



TO : HEADS OF DELEGATION OF CODESA WORKING GROUP 4,  
 CO-ORDINATORS OF WORKING GROUP 4,  
 MEMBERS OF WGSC4, MEMBERS OF WG 4 SUB-GROUPS

FROM : CODESA ADMINISTRATION

QUERIES : LOVEDALIA / LORRAINE

RE : DRAFT MINUTES - 4 MAY 1992

PLEASE WOULD NOMINATED HEADS OF DELEGATION OR CO-ORDINATORS FOR THE WORKING GROUP, ENSURE THAT THIS DOCUMENT IS DISTRIBUTED CONFIDENTIALLY TO ALL MEMBERS OF THE WORKING GROUP REQUIRING IT, INCLUDING DELEGATES, ADVISERS AND MEMBERS OF THE WORKING GROUP STEERING COMMITTEE (WGSC) WHERE APPROPRIATE.

THANK YOU.

WORKING GROUP 4

ANC	Negotiations Comm	011-333-4509
Bophuthatswana Gvt	D Schoeman	0140-84-2943
Ciskei Gvt	L S Mqalo	0401-95-2148
Democratic Pty	Off : Z de Beer	021-461-0092
Dikwankwetla Pty	S P Matla	01438-31721
IFP	F T Mdlalose/ S Felgate	0358-20-2167
	B Anderson	011 886-5450
Intando Ysizwe	J L Mahlangu c/o J S Mabona	01215-2548
Inyandza Nat Mvmnt	P M H Maduna	013140-606
Labour Party	T Abrahams	021-403-3402
NIC/TIC	P David	0322-33-0654
	N G Patel	011-837-2106
	P G Gordhan	031-309-2278
National Pty	J Mentz	021-461-761
National People's Pty	M Mohanlall	021-403-2971
Solidarity Party	M F Cassim	021-403-2956
SACP	G Fraser-Moleketi	011-836-8366 or 838-2816
	R Mudge	012-343-8043
Transkei Gvt	Z Titus	0471-23876
United People's Frt	c/o PR Chief Min	0156-35244
Venda Gvt	C Neluvhalani: Chief Gvt Liaison Off	0159-23172
Ximoko Prog Pty	C D Marivate/Ackron	01526-23140 or Ria Meyer on 01526-24646 ask for fax
WG4 Secretary	S Albertyn	011-838-5088
Rapporteurs	G Budlender	011-836-8680
	G M Memela	0471-22138
	B Ngcuka	021-959-2411



**F A X M E S S A G E**

**TO : MEMBERS OF WORKING GROUP 4**  
**FROM : CODESA ADMIN**  
**DATE : 6 MAY 1992**  
**RE : DRAFT MINUTES - 4 MAY 1992**

Attached please find the following :

1. Draft minutes of the meeting on 4 May 1992.

Should you have any queries, please do not hesitate to contact us.

Regards.

THESE ARE DRAFT MINUTES, AS APPROVED BY THE CHAIRPERSON. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF WORKING GROUP 4, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO RATIFICATION BY WORKING GROUP 4 AT ITS NEXT MEETING.

**MINUTES OF THE TENTH MEETING OF WORKING GROUP 4 (THE FUTURE OF THE TBVC STATES) HELD AT THE WORLD TRADE CENTRE ON MONDAY 4 MAY 1992 AT 10H45 AND TUESDAY 5 MAY AT 11H00**

**PRESENT:** Delegates and advisors (See Addenda AA and AB)

SN Sigcau (Chair)

S Albertyn (Secretary)

M Durrheim (Minutes)

**1 Opening by Chairperson**

The chairperson reported that she had received a request from a number of delegations that they be permitted to continue with a caucus meeting. Her reply had been that procedurally the delegations concerned should attend the opening of the plenary session of WG 4 and then request an adjournment in order to consult with each other. The caucassing groups had then sent one representative from each delegation to the plenary session of WG 4. The chairperson expressed concern about the precedent set by delegates not arriving to attend scheduled plenary meetings, and her unhappiness about these developments.

After some discussion it was decided to defer further debate to item 4 on the agenda:

**2 Agenda**

The agenda for the meeting, as drawn up by the Working Group 4 Steering Committee (WGSC 4), mandated by Working Group 4(WG 4), was adopted by WG 4.

**3 Adoption of minutes of Working Group 4 meeting held on 27 April 1992**

The minutes were adopted with the following amendments:

3.1 It was agreed to include the following item in the minutes:

**9 General**

The "Position Statement of the South African Government, 7 April 1992" paragraph 4 was referred to viz "If the response to the testing of the will of the people in a state is in favour of re-incorporation, **and if re-incorporation is decided upon**". The SA Government was asked whether or not this implied that even if the people voted in favour of re-incorporation, the SA Government would reserve the right to decide finally upon re-incorporation of a particular TBVC state. The SA Government replied that this was not the case.

3.2 Item 3.1 The SA Government agreed to change the wording of its statement as recorded in the minutes of the meeting of WG 4 held on 21 and 22 April:

- 10.3.3.6 the SA Government welcomes the participation of the TBVC states in a transitional government, provided that such state(s) comply with the requirements of the Terms of Reference of WG 4.

#### 4 Discussion of rapporteurs report and other position statements

It was agreed, while noting a protest at the actions of the delegations that had decided to continue their caucus meeting after the commencement of the plenary meeting of WG 4, that the meeting would adjourn until 14h00 in order to facilitate progress and give delegations time to consult informally.

*The meeting resumed at 14h10*

- 4.1 The Ximoko Progressive Party tabled a statement entitled "Response to the second report of the Rapporteurs dated 24/4/92" (see Addendum B).
- 4.1.1 The introduction to the statement placed on record that a number of delegations (these were later reported to be the Ximoko Progressive Party, Solidarity Party, National Peoples Party, National Party, Bophuthatswana Government, Dinkwankwetla Party, Inkatha Freedom Party, and the Ciskei Government) had met to evaluate the rapporteurs report and had concluded "that the report must be rejected as unfactual, speculative in part, based on some issues on assumptions."
- 4.1.2 The recommendation at the end of the statement is that "a Task Team comprising a representative of each of the SATBVC States, assisted by the Rapporteurs, review all Position Papers tabled by the participants in Working Group 4 and present a factual summary of the positions of each SATBVC State."

*The meeting was adjourned for 25 minutes.*

- 4.2 The following delegations reported that they would be tabling documents in the meeting, but that these were still being typed:
- ANC
  - SA Government
  - Labour Party (the document has still to be ratified by the party caucus and will only be available on Tuesday 5 May 1992)

*Item 5 was dealt with while awaiting the arrival of these documents.*

- 4.3 The ANC tabled a document entitled "Basis of settlement - proposed by African National Congress to Working Group 4" (see Addendum C).
- 4.4 The SA Government tabled a document entitled "Statement by the South African Government for discussion" (see Addendum D).
- 4.4.1 It was explained by the SA Government that the election referred to in 2 (ii) is whatever national election is going to take place in South Africa as a result of consensus reached in Working Groups 2 and 3.
- 4.5 It was agreed that a task group consisting of delegates from the TBVC states, the South African government, Ximoko Progressive Party and the Rapporteurs be delegated to consider the documents before the meeting and draw up a draft report for Codesa II. The task group agreed to meet immediately after WG 4 has adjourned.

5 **Date and time of continuation of WG 4 meeting**

WG 4 will continue to meet on Tuesday 5 May at 11h00. Sub-group 3 will meet prior to WG 4, at 10h00 on Tuesday 5 May, in order to finalise its report to the working group.

6 **Comments, if any, on submissions received to date**

A number of delegates did not have copies of the submissions to WG 4 that had been circulated previously. After some discussion it was agreed to give a mandate to the steering committee of WG 4 to deal with the submissions, taking the following proposal into account that:

- the relevant submissions be referred to sub-groups 3 and 4 respectively;

7 **Adjournment**

The meeting was adjourned at 16h50.

*The meeting was resumed on Tuesday 5 May 1992 at 11h00.*

8 **Report of the Task Group**

The draft report of the task group (see Addendum E) was circulated and read out to the meeting. It was unanimously agreed to accept the document as the basis for the report of WG 4 to Codesa II, with the SA Government and the Ciskei Government placing on record that their principals still needed to give their approval, which would hopefully be received early on Wednesday 6 May 1992.

9 **Additional items for Agenda**

The chairperson reported that a number of items will need to be added to the agenda:

- Report of sub-group 3
- Report of sub-group 4
- Statement to the Press

10 **Report of sub-group 3 of Working Group 4**

The report was circulated and read out to the meeting (see Addendum F).

10.1 A number of alterations were suggested and will be incorporated into the document prior to seeking final approval from WG 4. These alterations to the document will be checked by the steering committee of WG 4.

10.2 It was decided that WG 4 recommend that the two commissions envisaged in the report be appointed by Codesa II. The terms of reference of the commissions are sufficiently wide so as not to be restrictive.

*The meeting was adjourned for lunch and reconvened at 15h10. Sub-group 4 met at 13h45 in order to compile a report to WG 4.*

11 **Report-back from joint meeting of DMC and two representatives from each of the working group steering committees and gender advisory committee**

Mr T Abrahams reported back to the meeting as follows:

- 11.1 The deadline for all reports from the working groups for Codesa II is 7 May 1992.
- 11.2 The format for these reports should be:  
- Summary of deliberations according to Terms of Reference  
- Decisions  
- Outstanding work.
- 11.3 The way forward after Codesa II was discussed and the Management Committee will draw up a report.
- 11.4 WG 5 recommended the appointment of a task group to discuss the procedure for legislation to be adopted by Codesa II. A report on the procedure for legislation will be presented at Codesa II.
- 11.5 All working groups are asked to submit their recommendations regarding the procedure to be adopted after Codesa II at a meeting of the DMC and representatives of each working group scheduled for Monday 11 May at 12h30..
- 11.6 The manner of reporting at Codesa II will be that composite reports will be given eg. re-incorporation of the TBVC states will be addressed as an issue in the transition to a new South Africa and not as the work of a particular working group. This is to avoid fragmentation. Consensus reached in a working group will therefore become a decision of Codesa II. Two members of each working group steering committee will answer questions at Codesa II.

12 **Report to Codesa II**

- 12.1 The secretariat had drawn up a draft report which was presented to WG 4.
- 12.1.1 It was agreed to leave out all of point 2.2 (progress report of each of the sub-groups).
- 12.1.2 It was suggested that submissions to Codesa by other parties be referred to in the report.
- 12.1.3 It was suggested that the number of times WG 4 had met also be noted in the report.
- 12.2 It was agreed that the WGSC and the rapporteurs would draw up the report of WG 4 to Codesa II. This document would be faxed to the leader of each delegation and any comments would need to reach Codesa by no later than noon on Friday 8 May 1992. The WGSC would then meet to finalise the report.

13 **Report of sub-group 4 to Working Group 4**

The report of sub-group 4 was presented to the meeting (see Addendum G). It was unanimously agreed to accept the report.

14 **Closure**

The chairperson thanked the working group for the privilege of chairing the meetings and expressed her pleasure that WG 4 had something concrete to report at Codesa II. The chairperson, the secretarial staff and the rapporteurs were in turn thanked for their work.

The meeting was closed at 16h00.

## ADDENDUM AA

The following delegates and advisors were present at the meeting of WG 4 on Monday 4 May 1992:

Party/Organisation	Delegates	Advisors
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	DW Schoeman	
Ciskei	BR Tokota GF Godden	MJ Sondiyazi
Democratic Party	JA Jordaan EK Moorcroft	N Olivier C Simkins
Dikwankwetla Party	SP Matla S Manyane	DA Thejane
IFP	VT Zulu	B Anderson NJ Ngubane
IYP	JL Mahlangu JS Mabena	MS Mahlangu WMB Mohapi
INM	DZ Makhubela JM Matsana	ND Mokoena HA Motaung
Labour Party	T Abrahams J Douw	S Verveen PTC Napier
NIC/TIC	P David NG Patel	G Singh J Yawitch
National Party	JHW Mentz P Farrell	R Radue
NPP	D Govender BP Jaglal	S Naidoo A Ramulu
Solidarity Party	MF Cassim N Singh	AS Akoob K Chetty
SACP	L Nyembe S Ngonyama	P Dantjie M Motshekga
SA Government	AT Meyer RF Botha	NP van Heerden RW Burton
Transkei	M Titus LM Bengu	B Holomisa SHL Matebese



UPF

LM Mokoena  
NM Malekane

JM Nonyane  
ER Maponya

Venda

RR Sumbana  
SE Moeti

XPP

C Khosa

TB Shibambu  
TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

**ADDENDUM AB**

The following delegates and advisors were present at the meeting of WG 4 on Tuesday 5 May 1992:

<b>Party/Organisation</b>	<b>Delegates</b>	<b>Advisors</b>
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	DW Schoeman SS Seane	
Ciskei	MJ Sondiyazi DD Koya	
Democratic Party	JA Jordaan	N Olivier C Simkins
Dikwankwetla Party	SP Matla S Manyane	CC Harrington DA Thejane
IFP	VT Zulu FT Mdlalose	B Anderson
IYP	JL Mahlangu JS Mabena	MS Mahlangu WMB Mohapi
INM	DZ Makhubela JM Matsana	ND Mokoena HA Motaung
Labour Party	T Abrahams J Douw	S Verveen PTC Napier
NIC/TIC	P David NG Patel	G Singh J Yawitch
National Party	R Radue P Farrell	PC McKenzie
NPP	D Govender BP Jaglal	S Naidoo A Ramalu
Solidarity Party	MF Cassim N Singh	AS Akoob K Chetty
SACP	L Nyembe S Ngonyama	P Dantjie M Motshekga
SA Government	NP van Heerden CC Prins	RW Burton

Transkei

M Titus  
LM Bengu

SHL Matebese

UPF

LM Mokoena  
NM Malekane

JM Nonyane  
ER Maponya

Venda

S Makhuvha  
SE Moeti

RR Sumbana

XPP

C Khosa  
BN Ntsanwesi

TB Shibambu  
TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

## INTRODUCTION:

Salutation: Lady Chairperson, Delegates

A number of organisations have devoted time to an evaluation of the Rapporteurs Report no 2 and for a number of cogent reasons have come to the conclusions that the report must be rejected as unfactual, speculative in part, based on some issues on assumptions. The report also fails to accurately present the current position of the various participating States.

The report has failed to record or analyse the position of the RSA Government and the proposal made by the Democratic Party at the last meeting of Working Group 4.

The Rapporteurs has also seen fit to introduce various issues outside the scope of the terms of reference of Working Group 4 such as Interim Government and constitutional affairs etc.

Having spent time during the course of the morning analysing the written responses made by various organisations on the Rapporteurs Report no. 2 agreement has been reached that the Ximoko Position Paper best summarises the response and attitude of the participating delegations.

It will now be my intention to present the Ximoko Position Paper.

XIMOKO PROGRESSIVE PARTY

WORKING GROUP 4

30 April 1992

RESPONSE TO THE SECOND REPORT OF THE RAPPORTEURS DATED 27/4/92

1. The Four Starting Points

2.1 Declaration of Intent ( Paragraph 3 on page 1 )

The difference in interpretation between CODESA participants on the precise meaning of the wording of the Declaration is legion. In fact the Management Committee is addressing the matter by way of a general clarification of interpretation to the effect that the content of the Declaration can in no way be held to anticipate the outcome of negotiations nor to exclude any constitutional form including, for example, confederation. This point was addressed both by the Inkatha Freedom Party and the South African Government at CODESA 1.

It is therefore the view of the Ximoko Progressive Party that it is not appropriate to advance the wording of the paragraph referred to by the Rapporteurs in support of the issue of reincorporation. The very terms of reference of Working Group 4 clearly provide for the possibility of the TBVC states electing not to be reincorporated into South Africa, and also for flexibility on the question of restoration of citizenship.

2.2 The Terms of Reference of Working Group 4 and the " Structure of CODESA " ( Paragraphs 3 and 5 on page 2 )

The operative words in this paragraph are " to provide for the.....democratic participation of all the people living in the TBVC states....". Ximoko interprets this to mean that provision will be made for participation if the will of the people, democratically expressed, should indicate such a course of action. This matter is connected with the question of representivity. With a single exception the TBVC states are governed by military regimes which have not been elected by democratic electoral processes. The decision to invite these governments to participate in CODESA rather than ~~then~~ political parties representing the spectrum of political dissent in those states was occasioned by the very fact that such civilian party political structures in fact are generally absent in all but Bophuthatswana. CODESA should therefore beware not to compromise its strong stand on democratic values and its support of the

democratic ideal by according to these governments a representative status for which they do not qualify in democratic terms. Until they have a proven constituency they at best represent administrations and not necessarily the popular will.

2. The Decision on Whether or not to Reincorporate

2.1 Paragraph 6:

Ximoko supports the view that the matter of reincorporation of the TBVC states cannot be resolved unilaterally by the RSA Government. However, to the extent that the governments of the TBVC states do not have a clear democratic mandate to resolve this issue they cannot arrogate to themselves the right to speak on behalf of their citizens on the matter of reincorporation. This is surely an issue which goes far beyond the ambit of the debate on the future of the TBVC states but goes in fact to the very heart of that for which CODESA stands. Can CODESA afford to compromise on an issue so fundamental ?

It is the view of the Ximoko Progressive Party that, irrespective of the unfortunate circumstances under which they may have come into being, the TBVC states have provided a context within which millions of citizens have conducted their lives and developed interests. To the extent that reincorporation into South Africa will inevitably give rise to a change in the status quo of these people it is surely democratic to consult them in the matter. It makes little sense to compound the ills of the past in the somewhat contrived conviction that two "wrongs" will make a "right."

At the same time the Ximoko Progressive Party strongly believes that if the democratic will of the TBVC states is to return to South Africa they should not be barred from doing so.

2.2 Paragraph 7:

Ximoko supports the approach of treating each of the TBVC states independently on the individual merits of the case.

2.3 Paragraphs 11 and 12:

The Ximoko Progressive Party has no option but to take issue with the arguments advanced in sub-paragraphs 11.1 to 11.3 inclusive.

Firstly, the imperfections of the process whereby independence of the TBVC states was originally contrived have been raised by those who would disclaim the

the legitimacy of these states, yet according to the Rapporteurs' report this process is now being advanced in effect as a valid precedent to determine how CODESA should deal with the matter of possible reincorporation.

Secondly, on the question of constitutional anomaly raised in sub-paragraph 11.2, there can surely be no inherently more anomalous position than that the TBVC governments as governments of constitutionally independent states should participate in the writing of the constitution of a neighbouring constitutionally independent state (the RSA) as the TBVC states are in fact doing via CODESA. It is not a matter of the RSA government's seeking to decide on the future of the TBVC states. It is rather for CODESA to reach consensus on the universal principles which should apply in all the states participating in CODESA as the basic democratic norm appropriate to testing the will of the people, and it would not be unreasonable for CODESA to satisfy itself that that norm was being met. On the contrary, it could be suggested with some justification that opposition to such a patently reasonable approach which is fully in the spirit of CODESA could bring into question the bona fides of those opposing it as well as their real commitment to the democratic ideal.

The suggestion that the administrations of the TBVC states generally speak for the people of those states can only be taken to be valid to the extent that those governments represent a democratically proven constituency. This is, in all but one instance, patently not so. CODESA must beware not to compromise itself on this point for the sake of expediency.

By parity of reasoning the Ximoko Progressive Party rejects the notion suggested in paragraph 12 that autocratic regimes should be placed in a position by CODESA to usurp the democratic rights of their people through the expedient of CODESA's giving licence or "prerogative" to them to decide as to the wishes of their people.

### 3. Constitution-making and Interim Government

#### 3.1 Constitution-making:

Following the approach that "structure follows strategy" it would indeed seem to be unwise to try to pre-empt the work of Working Group 2 which is dealing with the process of constitution-making.

The Ximoko Progressive Party is generally in agreement with the content of paragraph 17.

### 3.2 Interim Government:

The Ximoko Progressive Party would not be in favour of the compromise proposed by the Rapporteurs in paragraph 18.

### 4. Reincorporation and Citizenship:

The Ximoko Progressive Party is not, as a matter of principle, in favour of the unilateral restoration of South African citizenship to the inhabitants of the TBVC states outside of the context of the expressed will of the citizens concerned. The Ximoko Progressive Party would not oppose the acquisition of citizenship of South Africa by citizens of the TBVC States either individually as an expression of individual free will through individual application to the South African Authorities, or collectively through the adoption of the necessary legislation by the South African Parliament in response to a democratic expression of will by the citizens of the TBVC States.



## 5. General Comments on the Present Impasse

The Ximoko Progressive Party is disturbed by what appears to be a change of heart on the part of certain parties on key issues in the present debate. In a document dated 24 March 1992 and entitled "Synthesis of attitudes to reincorporation by TBVC states - A report by Subgroup 4 of Working Group 4, it is specifically recorded (paragraph 1.1) that "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." At that time the Venda Government is recorded as having "...reservations about testing the will of the people on the issue of reincorporation because it would be superfluous." (Underlining not part of the original text.) Clearly Venda's position did not arise as a matter of principle.

Also in the record of the proceedings of a meeting between Sub-Groups 1 and 2 of Working Group 4 on 24 March 1992 it was reported that " This sub-group (had) agreed inter alia that the will of the people of the TBVC states be tested concurrently with the rest of South Africa, and that this be by way of referendum." Bophuthatswana recorded its dissent.

It is disturbing that in the case of Transkei their present posture appears to be different. Venda has consistently stated its reservation to reincorporation as based upon considerations other than principle. Their position appears never to have excluded democratic testing of the will of the people.

## 5. Conclusion

The Ximoko Progressive Party believes that there are issues of principle involved in the present debate which threaten to compromise the consensus position of CODESA so far developed on the matter of constitutionalism and also the very foundation of CODESA, namely the pursuit of the democratic ideal. Whatever the origins of the TBVC states and the complex arguments which are advanced in respect of their legitimacy and its implications, we cannot be captives of the past. These states are realities and we would do well to remember this and to seek practical solutions which recognise the facts. It will not be helpful to seek in the solution of the matter of the reincorporation of the TBVC states an avenue for making yet another condemnatory statement against Apartheid and the wrongs of the past. Ximoko believes that all parties around this table recognise those wrongs. Many of us have condemned them openly. The challenge is, however, to move forward and that will need a fresh approach which is a healthy combination of pragmatism and adherence to the very democratic ideals which constitute the foundation of CODESA.

## RECOMMENDATION

### RECOMMENDATION TO WORKING GROUP 4 ARISING OUT OF THE RAPPORTEUR'S REPORT NO 2:

In order to make progress and open the way forward and deal with the terms of reference of Working Group 4, it is proposed that a Task Team comprising a representative of each of the SATBVC States, assisted by the Rapporteurs, review all Position Papers tabled by the participants in Working Group 4 and present a factual summary of the positions of each SATBVC State.

On the basis of these summaries and through the process of analysis and synthesization determine the divergent viewpoints of each State for presentation to Working Group 4, so that the sub-groups may be directed to address these issues and seek sufficient consensus.

**Basis of settlement - proposed by African National Congress to Working Group 4 (4/05/92)**

The Working Group has already agreed to the re-incorporation of the TBVC states in principle, but the process needs to be finalised.

Pending the various steps necessary in the process of re-incorporation, it is proposed:

1. The people of the TBVC states shall take part fully in the process of constitution-making, including elections, as may be proposed by Working Group 2. The results of the elections shall constitute a sufficient test of the will of the people.
2. All transitional arrangements as proposed by Working Group 3 shall cover the TBVC states in the same way as the present RSA.

Interim government arrangements shall impact on the administrations and territories of the TBVC states in the same way as they impact on the South African government and its territory.

3. The rights of participation of the people of the TBVC states in all constitution-making processes, as well as transitional arrangements shall, in every way, be on the same basis as those of the presently defined citizens of the RSA.
4. South African citizenship shall be restored to the people of the TBVC states immediately.

STATEMENT BY THE SOUTH AFRICAN GOVERNMENT FOR DISCUSSIONWORKING GROUP FOUR4 MAY 1992

1. The South African Government has no objection in principle to the re-incorporation of the TBVC countries.
2. The Transitional Phase

With regard to Preparatory Councils, the Government would support the TBVC states' participation in the Councils provided that they are of an advisory nature. However, if these Councils obtain executive powers, participation will only be feasible when the following functional conditions are met:

- (i) That the Councils accommodating the TBVC states, become "International Councils", exercising the same executive powers in South Africa and the TBVC states simultaneously; and
- (ii) the people of each of the states should have the opportunity to express themselves on the issue of re-incorporation either before an interim constitution is agreed upon or through their participation in the envisaged election.

Their participation can be arranged in such a way that their votes are counted separately and should signify support for or rejection of re-incorporation.

3. The South African Government wishes to support CODESA'S requirement that the will of the people be tested regarding re-incorporation. The Government, however, does not find it necessary that this testing be done only by means of a referendum. Any other reasonable, fair and meaningful process can be considered.

FINAL DRAFTWORKING GROUP 4REPORT OF THE TASK GROUP - 5 MAY 1992

The Task Group appointed by Working Group 4 on 4 May 1992 recommends the following statement to the Working Group as a possible basis for consensus:

1 Re-incorporation

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

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 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.

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 above.

5 Reservation

It is recorded that the Bophuthatswana government reserves its position in relation to paragraphs 2, 3 and 4.

**WORKING GROUP 4**  
**REPORT ON THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL EFFECTS OF**  
**REINCORPORATION**

**1. INTRODUCTION**

Subgroup 3 was appointed by Working Group 4 to investigate the administrative, financial and practical implications of reincorporation or otherwise of the TBVC states. The Subgroup resolved to establish terms of reference which served as a useful guide during deliberations. The parties were requested to prepare position papers on items contained in the terms of reference. Eighteen of the nineteen parties provided position papers. The South African Government indicated that it is not in a position to submit a statement regarding the administrative, financial and practical effects of the reincorporation since a number of important matters regarding reincorporation have not been finalized in the plenary of Working Group 4. This position should be read in conjunction with the SA Government's position statement submitted to the plenary of Working Group 4 on 21 April 1992 and specifically paragraph 4 thereof.

Discussions were conducted on the contents of the position papers and the Rapporteur was subsequently asked to compile a synopsis of the positions with a view to identifying areas of commonality as well as points of divergence. This report is an endeavour to present to the Working Group the recommendations of the subgroup in respect of those areas where there has been consensus in regard to the terms of reference. It needs also to be mentioned that the report represents the work done to date by the Subgroup.

**2. 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. 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. The Subgroup recommends that:

- 3.1. 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 commission (see 11 below.)
- 3.2. The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.

- 3.3. The Subgroup 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.
- 3.4. 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.

#### **4. LAND TRANSFERS**

The Subgroup has reached sufficient consensus on this matter that:

- 4.1. No further attempts be made to identify new land for transfer to the TBVC governments.
- 4.2. 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.)
- 4.3. 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.
- 4.4. 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.

#### **5. 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.

#### **6. OPTIMAL USE OF EXISTING INFRASTRUCTURE**

The Subgroup reached an agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 6.1. 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.
- 6.2. Existing financial arrangements and transfers should continue uninterrupted until they are replaced by new arrangements.

## **7. 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.

## **8. 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:

- 8.1. Administration be reorganised around existing structures.
- 8.2. 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.

- 8.4. Certain basic services will have to continue uninterrupted during transition. These are:
  - 8.4.1. The administration of justice
  - 8.4.2. Civil service
  - 8.4.3. Parastatals
  - 8.4.4. Security and other public services.

## **9. 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:

- 9.1. 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.

## **10. 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 Subgroup notes that a new government will have to consider how to deal with debt irregularities, if any.

## **11. PROPOSED APPOINTMENT OF COMMISSIONS**



The Subgroup is unanimous that two commissions be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

#### Composition of Commissions

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

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

#### Terms of Reference of the Commissions

- 11.1. A commission 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:
- 11.1.1. Harmonisation of tax regime.
  - 11.1.2. Harmonisation of labour legislation.
  - 11.1.3. Possibility of granting temporary exemptions from tax.
  - 11.1.4. Introduction of export and other investment incentives.
  - 11.1.5. Protection of existing tax concessions for a reasonable period.
  - 11.1.6. Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.
  - 11.1.7. Protection of existing investments.
  - 11.1.8. 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.

- 11.1.9. Whether the process of harmonisation should be implemented incrementally.
- 11.1.10. Whether, where prejudices arise, exemptions should be granted for a definite period
- 11.1.11. Whether the granting of exemptions should be fairly automatic up to a certain date.
- 11.1.12. A close study of the taxation system to be undertaken.
- 11.1.13. The whole question of optimal use of existing infrastructure during transition and after reincorporation.
- 11.1.14. Any other matters relevant to the above issues.

11.2. A commission to look into the question of good administration during transition and the future of the civil service with particular regard to the following:

11.2.1. Reorganisation of administration around the existing structures.

11.2.2. 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.

11.2.3. An extensive rationalisation programme of the public services involving the SATBVC states.

11.2.4. The appointment of a non-partisan body to implement the process of rationalisation.

11.2.5. Any other matters relevant to the above issues.

## 12. PRACTICAL IMPLICATIONS

The following will be the practical implications of reincorporation:

12.1. The reincorporated state will again fall under the geographic jurisdiction of the RSA.

12.2. That state's people will be South African citizens.

12.3. That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.

12.4. The reincorporation process will have to be formally legislated through the relevant legislative bodies.

12.5. The "international" boundaries between that state and the RSA will fall away.

12.6. The need for diplomatic ties between the RSA and those states will fall away.

12.7. 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.

- 12.8. 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.

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## REPORT BY SUBGROUP 4 TO PLENARY SESSION OF WORKING GROUP 4

05 MAY 1992

After an impasse had been reached by Subgroups 1 and 2, Subgroup 4 was unable to continue discussion within its terms of reference. It was decided to await the outcome of the deliberations of the plenary session of Working Group 4. With the adoption today of the Task Group Report to Working Group 4, steps that have to be taken to effect reincorporation have been identified. Moreover the report of Subgroup 3 dated 05 May, 1992 has dealt with some of the issues which Subgroup 4 of Working Group 4 had to consider.

Under these circumstances, Subgroup 4 recommends that a technical commission be appointed which would have power to investigate, research and receive reports from the affected parties. The tasks of the commission would be within the terms of reference of Subgroup 4 of Working Group 4, and should include the following

1. Legal and constitutional implications.
  - 1.1 Relationship between SA and the TBVC states during the transitional phase.
  - 1.2 Consider legislation that would be required to effect reincorporation.
  - 1.3 Consider legislation/measures that would level the political playing field.

It is strongly recommended that the commission should consult with the Gender Advisory Committee.