

THESE MINUTES ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF WORKING GROUP 4, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE.

ADOPTED BY MEETING OF WORKING GROUP 4 ON 27 APRIL 1992

**MINUTES OF THE EIGHTH MEETING OF WORKING GROUP 4 (FUTURE OF THE TBVC STATES) HELD AT THE WORLD TRADE CENTRE ON TUESDAY 21 APRIL 1992 AT 10H00 AND ON WEDNESDAY 22 APRIL 1992 AT 09H30.**

PRESENT ON 21 APRIL 1992:                   Delegates and advisors (See Addendum AA)  
  
  SN Sigcau (Chair)  
  
  S Albertyn (Secretary)  
  M Durrheim (Minutes)

**1       Opening by Chairperson**

The delegates and advisors were welcomed by the chairperson.

**2       Agenda**

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

**3       Adoption of minutes**

The minutes of the meeting of WG 4 of 30 March 1992 were adopted.

**4       Matters arising**

4.1     The SA Government objected to the content of point 5.1 viz. "WG 3 had pointed out in the joint meeting that if there is a delay in reaching consensus in WG 4, WG 3 would go ahead and make decisions regarding interim arrangements for the TBVC states" as this implied a possible interference by WG 3 with WG 4 and its Terms of Reference. The chairperson stated that the matter would be further discussed by WGSC 4.

4.2     It was agreed to delete the second sentence of point 5.2.2.

**5       Position statements from each of the TBVC states and the SA government**

5.1     The chairperson reported that the TBVC states apologised for the late submission of their revised position statements. This had prevented the circulation of the position statements to delegations prior the meeting.

5.2     Each TBVC state's position statement and that of the South African government was then read out to the meeting (Copies are attached marked Addenda B - F).

It was agreed to adjourn the meeting to give delegates time to consider the position statements. The rapporteurs were requested to use the time to compile a report on the position statements.

## 6 Presentation by rapporteurs on position statements and discussion thereof

- 6.1 The report by the rapporteurs was circulated and read out to the meeting. A copy of the report is attached marked Addendum G.
- 6.2 Transkei, Venda and Ciskei agreed that the rapporteurs report correctly reflected their positions.
- 6.3 Bophuthatswana recorded that its current position paper should be read together with its previous statements.
- 6.4 The South African government said that wanted the wording of question 1, the second last sentence in paragraph two, to reflect that it would abide by the terms of reference of working group 4. On question 2 of the report it suggested that the last question be deleted. On question 4, the first sentence be amended to read " Working Group 4 has up till now insisted that restoration of citizenship and reincorporation are inextricably linked .... "
- 6.5 Discussion ensued where delegations clarified the position statements.
- 6.6 The DP submitted a written proposal (a copy is attached marked Addendum H) which was read out to the meeting. The DP argued for the holding of a referendum which would test the support for the new constitutional proposals drawn up by Working Group 2. At the same time the people of the TBVC states would have the opportunity to express themselves regarding re-incorporation of the respective states into South Africa. This would resolve the difficulty of holding separate referenda in each of the TBVC states while ensuring the view of the people of the TBVC states are tested. The process would also given legitimacy to the Codesa proposals.

## 7 Adjournment

The chairperson proposed that the meeting be adjourned until 09h30 on Wednesday 22 April 1992 in order to give delegations time to further examine the various reports and proposals submitted to the meeting. The meeting was adjourned at 16h00.

*Continuation of WG 4 meeting on Wednesday 22 April 1992*

PRESENT ON 22 APRIL 1992: Delegates and Advisors (see Addendum AB)

SN Sigcau (chair)

S Albertyn (secretary)

M Durrheim (minutes)

8 **Opening by Chairperson**

Delegates and advisors were welcomed to the meeting. The chairperson reported that she had received notice from the ANC, Ciskei and the NPP that they would be tabling statements/proposals at the meeting.

9 **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.

10 **Discussion of Proposals**

10.1 **Democratic Party Proposal**

The DP motivated their proposal contained in the document they had presented to the meeting on 21 April 1992 (marked Addendum H).

The Ciskei Government tabled a statement aligning itself with the DP proposal (see Addendum I).

The NPP also tabled a statement associating itself with and supports the DP proposal (see Addendum J)

There was discussion over whether or not the DP proposal that the referendum be based on the constitutional principles to be presented by WG 2 amounted to an extension of the mandate given to WG 4.

10.2 **ANC Proposal**

A statement by the ANC was presented to the meeting (see Addendum K). Delegations questioned the ANC on their statement and the proposal was debated at length.

10.3 **The following states expanded upon their position statements:**

10.3.1 The Bophuthatswana Government made the following points:

10.3.1.1 The ANC's proposals on dual citizenship should be seriously considered

10.3.1.2 The issue of re-incorporation raises two questions:

- the principle of whether or not to re-incorporate:  
each of the TBVC states has already stated their position on re-incorporation and testing the will of the people
- at what stage to re-incorporate:  
all states have set conditions for re-incorporation, although the conditions differ. Therefore the issue is meeting the conditions laid out by the states for re-incorporation.

10.3.1.3 Once these principled issues on re-incorporation have been decided upon, WG 4 can address the question of whether there is sufficient consensus on when and how to test the will of the people. This is where the DP proposal becomes useful.

10.3.2 The Venda Government reiterated that the desire for re-incorporation had begun before Codesa and that it wants to be part of the entire Codesa process.

10.3.3 The SA Government made the following points:

10.3.3.1 the SA Government is opposed to passing a unilateral act in order to re-incorporate any of the TBVC states because this would be in direct contrast to the spirit of the Declaration of Intent of Codesa and a direct transgression of the Terms of Reference of Working Group 4 by a signatory of the Declaration.

10.3.3.2 With regard to the fulfilment of its Terms of Reference on the "Future of the TBVC states", WG 4 would not be exceeding its mandate if it accepts the DP proposal, provided that sufficient consultation takes place between it and Working Groups 2 and 3 on whose consensus the work of WG 4 has to be built.

10.3.3.3 The SA Government indicated that the word "desirability" cannot be used in the DP's proposal since this ignores the SA Government's position as minuted in paragraph 10.3.3.4 hereunder and therefore suggested to the DP that its proposal will be supported if point 2.3 reads as follows: 'On the question of re-incorporation, all delegations have no objections in principle' (the suggested amendment was acceptable to the DP who changed its paragraph in question accordingly).

10.3.3.4 - point 1 states that it is up to each individual TBVC state to opt for re-incorporation or otherwise  
- point 2 makes it clear that the will of the people in each TBVC state should be tested as required by paragraph 1.1 of the preamble of WG 4's Terms of Reference and paragraph 1.1.4 (c) of the Terms of Reference.

10.3.3.5 the definition of what was meant by 'South Africa' was clarified.

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.

10.4 It was agreed that the meeting should adjourn to allow the delegations the opportunity to consult their principals on the proposals submitted.

10.5 It was further agreed that the rapporteurs be requested to draw up a document in which the ('bottom line') positions of the respective TBVC states regarding the issues pertaining to re-incorporation be clearly set out. The report should synthesize both the position statements, the DP and ANC proposals, and the views expressed in the meeting by delegations. This document will be made available to delegations prior to the next meeting of WG 4. The rapporteurs noted that their brief required them to move beyond their normal function.

11 **Future of sub-groups**

It was agreed that the work of sub-groups 3 and 4 will continue and that the future of sub-groups 1 and 2 will be decided at the next meeting of WG 4.

12 **Date and time of next meeting of WG 4**

It was agreed that the next meeting of WG 4 will take place on Monday 27 April. The meeting will commence at 11h00 in order to give delegations time to study the report by the rapporteurs.

13 **Closure**

The meeting was closed at 13h00.

S. M. Sijca  
8.5.92

## ADDENDUM AA

## PRESENT ON TUESDAY 21 APRIL 1992:

Party/Organisation	Delegates	Advisors
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	BE Keikelame DW Schoeman	JJ Tlholoe
Ciskei	N Nogcantsi BR Tokota	GF Godden BC Silivama
Democratic Party	JA Jordaan EK Moorcroft	N Olivier C Simkins
Dikwankwetla Party	SP Matla S Manyane	MJ Molapo DA Thejane
IFP	FT Mdlalose VT Zulu	B Anderson NJ Ngubane
IYP	JL Mahlangu JS Mabena	MS Mahlangu PZ Mashiane
INM	DZ Makhubela JM Matsana	HA Motaung ND Mokoena
Labour Party	T Abrahams J Douw	S Verveen W Whyte
NIC/TIC	P David NG Patel	G Singh
National Party	JHW Mentz P Farrell	GC Oosthuizen PC McKenzie
NPP	D Govender S Naidoo	A Ramalu BP Jaglal
Solidarity Party	MF Cassim N Singh	AS Akoob K Chetty
SACP	T Mtintso S Mufamadi	L Nyembe S Ngonyama
SA Government	RF Botha AT Meyer	D Auret G Croeser
Transkei	M Titus LM Bengu	WG Makanda

UPF

LM Mokoena  
NM MalekaneJM Nonyane  
ER Maponya

Venda

S Makhuvha  
SE MoetiRR Sumbana  
N Nefale

XPP

C Khosa  
ML NkunaTB Shibambu  
TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

## ADDENDUM AB

## PRESENT ON WEDNESDAY 22 APRIL 1992:

Party/Organisation	Delegates	Advisors
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	JJ Tlholoe DW Schoeman	
Ciskei	N Nogcantsi BR Tokota	
Democratic Party	EK Moorcroft N Olivier	C Simkins
Dikwankwetla Party	SP Matla S Manyane	DA Thejane
IFP	VT Zulu NJ Ngubane	B Anderson
IYP	JL Mahlangu MS Mahlangu	PZ Mashiane
INM	DZ Makhubela JM Matsana	HA Motaung ND Mokoena
Labour Party		
NIC/TIC	P David NG Patel	G Singh
National Party	JHW Mentz P Farrell	GC Oosthuizen PC McKenzie
NPP	D Govender S Naidoo	A Ramalu BP Jaglal J Bachu
Solidarity Party	MF Cassim N Singh	AS Akoob TS Barnabas
SACP	T Mtintso L Nyembi	S Ngonyama
SA Government	At Meyer CJ Streeter	CF Wheeler G Croeser
Transkei	M Titus LM Bengu	WG Makanda



UPF

LM Mokoena  
NM MalekaneJM Nonyane  
ER Maponya

Venda

S Makhuvha  
SE MoetiRR Sumbana  
N Nefale

XPP

C Khosa  
TB Shibambu

TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

## ADDENDUM B

RESTATEMENT OF CISKEI'S POSITION ON RE-INCORPORATION : CODESA  
WORKING GROUP 4 : 21 APRIL 1992

THE CISKEI GOVERNMENT WOULD WISH AGAIN TO RE-ITERATE ITS COMMITMENT TO THE CONCEPT OF RE-INCORPORATION INTO A DEMOCRATIC UNITED SOUTH AFRICA.

THE CISKEI GOVERNMENT IS CONVINCED THAT THIS COURSE OFFERS THE BEST OPPORTUNITY FOR A STABLE AND SOUND ECONOMIC DEVELOPMENT FOR THE CISKEIAN PEOPLE AND THAT IT WOULD NOT BE NECESSARY TO HOLD A REFERENDUM AMONGST THE CISKEIAN PEOPLE TO CONFIRM THIS COURSE OF ACTION.

SINCE CISKEI IS AN INDEPENDENT SOVEREIGN STATE IT WILL NOT BE IN A POSITION TO PARTICIPATE IN AN INTERIM GOVERNMENT OF ANOTHER STATE ie. SOUTH AFRICA WITHOUT FOREGOING ITS INDEPENDENCE STATUS. IT IS FOR THIS REASON THAT THE CISKEI GOVERNMENT HAS DECIDED NOT TO PARTICIPATE IN THE INTERIM GOVERNMENT.

THE POSITION OF THE CISKEI GOVERNMENT IS THEREFORE QUITE CLEAR. RE-INCORPORATION OF THE CISKEI INTO THE NEW SOUTH AFRICA CAN ONLY TAKE PLACE WHEN THE NEW SOUTH AFRICA HAS TAKEN SHAPE AND THE PEOPLE OF THE CISKEI KNOW WHAT THEY ARE GOING TO RE-JOIN AND KNOW THAT IN DOING SO THEY WILL BE BETTER OFF THAN THEY HAVE BEEN IN THE PAST.

THE CITIZENS OF THE CISKEI MUST MAKE SUCH AN INFORMED DECISION AT FREE AND FAIR ELECTION IN A CLIMATE CONDUCTIVE TO PEACEFUL POLITICAL ACTIVITY. SUCH ELECTIONS CAN ONLY BE HELD WHEN THE NEW CONSTITUTION FOR SOUTH AFRICA HAS BEEN CLEARLY FORMULATED, INCLUDING THE BOUNDARIES OF THE REGIONS TO BE CREATED AND THE ENTRENCHED RIGHTS OF SUCH FEDERAL STRUCTURES, WHILE THE ELECTORAL PROCESS HAS TO BE IN PLACE.

VENDA GOVERNMENT

SUBMISSION TO WORKING GROUP 4 OF CODESA

REINCORPORATION OF VENDA AND PARTICIPATION IN CODESA ACTIVITIES.

The Venda Government being a signatory to the declaration of INTENT and having participated in all Working Groups of CODESA since January 1992, would like to continue to be involved and to participate in all phases and activities of CODESA. Venda specifically demands to participate from the first phase of the interim Government to the final stage where it eventually would have been reincorporated. The Venda Government sees no reason to descale into a national State before participating in the first phase of the interim Government.

The Venda Government is a participant in CODESA and therefore regards the other participants as equal partners in the process. No one participant should have the right to dictate to the other about its fate.

The legal implications which are to be addressed are in terms of the South African legal system and they should be addressed by common understanding in order to create a new Democratic Country. It is not impossible to agree to change the laws to suit any situation.

The Venda Government therefore wishes to indicate that it should have an opportunity to participate in all processes of CODESA, including all the phases of the interim government, as it is, because in the final analysis, it is ready to be incorporated into the New Democratic South Africa.

Venda would like to be involved in the creation of the envisaged New South Africa and in the making of its constitution.

It rejects the notion of descaling as a prerequisite for participation in the interim government of the united New South Africa.

## TRANSKEI GOVERNMENT

## ADDENDUM TO TRANSKEI'S WORKING GROUP 4 INPUT TO CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (CODESA)

The original position of Transkei was vividly set out under the contribution made by Working Group 4 on future of TBVC States on a document presented by Transkei delegation to Codesa Working Groups on 6 February 1992. In the said document it was spelt out that the "desirability or otherwise of the re-incorporation of such States" cannot in our view be separated from the notion of testing the will of the people concerned regarding re-incorporation or otherwise of the TBVC States by acceptable democratic means. The whole process of re-incorporation has as its starting point the testing of the will of the people.

After the historic speech of the 2nd February 1990 by President de Klerk Transkei formed a committee representing 159 organisations existant in Transkei. This committee was charged with the responsibility of collecting the views of the people on the possibility of re-incorporation into a new South Africa. A draft referendum decree was published and all Transkeian citizens and other interested parties in Southern Africa were afforded an opportunity to express their opinions. The result of this was that instead of expressing views on the desirability or otherwise of holding a referendum an overwhelming majority expressed the desire for Transkeians to be restored South African citizenship and for Transkei to be re-incorporated into South Africa.

With the advent of Codesa, Transkei Government summoned a meeting of 59 organisations operating in Transkei, to discuss the invitation and the participation of Transkei Government at Codesa. At this meeting a Transkei delegation comprising of government and non-government officials was formed and given a mandate to participate at Codesa with a clear set of guidelines on each aspect of their participation.

Transkei has all along been firm on the question of testing the will of the people under the aegis of Codesa. However, the government has recently seen it fitting to sound the views of its citizens on the same issue in the light of events taking place at Codesa, and the government had to be guided by the views of the people.

A joint meeting of the 159 member referendum committee and the 59 organisations which mandated Transkei participation at Codesa was summoned to consider the necessity of holding a referendum on the question of re-incorporation into South Africa and the restoration to Transkeians of South African citizenship. The said meeting was held on 13 April 1992 at which it was overwhelmingly resolved that a referendum was no longer a requirement for the Transkei to join the new apartheid free South Africa.

Transkei delegation has henceforth been mandated to revise the original position as we hereby do regarding the testing of the will of the people. Transkeians want restoration of their South African citizenship which they claim was taken away from them without consultation. Transkei intends to be part of the negotiations at Codesa right up to the elections and installation of an elected Interim Government/Constituent Assembly at which stage re-incorporation can take place.

WORKING GROUP 4BOPHUTHATSWANA POSITION PAPERPARTICIPATION IN AN INTERIM GOVERNMENT1. PERSPECTIVE

Participation in interim arrangements is only possible once finality is reached regarding the ultimate outcome of the negotiations, and specific details regarding interim arrangements are known. From the attached figure it is evident that this stage has not been reached. In fact, it transpires that Working Group 4 is awaiting more details from Working Group 2, ...who in turn, awaits progress on interim arrangements at Working Group 3, ...who in turn is now expecting Working Group 4 to state their position on participation in an interim government. This completes a picture of one group waiting on the other for progress and is creating an unfortunate trap, while unfair demands are levelled at the TBVC states to state their position without knowledge of the details of other proposals.

In addition it was also reported that the discussions and decisions of Working Group 3 were wrongly conveyed to Working Group 4 and that there is appreciation for the fact that a position statement by the TBVC states at this stage is not realistic.

This position statement by Bophuthatswana should be viewed within this context.

2. POSITION STATEMENT

Clarity regarding basic principles and values in a future constitution for South Africa, is considered a pre-condition for any final decision on incorporation or non-incorporation into South Africa. Our preferred options are well known, as well as our undertaking to consider any proposal that offers a future as good or better than the present situation. Bophuthatswana will not give up its sovereign and independent status until sufficient information about a future constitution and the will of its people has been thoroughly tested. Any suggestion that we should decide on joining an interim government without knowledge of the details of such an interim arrangement or future principles and values, is not acceptable.

It should furthermore be obvious that any constitution that is negotiated without Bophuthatswanas' involvement and participation, stand the danger of not meeting basic requirements that we consider important. The Bophuthatswana government should therefore be allowed the opportunity to actively participate and negotiate understandings and undertakings for a new dispensation, if it is the intention that it should ultimately become part and parcel of it. It is therefore equally important that negotiations on a future constitution continue at Codesa and not elsewhere until basic principles and values have been agreed upon. This stage has not yet been reached.

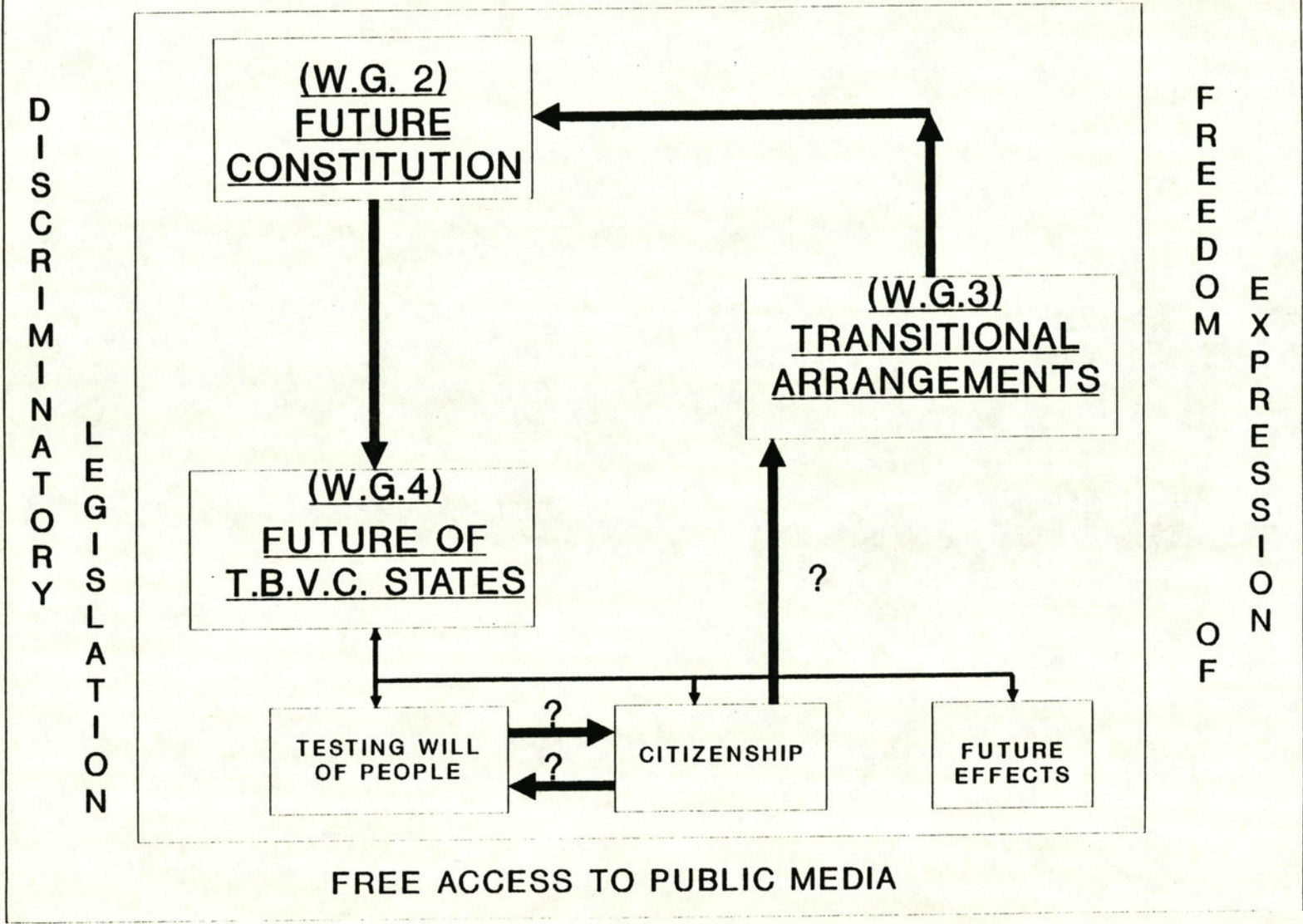
If it is the intention that further constitutional details are going to be discussed by structures resulting from interim arrangements, this cannot be supported. Any suggestion that Bophuthatswana should degrade its status as an independent state for the sake of being able to participate in interim arrangements and future constitution making, is therefore also not acceptable.

Whether Bophuthatswana participates in an interim government or not, the principle remains that all existing bi-lateral and multi-lateral arrangements should continue, unless with a specific, explicit agreement of all participants to these agreements and understandings.

The specific understanding that all decisions that affect Bophuthatswana must be taken with the full consent of the Bophuthatswana government therefore remain. The people of Bophuthatswana should in the end be allowed to take their own decisions as to their preferred choice for the future.

# CODESA WORKING GROUPS

## W.G 1 CREATING A FREE POLITICAL CLIMATE





ADDENDUM F

**POSITION STATEMENT OF THE SOUTH AFRICAN  
GOVERNMENT, 7 APRIL 1992**

**CODESA : WORKING GROUP FOUR**

**("Future of the TBVC states")**

**AGENDA ITEM 4, OF WORKING GROUP FOUR'S MEETING SCHEDULED FOR  
21 APRIL 1992 ("position statements from each of the TBVC  
states and the SAG")**

Position of the South African Government regarding the re-incorporation of the TBVC states in response to a consensus request of Working Group Four on 30 March 1992 regarding position statements.

The South African Government wishes to confirm that:

1. Within the framework of the Declaration of Intent and the Terms of Reference of Working Group Four and its Sub-groups, the right to choose whether or not to re-incorporate into South Africa under the present constitution or a transitional constitution or a final new constitution remains that of the Government and the people of each of the TBVC states.

2. The views of the people of the TBVC states on the above-mentioned alternatives must be tested democratically in a free, fair and meaningful process before re-incorporation can be decided upon.
3. While the South African Government has no objection to negotiate the re-incorporation of any of the states, the South African Government will not exert any pressure on, or agree to any railroading of, any state and its people to choose either re-incorporation or the retention of the status quo or any other constitutional alternative.
4. 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 following matters will have to be attended to in bilateral negotiations between the Government of the relevant state and the Government of the Republic of South Africa:
  - (a) terminating the sovereignty of the relevant state;
  - (b) transfer of the executive, legislative, judicial and administrative functions of the relevant state to constitutional structures which are compatible with the present or transitional or final new constitution of South Africa whichever may be in force at that stage; and
  - (c) restoration of citizenship.

## WORKING GROUP 4

REPORT BY RAPPORTEURS - 21 APRIL 1992

1 The starting-point must be the terms of reference, which include the Declaration of Intent. Paragraphs 1 and 5a of the Declaration of Intent are of particular relevance to this Working Group. The Preamble to the Terms of Reference of WG4 provides a further set of agreed principles. Paragraph 1.1.4 sets out the questions of principle which have to be decided upon, and 1.1.5 sets out practical matters which have to be addressed if re-incorporation is decided upon in respect of any TBVC state.

2 From the presentations made by the various parties, various critical questions have emerged. These questions, and the positions of the TBVC and SA governments on them, are as follows.

3 Question 1: The principle of re-incorporation

What is the attitude in principle to re-incorporation?  
If re-incorporation is to take place, at what stage should this be?

Ciskei, Venda and Transkei support the principle. Bophuthatswana has reserved its position until basic principles and values in a future constitution have been agreed to. The South African government attitude is that the decision is that of the Government and people of each of the TBVC states.

Transkei wants re-incorporation once there is an elected interim government/constituent assembly. Venda supports re-incorporation at some stage of the interim government. Ciskei wants re-incorporation once a new constitution, that is acceptable to the Ciskei, is in place. The Bophuthatswana position is as above. The South African government says that it is dependent on testing of the will of the citizens of a particular state and negotiations between itself and the respective government. This raises the question of the relationship between the negotiations at Codesa and bilateral negotiations.

4 Question 2: Re-incorporation and interim government

What is the role of interim government? [This is a matter being debated by WG3, on which all parties are represented.]  
Should the TBVC states participate in the interim government?  
If a TBVC state is to participate in interim government, what implications does this have for sovereignty? Is participation consistent with continued constitutional independence?  
Is the restoration of citizenship an alternative means of providing participation in interim government without immediate loss of sovereignty?

Venda and Transkei want to participate in the interim government. Ciskei does not want to participate in interim government because it wishes to retain its sovereignty, and it sees participation and sovereignty as incompatible. Bophuthatswana does not want to be part of transitional arrangements/interim government, but wants to be part of (separate) negotiations for a new dispensation, at Codesa, until basic principles and values have been agreed upon. The South African government's view is as reflected in paragraph 3 (in relation to Question 2).

5 Question 3: The restoration of citizenship

Abandonment of sovereignty and 'de-scaling' carries with it the necessary consequence of restoration of citizenship. But is the restoration of citizenship dependent on prior re-incorporation (or on a decision to re-incorporate)?

Sub-group 2 agreed to the principle of restoration of citizenship. There are two views on the timing, as reported by sub-group 2. The only government which deals with this issue in its new presentation is Transkei, which states that citizenship should be restored immediately. This would mean dual citizenship while the questions of the timing and method of re-incorporation are debated.

6 Question 4: The testing of the will

Is the testing of the will necessary?

If so

- is a separate testing of the will necessary?
- what would constitute a testing of the will?
- what is the issue on which the will is to be tested - reincorporation, restoration of citizenship, or the acceptability of a new constitution?

If a TBVC government declares that it has tested the will in a manner which it deems adequate, will the SA government accept this, or does it reserve the right to prescribe the manner in which the will is to be tested?

The South African government has up till now insisted that restoration of citizenship and re-incorporation are inextricably linked, and that testing of the will on re-incorporation is also a testing of the will on restoration. In their current position statements, none of the TBVC states has linked testing of the will to the question of citizenship.

The Ciskei government attitude is that it is not necessary to hold a referendum on re-incorporation. The citizens of the Ciskei must make an informed decision at free and fair elections, which will only be held when a new constitution for South Africa has been clearly formulated.

The Venda government attitude (as set out in the report of sub-group 4) is that testing of the will on re-incorporation, and by necessary implication on restoration of citizenship, is superfluous.

The Transkei government attitude is that it has adequately tested the will on re-incorporation by a means of extensive consultations, and that no further testing is necessary. (As set out above, Transkei government supports immediate restoration of citizenship.)

The Bophuthatswana government wants a testing of the will of the citizens of Bophuthatswana on re-incorporation once there is sufficient information about a new constitution. It has not expressed itself on whether this can or should be separated from restoration of citizenship.

[It should be noted that the question of a separate testing of the will is one on which sub-group 1 deadlocked.]

7 In our opinion, the questions being dealt with by the sub-groups should be reconsidered in the light of the new positions and the developing debate. Sub-groups 1 and 2 have reported that they have gone as far as they can. We suggest that in the light of these developments, WG4 should consider whether sub-groups 3 and 4 should continue with their current terms of reference and structure. The options include the following:

- 7.1 The sub-groups should continue with their current terms of reference and structure.
- 7.2 The sub-groups should terminate their work at this stage, and be re-constituted to deal with some of the questions which have now emerged.
- 7.3 The sub-groups should be re-constituted as smaller expert committees, to make recommendations on these technical matters to the Working Group.

## ADDENDUM H

### PROPOSAL BY DEMOCRATIC PARTY TO WORKING GROUP 4 ON 21 APRIL 1992

1. In view of our terms of reference which state that:

1.1.4. Specifically, but without vitiating the generality of the above to consider whether and how:

- (a) -
- (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.

2. We note that the submissions of the five relevant governments reveal commonality in the following respects:

2.1 All delegations wish to continue their involvement with CODESA.

2.2 All delegations reserve the right not to be dictated to by any other group (Paragraph 2 of Venda document).

2.3 On the question of re-incorporation, all delegations have no objections in principle with the desirability of such a step.

3. On the question of testing the will of the people:

Two of the delegations, Ciskei and Bophuthatswana, have made it clear that their re-incorporation is conditional upon

- (a) their participation in the drawing up of the constitutional principles within CODESA
- (b) the final constitutional proposals meeting with their approval, that is, there will be a testing of the will of the people.

4. Transkei has indicated that it is satisfied that it has sufficiently consulted with its people.

5. Venda does not commit itself on this issue viz. testing the will in their submission.

6. The South African Government's position is that it is in favour of the testing of the will of the people in line with the terms of reference of Working Group 4. (See item 2 in SA Government position statement.)

7. In view of the above, we are of the opinion that sufficient consensus exists for a referendum to be held on the basis of the principles of a new constitution for South Africa as proposed by CODESA. This would of necessity mean that the votes of the people in these states be counted separately, thereby meeting the terms of reference as quoted in the beginning of this motion in 1.1.4.(c).

## ADDENDUM I

Madam Chair, the Ciskei Government wishes to align itself with the proposal submitted by the Democratic Party yesterday.

That submission as we understand it sums it all. In general we agree with the sentiments expressed therein.

The question of the testing of the will of the people has already been decided by Sub-group 1 of Working Group 4 and there was sufficient consensus on the need of testing of the will of the people living in the so-called TBVC states by way of a referendum.

The Ciskei position has always been that on the concept of re-incorporation as such there is no need for the testing of the will of the people but it is indeed desirable that when the constitutional principles have emerged the so called bottom lines have to be placed before the people so that we can find out from them as to whether they are prepared to be incorporated into a new South Africa based on such principles. As we understand the submission by the DP each state will count its votes separately and to us this seems logical and there is no racism implied in this if we understand this submission correctly.

22 April 1992

## Natural Peoples Party.

It is understandable that all of us are anxious to move towards a democratic South Africa in as short a time as possible and are eager to wipe out the mistakes of the past.

However, we have to be cognisant of the fact that the coming into being of the T.B.V.C States brought about many legal consequences. Their sovereignty and existing constitutional and other structures cannot be canceled without specific juristic acts. This aspect of re-incorporation can only be performed by the parties who originally participated in its creation, so one should not read anything sinister into Clause 4 of the South African Government's Submission.

Furthermore madame chair my party wishes to associate itself with and support the proposal of the Democratic Party. We feel that once the constitutional proposal are set out unequivocally and irrevocably then the T.B.V.C states will be able to see their way clear to either opting for, or rejecting incorporation into the new South Africa. Those who are already firm in their conviction that they favour incorporation will be making assurance doubly sure and confirming their position.

SUBMISSION OF THE A-N-C  
ON THE FUTURE OF THE TBVC STATES

22ND APRIL 1992

1. INTRODUCTION

The ANC has considered the stage reached by Working Group 4, the work done by the 4 Sub-Committees as well as the report of the Rapporteurs dated 21 April 1992.

The ANC is deeply concerned that the process of creating a united, non-racial, non-sexist, democratic S A envisaged in the Declaration of Intent adopted at CODESA I, may be derailed by the position of the S A Government.

The ANC rejects the contention of the S A Government that the words "united" and "undivided" referred to in the Declaration of Intent exclude the TBVC States and that United S A only refers to the 4 existing provinces of the R S A.

The Transkei, Venda and Ciskei are amongst the parties who have signed the Declaration of Intent. The Declaration also provides for the participation of the TBVC States in the "... drafting of the texts of all legislation required to give effect to the agreements reached in CODESA.

Clearly the parties envisaged that the CODESA process will eradicate apartheid and all apartheid structures.

Indeed, in the period leading to CODESA I the issue of the participation of the TBVC States was discussed and resolved in favour of their participation. In this regard we remind this Working Group of the following provisions in the Declaration of Intent:



declare our solemn commitment:

"to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia"

- a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

Of crucial important too is the provision in the Terms of Reference of Working Group 4 which reads as follows:

AND WHEREAS the parties recognise the need to provide 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.

Accordingly we cannot now reopen the issues resolved prior to and at CODESA I

The implication of the S A Government position is serious. It means that the people in the TBVC States will not be allowed to participate in the Transitional and Constitutional Making process. The S A Government is asking CODESA to put the stand of legitimacy on a system that stands condemned by the entire International Community and for which it has never been able to win legitimacy.

In addition the process to be followed for possible reincorporation as proposed by the S A Government is equally

unacceptable. It is in conflict with the Declaration of Intent and the Terms of Reference for Working Group 4 and is designed to undermine the role of CODESA in this process

In the view of the ANC all the participants have a duty to ensure that the process of democratization of S A is not delayed or derailed. We appeal to all parties, in particular the S A Government to adopt a positive attitude which will ensure that a united, non-racial, non-sexist, democratic S A is realised in the shortest possible time. We accordingly appeal to all parties to support the proposals outlined herein.

2. IMMEDIATE RESTORATION OF S A CITIZENSHIP

It is the view of the ANC that CODESA II agreements should provide for S A Citizenship to be restored to the people of the TBVC States without delay. The effect of this would be that people of the TBVC States would be able and empowered to take part in all transitional and constitution making process.

This course will have advantage that the Sovereignty of the TBVC States will be unaffected and no de-scaling of status will be necessary. In the same way, the S A Government is not being asked to dissolve itself in the initial place of Interim Government. The same must therefore apply to the administration of the TBVC States. Not only will the restoration of citizenship redress the gross historical injustice, it will also facilitate the CODESA process to move forward.

3. NO TESTING OF THE WILL FOR REINCORPORATION

In the light of recent developments it is clear that the testing-of-will as proposed by the S A Government, is no

longer necessary and therefore a futile exercise. Firstly, Transkei and Venda consider it unnecessary. Secondly, the Boputhatswana Government has reserved its position and has indicated that it will decide on its attitude in its own time and in its own way.

It appears that the demand that each of the TBVC States embark on the process of testing the will of its people is designed to frustrate, if not to deprive, these people of the right to participate in all the transitional and constitutional processes.

#### 4. THE PROCESS OF REINCOPORATION

Reincorporation is not a single event but a process and in the view of the ANC, CODESA agreements should provide for the various steps in the process. Appropriate legislative measures will have to be identified and drafted. This process must, take into account, inter alia, the following:

- 4.1 citizenship to be restored immediately as outlined above.
- 4.2 steps in the interim arrangement which will be in tandem with the recommendation of Working Group 3 will have to be identified.
- 4.3 participation in the Interim government processes by the Administrations of the TBVC States shall form part of such arrangements.
- 4.4 the stage at which legal reincorporation takes place must be identified.
- 4.5 there is a need for harmonisation of legislation, orderly sorting out of financial arrangements, unfinished contracts etc in the transitional phase. Thus, during this period bi-lateral discussions between the TBVC States and the S A Government may take place on such issues as may be identified and supervised by CODESA. There shall be report-back to the Working Group.

5. FUTURE OF THE SUB-COMMITTEE

The ANC proposes that sub-committees 1 and 2, having taken their tasks as far as possible, should now disband and that Sub-committees 3 and 4 be reconstituted to complete their original tasks as well as the tasks described in 4 above.

6. The Terms of Reference of 1.1.4 of Working Group 4 requires the Working Group to consider strategies to keep the people of the TBVC States fully informed especially to avoid unfortunate misunderstandings.

The ANC proposes that immediate steps be taken in this regard, e.g. Voice of CODESA as agreed and the issue of a weekly publication for distribution in the TBVC States.

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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 THE WORKING GROUP AT ITS NEXT MEETING.

**MINUTES OF THE MEETING OF WORKING GROUP 4 (FUTURE OF THE TBVC STATES) HELD AT THE WORLD TRADE CENTRE ON TUESDAY 21 APRIL 1992 AT 10H00 AND ON WEDNESDAY 22 APRIL 1992 AT 09H30.**

PRESENT ON 21 APRIL 1992: Delegates and advisors (See Addendum AA)

SN Sigcau (Chair)

S Albertyn (Secretary)  
M Durrheim (Minutes)

**1 Opening by Chairperson**

The delegates and advisors were welcomed by the chairperson.

**2 Agenda**

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

**3 Adoption of minutes**

The minutes of the meeting of WG 4 of 30 March 1992 were adopted.

**4 Matters arising**

4.1 The SA Government objected to the content of point 5.1 viz. "WG 3 had pointed out in the joint meeting that if there is a delay in reaching consensus in WG 4, WG 3 would go ahead and make decisions regarding interim arrangements for the TBVC states" as this implied a possible interference by WG 3 with WG 4 and its Terms of Reference. The chairperson stated that the matter would be further discussed by WGSC 4.

4.2 It was agreed to delete the second sentence of point 5.2.2.

**5 Position statements from each of the TBVC states and the SA government**

5.1 The chairperson reported that the TBVC states apologised for the late submission of their revised position statements. This had prevented the circulation of the position statements to delegations prior the meeting.

5.2 Each TBVC state's position statement and that of the South African government was then read out to the meeting (Copies are attached marked Addenda B - F).

It was agreed to adjourn the meeting to give delegates time to consider the position statements. The rapporteurs were requested to use the time to compile a report on the position statements.

## 6 Presentation by rapporteurs on position statements and discussion thereof

- 6.1 The report by the rapporteurs was circulated and read out to the meeting. A copy of the report is attached marked Addendum G.
- 6.2 Transkei, Venda and Ciskei agreed that the rapporteurs report correctly reflected their positions.
- 6.3 Bophuthatswana recorded that its current position paper should be read together with its previous statements.
- 6.4 The South African government said that wanted the wording of question 1, the second last sentence in paragraph two, to reflect that it would abide by the terms of reference of working group 4. On question 2 of the report it suggested that the last question be deleted. On question 4, the first sentence be amended to read " Working Group 4 has up till now insisted that restoration of citizenship and reincorporation are inextricably linked ...."
- 6.5 Discussion ensued where delegations clarified the position statements.
- 6.6 The DP submitted a written proposal (a copy is attached marked Addendum H) which was read out to the meeting. The DP argued for the holding of a referendum which would test the support for the new constitutional proposals drawn up by Working Group 2. At the same time the people of the TBVC states would have the opportunity to express themselves regarding re-incorporation of the respective states into South Africa. This would resolve the difficulty of holding separate referenda in each of the TBVC states while ensuring the view of the people of the TBVC states are tested. The process would also given legitimacy to the Codesa proposals.

## 7 Adjournment

The chairperson proposed that the meeting be adjourned until 09h30 on Wednesday 22 April 1992 in order to give delegations time to further examine the various reports and proposals submitted to the meeting. The meeting was adjourned at 16h00.

### *Continuation of WG 4 meeting on Wednesday 22 April 1992*

PRESENT ON 22 APRIL 1992: Delegates and Advisors (see Addendum AB)

SN Sigcau (chair)

S Albertyn (secretary)

M Durrheim (minutes)

## 8 Opening by Chairperson

Delegates and advisors were welcomed to the meeting. The chairperson reported that she had received notice from the ANC, Ciskei and the NPP that they would be tabling statements/proposals at the meeting.

9 **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.

10 **Discussion of Proposals**10.1 **Democratic Party Proposal**

The DP motivated their proposal contained in the document they had presented to the meeting on 21 April 1992 (marked Addendum H).

The Ciskei Government tabled a statement aligning itself with the DP proposal (see Addendum I).

The NPP also tabled a statement associating itself with and supports the DP proposal (see Addendum J)

There was discussion over whether or not the DP proposal that the referendum be based on the constitutional principles to be presented by WG 2 amounted to an extension of the mandate given to WG 4.

10.2 **ANC Proposal**

A statement by the ANC was presented to the meeting (see Addendum K).

Delegations questioned the ANC on their statement and the proposal was debated at length.

10.3 **The following states expanded upon their position statements:**10.3.1 **The Bophuthatswana Government made the following points:**

10.3.1.1 The ANC's proposals on dual citizenship should be seriously considered

10.3.1.2 The issue of re-incorporation raises two questions:

- the principle of whether or not to re-incorporate:  
each of the TBVC states has already stated their position on re-incorporation and testing the will of the people
- at what stage to re-incorporate:  
all states have set conditions for re-incorporation, although the conditions differ. Therefore the issue is meeting the conditions laid out by the states for re-incorporation.

10.3.1.3 Once these principled issues on re-incorporation have been decided upon, WG 4 can address the question of whether there is sufficient consensus on when and how to test the will of the people. This is where the DP proposal becomes useful.

10.3.2 The Venda Government reiterated that the desire for re-incorporation had begun before Codesa and that it wants to be part of the entire Codesa process.

10.3.3 The SA Government made the following points:

- 10.3.3.1 the SA Government is opposed to passing a unilateral act in order to re-incorporate any of the TBVC states as the taking of independence by each of the TBVC states was not done unilaterally.
- 10.3.3.2 in order to address the uncertainty regarding whether or not WG 4 would be exceeding its mandate if it accepted the DP proposal, there should be consultation between the working groups.
- 10.3.3.3 the SA Government is unable to endorse the view contained in point 2.3 of the DP proposal viz. that all delegations have no objections in principle with the desirability of re-incorporation.
- 10.3.3.4 the SA Government position statement dated 7 April 1992:  
- point 1 states that it is up to each individual TBVC state to opt for re-incorporation or otherwise  
- point 2 makes it clear that the will of the people in each TBVC state should be tested (the preamble to Terms of Reference of WG 4 was referred to).
- 10.3.3.5 the definition of what was meant by 'South Africa' was clarified.
- 10.3.3.6 the SA Government would not accept participation of another government in an interim government.

10.4 It was agreed that the meeting should adjourn to allow the delegations the opportunity to consult their principles on the proposals submitted.

10.5 It was further agreed that the rapporteurs be requested to draw up a document in which the ('bottom line') positions of the respective TBVC states regarding the issues pertaining to re-incorporation be clearly set out. The report should synthesize both the position statements, the DP and ANC proposals, and the views expressed in the meeting by delegations. This document will be made available to delegations prior to the next meeting of WG 4. The rapporteurs noted that their brief required them to move beyond their normal function.

11 **Future of sub-groups**

It was agreed that the work of sub-groups 3 and 4 will continue and that the future of sub-groups 1 and 2 will be decided at the next meeting of WG 4.

12 **Date and time of next meeting of WG 4**

It was agreed that the next meeting of WG 4 will take place on Monday 27 April. The meeting will commence at 11h00 in order to give delegations time to study the report by the rapporteurs.

13 **Closure**

The meeting was closed at 13h00.



## ADDENDUM AA

## PRESENT ON TUESDAY 21 APRIL 1992:

Party/Organisation	Delegates	Advisors
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	BE Keikelame DW Schoeman	JJ Tlholoe
Ciskei	N Nogcantsi BR Tokota	GF Godden BC Silivama
Democratic Party	JA Jordaan EK Moorcroft	N Olivier C Simkins
Dikwankwetla Party	SP Matla S Manyane	MJ Molapo DA Thejane
IFP	FT Mdlalose VT Zulu	B Anderson NJ Ngubane
IYP	JL Mahlangu JS Mabena	MS Mahlangu PZ Mashiane
INM	DZ Makhubela JM Matsana	HA Motaung ND Mokoena
Labour Party	T Abrahams J Douw	S Verveen W Whyte
NIC/TIC	P David NG Patel	G Singh
National Party	JHW Mentz P Farrell	R Radue PC McKenzie
NPP	M Govender S Naidoo	A Ramalu BP Jaglal
Solidarity Party	MF Cassim N Singh	AS Akoob K Chetty
SACP	T Mtintso S Mufamadi	L Nyembe S Ngonyama
SA Government	RF Botha AT Meyer	D Auret G Croeser
Transkei	M Titus LM Bengu	WG Makanda

UPF

LM Mokoena  
NM MalekaneJM Nonyane  
ER Maponya

Venda

S Makhuvha  
SE MoetiRR Sumbana  
N Nefale

XPP

C Khosa  
ML NkunaTB Shibambu  
TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

## ADDENDUM AB

## PRESENT ON WEDNESDAY 22 APRIL 1992:

Party/Organisation	Delegates	Advisors
ANC	A Nzo M Phosa	B Mabandla D Omar
Bophuthatswana	JJ Tlholoe DW Schoeman	
Ciskei	N Nogcantsi BR Tokota	
Democratic Party	EK Moorcroft N Olivier	C Simkins
Dikwankwetla Party	SP Matla S Manyane	DA Thejane
IFP	VT Zulu NJ Ngubane	B Anderson
IYP	JL Mahlangu MS Mahlangu	PZ Mashiane
INM	DZ Makhubela JM Matsana	HA Motaung ND Mokoena
Labour Party		
NIC/TIC	P David NG Patel	G Singh
National Party	JHW Mentz P Farrell	GC Oosthuizen PC McKenzie
NPP	M Govender S Naidoo	A Ramalu BP Jaglal J Bachu
Solidarity Party	MF Cassim N Singh	AS Akoob TS Barnabas
SACP	T Mtintso L Nyembi	S Ngonyama
SA Government	At Meyer CJ Streeter	CF Wheeler G Croeser
Transkei	M Titus LM Bengu	WG Makanda

UPF

LM Mokoena  
NM MalekaneJM Nonyane  
ER Maponya

Venda

S Makhuvha  
SE MoetiRR Sumbana  
N Nefale

XPP

C Khosa  
TB Shibambu

TW Tshabalala

Rapporteurs

G Budlender  
B Ngcuka  
GM Memela

## ADDENDUM B

RESTATEMENT OF CISKEI'S POSITION ON RE-INCORPORATION : CODESA  
WORKING GROUP 4 : 21 APRIL 1992

THE CISKEI GOVERNMENT WOULD WISH AGAIN TO RE-ITERATE ITS COMMITMENT TO THE CONCEPT OF RE-INCORPORATION INTO A DEMOCRATIC UNITED SOUTH AFRICA.

THE CISKEI GOVERNMENT IS CONVINCED THAT THIS COURSE OFFERS THE BEST OPPORTUNITY FOR A STABLE AND SOUND ECONOMIC DEVELOPMENT FOR THE CISKEIAN PEOPLE AND THAT IT WOULD NOT BE NECESSARY TO HOLD A REFERENDUM AMONGST THE CISKEIAN PEOPLE TO CONFIRM THIS COURSE OF ACTION.

SINCE CISKEI IS AN INDEPENDENT SOVEREIGN STATE IT WILL NOT BE IN A POSITION TO PARTICIPATE IN AN INTERIM GOVERNMENT OF ANOTHER STATE ie. SOUTH AFRICA WITHOUT FOREGOING ITS INDEPENDENCE STATUS. IT IS FOR THIS REASON THAT THE CISKEI GOVERNMENT HAS DECIDED NOT TO PARTICIPATE IN THE INTERIM GOVERNMENT.

THE POSITION OF THE CISKEI GOVERNMENT IS THEREFORE QUITE CLEAR. RE-INCORPORATION OF THE CISKEI INTO THE NEW SOUTH AFRICA CAN ONLY TAKE PLACE WHEN THE NEW SOUTH AFRICA HAS TAKEN SHAPE AND THE PEOPLE OF THE CISKEI KNOW WHAT THEY ARE GOING TO RE-JOIN AND KNOW THAT IN DOING SO THEY WILL BE BETTER OFF THAN THEY HAVE BEEN IN THE PAST.

THE CITIZENS OF THE CISKEI MUST MAKE SUCH AN INFORMED DECISION AT FREE AND FAIR ELECTION IN A CLIMATE CONDUCIVE TO PEACEFUL POLITICAL ACTIVITY. SUCH ELECTIONS CAN ONLY BE HELD WHEN THE NEW CONSTITUTION FOR SOUTH AFRICA HAS BEEN CLEARLY FORMULATED, INCLUDING THE BOUNDARIES OF THE REGIONS TO BE CREATED AND THE ENTRENCHED RIGHTS OF SUCH FEDERAL STRUCTURES, WHILE THE ELECTORAL PROCESS HAS TO BE IN PLACE.

VENDA GOVERNMENT

SUBMISSION TO WORKING GROUP 4 OF CODESA

REINCORPORATION OF VENDA AND PARTICIPATION IN CODESA ACTIVITIES.

The Venda Government being a signatory to the declaration of INTENT and having participated in all Working Groups of CODESA since January 1992, would like to continue to be involved and to participate in all phases and activities of CODESA. Venda specifically demands to participate from the first phase of the interim Government to the final stage where it eventually would have been reincorporated. The Venda Government sees no reason to descale into a national State before participating in the first phase of the interim Government.

The Venda Government is a participant in CODESA and therefore regards the other participants as equal partners in the process. No one participant should have the right to dictate to the other about its fate.

The legal implications which are to be addressed are in terms of the South African legal system and they should be addressed by common understanding in order to create a new Democratic Country. It is not impossible to agree to change the laws to suit any situation.

The Venda Government therefore wishes to indicate that it should have an opportunity to participate in all processes of CODESA, including all the phases of the interim government, as it is, because in the final analysis, it is ready to be incorporated into the New Democratic South Africa.

Venda would like to be involved in the creation of the envisaged New South Africa and in the making of its constitution.

It rejects the notion of descaling as a prerequisite for participation in the interim government of the united New South Africa.

## TRANSKEI GOVERNMENT

## ADDENDUM TO TRANSKEI'S WORKING GROUP 4 INPUT TO CONVENTION FOR A DEMOCRATIC SOUTH AFRICA (CODESA)

The original position of Transkei was vividly set out under the contribution made by Working Group 4 on future of TBVC States on a document presented by Transkei delegation to Codesa Working Groups on 6 February 1992. In the said document it was spelt out that the "desirability or otherwise of the re-incorporation of such States" cannot in our view be separated from the notion of testing the will of the people concerned regarding re-incorporation or otherwise of the TBVC States by acceptable democratic means. The whole process of re-incorporation has as its starting point the testing of the will of the people.

After the historic speech of the 2nd February 1990 by President de Klerk Transkei formed a committee representing 159 organisations existant in Transkei. This committee was charged with the responsibility of collecting the views of the people on the possibility of re-incorporation into a new South Africa. A draft referendum decree was published and all Transkeian citizens and other interested parties in Southern Africa were afforded an opportunity to express their opinions. The result of this was that instead of expressing views on the desirability or otherwise of holding a referendum an overwhelming majority expressed the desire for Transkeians to be restored South African citizenship and for Transkei to be re-incorporated into South Africa.

With the advent of Codesa, Transkei Government summoned a meeting of 59 organisations operating in Transkei, to discuss the invitation and the participation of Transkei Government at Codesa. At this meeting a Transkei delegation comprising of government and non-government officials was formed and given a mandate to participate at Codesa with a clear set of guidelines on each aspect of their participation.

Transkei has all along been firm on the question of testing the will of the people under the aegis of Codesa. However, the government has recently seen it fitting to sound the views of its citizens on the same issue in the light of events taking place at Codesa, and the government had to be guided by the views of the people.

A joint meeting of the 159 member referendum committee and the 59 organisations which mandated Transkei participation at Codesa was summoned to consider the necessity of holding a referendum on the question of re-incorporation into South Africa and the restoration to Transkeians of South African citizenship. The said meeting was held on 13 April 1992 at which it was overwhelmingly resolved that a referendum was no longer a requirement for the Transkei to join the new apartheid free South Africa.

Transkei delegation has henceforth been mandated to revise the original position as we hereby do regarding the testing of the will of the people. Transkeians want restoration of their South African citizenship which they claim was taken away from them without consultation. Transkei intends to be part of the negotiations at Codesa right up to the elections and installation of an elected Interim Government/Constituent Assembly at which stage re-incorporation can take place.



WORKING GROUP 4BOPHUTHATSWANA POSITION PAPERPARTICIPATION IN AN INTERIM GOVERNMENT1. PERSPECTIVE

Participation in interim arrangements is only possible once finality is reached regarding the ultimate outcome of the negotiations, and specific details regarding interim arrangements are known. From the attached figure it is evident that this stage has not been reached. In fact, it transpires that Working Group 4 is awaiting more details from Working Group 2, ...who in turn, awaits progress on interim arrangements at Working Group 3, ...who in turn is now expecting Working Group 4 to state their position on participation in an interim government. This completes a picture of one group waiting on the other for progress and is creating an unfortunate trap, while unfair demands are levelled at the TBVC states to state their position without knowledge of the details of other proposals.

In addition it was also reported that the discussions and decisions of Working Group 3 were wrongly conveyed to Working Group 4 and that there is appreciation for the fact that a position statement by the TBVC states at this stage is not realistic.

This position statement by Bophuthatswana should be viewed within this context.

2. POSITION STATEMENT

Clarity regarding basic principles and values in a future constitution for South Africa, is considered a pre-condition for any final decision on incorporation or non-incorporation into South Africa. Our preferred options are well known, as well as our undertaking to consider any proposal that offers a future as good or better than the present situation. Bophuthatswana will not give up its sovereign and independent status until sufficient information about a future constitution and the will of its people has been thoroughly tested. Any suggestion that we should decide on joining an interim government without knowledge of the details of such an interim arrangement or future principles and values, is not acceptable.

It should furthermore be obvious that any constitution that is negotiated without Bophuthatswanas' involvement and participation, stand the danger of not meeting basic requirements that we consider important. The Bophuthatswana government should therefore be allowed the opportunity to actively participate and negotiate understandings and undertakings for a new dispensation, if it is the intention that it should ultimately become part and parcel of it. It is therefore equally important that negotiations on a future constitution continue at Codesa and not elsewhere until basic principles and values have been agreed upon. This stage has not yet been reached.

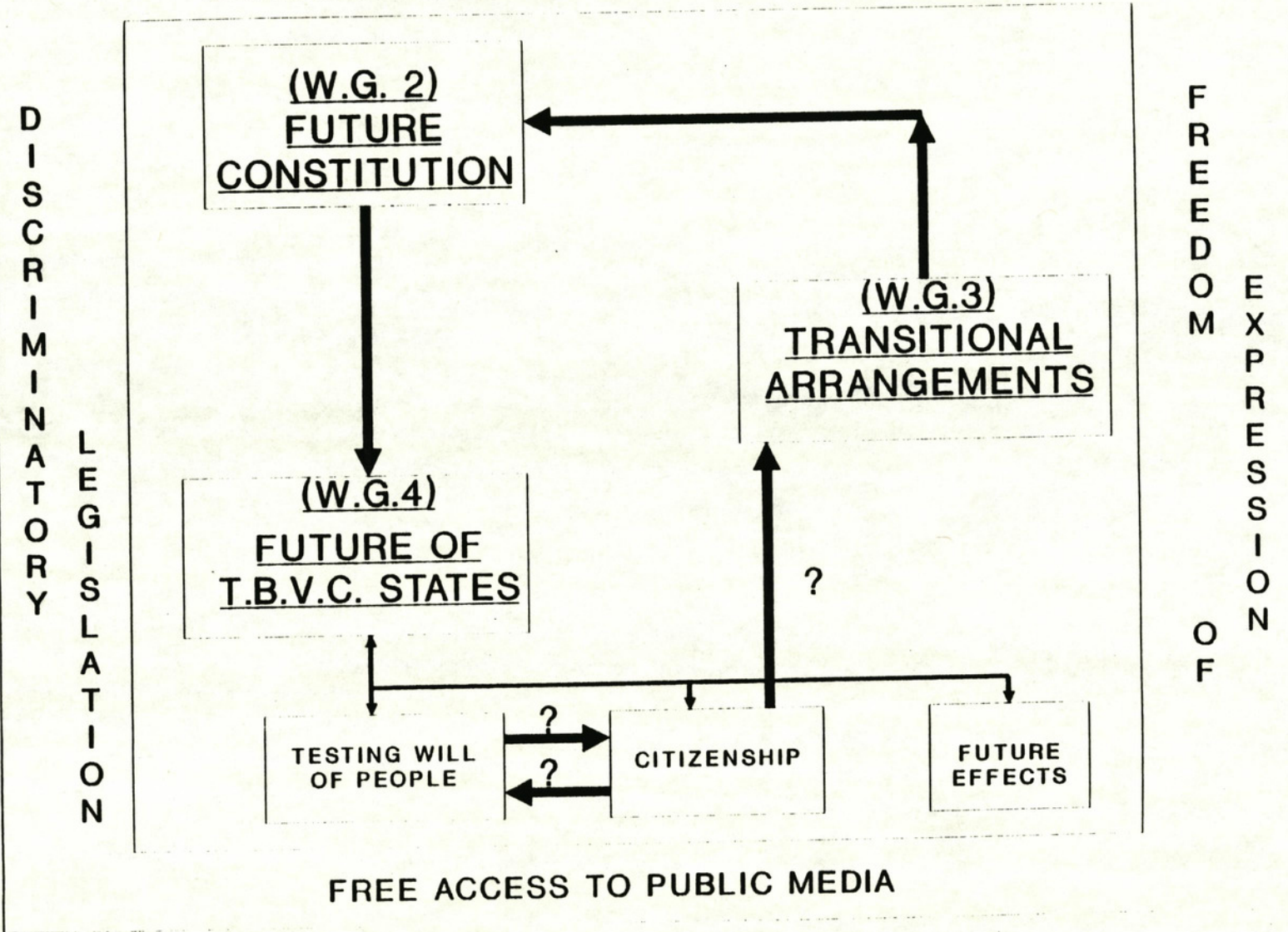
If it is the intention that further constitutional details are going to be discussed by structures resulting from interim arrangements, this cannot be supported. Any suggestion that Bophuthatswana should degrade its status as an independent state for the sake of being able to participate in interim arrangements and future constitution making, is therefore also not acceptable.

Whether Bophuthatswana participates in an interim government or not, the principle remains that all existing bi-lateral and multi-lateral arrangements should continue, unless with a specific, explicit agreement of all participants to these agreements and understandings.

The specific understanding that all decisions that affect Bophuthatswana must be taken with the full consent of the Bophuthatswana government therefore remain. The people of Bophuthatswana should in the end be allowed to take their own decisions as to their preferred choice for the future.

# CODESA WORKING GROUPS

## W.G 1 CREATING A FREE POLITICAL CLIMATE



ADDENDUM F

**POSITION STATEMENT OF THE SOUTH AFRICAN  
GOVERNMENT, 7 APRIL 1992**

**CODESA : WORKING GROUP FOUR**

**("Future of the TBVC states")**

**AGENDA ITEM 4, OF WORKING GROUP FOUR'S MEETING SCHEDULED FOR  
21 APRIL 1992 ("position statements from each of the TBVC  
states and the SAG")**

Position of the South African Government regarding the re-incorporation of the TBVC states in response to a consensus request of Working Group Four on 30 March 1992 regarding position statements.

The South African Government wishes to confirm that:

1. Within the framework of the Declaration of Intent and the Terms of Reference of Working Group Four and its Sub-groups, the right to choose whether or not to re-incorporate into South Africa under the present constitution or a transitional constitution or a final new constitution remains that of the Government and the people of each of the TBVC states.

2. The views of the people of the TBVC states on the above-mentioned alternatives must be tested democratically in a free, fair and meaningful process before re-incorporation can be decided upon.
3. While the South African Government has no objection to negotiate the re-incorporation of any of the states, the South African Government will not exert any pressure on, or agree to any railroading of, any state and its people to choose either re-incorporation or the retention of the status quo or any other constitutional alternative.
4. 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 following matters will have to be attended to in bilateral negotiations between the Government of the relevant state and the Government of the Republic of South Africa:
  - (a) terminating the sovereignty of the relevant state;
  - (b) transfer of the executive, legislative, judicial and administrative functions of the relevant state to constitutional structures which are compatible with the present or transitional or final new constitution of South Africa whichever may be in force at that stage; and
  - (c) restoration of citizenship.

WORKING GROUP 4

REPORT BY RAPPORTEURS - 21 APRIL 1992

1 The starting-point must be the terms of reference, which include the Declaration of Intent. Paragraphs 1 and 5a of the Declaration of Intent are of particular relevance to this Working Group. The Preamble to the Terms of Reference of WG4 provides a further set of agreed principles. Paragraph 1.1.4 sets out the questions of principle which have to be decided upon, and 1.1.5 sets out practical matters which have to be addressed if re-incorporation is decided upon in respect of any TBVC state.

2 From the presentations made by the various parties, various critical questions have emerged. These questions, and the positions of the TBVC and SA governments on them, are as follows.

3 Question 1:     The principle of re-incorporation

What is the attitude in principle to re-incorporation?  
If re-incorporation is to take place, at what stage should this be?

Ciskei, Venda and Transkei support the principle. Bophuthatswana has reserved its position until basic principles and values in a future constitution have been agreed to. The South African government attitude is that the decision is that of the Government and people of each of the TBVC states.

Transkei wants re-incorporation once there is an elected interim government/constituent assembly. Venda supports re-incorporation at some stage of the interim government. Ciskei wants re-incorporation once a new constitution, that is acceptable to the Ciskei, is in place. The Bophuthatswana position is as above. The South African government says that it is dependent on testing of the will of the citizens of a particular state and negotiations between itself and the respective government. This raises the question of the relationship between the negotiations at Codesa and bilateral negotiations.

4 Question 2:     Re-incorporation and interim government

What is the role of interim government? [This is a matter being debated by WG3, on which all parties are represented.]

Should the TBVC states participate in the interim government?

If a TBVC state is to participate in interim government, what implications does this have for sovereignty? Is participation consistent with continued constitutional independence?

Is the restoration of citizenship an alternative means of providing participation in interim government without immediate loss of sovereignty?

Venda and Transkei want to participate in the interim government. Ciskei does not want to participate in interim government because it wishes to retain its sovereignty, and it sees participation and sovereignty as incompatible. Bophuthatswana does not want to be part of transitional arrangements/interim government, but wants to be part of (separate) negotiations for a new dispensation, at Codesa, until basic principles and values have been agreed upon. The South African government's view is as reflected in paragraph 3 (in relation to Question 2).

5 Question 3:     The restoration of citizenship

Abandonment of sovereignty and 'de-scaling' carries with it the necessary consequence of restoration of citizenship. But is the restoration of citizenship dependent on prior re-incorporation (or on a decision to re-incorporate)?

Sub-group 2 agreed to the principle of restoration of citizenship. There are two views on the timing, as reported by sub-group 2. The only government which deals with this issue in its new presentation is Transkei, which states that citizenship should be restored immediately. This would mean dual citizenship while the questions of the timing and method of re-incorporation are debated.

6 Question 4: The testing of the will

Is the testing of the will necessary?

If so

- is a separate testing of the will necessary?
- what would constitute a testing of the will?
- what is the issue on which the will is to be tested - reincorporation, restoration of citizenship, or the acceptability of a new constitution?

If a TBVC government declares that it has tested the will in a manner which it deems adequate, will the SA government accept this, or does it reserve the right to prescribe the manner in which the will is to be tested?

The South African government has up till now insisted that restoration of citizenship and re-incorporation are inextricably linked, and that testing of the will on re-incorporation is also a testing of the will on restoration. In their current position statements, none of the TBVC states has linked testing of the will to the question of citizenship.

The Ciskei government attitude is that it is not necessary to hold a referendum on re-incorporation. The citizens of the Ciskei must make an informed decision at free and fair elections, which will only be held when a new constitution for South Africa has been clearly formulated.

The Venda government attitude (as set out in the report of sub-group 4) is that testing of the will on re-incorporation, and by necessary implication on restoration of citizenship, is superfluous.

The Transkei government attitude is that it has adequately tested the will on re-incorporation by a means of extensive consultations, and that no further testing is necessary. (As set out above, Transkei government supports immediate restoration of citizenship.)

The Bophuthatswana government wants a testing of the will of the citizens of Bophuthatswana on re-incorporation once there is sufficient information about a new constitution. It has not expressed itself on whether this can or should be separated from restoration of citizenship.

[It should be noted that the question of a separate testing of the will is one on which sub-group 1 deadlocked.]

7 In our opinion, the questions being dealt with by the sub-groups should be reconsidered in the light of the new positions and the developing debate. Sub-groups 1 and 2 have reported that they have gone as far as they can. We suggest that in the light of these developments, WG4 should consider whether sub-groups 3 and 4 should continue with their current terms of reference and structure. The options include the following:

7.1 The sub-groups should continue with their current terms of reference and structure.

7.2 The sub-groups should terminate their work at this stage, and be re-constituted to deal with some of the questions which have now emerged.

7.3 The sub-groups should be re-constituted as smaller expert committees, to make recommendations on these technical matters to the Working Group.

## ADDENDUM H

### PROPOSAL BY DEMOCRATIC PARTY TO WORKING GROUP 4 ON 21 APRIL 1992

1. In view of our terms of reference which state that:
  - 1.1.4. Specifically, but without vitiating the generality of the above to consider whether and how:
    - (a) -
    - (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.
  
2. We note that the submissions of the five relevant governments reveal commonality in the following respects:
  - 2.1 All delegations wish to continue their involvement with CODESA.
  - 2.2 All delegations reserve the right not to be dictated to by any other group (Paragraph 2 of Venda document).
  - 2.3 On the question of re-incorporation, all delegations have no objections in principle with the desirability of such a step.
  
3. On the question of testing the will of the people:

Two of the delegations, Ciskei and Bophuthatswana, have made it clear that their re-incorporation is conditional upon

  - (a) their participation in the drawing up of the constitutional principles within CODESA
  - (b) the final constitutional proposals meeting with their approval, that is, there will be a testing of the will of the people.
  
4. Transkei has indicated that it is satisfied that it has sufficiently consulted with its people.
  
5. Venda does not commit itself on this issue viz. testing the will in their submission.
  
6. The South African Government's position is that it is in favour of the testing of the will of the people in line with the terms of reference of Working Group 4. (See item 2 in SA Government position statement.)
  
7. In view of the above, we are of the opinion that sufficient consensus exists for a referendum to be held on the basis of the principles of a new constitution for South Africa as proposed by CODESA. This would of necessity mean that the votes of the people in these states be counted separately, thereby meeting the terms of reference as quoted in the beginning of this motion in 1.1.4.(c).



## ADDENDUM I

Madam Chair, the Ciskei Government wishes to align itself with the proposal submitted by the Democratic Party yesterday.

That submission as we understand it sums it all. In general we agree with the sentiments expressed therein.

The question of the testing of the will of the people has already been decided by Sub-group 1 of Working Group 4 and there was sufficient consensus on the need of testing of the will of the people living in the so-called TBVC states by way of a referendum.

The Ciskei position has always been that on the concept of re-incorporation as such there is no need for the testing of the will of the people but it is indeed desirable that when the constitutional principles have emerged the so called bottom lines have to be placed before the people so that we can find out from them as to whether they are prepared to be incorporated into a new South Africa based on such principles. As we understand the submission by the DP each state will count its votes separately and to us this seems logical and there is no racism implied in this if we understand this submission correctly.

22 April 1992

## Natural Peoples Party.

It is understandable that all of us are anxious to move towards a democratic South Africa in as short a time as possible and are eager to wipe out the mistakes of the past.

However, we have to be cognisant of the fact that the coming into being of the T.B.V.C states brought about many legal consequences. Their sovereignty and existing constitutional and other structures cannot be cancelled without specific juristic acts. This aspect of re-incorporation can only be performed by the parties who originally participated in its creation, so one should not read anything sinister into Clause 4 of the South African Government's Submission.

Furthermore madame chair my party wishes to associate itself with and support the proposal of the Democratic Party. We feel that once the constitutional proposal are set out unequivocally and irrevocably then the T.B.V.C states will be able to see their way clear to either opting for, or rejecting incorporation into the new South Africa. Those who are already firm in their conviction that they favour incorporation will be making assurance doubly sure and confirming their position.

SUBMISSION OF THE A-N-C  
ON THE FUTURE OF THE TBVC STATES

22ND APRIL 1992

1. INTRODUCTION

The ANC has considered the stage reached by Working Group 4, the work done by the 4 Sub-Committees as well as the report of the Rapporteurs dated 21 April 1992.

The ANC is deeply concerned that the process of creating a united, non-racial, non-sexist, democratic S A envisaged in the Declaration of Intent adopted at CODESA I, may be derailed by the position of the S A Government.

The ANC rejects the contention of the S A Government that the words "united" and "undivided" referred to in the Declaration of Intent exclude the TBVC States and that United S A only refers to the 4 existing provinces of the R S A.

The Transkei, Venda and Ciskei are amongst the parties who have signed the Declaration of Intent. The Declaration also provides for the participation of the TBVC States in the "... drafting of the texts of all legislation required to give effect to the agreements reached in CODESA.

Clearly the parties envisaged that the CODESA process will eradicate apartheid and all apartheid structures.

Indeed, in the period leading to CODESA I the issue of the participation of the TBVC States was discussed and resolved in favour of their participation. In this regard we remind this Working Group of the following provisions in the Declaration of Intent:

declare our solemn commitment:

"to bring about an undivided South Africa with one nation sharing a common citizenship, patriotism and loyalty, pursuing amidst our diversity, freedom, equality and security for all irrespective of race, colour, sex or creed; a country free from apartheid or any other form of discrimination or domination;

to set in motion the process of drawing up and establishing a constitution that will ensure, inter alia"

- a. that South Africa will be a united, democratic, non-racial and non-sexist state in which sovereign authority is exercised over the whole of its territory;

Of crucial important too is the provision in the Terms of Reference of Working Group 4 which reads as follows:

AND WHEREAS the parties recognise the need to provide 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.

Accordingly we cannot now reopen the issues resolved prior to and at CODESA I

The implication of the S A Government position is serious. It means that the people in the TBVC States will not be allowed to participate in the Transitional and Constitutional Making process. The S A Government is asking CODESA to put the stand of legitimacy on a system that stands condemned by the entire International Community and for which it has never been able to win legitimacy.

In addition the process to be followed for possible reincorporation as proposed by the S A Government is equally

unacceptable. It is in conflict with the Declaration of Intent and the Terms of Reference for Working Group 4 and is designed to undermine the role of CODESA in this process

In the view of the ANC all the participants have a duty to ensure that the process of democratization of S A is not delayed or derailed. We appeal to all parties, in particular the S A Government to adopt a positive attitude which will ensure that a united, non-racial, non-sexist, democratic S A is realised in the shortest possible time. We accordingly appeal to all parties to support the proposals outlined herein.

2. IMMEDIATE RESTORATION OF S A CITIZENSHIP

It is the view of the ANC that CODESA II agreements should provide for S A Citizenship to be restored to the people of the TBVC States without delay. The effect of this would be that people of the TBVC States would be able and empowered to take part in all transitional and constitution making process.

This course will have advantage that the Sovereignty of the TBVC States will be unaffected and no de-scaling of status will be necessary. In the same way, the S A Government is not being asked to dissolve itself in the initial place of Interim Government. The same must therefore apply to the administration of the TBVC States. Not only will the restoration of citizenship redress the gross historical injustice, it will also facilitate the CODESA process to move forward.

3. NO TESTING OF THE WILL FOR REINCORPORATION

In the light of recent developments it is clear that the testing-of-will as proposed by the S A Government, is no

longer necessary and therefore a futile exercise. Firstly, Transkei and Venda consider it unnecessary. Secondly, the Boputhatswana Government has reserved its position and has indicated that it will decide on its attitude in its own time and in its own way.

It appears that the demand that each of the TBVC States embark on the process of testing the will of its people is designed to frustrate, if not to deprive, these people of the right to participate in all the transitional and constitutional processes.

#### 4. THE PROCESS OF REINCOPORATION

Reincorporation is not a single event but a process and in the view of the ANC, CODESA agreements should provide for the various steps in the process. Appropriate legislative measures will have to be identified and drafted. This process must, take into account, inter alia, the following:

- 4.1 citizenship to be restored immediately as outlined above.
- 4.2 steps in the interim arrangement which will be in tandem with the recommendation of Working Group 3 will have to be identified.
- 4.3 participation in the Interim government processes by the Administrations of the TBVC States shall form part of such arrangements.
- 4.4 the stage at which legal reincorporation takes place must be identified.
- 4.5 there is a need for harmonisation of legislation, orderly sorting out of financial arrangements, unfinished contracts etc in the transitional phase. Thus, during this period bi-lateral discussions between the TBVC States and the S A Government may take place on such issues as may be identified and supervised by CODESA. There shall be report-back to the Working Group.

5. FUTURE OF THE SUB-COMMITTEE

The ANC proposes that sub-committees 1 and 2, having taken their tasks as far as possible, should now disband and that Sub-committees 3 and 4 be reconstituted to complete their original tasks as well as the tasks described in 4 above.

6. The Terms of Reference of 1.1.4 of Working Group 4 requires the Working Group to consider strategies to keep the people of the TBVC States fully informed especially to avoid unfortunate misunderstandings.

The ANC proposes that immediate steps be taken in this regard, e.g. Voice of CODESA as agreed and the issue of a weekly publication for distribution in the TBVC States.

**DRAFT AGENDA FOR MEETING OF WORKING GROUP 4 TO BE HELD AT THE WORLD TRADE CENTRE ON MONDAY 27 APRIL 1992 AT 11H00**

1. Opening by chairperson.
2. Adoption of Working Group 4 minutes of meeting of 21 and 22 April 1992.
3. Matters arising from the minutes of Working Group 4 meeting of 21 and 22 April 1992.
4. Presentation of rapporteurs report.
5. Discussion on rapporteurs report and the position statements of the states.
6. Discussing the future of sub groups 1 and 2.
7. Submissions received:
  - 7.1 ANC Women's League recommendation.
  - 7.2 Mafikeng Anti Repression Forum.
  - 7.3 Stinkwater Community Authority letter.
  - 7.4 Bafokeng Action Committee.
  - 7.5 Letter from Pule Peter Moate.
  - 7.6 Braklaagte Community
8. Closure

**THE SUB GROUPS WILL MEET AFTER THE MEETING OF WORKING GROUP 4. IF THE PLENARY SESSION OF WORKING GROUP 4 LASTS FOR THE ENTIRE DAY ON MONDAY 27 APRIL 1992, THE SUB GROUPS WILL THEN MEET ON TUESDAY 28 APRIL 1992.**