

3.2 "Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation. The following is a summary of the main principles on which consensual decisions were taken; a copy of the full report is attached marked annexure F.

3.2.1 RETENTION OF BUSINESS CONFIDENCE AND TAXATION

The process of reincorporation should be conducted in such a way that it ensures retention of business confidence.

3.2.1.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place.

3.2.1.2 Labour legislation should be harmonised throughout South Africa including stipulations on a stable relationship with unions.

3.2.1.3 The taxation regime should be harmonised in respect of all forms of tax structures; the question of tax concessions may be considered in relation to regional development issues.

3.2.1.4 A commission is to be appointed to investigate and report to the relevant parties on the best means to retain business confidence and use of the existing infrastructure, with special reference to the matters listed in par. 11.1 of the annexure.

3.2.2 A MORATORIUM ON LAND TRANSFERS

3.2.2.1 No further attempts are to be made to identify new land for transfer to the TBVC governments.

3.2.2.2 This moratorium will apply to all TBVC states and to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.

Reservations were expressed by the SA Government, Bophuthatswana and Ciskei; these are listed in the annexure under par. 4.

3.2.3 DISPOSAL/TRANSFER OF ASSETS AND LIABILITIES

3.2.3.1 All assets and liabilities of the TBVC states should be transferred to the new government on reincorporation.

3.2.4 OPTIMAL USE OF EXISTING INFRASTRUCTURE

3.2.4.1 All structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalised structures and operations.

3.2.4.2 Existing financial arrangements and transfers should continue uninterrupted until they are replaced by new arrangements.

3.2.5 REVIEW OF DEVELOPMENT PROJECT PRIORITIES

3.2.5.1 On reincorporation priorities of development projects should form part of the national/regional prioritisation programme.

3.2.6 GOOD ADMINISTRATION DURING TRANSITION

3.2.6.1 Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service.

3.2.6.2 Administrations should be reorganised around existing structures.

3.2.6.3 Certain basic services such as the administration of justice, the civil service, parastatals and security and other public services will have to continue uninterrupted during transition.

3.2.6.4 The TBVC Administrations should operate under the supervision of the Interim Government during transition. (Bophuthatswana made the reservation that this is only applicable once a decision in favour of reincorporation is taken).

3.2.7 FUTURE OF THE CIVIL SERVICE

3.2.7.1 Civil servants should retain their existing salaries, benefits, conditions of service etc until adjustments are made as a result of absorption into a non-racial national/regional service.

3.2.7.2 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to and extensive rationalisation programme in the new South African civil service.

3.2.8 SERVICING AND REPAYMENT OF TBVC DEBTS

3.2.8.1 The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated.

3.2.9 A COMMISSION IS TO BE APPOINTED TO LOOK INTO THE QUESTION OF GOOD ADMINISTRATION DURING TRANSITION AND THE FUTURE OF THE CIVIL SERVICE.

The commission will deal with the various issues set out in par. 11.2 in the Annexure.

3.2.10 COMPOSITION OF THE COMMISSIONS

3.2.10.1 The two commissions to be appointed should each be a nine-member multi-party commission consisting of five representatives, one from each of the SA and TBVC administrations and four representatives nominated by the remaining parties at Codesa.

3.2.11 RESERVATION BY BOPHUTHATSWANA

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

NATIONAL PARTY COMMENTS

The National Party is in agreement with the contents of the First Draft Report.

SOUTH AFRICAN GOVERNMENT COMMENTS

The South African Government reserves its position in respect of the report of Working Group Four to Codesa 2, pending the outcome of the deliberations in Working Groups 2 and 3.

SOUTH AFRICAN COMMUNIST PARTY COMMENTS

The following changes need to be made to the First Draft Report of Working Group 4 to CODESA 2:

3.2 Addition: "...effects of reincorporation. Consensus was also reached on mechanisms of addressing proposals by the various parties which could not be thoroughly dealt with in the sub-committee. It was agreed to establish two multi-party commissions to deal with these matters. A copy of the report is attached ..."

4. Mechanisms for dealing with some of the aspects of the terms of reference not yet covered by Working Group 4 are suggested in paragraphs 3.2 and 3.3 above.

Annexure F

Report on the Administrative, Financial and Practical Effects of Reincorporation

8.2 A single non-racial administration be created from existing "own" and "general" affairs as well as self-governing states as a starting point. On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.

Note: Point 8.2 was included in the previous draft report both under the headings "Good Administration during Transition" and "Appointment of Commissions". It was agreed on 5 May that it not be repeated under the second heading, but the First Draft Report has now deleted this essential point. We request that this point be retained under both original headings to avoid any confusions which may arise. Further trimming of the document, by way of accepting or rejecting its recommendations should be done by the CODESA plenary. The present 8.2 then becomes 8.3 as in the final draft to the plenary of Working Group 4.

Terms of reference of the Commissions

There is a lack of clarity in the setting out of the terms of reference. Points 11.1.9, 11.1.10 and 11.1.11 relate specifically to the question of harmonisation of taxation and should therefore be subpoints to 11.1.1 as follows:

- 11.1.3 Possibility of granting temporary exemptions from tax including 11.1.3**
- (a) Whether the process of harmonisation should be implemented incrementally
 - (b) Whether, where prejudices arise, exemptions should be granted for a definite period
 - (c) Whether the granting of exemptions should be fairly automatic up to a certain date

The above proposals were made by our party and make no sense as they stand in the First Draft Report. Extracts from our original submission are attached.

11.2 As stated above, 8.2 above should be repeated as 11.2.2 as per the sub-committee 3 report of 4 May.

On the basis that reincorporation of the TBVC states is desirable:

(a) the retention of business confidence, particularly in relation to existing investments

* the present situation

Both company and personal taxation are at rates which are lower than under central government. In some instances, businesses have used these opportunities simply as a means of evading the South African tax laws, rather than in attempts to develop the economic/industrial infrastructure in the TBVC states. This should cease immediately.

The focus of the industrial decentralisation incentive schemes have shifted from inputs to profitability and these schemes apply throughout the SATBVC. There appears to be no immediate need to address this issue at present, as the matter should be dealt with by a future government.

*** key issues and problems**

Business confidence will best be maintained and improved, if there is clarity about the direction and pace of change, if there is a sense that, on balance, conditions for business will not deteriorate and if there is good administration during transition. Maintaining business confidence should not become an excuse for delaying appropriate harmonisation of taxation and regulation environments (legislation). The objective should be to protect the people against uncertainty, not to protect people against an inevitable future. In certain cases, phasing will be necessary to ensure that harmonisation is not overly disruptive.

*** recommendations**

1. A formal Statement of Intent should be issued by CODESA 2 by which businesses are informed that on re-integration of TBVC and self-governing territories, the laws and regulations of the RSA and the relevant province will apply. Such a statement should relate both to company and personal income tax.
2. A multi-lateral commission to be set up by CODESA 2 to consider a plan for the harmonisation of taxation and regulation environments. This Commission to consist of representatives of the tax authorities of the TBVC states and to include representatives from organisations who would not have automatic representation - Democratic Party, ANC, etc.
3. The process of harmonisation could be implemented incrementally and the revenue would accrue to the TBVC administrations. A date would have to be established on which agreements on taxation, etc. between businesses and TBVC governments would terminate. This would presumably be the date of dissolution of the "independent" status of the TBVC administrations and the effective date of reincorporation into the central South African state.
4. If this will prejudice their businesses in any way, they should be permitted to be exempted for a defined period from South African laws and regulations, and instead, the agreement between the company and the TBVC administration can be maintained temporarily. This could be organised by applications to the commission to whom all businesses will have to apply for any exemptions,

ensuring that the body managing harmonisation will have full information about the implications of the change to all individual businesses where the businesses consider such implications to be harmful. Advantage gained out of harmonisation should not be a criteria for exemption. The Commission should ensure that tax avoidance ceases immediately.

5. Except where completely impractical, the granting of exemptions (upon application) should be fairly automatic up to a certain date, which would be the "deadline" for harmonisation. The setting of dates is necessary to ensure greater ease of administration of the national process - otherwise four sets of different dates for exemption will apply.

Further changes to the Report of Working Group 4 proposed by the South African Communist Party

Report on the Administrative, Financial and Practical Effects of Reincorporation

5. Disposal/Transfer of Assets and Liabilities

The parties share a common view that the present assets and liabilities of these states should be transferred to the new government on reincorporation.

8. Good Administration during transition

8.4.4 Security services - this will be subject to the decisions of Working Group 1

8.4.5 Other public services

11. Proposed Appointment of Commissions

Terms of Reference of the Commissions

We wish to propose certain changes so that the items which have not been agreed between the parties retain the nature of points for investigation:

11.1.5 Investigation of retaining existing tax concessions for a reasonable period

11.1.7 The future of existing tax investments

11.2.2 Consideration of IMF proposals on the civil service

There are two further points which, we believe, do not fit within the brief of this Working Group and are in fact the subject of other structures or future government policy:

11.1.4 This point is a long-term matter which is dependent on government policy and should therefore be deleted.

11.1.8 This point and the issue of freedom of political expressions is already the subject of discussions in Working Group 1 and is also substantially dealt with in the structures of the National Peace Accord. It should therefore be deleted from the terms of reference.

REPORT OF WORKING GROUP 4 TO CODESA 2

1 Terms of reference for Working Group 4.

A copy of the terms of reference of working group 4 is attached marked annexure A.

2 Explanation of the way working group 4 conducted its business.

2.1 Working group 4 created four sub groups to look at the following issues:

2.1.1 Sub group 1 - testing the will of the people

2.1.2 Sub group 2 - citizenship

2.1.3 Sub group 3 - practical, financial and administrative implication of reincorporation

2.1.4 Sub group 4 - constitutional, legal and political implications of reincorporation.

2.2 Each delegation was represented in the sub groups.

2.3 Working group 4 determined the terms of reference for each of the sub groups, based on its own Terms of Reference. Copies of the terms of reference are annexed marked annexure B,C,D and E.

2.4 Working group 4 held 10 meetings.

2.5 Submissions were received from members of the public and organisations.

3 Points of agreement reached:

3.1 Working group 4 reached consensus on the following issues:

3.1.1 Re-incorporation

All delegations have no objection in principle to the re-incorporation of the TBVC states.

3.1.2 Transitional arrangements

The TBVC states will participate in transitional arrangements as proposed by Working Group 3, on the understanding that these arrangements shall mutatis mutandis impact on the TBVC governments and territories in the same way as they impact on the South African government and the RSA.

3.1.3 Testing the will of the people

The people of the TBVC states shall take part fully in the processes of constitution-making and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of reincorporation. The results of such an election shall constitute a sufficient test of the will of the people.

3.1.4 Restoration of citizenship

South African citizenship will be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.

3.1.5 Reservation

It is recorded that the Bophuthatswana government reserves its position in relation to paragraphs 3.1.2, 3.1.3 and 3.1.4.

3.2. Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation.

3.2.1 Reincorporation

Eighteen parties share the view that reincorporation of the TBVC States into the new South Africa is desirable. However, Bophuthatswana reiterates its preference for non-reincorporation, but states that every option which promises a better future or a future at least as good as its present position will be regarded as a feasible and realistic option for consideration.

The demarcation of functions and responsibilities on the first, second and third levels of government have not yet been clarified. Where reference is made to future government responsibilities, it should be regarded as being in accordance with the constitutional proposals and interim government arrangements formulated by Working Groups 2 and 3.

3.2.2 Retention of Business Confidence and Taxation

The parties are unanimous that the process of reincorporation should be conducted in such a way that it ensures retention of business confidence. Working Group 4 recommends that:

- 3.2.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place, the details of which will be considered by a committee (see 11 below.)
- 3.2.2.2 The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.
- 3.2.2.3 Working group 4 is unanimous that there should be harmonisation of the taxation regime. The tax system of the TBVC states should be brought in line with the applicable tax laws in the RSA. This process should apply to all forms of tax structures e.g. company tax, personal tax etc. The question of tax concessions may be considered in relation to regional development issues.
- 3.2.2.4 A formal statement of intent be issued by Codesa 2, by which

businesses are informed of the proposed harmonisation of legislation, specifically tax and labour legislation.

3.2.3 Land Transfers

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.
- 3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution, whereafter it will be transferred to the SA Government (successor in title.)
- 3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.
- 3.2.3.4 This moratorium will apply to all TBVC States.

Reservation

Bophuthatswana indicates that such a moratorium could be perceived as a negative implication to be considered carefully.

Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised.

The meeting also notes the concern of the SA Government and the National Party about certain legal and contractual obligations which have to be fulfilled as well as land purchased from individual South African citizens which has not yet been transferred.

3.2.4 Disposal/Transfer of Assets and Liabilities

The parties share a common view that the assets and liabilities of these states should be transferred to the new government on reincorporation.

3.2.5 Optimal Use of Existing Infrastructure

Working Group 4 reached agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 3.2.5.1 It is recommended that all structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalized structures and operations.
- 3.2.5.2 Existing financial arrangements and transfers should continue

uninterrupted until they are replaced by new arrangements.

3.2.6 Review of Development Project Priorities

On reincorporation, prioritisation of development projects should form part of the national/regional prioritisation programme. The Development Bank of Southern Africa which has been closely linked with the development projects in these states could provide a useful service in this regard.

3.2.7 Good Administration during Transition

Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service. The Subgroup proposes that:

- 3.2.7.1 Administration be reorganised around existing structures.
- 3.2.7.2 On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.
- 3.2.7.3 The TBVC Administration should operate under the supervision of the Interim Government during transition.

Reservation

Bophuthatswana reiterates that this is only applicable once a decision in favour of reincorporation is taken.

- 3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are:
 - 3.2.7.4.1 The administration of justice
 - 3.2.7.4.2 Civil service
 - 3.2.7.4.3 Parastatals
 - 3.2.7.4.4 Security and other public services.

3.2.8 Future of the Civil Service

Civil servants should retain their existing salaries, benefits, conditions of service, etc. Any adjustment in the conditions of service should be occasioned by a process of rationalisation as a result of absorption into a non-racial national/regional service. It is recommended that:

- 3.2.8.1 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.

3.2.9 Servicing and Repayment of TBVC Debts

The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated. The working group notes that a new government will have to consider how to deal with debt irregularities, if any.

3.2.10 Proposed Appointment of Committees

Working group 4 is unanimous that two committees be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

3.2.10.1 Composition of Committees

Each committee should be a nine-member multi-party committee consisting of:

3.2.10.1.1 five representatives, one from each of the SATBVC administrations.

3.2.10.1.2 four representatives nominated by the remaining parties at Codesa.

3.2.10.2 Terms of Reference of the Committees

A committee on the retention of business confidence and use of existing infrastructure will be tasked to investigate and make recommendations to the relevant parties on the following:

3.2.10.2.1 Harmonisation of tax regime.

3.2.10.2.2 Harmonisation of labour legislation.

3.2.10.2.3 Possibility of granting temporary exemptions from tax.

3.2.10.2.4 Introduction of export and other investment incentives.

3.2.10.2.5 Protection of existing tax concessions for a reasonable period.

3.2.10.2.6 Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.

3.2.10.2.7 Protection of existing investments.

3.2.10.2.8 Investigation of the causes and effects of mass action on business confidence.

Reservation

The ANC expressed its concern that this should not prejudice its right to undertake mass action in general.

- 3.2.10.2.9 Whether the process of harmonisation should be implemented incrementally.
- 3.2.10.2.10 Whether, where prejudices arise, exemptions should be granted for a definite period
- 3.2.10.2.11 Whether the granting of exemptions should be fairly automatic up to a certain date.
- 3.2.10.2.12 A close study of the taxation system to be undertaken.
- 3.2.10.2.13 The whole question of optimal use of existing infrastructure during transition and after reincorporation.
- 3.2.10.2.14 Any other matters relevant to the above issues.
- 3.2.10.3 A committee to look into the question of good administration during transition and the future of the civil service with particular regard to the following:
- 3.2.10.3.1 Reorganisation of administration around the existing structures.
- 3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporation.
- 3.2.10.3.3 The following questions in regard to the civil service, security service, parastatals etc.
- uniformity of salaries and conditions of service.
 - security and transferability of pension benefits.
 - assimilation and training of skilled staff.
 - appointment on merit i.e. qualifications, experience and ability irrespective of race, colour, creed or sex.
 - strict adherence to the IMF norm that the total civil service remuneration should not exceed 30% of the national/regional income.
 - rationalisation of excessive bureaucracy on a humane basis.

- 3.2.10.3.4 An extensive rationalisation programme of the public services involving the SATBVC states.
- 3.2.10.3.5 The appointment of a non-partisan body to implement the process of rationalisation.
- 3.2.10.3.6 Any other matters relevant to the above issues.

3.2.11 Practical Implications

The following will be the practical implications of reincorporation:

- 3.2.11.1 The reincorporated state will again fall under the geographic jurisdiction of the RSA.
- 3.2.11.2 That state's people will be South African citizens.
- 3.2.11.3 That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.
- 3.2.11.4 The reincorporation process will have to be formally legislated through the relevant legislative bodies.
- 3.2.11.5 The "international" boundaries between that state and the RSA will fall away.
- 3.2.11.6 The need for diplomatic ties between the RSA and those states will fall away.
- 3.2.11.7 If all four TBVC states are reincorporated, South Africa would once more be undivided, thus achieving one of the main objectives of the Declaration of Intent signed by the parties to Codesa.
- 3.2.11.8 It is as well to mention that if any TBVC state were to decide not to be reincorporated, it would have to seriously consider the effects that decision would have on that state.

Reservation

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

- 3.3 Consensus was also reached on mechanisms of addressing the political, legal and constitutional implications of reincorporation. It was agreed to establish a technical committee. This committee should consult the Gender Advisory Committee. It should investigate within the context of the terms of reference of sub group 4 of working group 4 the following:

- 3.3.1 the relationship between South Africa and the TBVC states during the transitional phase;

- 3.3.2 consider legislation that would be required to effect reincorporation;
- 3.3.3 consider legislation and/or measures that would level the political playing field;
- 3.3.4 harmonisation of legislation.

4 Points not yet covered by working group 4 from the terms of reference

Mechanisms of dealing with some of the aspects of the terms of reference not yet covered by working group 4 are suggested in paragraphs 3.3 above.

- 4.1 strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- 4.2 the time frames for such a re-incorporation and related processes;
- 4.3 the exact form of authority in the TBVC territories;
- 4.4 harmonisation of legislation and taxation;
- 4.5 orderly termination of bilateral and multilateral agreements and treaties;
- 4.6 ensuring public accountability of actions taken for the purposes of re-incorporation;
- 4.7 the identification of specific constitutional, legal and political measure and steps which will have to be taken to effect re-incorporation.

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TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 4

ASSIGNMENT

Future of TBVC states.

1. Terms of Reference

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

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

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:
- (a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
 - (b) the desirability or otherwise of the re-incorporation of such states;
 - (c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
 - (d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
 - (f) land transfers by South Africa to these states;

- (g) citizenship;
- (h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

- (a) proposals for the re-incorporation into South Africa of a TBVC state;
- (b) consider the question of transitional arrangements in those states which want to be incorporated;
- (c) the time frames for such a re-incorporation and related processes;
- (d) disposal/transfer of assets of TBVC governments;
- (e) optimal use of existing infrastructure;
- (f) review of development project priorities;
- (g) good administration during transition;
- (h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
- (i) consider future of civil service in such states;
- (j) the exact form of authority in the TBVC territories;
- (k) harmonisation of legislation and taxation;
- (l) orderly termination of bilateral and multilateral agreements and treaties;
- (m) servicing and repayment of TBVC state debts;
- (n) ensuring public accountability of actions taken for the purposes of re-incorporation;
- (o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

TERMS OF REFERENCE FOR SUB-COMMITTEE 1 "TESTING THE WILL OF THE PEOPLE"

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
 - (b) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (c) the method to be employed to test the feeling of the people (referendum? opinion poll? election?);
 - (d) deciding on who will be entitled to express an opinion (citizens? residents of TBVC states? and/or citizens also resident outside these states, within South Africa).

**TERMS OF REFERENCE FOR SUB-COMMITTEE 2
"CITIZENSHIP"**

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the question of citizenship (dual citizenship? single citizenship?);
 - (b) the time-frames for the sub-committee to report;
 - (c) the proposal of the ANC;
 - (d) the proposal of the NPP.

**TERMS OF REFERENCE FOR SUB-COMMITTEE 3
"THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL
EFFECTS OF REINCORPORATION OF THE TBVC STATES"**

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
 - (b) land transfers by South Africa to these states;
 - (c) disposal/transfer of assets of TBVC governments;
 - (d) optimal use of existing infrastructure;
 - (e) review of development project priorities;
 - (f) good administration during transition;
 - (g) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
 - (h) consider future of civil service in such states;
 - (i) servicing and repayment of TBVC state debts.

**TERMS OF REFERENCE FOR SUB-COMMITTEE 4
"THE POLITICAL, LEGAL AND CONSTITUTIONAL EFFECTS
OF REINCORPORATION OF THE TBVC STATES"**

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the exact form of authority in the TBVC territories;
 - (b) harmonisation of legislation and taxation;
 - (c) orderly termination of bilateral and multilateral agreements and treaties;
 - (d) ensuring public accountability of actions taken for the purposes of re-incorporation;
 - (e) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

REPORT TO CODESA 2 FROM WORKING GROUP 4

- 1 Brief summary of the terms of reference for Working Group 4.
(a copy of the full terms of reference will be attached)
- 2 Explanation of the way working group 4 conducted its business.
 - 2.1 establishment of sub groups and an outline of the terms of reference for each of the sub groups
 - 2.2 progress report of each of the sub groups
- 3 Points of agreement reached:
 - 3.1 Task group report
 - 3.2 Practical, financial and administrative effects of reincorporation (Sub group 3's report)
- 4 Points of disagreement in working group 4
- 5 Points not yet covered by working group 4 from the terms of reference

REPORT OF WORKING GROUP 4 TO CODESA 2

1 Terms of reference for Working Group 4.

A copy of the terms of reference of working group 4 is attached marked annexure A.

2 Explanation of the way working group 4 conducted its business.

2.1 Working group 4 created four sub groups to look at the following issues:

2.1.1 Sub group 1 - testing the will of the people

2.1.2 Sub group 2 - citizenship

2.1.3 Sub group 3 - practical, financial and administrative implication of reincorporation

2.1.4 Sub group 4 - constitutional, legal and political implications of reincorporation.

2.2 Each delegation was represented in the sub groups.

2.3 Working group 4 determined the terms of reference for each of the sub groups, based on its own Terms of Reference. Copies of the terms of reference are annexed marked annexure B,C,D and E.

2.4 Working group 4 held 10 meetings.

2.5 Submissions were received from members of the public and organisations.

3 Points of agreement reached:

3.1 Working group 4 reached consensus on the following issues:

3.1.1 Re-incorporation

All delegations have no objection in principle to the re-incorporation of the TBVC states.

3.1.2 Transitional arrangements

The TBVC states will participate in transitional arrangements as proposed by Working Group 3, on the understanding that these arrangements shall mutatis mutandis impact on the TBVC governments and territories in the same way as they impact on the South African government and the RSA.

3.1.3 Testing the will of the people

The people of the TBVC states shall take part fully in the processes of constitution-making and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of re-incorporation. The results of such an election shall constitute a sufficient test of the will of the people.

3.1.4 Restoration of citizenship

South African citizenship will be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.

3.1.5 Reservation

It is recorded that the Bophuthatswana government reserves its position in relation to paragraphs 3.1.2, 3.1.3 and 3.1.4.

3.2. Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation.

3.2.1 Reincorporation

Eighteen parties share the view that reincorporation of the TBVC States into the new South Africa is desirable. However, Bophuthatswana reiterates its preference for non-reincorporation, but states that every option which promises a better future or a future at least as good as its present position will be regarded as a feasible and realistic option for consideration.

The demarcation of functions and responsibilities on the first, second and third levels of government have not yet been clarified. Where reference is made to future government responsibilities, it should be regarded as being in accordance with the constitutional proposals and interim government arrangements formulated by Working Groups 2 and 3.

3.2.2 Retention of Business Confidence and Taxation

The parties are unanimous that the process of reincorporation should be conducted in such a way that it ensures retention of business confidence. Working Group 4 recommends that:

- 3.2.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place, the details of which will be considered by a committee (see 11 below.)
- 3.2.2.2 The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.
- 3.2.2.3 Working group 4 is unanimous that there should be harmonisation of the taxation regime. The tax system of the TBVC states should be brought in line with the applicable tax laws in the RSA. This process should apply to all forms of tax structures e.g. company tax, personal tax etc. The question of tax concessions may be considered in relation to regional development issues.
- 3.2.2.4 A formal statement of intent be issued by Codesa 2, by which

businesses are informed of the proposed harmonisation of legislation, specifically tax and labour legislation.

3.2.3 Land Transfers

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.
- 3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution, whereafter it will be transferred to the SA Government (successor in title.)
- 3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.
- 3.2.3.4 This moratorium will apply to all TBVC States.

Reservation

Bophuthatswana indicates that such a moratorium could be perceived as a negative implication to be considered carefully.

Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised.

The meeting also notes the concern of the SA Government and the National Party about certain legal and contractual obligations which have to be fulfilled as well as land purchased from individual South African citizens which has not yet been transferred.

3.2.4 Disposal/Transfer of Assets and Liabilities

The parties share a common view that the assets and liabilities of these states should be transferred to the new government on reincorporation.

3.2.5 Optimal Use of Existing Infrastructure

Working Group 4 reached agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 3.2.5.1 It is recommended that all structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalized structures and operations.
- 3.2.5.2 Existing financial arrangements and transfers should continue

uninterrupted until they are replaced by new arrangements.

3.2.6 Review of Development Project Priorities

On reincorporation, prioritisation of development projects should form part of the national/regional prioritisation programme. The Development Bank of Southern Africa which has been closely linked with the development projects in these states could provide a useful service in this regard.

3.2.7 Good Administration during Transition

Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service. The Subgroup proposes that:

3.2.7.1 Administration be reorganised around existing structures.

3.2.7.2 On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.

3.2.7.3 The TBVC Administration should operate under the supervision of the Interim Government during transition.

Reservation

Bophuthatswana reiterates that this is only applicable once a decision in favour of reincorporation is taken.

3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are:

3.2.7.4.1 The administration of justice

3.2.7.4.2 Civil service

3.2.7.4.3 Parastatals

3.2.7.4.4 Security and other public services.

3.2.8 Future of the Civil Service

Civil servants should retain their existing salaries, benefits, conditions of service, etc. Any adjustment in the conditions of service should be occasioned by a process of rationalisation as a result of absorption into a non-racial national/regional service. It is recommended that:

3.2.8.1 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.

3.2.9 Servicing and Repayment of TBVC Debts

The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated. The working group notes that a new government will have to consider how to deal with debt irregularities, if any.

3.2.10 Proposed Appointment of Committees

Working group 4 is unanimous that two committees be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

3.2.10.1 Composition of Committees

Each committee should be a nine-member multi-party committee consisting of:

- 3.2.10.1.1 five representatives, one from each of the SATBVC administrations.
- 3.2.10.1.2 four representatives nominated by the remaining parties at Codesa.

3.2.10.2 Terms of Reference of the Committees

A committee on the retention of business confidence and use of existing infrastructure will be tasked to investigate and make recommendations to the relevant parties on the following:

- 3.2.10.2.1 Harmonisation of tax regime.
- 3.2.10.2.2 Harmonisation of labour legislation.
- 3.2.10.2.3 Possibility of granting temporary exemptions from tax.
- 3.2.10.2.4 Introduction of export and other investment incentives.
- 3.2.10.2.5 Protection of existing tax concessions for a reasonable period.
- 3.2.10.2.6 Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.
- 3.2.10.2.7 Protection of existing investments.
- 3.2.10.2.8 Investigation of the causes and effects of mass action on business confidence.

Reservation

The ANC expressed its concern that this should not prejudice its right to undertake mass action in general.

- 3.2.10.2.9 Whether the process of harmonisation should be implemented incrementally.
- 3.2.10.2.10 Whether, where prejudices arise, exemptions should be granted for a definite period
- 3.2.10.2.11 Whether the granting of exemptions should be fairly automatic up to a certain date.
- 3.2.10.2.12 A close study of the taxation system to be undertaken.
- 3.2.10.2.13 The whole question of optimal use of existing infrastructure during transition and after reincorporation.
- 3.2.10.2.14 Any other matters relevant to the above issues.
- 3.2.10.3 A committee to look into the question of good administration during transition and the future of the civil service with particular regard to the following:
- 3.2.10.3.1 Reorganisation of administration around the existing structures.
- 3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporation.
- 3.2.10.3.3 The following questions in regard to the civil service, security service, parastatals etc.
- uniformity of salaries and conditions of service.
 - security and transferability of pension benefits.
 - assimilation and training of skilled staff.
 - appointment on merit i.e. qualifications, experience and ability irrespective of race, colour, creed or sex.
 - strict adherence to the IMF norm that the total civil service remuneration should not exceed 30% of the national/regional income.
 - rationalisation of excessive bureaucracy on a humane basis.

- 3.2.10.3.4 An extensive rationalisation programme of the public services involving the SATBVC states.
- 3.2.10.3.5 The appointment of a non-partisan body to implement the process of rationalisation.
- 3.2.10.3.6 Any other matters relevant to the above issues.

3.2.11 Practical Implications

The following will be the practical implications of reincorporation:

- 3.2.11.1 The reincorporated state will again fall under the geographic jurisdiction of the RSA.
- 3.2.11.2 That state's people will be South African citizens.
- 3.2.11.3 That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.
- 3.2.11.4 The reincorporation process will have to be formally legislated through the relevant legislative bodies.
- 3.2.11.5 The "international" boundaries between that state and the RSA will fall away.
- 3.2.11.6 The need for diplomatic ties between the RSA and those states will fall away.
- 3.2.11.7 If all four TBVC states are reincorporated, South Africa would once more be undivided, thus achieving one of the main objectives of the Declaration of Intent signed by the parties to Codesa.
- 3.2.11.8 It is as well to mention that if any TBVC state were to decide not to be reincorporated, it would have to seriously consider the effects that decision would have on that state.

Reservation

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

- 3.3 Consensus was also reached on mechanisms of addressing the political, legal and constitutional implications of reincorporation. It was agreed to establish a technical committee. This committee should consult the Gender Advisory Committee. It should investigate within the context of the terms of reference of sub group 4 of working group 4 the following:

- 3.3.1 the relationship between South Africa and the TBVC states during the transitional phase;

- 3.3.2 consider legislation that would be required to effect reincorporation;
- 3.3.3 consider legislation and/or measures that would level the political playing field;
- 3.3.4 harmonisation of legislation.

4 Points not yet covered by working group 4 from the terms of reference

Mechanisms of dealing with some of the aspects of the terms of reference not yet covered by working group 4 are suggested in paragraphs 3.3 above.

- 4.1 strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- 4.2 the time frames for such a re-incorporation and related processes;
- 4.3 the exact form of authority in the TBVC territories;
- 4.4 harmonisation of legislation and taxation;
- 4.5 orderly termination of bilateral and multilateral agreements and treaties;
- 4.6 ensuring public accountability of actions taken for the purposes of re-incorporation;
- 4.7 the identification of specific constitutional, legal and political measure and steps which will have to be taken to effect re-incorporation.

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TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 4

ASSIGNMENT

Future of TBVC states.

1. **Terms of Reference**

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

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

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:
- (a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
 - (b) the desirability or otherwise of the re-incorporation of such states;
 - (c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
 - (d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
 - (f) land transfers by South Africa to these states;

- (g) citizenship;
- (h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

- (a) proposals for the re-incorporation into South Africa of a TBVC state;
- (b) consider the question of transitional arrangements in those states which want to be incorporated;
- (c) the time frames for such a re-incorporation and related processes;
- (d) disposal/transfer of assets of TBVC governments;
- (e) optimal use of existing infrastructure;
- (f) review of development project priorities;
- (g) good administration during transition;
- (h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
- (i) consider future of civil service in such states;
- (j) the exact form of authority in the TBVC territories;
- (k) harmonisation of legislation and taxation;
- (l) orderly termination of bilateral and multilateral agreements and treaties;
- (m) servicing and repayment of TBVC state debts;
- (n) ensuring public accountability of actions taken for the purposes of re-incorporation;
- (o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

TERMS OF REFERENCE FOR SUB-COMMITTEE 1 "TESTING THE WILL OF THE PEOPLE"

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
 - (b) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (c) the method to be employed to test the feeling of the people (referendum? opinion poll? election?);
 - (d) deciding on who will be entitled to express an opinion (citizens? residents of TBVC states? and/or citizens also resident outside these states, within South Africa).

**TERMS OF REFERENCE FOR SUB-COMMITTEE 2
"CITIZENSHIP"**

WORKING GROUP 4

1. Terms of Reference

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- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the question of citizenship (dual citizenship? single citizenship?);
 - (b) the time-frames for the sub-committee to report;
 - (c) the proposal of the ANC;
 - (d) the proposal of the NPP.

**TERMS OF REFERENCE FOR SUB-COMMITTEE 3
"THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL
EFFECTS OF REINCORPORATION OF THE TBVC STATES"**

WORKING GROUP 4

1. Terms of Reference

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 - (g) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
 - (h) consider future of civil service in such states;
 - (i) servicing and repayment of TBVC state debts.

**TERMS OF REFERENCE FOR SUB-COMMITTEE 4
"THE POLITICAL, LEGAL AND CONSTITUTIONAL EFFECTS
OF REINCORPORATION OF THE TBVC STATES"**

WORKING GROUP 4

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 - (e) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.