



14.4

C O D E S A

WORKING GROUP 4 MEETING ON MONDAY
17 FEBRUARY 1992: 6.2 : AREAS OF
RESEARCH REQUIRED IF RE-INCORPORATION
OF THE TBVC STATES INTO SOUTH AFRICA
IS AGREED UPON

BACKGROUND MATERIAL REGARDING THE ADMINISTRATIVE, FINANCIAL,
LEGAL, CONSTITUTIONAL AND PRACTICAL EFFECTS OF RE-INCORPORATION
OF THE TBVC STATES

(A Paper submitted by the South African Government Delegation
on Working Group 4, with reference to Item 6.2 of the Draft
Agenda of the meeting held on 10 February 1992.)





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
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


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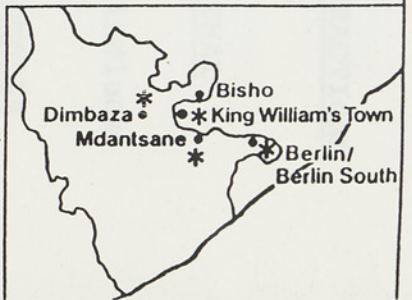
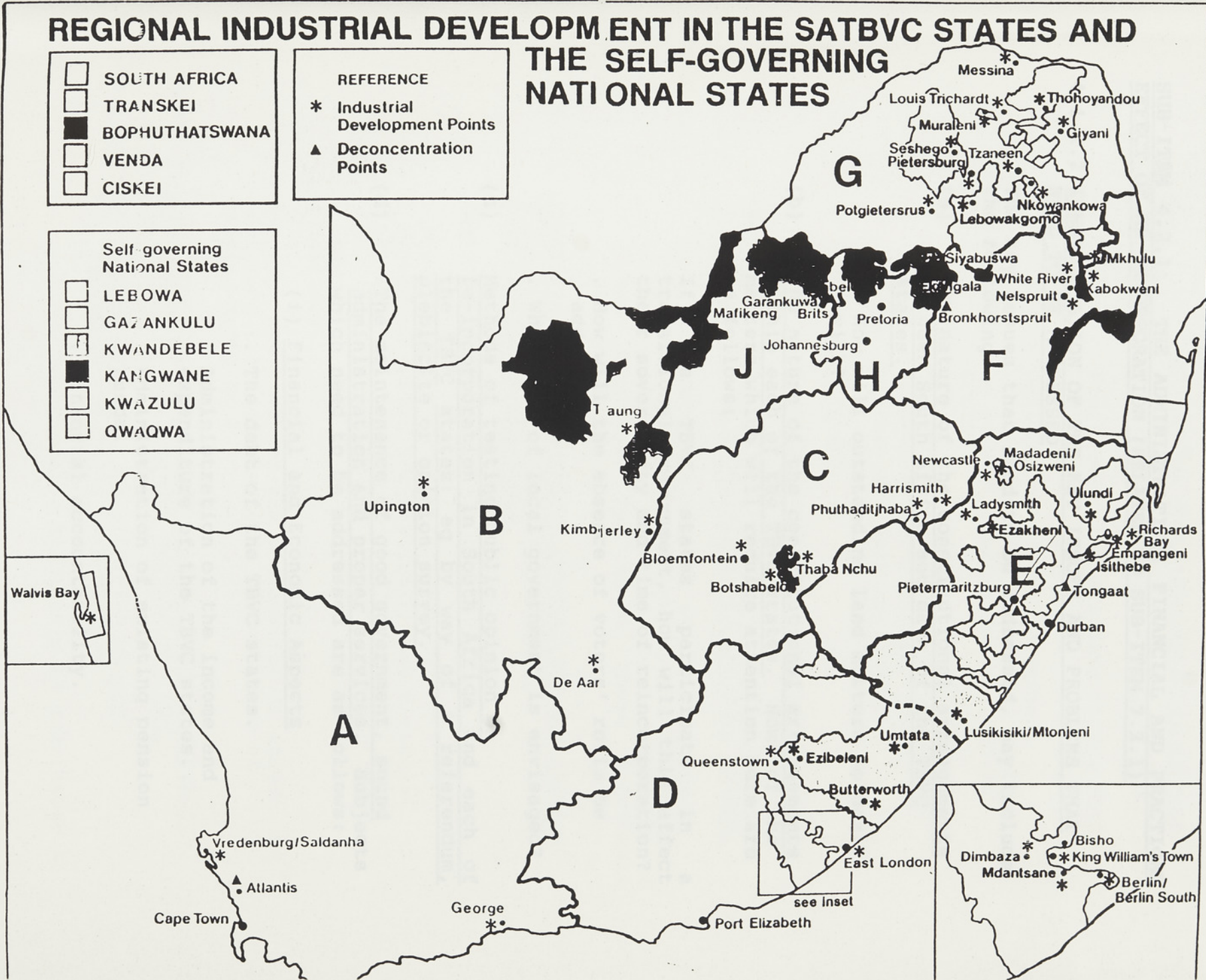
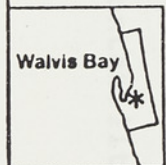
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REGIONAL INDUSTRIAL DEVELOPMENT IN THE SATBVC STATES AND THE SELF-GOVERNING NATIONAL STATES

-  SOUTH AFRICA
-  TRANSKEI
-  BOPHUTHATSWANA
-  VENDA
-  CISKEI

- REFERENCE
- * Industrial Development Points
 - ▲ Deconcentration Points

- Self-governing National States
-  LEBOWA
 -  GAZANKULU
 -  KWANDEBELE
 -  KANGWANE
 -  KWAZULU
 -  QWAQWA



SUB-ITEM 6.2.1: THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL EFFECT OF RE-INCORPORATION (RELATED TO SUB-ITEM 7.2.1)

4.1.1.2 IDENTIFICATION OF THE KEY ISSUES AND PROBLEMS THAT NEED TO BE ADDRESSED

The key issues that need to be addressed, may include the following:

- (a) The nature of the constitutional arrangements between South Africa and each of the TBVC states.
 - . How will outstanding land matters be dealt with?
- (b) The nature of the constitutional arrangements within each of the TBVC states. Some of the matters which will require attention here are as follows:

If the TBVC states participate in a transitional government, how will this affect their sovereignty and time of reincorporation?

 - . How will the absence of voters' rolls be addressed?
 - . What form of local government is envisaged?
- (c) Methods of testing public opinion on re-incorporation in South Africa and each of the TBVC states: eg by way of a referendum, plebiscite or opinion survey.
- (d) The maintenance of good government, sound administration and proper services. Subjects which need to be addressed are as follows:
 - (i) Financial and Economic Aspects
 - . The debt of the TBVC states.
 - . Administration of the income and expenditure of the TBVC states.
 - . Administration of existing pension funds.
 - . Financial accountability.

(ii) Managerial and organisational aspects

- . Managerial and technical know-how.
- . Position of the military in the TBVC states.
- . Rationalisation of government institutions and parastatal institutions to prevent duplication with South Africa.
- . The position of civil servants and members of the services, whose offices are quintriplicated.

(iii) Services

- . Regional development plans.

(e) Means of ensuring continuation of services provided by South Africa to the TBVC states.

A multitude of bilateral and multilateral agreements exists in this respect. Provision will have to be made for the continuation of the functions for which these agreements provide.

4.1.1.3 IDENTIFICATION OF AREAS OF COMMONALITY AND ASPECTS WHERE AGREEMENT ALREADY EXISTS BETWEEN PARTICIPATING DELEGATIONS.

These would include the following:

- . Legal system.
- . System of public administration and financial management.
- . Public services.
- . Language.
- . Military.

For the rest, compare the declaration of intent and paragraph 4.1.1 of the terms of reference of Working Group No 4.

4.1.1.4 SPECIFICALLY, BUT WITHOUT VITIATING THE GENERALITY OF THE ABOVE, TO CONSIDER WHETHER AND HOW:

4.1.1.4 (b) the desirability or otherwise of the re-incorporation of such states:

- . A New South Africa might only be considered to

be complete if those TBVC states which desire to be re-incorporated are fully incorporated and part of the new governmental structures of the country.

- . The people of the TBVC states may be better served by the regions and their say will be important in a regional and national context.
- . The issue of duplication of structures.
- . Rationalization of structures and staff in the TBVC states.

4.1.1.4 (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states:

This will have to be addressed in the following ways:

- (i) By the protection of existing rights in any re-incorporation agreement.
- (ii) By the major parties to Codesa being aware of the consequences of their economic (and political) policy pronouncements.
- (iii) By the maintenance of good government and administration, especially with regard to finances.
- (iv) By the maintenance of political stability and industrial peace.
- (v) By the maintenance of law and order.
- (vi) By resolving contentious issues which exist between Governments and/or organisations in the SATBVC states.

4.1.1.4 (f) Land transfers by South Africa to these states:

There is considerable uncertainty as to how this question is to be dealt with.

4.1.1.4 (h) Any other matters which the working group may consider relevant to its brief

4.1.1.5 IF RE-INCORPORATION IS DECIDED UPON IN RESPECT OF ANY TBVC STATE, MATTERS THAT WILL NEED TO BE ADDRESSED INCLUDE:

4.1.1.5 (d) Disposal/transfer of assets of TBVC governments:

It is generally recognised that the successor state takes over the public funds and public property, whether movable or immovable, of the predecessor state.

4.1.1.5 (e) Optimal use of existing infrastructure

Existing infrastructure could include matters such as the following:

- Schools
- Hospitals
- Government administration blocks
- Parastatal-owned buildings
- Courts
- Post offices
- Prisons
- Police stations
- Government garages
- Railways
- Roads
- Airports
- Planes
- Government vehicles
- Military equipment
- Embassy buildings
- Government housing
- Broadcasting services
- Dams
- National parks
- Archives

4.1.1.5 (f) Review of development project priorities

Attention is presently being given to the formulation of national development plans in each TBVC state. From these plans will emerge sectoral development plans, eg. for health, agriculture, education, etc. Development priorities will have to be determined on the basis of these plans.

4.1.1.5 (g) Good administration during transition

The Structural Adjustment Agreements with respect to the TBVC countries will foster good administration. Aspects which could

receive attention, include the following:

- . Interchange of staff in key posts.
- . Rationalization of Public Service.
- . Countries to aim to spend 30 % of income on public servants (in accordance with IMF norms).
- . Control of pension funds.
- . Management of state debt.
- . Training and motivation of staff.
- . Compilation of regional development plans.
- . Limit expansion of establishment.
- . New gradings of posts and salaries of public servants.
- . Taking steps to ensure proper financial accountability.

4.1.1.5 (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.

- Some of TBVC staff may be absorbed into the central South Africa public service.
- The staff of participating government services may have to be integrated into a specific regional government.
- As part of the constitutional negotiations, a division of functions will have to be made timeously between the central and regional governments.

4.1.1.5 (i) Consider the future of the civil service in such states.

The future of the public services is a matter which will be determined by the nature of the constitution which is negotiated at Codesa - whether it will be a single service or a federal arrangement with multiple services.

The matter is of such a technical nature that it will have to be dealt with by specialists of the five Commissions for Administration.

Examples of the matters which will have to receive attention are as follows:

- The rationalisation of government

departments and parastatal organisations within a specific region.

- Determination of services which can be done on an agency basis.
- The assignment of skilled staff to the regions in an equitable manner.
- The training of staff.
- Norms and standards with respect to eg. health services and education which will be applicable in the respective regions;
- Control over pension funds.
- Transferability of staff from region to region, with retention of pension.
- Salaries and fringe benefits in the different regions.
- Size of public services in regions (expenditure on public servants to be in line with IMF norm of 30 % of income).
- The enforcement of financial accountability in the public services.
- Determination of whether each region will have its own Public Service Act and Public Service Commission.
- Establish what will happen to public servants who do not wish to be transferred to new regional governments in a federal structure.
- Deal with position of superfluous or redundant public servants.
- Allow Structural Adjustment Committees to continue with their work in the regions.

It will be necessary to pay attention to the position of the existing legislation in the TBVC States when an agreement of re-incorporation is negotiated.

4.1.1.5 (k) Harmonisation of legislation and taxation.

It will be necessary to pay attention to the position of the existing legislation in the TBVC

states when an agreement of re-incorporation is negotiated.

4.1.1.5 (1) Orderly termination of bilateral and multilateral agreements and treaties.

LEGAL CONSEQUENCES OF RE-INCORPORATION

The re-incorporation of the TBVC states into South Africa, as a form of state succession will have numerous and comprehensive legal consequences.

All these legal consequences will have to be identified and addressed in the re-incorporation agreements and accompanying legislation.

The following consequences will have to be investigated:

The status of existing agreements

The position of existing agreements greatly depends on the form the actual change of sovereignty will assume.

The status of existing legislation

The legal consequences regarding the status of existing legislation is once again dependent upon the nature of the constitutional model into which the TBVC states will be re-incorporated.

Citizenship

The implications will have to be investigated in order to deal with this matter in a way which would avoid confusion and this disruption.

Other legal consequences

Other legal consequences that shall have to be dealt with in the re-incorporation agreements are the following:

- . Steps to ensure the continuance of pending legal actions.
- . Jurisdiction of Courts.
- . The position of public property and public funds.
- . The position of the Administration including

the Civil Service and Armed Forces.

- . The position regarding State debt.
- . The position of State archives.

4.1.1.5 (m) Servicing and repayment of TBVC state debts

Attention will have to be given to this matter.

SUB-ITEM 6.2.2 THE POLITICAL, LEGAL AND CONSTITUTIONAL EFFECT OF RE-INCORPORATION (RELATED SUB-ITEM 7.2.2)

4.1.1.1 TO INVESTIGATE, REPORT UPON AND MAKE RECOMMENDATIONS WITH REGARD TO THE RELATIONSHIP BETWEEN SOUTH AFRICA, THE TBVC STATES AND THE PEOPLE OF THOSE STATES UNDER A NEW SOUTH AFRICAN CONSTITUTION.

The relationship between South Africa and the present TBVC states will be determined by the responses of the people of these states to a new negotiated constitution.

4.1.1.2 IDENTIFICATION OF THE KEY ISSUES AND PROBLEMS THAT NEED TO BE ADDRESSED

The key issues that need to be addressed, may include the following:

- (a) The nature of the constitutional arrangements between South Africa and each of the TBVC states.
 - . When will the sovereignty of the TBVC states be affected?
 - . What acts, regulations and agreements will have to be amended, repealed or terminated?
- (b) The nature of the constitutional arrangements within each of the TBVC states. Some of the matters which will require attention here are as follows:
 - . If TBVC States participate in a transitional government, how will this affect their sovereignty and time of reincorporation?
 - . What form of local government is envisaged?
- (c) Methods of testing public opinion on the issues in South Africa and each of the TBVC states: eg. by way of a referendum, plebiscite or opinion survey.

- (f) The position regarding rights created under TBVC legislation, which do not exist under South African legislation - more favourable taxes, land ownership and land use, casinos, censorship.
- (g) Issues of general interest
National anthem, national symbols, languages, traditions, fire arms control, etc.
- (h) The time-frame for re-incorporation
(To be dealt with by Working Group 5)

4.1.1.3 IDENTIFICATION OF AREAS OF COMMONALITY AND ASPECTS WHERE AGREEMENT ALREADY EXISTS BETWEEN PARTICIPATING DELEGATIONS. These would include the following:

- . Legal system.
- . System of public administration and financial management.
- . Public services.
- . Language.
- . Military.

For the rest, compare the declaration of intent and the paragraph 4.1.1 of the terms of reference of Working Group No 4.

4.1.1.4 SPECIFICALLY, BUT WITHOUT VITIATING THE GENERALITY OF THE ABOVE, TO CONSIDER WHETHER AND HOW:

- 4.1.1.4 (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.

The Governments of three of the TBVC states have in one form or another indicated that they would wish return to a non-racial, post-apartheid South Africa.

If the new or amended constitution is acceptable to the TBVC states and their people, the constitutional status of those countries will be affected when -

- (i) South Africa and each of the TBVC states have negotiated agreements on the surrender of sovereignty by the TBVC states concerned and on all necessary transitional

arrangements; and

(ii) the South African legislature and the legislative authorities of the TBVC states have -

- . repealed certain legislation eg. the Status Acts; and
- . adopted into domestic legislation the terms of the agreements which have been negotiated.

4.1.1.4 (c) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states by acceptable democratic means

There seems to be general agreement that the will of the people should be tested.

4.1.1.4 (d) Strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings:

Codesa will make its own arrangements to disseminate information, eg by way of press statements and paid advertisement campaigns (radio, TV, press, posters, schools, competitions, etc).

4.1.1.4 (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states:

This will have to be addressed in the following ways:

- (i) By the protection of existing rights in any re-incorporation agreement.
- (ii) By the major parties to Codesa being made aware of the consequences of their economic (and political) policy pronouncements.
- (iii) By the maintenance of good government and administration, especially with regard to finances.
- (iv) By the maintenance of political stability and industrial peace.
- (v) By the maintenance of law and order.
- (vi) By resolving contentious issues which

exist between governments and/or organisations, companies, etc. in the SATBVC states.

4.1.1.4 (g) Citizenship

See Sub-Item 6.2.1, paragraph 4.1.1.5 (1).

4.1.1.4 (h) Any other matters which the working group may consider relevant to its brief

4.1.1.5 IF RE-INCORPORATION IS DECIDED UPON IN RESPECT OF ANY TBVC STATE, MATTERS THAT WILL NEED TO BE ADDRESSED INCLUDE:

4.1.1.5 (a) Proposals for the re-incorporation into South Africa of a TBVC state:

This process can only commence once the proposals of Working Group 2 have been submitted and accepted by the parties who are represented in Working Group 4.

4.1.1.5 (b) Consider the question of transitional arrangements in those states which want to be incorporated:

The TBVC states will remain sovereign until such time as they are re-incorporated into South Africa by way of agreement and legislation.

4.1.1.5 (c) Time-frames for such a re-incorporation and related processes:

This is the function of Working Group 5. The time-frames will be affected by -

- (a) the speed at which Codesa completes its task;
- (b) the decisions taken on how the will of the inhabitants of the five states should be tested;
- (c) whether and how quickly the SATBVC governments accept re-incorporation;
- (d) the speed at which solutions to practical issues can be negotiated in the re-incorporation process. The results will have to be formulated for inclusion in bilateral re-incorporation agreements; and
- (e) the speed at which agreements and legislation regarding re-incorporation can be finalized.

- 4.1.1.5 (j) The exact form of authority in the TBVC territories.

This can only be decided once Working Group 2 has submitted its proposals to Working Group 4 and these have been accepted by the participants of Codesa in Working Group 4.

- 4.1.1.5 (n) Ensuring public accountability of action taken for the purposes of re-incorporation.

It is of paramount importance that the whole process of the re-incorporation of the TBVC states shall be done with due regard to internationally accepted norms and within the scope of the provisions of national legislation.

- 4.1.1.5 (o) The identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation

RE-INCORPORATION STEPS

Re-incorporation can only be achieved by way of negotiation and via a bilateral re-incorporation agreement. The whole process of re-incorporation of the TBVC states into South Africa will involve aspects of both the international and municipal law.

STEPS TO BE TAKEN BY THE TBVC STATES:

- . Acceptance of the proposed transitional government and constitution of South Africa or the final product, a New South Africa with a new constitution.
- . The intention to transfer sovereignty to South Africa and to be re-incorporated into that South Africa, must exist.
- . The decision to hold referenda to establish democratically the wishes of their people in each state.
- . The enactment of the necessary legislation to facilitate the holding of referenda in accordance with internationally accepted norms.
- . The holding of referenda.
- . If the people agree with that which they are to become part of, the actual request to the

Government of South Africa for re-incorporation must be made.

- . Negotiation of a bilateral re-incorporation agreement.

STEPS TO BE TAKEN BY THE SOUTH AFRICAN GOVERNMENT:

- . The holding of a referendum in South Africa to test the wishes of the voters of South Africa.
- . If the people agree on re-incorporation and the requests for re-incorporation have been received from the TBVC states, the negotiation of the re-incorporation agreements can begin.

RE-INCORPORATION AGREEMENTS

- . The re-incorporation agreements shall provide the legal basis for the assumption of sovereignty by South Africa over the territories of the TBVC states.
- . All aspects of the loss of sovereignty and its legal consequences must be dealt with in these agreements.
- . The practical implications of re-incorporation must be addressed in the agreements.

LEGISLATIVE STEPS

- . The TBVC states will each have to repeal their constitutions or other decrees granting them independence.
- . South Africa will have to repeal the Status Acts through which independence was granted to the TBVC states.
- . All the states will simultaneously have to pass similar legislation enacting the provisions of the re-incorporation agreements and thus incorporate them in their municipal law.
- . These legislative acts together with the transitional or new constitution of South Africa will be the final steps towards the re-incorporation of the TBVC states into South Africa.

SUB-ITEM 7.1 : SUB-COMMITTEE I: TO INVESTIGATE THE EFFECT IF RE-INCORPORATION OF THE TBVC STATES IS NOT DECIDED ON. (THERE IS NO EQUIVALENT PROVISION IN THE DRAFT AGENDA UNDER ITEM 6, SUB-ITEM 2)

4.1.1.4 (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

If the new constitution is not acceptable to one or more of the TBVC states, the status quo with respect to such a country or countries will be maintained.

