

**THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL EFFECTS OF
RE-INCORPORATION AND NON-INCORPORATION****BOPHUTHATSWANA POSITION PAPER****INTRODUCTION**

A discussion document by Bophuthatswana listed in detail the positive and negative effects of incorporation and non-incorporation. From the discussions it became evident that, although some participants disagreed emotionally, the factual basis is still overwhelmingly in favour of non-incorporation for Bophuthatswana. It is evident that proposals on re-incorporation will have to take care of these negative effects to make it worthwhile to consider this option realistically.

A draft report by die rapporteur for working group 4 listed the proposals made to date. This provided a useful basis for further discussions. This report did not take the Bophuthatswana discussion document into consideration, but this can now easily, with the "checklist" provided, be updated as follows:

1. RE-INCORPORATION

Bophuthatswana is still convinced of its preference for non-incorporation, but undertakes once again to consider and participate in every option which promises a future as least as good, or better than its present position. Whereafter the people of Bophuthatswana will be asked for their final decision in this respect. A detailed schedule of positive and negative effects of incorporation and non-incorporation on which assurances and clarity is requested, was presented for discussion. This list provides a basis on administrative, financial and technical effects to be considered.

2. RETENTION OF BUSINESS CONFIDENCE

Retention of business confidence is of primary concern. Existing incentive and promotion schemes should as a minimum be retained. The basic principle is that businesses should not be worse off as a result of any new dispensation decided upon.

The continuation of the free market mechanism and principles of private ownership and initiative should be guaranteed. An explicit undertaking not to nationalise or confiscate existing businesses or expropriate privately owned land should further be given.

If conflicting legislation is encountered, special arrangements should be entered into that will not disadvantage existing business enterprises. Legislation for the protection of labour relations and advanced dispute resolution procedures in operation should be allowed to continue unhindered, and not be replaced with inferior legislation. The same principle should apply to

other advanced protection and development of business legislation in operation. In general, existing legislation should continue to be in operation until it can be replaced by superior legislation and after appropriate compensation, where applicable, has successfully been negotiated.

This further implies that business people should be properly briefed from the beginning and that their complaints and fears should be successfully investigated and negotiated by an appropriate objective body.

In addition, further export promotion and industrial development incentive schemes should be allowed to promote local and foreign investments outside the PWV and other metropolitan areas.

Fiscal autonomy should be maintained and even decentralised further to lower order governments similar to the present situation with the TBVC states. The present tax harmonization and double taxation agreements in operation are sophisticated enough to be continued without any disruption in a future dispensation. This already provides more than enough supervision and control to be exercised by a Central Government.

2. DISPOSAL/TRANSFER OF ASSETS

All public assets should remain with the existing government structures until appropriate replacement structures have been developed. Thereafter these assets should become the property of the new first, second and third tiers of government.

After acceptance of re-incorporation, a moratorium should be placed on the sale and privatisation of all public assets, including assets presently belonging to South African government institutions. Commercialisation of public services is an advanced and improved way of managing public affairs on sound business principles and should be allowed to continue.

It is considered impractical and unnecessary to prepare detailed inventories of all state assets. No purpose could be served, and it is a time consuming and costly exercise. If it is considered appropriate for future management and administration to develop such an inventory, this should include an inventory of all public sector assets, also those in possession of self governing states and "own-affairs" administrations. Thereafter, a system should be in operation to continue the updating of such an inventory and provide for annual auditing of the records.

4. OPTIMAL USE OF EXISTING INFRASTRUCTURE

Existing infrastructure should be optimally utilised at all times. The best way to ensure this and not create any disruption, is to allow existing structures to continue the administration and use of all available infrastructure, until suitable alternative arrangements have been put into operation.

5. DEVELOPMENT PROJECTS

Again, not to create disruption or brake in continuity, it is best to allow existing structures to continue project identification, preparation and implementation according to existing planning and development programmes.

These development programmes to be gradually phased out and absorbed into new planning and development guidelines and programmes as they are formulated and put into operation by the new alternative arrangements that are developed. Central control over these projects to be decentralised later to new regional and local structures, will disrupt the process twice and could have serious negative implications for the development effort in these areas.

As a basic principle, it should be acknowledged that the local community and people is better equipped to identify basic needs and projects for planning and implementation than any central government institution. Planning should be with the people and not for the people. Centralised planning is therefore not favoured at all. It is an outdated system that did not succeed anywhere.

The Development Bank of Southern Africa (DBSA) and KEOSSA should be urged to continue their concessionary project funding as before until suitable new structures have been put into place.

6. ADMINISTRATION DURING TRANSITION

Existing governments are best equipped and should be allowed to continue administration of all affairs in the interim, until suitable alternative arrangements have been put into operation to continue these actions uninterrupted. Administrative re-organisation should be designed, planned and put into operation as a priority project throughout government in a phased approach as to cause the minimum disruption and suffering to the people at all time. Existing employees should as far as possible be accommodated functionally in the new structure and existing non-racial structures in operation should not unduly be tampered with. Consultation with all employees should take place from the beginning to ensure that they are fully in the picture on all developments, and that their wishes and aspirations are taken care off. Again the principle should be that employees will not be worse off after re-organisation than before and that all employees will be compensated for any suffering experienced.

It is foreseen that only the minimum of functions presently with the TBVC states will ultimately revert to a central government, and that most functions will remain with regional and local governments. It therefore makes no sense to transfer the execution of these functions to a central government and then again back to regional/local structures at a later stage.

The governments of TBVC states should therefore continue without interruption until suitable alternative arrangements are in place. The notion of an interim government, only applies to the present South African government system and is not regarded a feasible or practical approach for the TBVC states. The people in the TBVC states must first decide on incorporation and thereafter put the necessary legislation through their existing National Assemblies, before these governments cease to exist. This can only be done once alternative structures/arrangements are in place to take over their present functions.

FUTURE ADMINISTRATION

Maximum devolution of decision making and decentralisation of authority and responsibility should be the principle whenever future functional responsibilities and administrative arrangements are decided upon. This should include the ability to formulate and pass appropriate legislation, and access to fiscal resources to meet all its functional responsibilities.

It is therefore reasonable to assume that most of the existing legislation and administrative responsibility will continue to be performed by future regional governments. It makes sense to keep responsibility with existing structures for transfer to the new governments, once they are established and in operation.

Advanced development initiatives, for example our unique approach towards training and development, should be promoted and recognised in future programmes and utilisation in economic planning.

FUTURE OF CIVIL SERVICE

Civil servants should retain their existing salaries, benefits and conditions of service. Existing Public Service administrations should ensure that employees are not disadvantaged as a result of negotiations and re-organisation actions. Staff recruitment and salary increases should continue as before until the present policy can be phased into newly formulated policies and procedures.

Note should be taken of existing administrations who applied sound recruitment and remuneration policies in the past. Staff to be absorbed into new structures should be according to a well planned and balanced approach that allows appropriate counselling and consultation with all affected employees. Proper negotiation and investigation machinery should be set up to investigate problems encountered. Retrenchments of employees and early retirements should be part and parcel of a total restructuring exercise of the total public service and should be designed not to disadvantage employees.

Care should be taken that pension benefits and schemes are properly managed and not eroded as a result of transfers and amalgamations with other schemes. Actuarial reports should all be updated and employees in healthy schemes should not be penalized in any way as a result of mismanagements by other schemes.

All principles and conditions that apply to public servants should also be applied towards employees from all para-statal and government supported institutions. These employees should be regarded as part and parcel of the total public sector fabric during all negotiations regarding their future.

TAXATION/PUBLIC FINANCE

All governments should continue their existing fiscal autonomy and access to sources of public funding as before, until suitable new arrangements are put in place. Note should further be taken of the insistence that fiscal autonomy should be maintained and specifically entrenched and guaranteed in a future constitution. The principle that whatever revenue source can be locally identified, should resort to that authority, should be agreed to and applied vigorously.

Central government should be given limited fiscal autonomy over affairs that concern the lower order governments. The present arrangements regarding tax harmonization and prevention of double taxation are considered sophisticated and adequate to form the basis of future fiscal relations between the central government and other lower order governments.

Specific arrangements and undertakings are required to keep available sources of revenue, or corresponding calculated amounts, available for the present governments until appropriate funding for regional governments have been finalised. The principle is again that the communities and people living in the affected regions should not be worse off as a result of future financial allocations than before. In addition, any new government should be in a better position than the existing position with regard to access to revenue sources to promote development in the region. Clarity is required regarding customs and excise transfers, budgetary assistance, compensations in terms of industrial concessions, Rand monetary funding agreements, individual, mining and company taxation and value added taxes.

Formulae on future financial transfers from central government to lower order governments should be negotiated to the satisfaction of all parties, and thereafter entrenched and guaranteed in the future constitution. The principle that future regions should be better off than before in terms of financial transfers should be reconfirmed and implemented in these formulae to be developed.

SERVICING AND REPAYMENT OF TBVC DEBTS

Servicing and repayment of debts should continue to be handled as part and parcel of a complete programme of future financial relations to be negotiated with the TBVC states. Recognition should be given to the fact that governments who applied sound financial management principles in the past are not penalised in these arrangements to be developed.

Any form of financial assistance to assist with debt repayments should, therefore, be matched by similar arrangements of compensation to other governments or future regional governments where these governments are absorbed.

It is foreseen that future regional governments will continue to be allowed to enter into loans and will have to accept responsibility for repayment of these loans, within overall policy guidelines to be negotiated by the future central government.

PRACTICAL ISSUES

- Suitable arrangements should be introduced to prevent the present violence, intimidation and labour unrest in South Africa from spilling over into the TBVC states. Undertakings should be given that any loss of revenue or situation of lawlessness not evident before, will appropriately be dealt with, and that these states will not be worse off as a result of their decision to be re-incorporated, than before.
- All existing bilateral and multi-lateral agreements and arrangements in force should be allowed to continue until they can be replaced by suitable other arrangements, or be phased out into the new arrangements.
- The existing valuable work done by Multilateral Technical Committees and Regional Liaison and Advisory Committees should be allowed to continue and be taken into consideration whenever new policies and arrangements are introduced.
- All para-statal and government supported institutions should be allowed to continue uninterrupted until new government structures are in place and suitable arrangements are in operations to continue the valuable work done.