

CONVENTION

FOR A

DEMOCRATIC SOUTH AFRICA

TRANSKEI'S INPUTS

TO BE PRESENTED TO CODESA

WORKING GROUPS

ON

06 FEBRUARY 1992

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INDEX

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<u>SUBJECT-MATTER</u>	<u>PAGES</u>
A. CREATION OF A CLIMATE FOR FREE POLITICAL PARTICIPATION	01 - 13
B. ROLE OF THE INTERNATIONAL COMMUNITY	14 - 17
C. GENERAL CONSTITUTIONAL PRINCIPLES	18 - 20
D. CONSTITUTION-MAKING BODY/PROCESS	21 - 22
E. TRANSITIONAL ARRANGEMENTS/INTERIM GOVERNMENT/ TRANSITIONAL AUTHORITY	23 - 32
F. FUTURE OF TBVC STATES	33 - 42
G. TIME FRAMES AND IMPLEMENTATION OF CODESA'S DECISIONS	43 - 48

WORKING GROUP 1

FIRST ASSIGNMENT

1. CREATION OF A CLIMATE FOR FREE POLITICAL PARTICIPATION

The apartheid system is, by its very nature, violent and is not, and never was, conducive to the creation of a climate for free political participation. For as long as that system obtains, no such climate will ever exist.

Therefore, the dismantling of apartheid and the installation of an interim government as soon as possible would, ultimately, be the most decisive step towards the creation of the desired climate for free political participation.

The present regime has no intention of voluntarily creating mechanisms for the realisation of so vital an objective. Although the apartheid State has the capacity and resources to stem the tide of violence sweeping our country, it has failed to do so, thus leaving victims and observers no option but to conclude that it is either a collaborator in the perpetuation of the violence or it has lost control over its security forces.

Therefore, this government, in either case, is clearly no longer fit to govern during this transition period and must give way to an Interim Government as soon as possible.

However, the process of creating a climate for free political participation would be greatly enhanced if:

1. The process aimed at creating a climate for negotiations is completed;
2. The security and socio-economic deterioration are addressed;
3. Rules are laid down to facilitate achievement of a level political playing field and free political participation.

1. COMPLETING PROCESS AIMED AT CREATING CLIMATE FOR NEGOTIATIONS

1.1 RELEASE OF POLITICAL PRISONERS (a)

The remaining political prisoners, who have been the subject of two agreements, namely, the Groote Schuur and Pretoria Minutes, between the South African government and the African National Congress, must be released without delay and no restrictions must be imposed on them.

In this regard, the South African government is called upon to desist from bogging down the process of their release subject to the submission of a lot of bureaucratic detail as has happened in the past two years.

The South African government is further called upon not to introduce its own interpretation to agreements reached on this matter.

1.2 RETURN OF EXILES (b)

The South African government is called upon to grant blanket categorising indemnity to all exiles and refrain from categorising as to who may or may not return.

Furthermore, returning exiles must be given protection from prosecution on their return.

.3 LAWS MILITATING AGAINST FREE POLITICAL ACTIVITY (c)

All laws that were designed to circumscribe political activity must be repealed, including municipal by-laws that have the same effect.

. ADDRESSING SECURITY AND SOCIO-ECONOMIC DETERIORATION

.1 POLITICAL INTIMIDATION (d)

Democracy rests on the freedom of every individual to choose which political party or organisation to join and/or vote for in the case of elections.

In this regard, all political parties or organisations must recognise this fundamental principle of democracy and thus refrain from using any kind of intimidation to make people support, join or vote for their parties or organisations. With regard to ruling parties, membership or non-membership of the party should not be the determining factor for people to exercise their rights and get their dues.

We further submit that an independent body to monitor compliance with this principle must be set up and that such a

body should receive and investigate complaints against political parties or organisations and also have a disciplinary/punitive code for those that violate it.

.2 TERMINATION OF THE USE OF MILITARY AND/OR VIOLENT MEANS OR THE THREAT THEREOF OF PROMOTING THE OBJECTIVES/VIEWS OF A POLITICAL PARTY OR ORGANISATION (e)

All political parties or organisations must refrain from using violence or the threat thereof to promote their objectives and views. In this regard, the carrying of dangerous weapons in political gatherings and rallies must be prohibited by law, and the relevant authorities in the SA-TBVC and self-governing States must legislate accordingly as a matter of urgency. The media should also play a positive role in the efforts to uproot the culture of violence in South African political life. The apparent readiness of the SABC-TV to display warriors brandishing lethal traditional weapons and inflicting severe harm on innocent people has instilled panic in communities, served to inculcate respect for violence and to extremely lessen the value of human life.

Ruling parties in the SA-TBVC and self-governing States must not use their security forces to undermine other parties or organisations. In conflict situations the security forces must act impartially at all times. Recent history shows

that security forces have taken sides in such conflict. in a way that has left the communities at a disadvantage and consequently we propose that an independent body be set up to ensure compliance with the non-violence principle by all political parties or organisations.

Such a body would also have to monitor the role and conduct of the security forces in the execution of their duties.

.3 IMPLEMENTATION OF PEACE ACCORD (g)

The Peace Accord should be consolidated and all political parties or organisations must commit themselves to it. The Accord, we believe, must then be undertaken as a Codesa project and its implementation monitored by an independent body to ensure compliance with its provisions and codes by all.

.4 PREVENTION OF VIOLENCE-RELATED CRIME AND MATTERS GIVING RISE THERETO (h)

It is our firm belief that for as long as the climate of violence prevails we cannot hope to eliminate crime related to it. Furthermore, such crime is fuelled by deteriorating socio-economic conditions in certain, primarily black, sections of society and it feeds on the violent climate that exists.

In line with the Peace Accord, prevention of violence-related crime will be achieved only when a violence free climate exists and there is, simultaneously, a concerted effort to address the socio-economic conditions of the people.

.5 COMPOSITION AND ROLE OF THE SECURITY FORCES (i)

It is our view that, in the light of the role that has been played by the security forces both historically and in the recent past, where they were and still are implicated in the violence against our communities, they need to be re-organised, re-orientated, re-trained and positively motivated in order to instil impartiality, professionalism and commitment to non-sectarian conduct in the pursuit of their duties. Such a process should involve the dismantling of those structures within the security forces which have been fomenting violence - the C C B, Askaris, Battalion 32, Koevoet etc., and the weeding out of all elements responsible for the perpetration of violence by way of prosecution and/or retirement.

It is our view that foreign forces must be repatriated to their home countries as we cannot afford to have people bearing arms but whose role is undefined and who have no commitment to the country.

Furthermore, there is a need to look into the whole question of the security forces in South Africa with regard to their composition, re-organisation and re-orientation, role in the transition, mergers of the various armies including the liberation armies. We, therefore, propose that a sub-committee be set up under this working group to look into these issues and make proposals.

Such a sub-committee would also have to look into how the re-orientation of the security forces can be done as we believe that those who trained to defend apartheid are not suitable for this task.

.6 IMPROVEMENT IN SOCIO-ECONOMIC CONDITIONS (m)

On the socio-economic face, norms and standards of distributing financial resources equitably to address social imbalances must be laid down and mechanisms for their implementation set in motion. For this purpose, consultation with the communities through their structures will be of vital importance. This is an important part of the process of creating a peaceful climate because when these are not addressed, they lead to conflict which may, and often does, result in violence.

2.7 FOSTERING SPIRIT OF TOLERANCE AMONGST POLITICAL PARTIES (n)

All political parties or organisations must commit them-

selves to:

- fostering a spirit of tolerance amongst themselves;
- inculcating a culture of tolerance amongst their followers.

To promote this culture political leaders must refrain from insulting and villifying other political leaders and their parties or organisations but must confine themselves to opposing or attacking their policies.

Furthermore, objective media reportage, especially that of the State will greatly facilitate this culture. The tendency of the State media to permit one party to villify the other without the latter being given a chance to respond to scathing attacks on it on the spot militates against endeavours to promote political tolerance.

8 EDUCATIVE AND INFORMATIVE CAMPAIGNS (o)

Political leaders, parties or organisations must include, as part of their political programmes, a campaign to educate their followers on political tolerance, the workings of democracy and the processes of Codesa.

LEVELLING POLITICAL PLAYING FIELD AND FREE POLITICAL PARTICIPATION

1 POLITICAL NEUTRALITY OF, AND FAIR ACCESS TO, STATE MEDIA (f)

The South African State media as we have it today does not and cannot contribute to the creation of a climate for free political participation because:

- it serves the narrow interests of the National party and its government;
- reports selectively and favourably on some political forces whilst distorting the viewpoints of those forces it does not favour;
- prescribes what listeners and viewers can be exposed to because of its monopoly of the air-waves;
- contributes negatively to the political climate in this country.

The same is true of the TBVC States.

In the light of all the above and the fact that we are trying to create a climate for free political activity and debate, where all political forces can have fair access to

State media there has to be restructuring of the SA-TBVC Broadcasting Corporations' Boards of Directors to make them broadly representative and to divest them of their ideological character.

For the purpose of bringing about structural changes to South African State media, we propose that there be a sub-committee whose brief will be:

- to look into the operation and control of State media in South Africa;
- receive submissions on media related matters; and
- make proposals on the necessary changes.

2 FUNDING OF POLITICAL PARTIES (j)

Governments and administrations in the SA-TBVC and self-governing States must:

- refrain from using the State machinery to boost the ruling party's political image;
- refrain from utilising State resources to further the political programmes of their ruling parties, but those parties must rely on party funds like their rivals who are not part of any government machinery;

- refrain from using State funds to finance selected political parties favourable to them.

PUBLIC FACILITIES (k)

All available public amenities like public halls, stadiums, schools, State media, etc., must be freely utilised by all political forces without any discrimination.

4 PROVISIONS FOR PARTIES TO ESTABLISH OWN MEANS OF MASS COMMUNICATIONS (l)

There should be statutory provisions enabling political parties to establish and maintain their own means of mass communication. Such a guarantee becomes important against the background of stringent laws that have been in place to control publication and which were used for censorship.

.5 ACCESS TO POTENTIAL VOTERS (p)

All parties must be free to form branches all over South Africa inclusive of the TBVC and self-governing States without harassment, intimidation, detention, restriction or any other form of repression.

Those administrations dealing with rural communities must refrain from using chiefs and headmen as instruments to

stifle the free political participation of those communities and of their political opponents.

These chiefs and headmen must, in terms of their administrative duties, be neutral irrespective of their own individual political affiliation.

COND ASSIGNMENT

ROLE OF THE INTERNATIONAL COMMUNITY

e apartheid legacy, with the reality that one political party
s been in power for more than forty years, and the level and
tent of the South African conflict, which at some state threat-
ed to consume the whole Southern African region, have presented
; with a situation where it will be difficult for South Africans
, resolve the conflict on their own for, inter alia, the follow-
ing reasons:

- there is a very high level of distrust between the liberation forces and the government;
- agreements that have been entered into bilaterally by the government and the liberation movement have not worked, for the reason that as there was no outside party the interpretation of those agreements has varied;
- the advantageous position of a party that has been ruling for over four decades, while it is at the same time a party to the negotiations.

It would, therefore, in our view, greatly assist the negotiation process if the international community through its various bodies were to be involved and play a role that will have been assigned

by South Africans themselves.

those international bodies that have already participated in Codesa namely:-

- The United Nations;
- The Organisation of African Unity;
- The European Community;
- The British Commonwealth; and
- The Non-aligned Movement,

should continue to play a part in Codesa. The Frontline States, which have vital political and economic interests in the resolution of the South African conflict, should also be invited.

We envisage the following possible roles that the international community can play:

.1 OBSERVER STATUS

The international community should continue to be observers in Codesa.

.2 MONITORING

The international community should have a presence of officials who will do overall monitoring of the negotiations process in South Africa.

n so far as this area of involvement by the international community the following roles can be assigned to it:

- that it be part of an independent body set up as proposed in 2.1 of Assignment One;
- that it be part of an independent body set up as proposed in 2.2 of Assignment One;
- that it be part of an independent body set up as proposed in 2.3 of Assignment One;
- that the sub-committee on security forces consider a role for the international community on the issue.

le further submit that the international community should be involved in the monitoring of the transition to democracy in South Africa in the following possible ways:

- that it plays a role of mediating and arbitrating in the event of deadlocks and where there is disagreement over the interpretation of agreements;
- that it provides a peace-keeping force or supervise transitional security mechanisms;
- that it monitors elections and advise as to whether

they were free and fair.

le, however, wish to state that whatever role is played by the international community should be determined by what happens in the negotiations process.

WORKING GROUP 2

FIRST ASSIGNMENT

GENERAL CONSTITUTIONAL PRINCIPLES

INTRODUCTION

odesa is an exercise for the search of mechanisms for the introduction of a democratic South Africa. The search will naturally come to an end when a new constitution has been formulated and adopted by the people of South Africa. It can only properly be formulated and adopted by the people through the democratic election of representatives in a body such as a Constituent assembly. These will be persons who will be entrusted by South Africans with the task of making the constitution.

PROPOSED GENERAL CONSTITUTIONAL PRINCIPLES

The constitution should enshrine the following principles:-

- a) The creation of united, democratic, non-racial and non-sexist State. This envisages a situation where there would be no homelands, the people serving in organs of power will be democratically elected without regard to the race, colour or creed of the persons concerned and where there will be no discrimination on the basis of sex.
- b) The constitution shall be the supreme law and guarded over

by an independent, non-racial and impartial judiciary. The constitution shall have an entrenched Bill of Rights which embodies the protection and guaranteeing of universally accepted fundamental human rights and freedoms while ensuring that the apartheid legacies of inequality and deprivation are addressed by affirmative action.

- c) The separation of powers between the legislature, executive and judiciary with appropriate checks and balances.
- d) The election of government in free, fair and regular elections based on the principle of universal and equal suffrage on a common voters' roll on the basis of one person one vote. There will be a multi-party democracy with the right to form and join political parties. The basic electoral system shall be that of proportional representation.
- (e) The diversity of languages, cultures and religion of the people shall be acknowledged.
- (f) The recognition and acceptance of the role for traditional leaders at national, regional and local levels of administration.
- (g) There shall be a legal system that will guarantee equality of all.
- (h) A democratic South Africa shall respect the rights, sover-

eighty and territorial integrity of all countries and pursue
a policy of peace, friendship and mutually beneficial co-
operation with all people.

ASSIGNMENT

CONSTITUTION-MAKING BODY/PROCESS

Principles of democracy demand that as far as is practicable the introduction of a democratic establishment must be done by democratic means. For any constitution to enjoy the support of the people, and thereby rendered legitimate, it must be formulated by people who have been duly mandated by the electorate.

Accordingly the only legitimate forum for the formulation of a constitution is a Constituent Assembly. It will be made up of persons who are elected by the people of South Africa on the basis of one-person one-vote on a non-racial common voters' roll. All the people of South Africa, homelands included, will be eligible to vote and be voted for.

All political parties shall be free to canvass support for their constitutional models and to field candidates of their own. There shall be proportional representation of groups participating in the Constituent Assembly.

The deliberations in the Constituent Assembly shall be concluded within a specified period of time. Upon adoption and promulgation of the constitution the Constituent Assembly will disband and parliamentary elections will be conducted in terms of the new constitution.

When the constitution has been formulated by a democratically elected Constituent Assembly on a non-racial basis there shall be no need for the holding of a referendum.

TRANSITIONAL ARRANGEMENTS/INTERIM GOVERNMENT/TRANSITIONAL AUTHORITY

1. Form of Interim Structure.

Transitional Arrangements, Interim Government and Transitional Authority in reality mean the same thing. The differences are only academic.

Thus, it is recommended that there be established an INTERIM GOVERNMENT to rule the country and oversee the process of transition to a new Constitution for South Africa.

2. Justification/Preamble.

Accepting that the RSA Government (National Party Government) cannot be a CODESA participant and referee at the same time;

Recognising that CODESA is in reality part of a process of transferring power from the minority to the majority;

Recognising and Accepting that the governing of the country - South Africa - during the period of transformation is of cardinal importance and cannot thus be kept in the hands of

the minority or section of the South African population;

Accepting that the Interim Government must be structured such that it is acceptable to the people of South Africa;

Accepting that CODESA, being a multi-party forum representing the majority of the people of South Africa, is the only structure with adequate representative standing to establish an Interim Government; and

Accepting that the proposed Interim Government will be a government of national unity and reconciliation;

Now, therefore, the Transkei delegation proposes that the Interim Government must:-

2.1 Be endowed with sovereignty/supreme authority to enable it to be effective and also taking into account that it shall be required to:-

2.1.1 Supervise the process of electing the Constituent Assembly;

2.1.2 Take full and effective control of the security forces, particularly that there is irrefutable evidence that the majority of the people of South Africa believe that sections of the said forces are involved in certain

acts of violence and intimidation within South Africa.

It must be accepted that such acts of violence have the effect of undermining the whole process of transformation of the South African society and the majority of South Africans have no confidence in the security forces as currently structured.

2.1.3 Supervise the administration of the TBVC States until the process of their reincorporation is finalised.

2.1.4 Perform all the functions of Government until the finalisation of a new Constitution and the eventual installation of a new Government in South Africa.

3. The Structuring of the Interim Government

3.1 Body to cause the Establishment of the Interim Government

It is strongly recommended that CODESA should cause the Interim Government to be established.

Modus Operandi / How

Transkei proposes that, to head the Interim Government, CODESA must appoint an Administrator and an Executive Council.

3.2.1 Appointment of an Administrator:

CODESA must appoint the Administrator. Such appointee need not necessarily be an individual from one of the participants. An outside person can also be appointed at the discretion of CODESA.

3.2.2 Appointment of the Executive Council:

Each CODESA participant, provided that such participant has signed the Declaration of Intent, should provide one person to serve in the Executive Council.

Executive Council Members shall also serve as Executive heads of the various Departments of the Interim Government.

3.2.3 It is important to record that the Adminis-

trator takes all decisions in Council.

3.2.4 State Departments:

The establishment of an Interim Government necessitates that Government Departments in the RSA must be restructured and as a consequence of such restructuring, the following Departments are recommended:

3.2.4.1 Finance: To administer all financial and budgetary matters.

3.2.4.2 Defence: To take over the functions of the current RSA Department of Defence.

(NOTE: WG 1 proposals on TBVC security forces).

3.2.4.3 Police: To take over the function of law enforcement and general Police functions.

3.2.4.4 Prisons: To administer prisons services.

3.2.4.5 Foreign Affairs and Information:
To supervise the formulation and implementation of foreign policy

with a view towards ensuring the promotion of the transformation process; and to provide information services internally and externally with the same goals.

- 3.2.4.6 Home and Constitutional Affairs:
To perform the normal duties of the Home Affairs Department and to see to the preparation of the necessary infrastructure for the elections of the future South Africa starting from the election of the Constitution-making body.
- 3.2.4.7 Trade & Industry: To promote proper trade and industrialization of South Africa.
- 3.2.4.8 Agriculture: Normal duties of a Department of Agriculture.
- 3.2.4.9 Public Works: To provide support services in all public works within South Africa.
- 3.2.4.10 Education: To provide educational

services during the transition period.

- 3.2.4.11 Manpower: To facilitate the interaction of employer/employee relations throughout the country.
- 3.2.4.12 Health: To provide health services.
- 3.2.4.13 Transport: To provide transport services and to facilitate private sector involvement in transport services.
- 3.2.4.14 Audit: To ensure the efficient and proper application of public funds during the transformation phase. This Department should also take over the audit function in the TBVC and self-governing States.
- 3.2.4.15 Forestry and Environmental Affairs: To provide for the proper maintenance and upkeep of the forests in the country together with the proper protection of the environment.

- 3.2.4.16 Water Affairs: To provide for the protection of water and related issues.
- 3.2.4.17 Posts and Telecommunications: To provide posts and telecommunication services.
- 3.2.4.18 Public Service Commission: To be in charge of all matters concerning the Public Servants.
- 3.2.4.19 House of Delegates: To administer the structures presently falling under the House of Delegates.
- 3.2.4.20 House of Representatives: To administer the structures presently falling under the House of Representatives.
- 3.2.4.21 Self-Governing States: To administer all Self-Governing States.
- 3.2.4.22 TBVC States: To administer the TBVC States.

General Comments/Recommendations.

4.1 It is strongly recommended that all Departments should facilitate the eventual reconsolidation of all divisive Apartheid Structures such as the Tricameral Structures on the one hand and the homelands (Self-governing and independent) on the other into a unified South Africa.

4.2 The establishment of sectoral Departments (House of Delegates, House of Representatives, TBVC and Self-governing States) is actuated by the following considerations.

4.2.1 These structures are a reality even though undesirable.

4.2.2 They are providing essential services to the communities they serve. They also employ a considerable number of people and should thus be maintained until such time as suitable alternative arrangements have been identified and implemented.

4.2.3 The guiding principle is that the lives of the affected people should be as minimally affected as possible.

2.4

It is recommended that the Interim Government should rule by decree and the tricameral Parliament must dissolve together with Homeland Parliaments and other legislative authorities in independent and self-governing homelands.

CODESA

INTERIM GOVERNMENT

ADMINISTRATOR-IN-COUNCIL

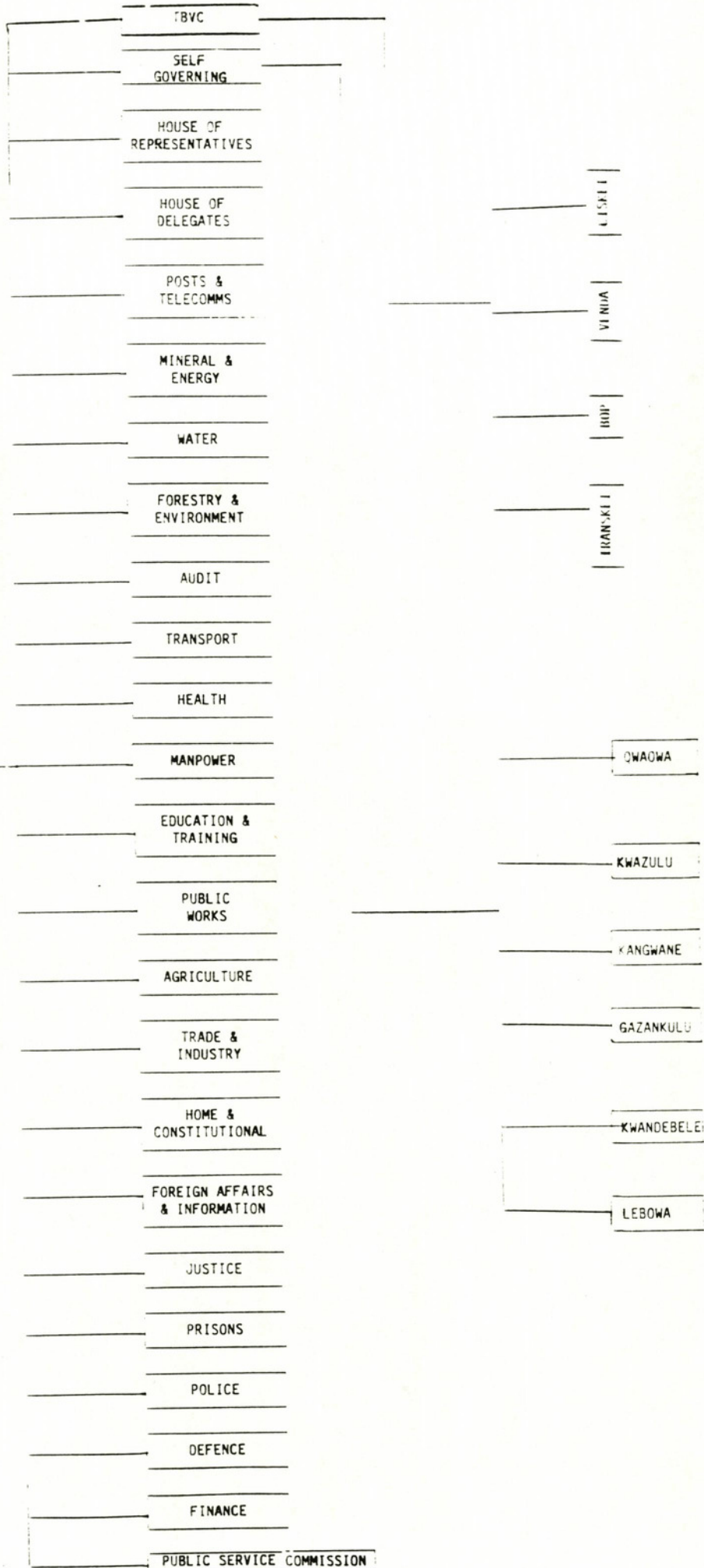


FIGURE OF TBVC STATES

BACKGROUND

The advent of the Homeland System led to the fragmentation of South Africa along ethnic and racial lines with the attendant inequalities in the distribution of land and all other resources. What is peculiar about the homeland policy is that Blacks are seen as disparate national entities whilst Whites are grouped as one, irrespective of their historic origin. This division of Blacks is based mainly on language differences, yet linguistic differences among the Africans are much smaller than those among the Whites. This is nothing else but a pseudo-scientific way of camouflaging the principle of divide and rule. This is the policy which could be said to have a bearing even on the inter-tribal strife we have today.

We have evidence even to-day of how politics of separation have affected black people - the worst example being in education. In 1954 Dr Verwoed who we know to be the Father of Separate Development, had this to say about Black/African education in parliament of that year - that it should stand with both feet in the reserves and should be based on tribal organisation. He added that there was no place for the African in the White community "above the level of certain forms of labour", and he condemned the

ating system of education as having "misled the African by showing him greener pastures of European Society in which he was allowed to graze" (for part of the above paragraph see University of Transkei Re-incorporation Seminar 1990 - Dr W.M. Mootsi, Page 11, first paragraph).

The subject of Transkeian independence has been a bone of contention not only at home but abroad before and after its advent. The hot debate it elicited at its conception has started all over again. In 1974 a referendum was purported to have been conducted on the future constitutional status of the country and most Transkeians believe the method used was more prescriptive than democratic and the segment of the Transkeian nation whose views were sought was very tiny to say the least and therefore grossly unrepresentative as only the views of Tribal and Regional authorities and a few associations existing at the time were canvassed, when each individual should have been allowed to express his/her will through the ballot box.

It is an open secret that Transkeians have always identified with the struggle for liberation in South Africa and treated this country as an integral part of South Africa without envisioning secession of any kind either by manipulation, skillful diplomacy or forced decision. Even during the time of Parliament in Transkei - politicians there never saw their independence as an end in itself but as a platform from which to canvass the final liberation of Blacks in the rest of South Africa. Many Transkeians are internationally renowned for their vehement opposition to, and

ing virulent attack on, the apartheid system which has
ed in the balkanisation of South Africa.

these emergent States became independent, they were never
ically recognised by either the OAU or the United Nations.
the eyes of the international community these States were
ing else but the spawns of apartheid.

the whole process of democratisation it is only logical that
apartheid crumbles and a new order takes place these cita-
of apartheid should also crumble, and that the way out
ould be re-incorporation.

THE TERMS OF REFERENCE

One cannot address all the items on the terms of reference for
Working Group 4 until intensive studies and research have been
concluded. In respect of some of these, like in other Working
Groups, sub-committees will soon have to be appointed to provide
inputs that will lead to well reasoned findings and recommenda-
tions to Codesa. Coming to the specific items - 1.1.4 of the
terms of reference - our delegation is of the view that:

1.1.4(a) A sub-committee will have to look into all the statutes
that gave rise to each of the TBVC States and analyse the conse-
quences of reincorporation if this should be opted for by the
citizens concerned.

(b), (c) & (d) 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 reincorporation has as its starting point the testing of the will of the people. It is true that in some of these States the people have sent signals of their willingness to go back to South Africa. This is true of quite a number of those people who are members and supporters of the various liberation movements. With the exception of a few success stories the majority of the people in these States have seen how financial constraints and a dependence on South Africa amid the shouts of South African taxpayers have limited development.

Through non-recognition the TBVC States have been denied access to international aid and money markets because they are regarded as an integral part of South Africa.

In Transkei for instance it is unlikely that the majority of the people will be against re-incorporation. What is of common concern and importance now is how to measure that opinion. For posterity, this all important step must be executed in such a way that should future generations not find the New South Africa meeting, or rising to, their expectations there would be great security in the knowledge that as a matter of historical record the views of the people were tested.

paper delivered by Velaphi Vuyo Walter Duba at the University of Stellenbosch on the reincorporation of the independent/territorial States the following views were made regarding how to measure public opinion on this issue:

"Perhaps what we should concern ourselves with is how to measure that opinion. Many methods may be used. One method may be to solicit organisational or party opinion from the groups that operate in these TBVC States. The opinion held by the majority of these organisations or parties would be the determining factor. However, the basic flaw of this method is that not all the people of these TBVC States belong to the organisations or parties. The opinion, therefore, will not be representative enough.

The other method would be to submit the question of reincorporation to the vote of the people, i.e. a referendum. It can either be imperative, controlling or facultative as long as at the end of it all it obliges the government to act in accordance with its outcome. This method seems more favourable. Every TBVC State citizen who is entitled to vote, irrespective of organisational or party affiliation or non-affiliation will be given a chance to express his or her opinion through a ballot paper. The outcome will be the opinion of the TBVC citizens. Further it will afford the politicians an opportunity to test how the people in general will behave during the oncoming elections. Further, and

most important, it will afford the people of the TBVC States an opportunity to shape their own future democratically.

Some argue that there is no time left for such an involved and expensive method. Be that as it may, referenda on re-incorporation may simultaneously be conducted in the TBVC States.

Referenda are methods used under international law. Although the TBVC States are neither de facto nor de jure recognised as States under, or (by) subjects of, international law, it will be wiser and more proper to use international law principles when dealing with the issue of re-incorporation."

We as a Transkei delegation on Working Group 4 fully endorse the views expressed above.

If testing the views of the people is undertaken as a Codesa exercise, on the flip side of the coin it would help people in the States where the current authorities do not favour re-incorporation, to voice an opinion.

Thus we see the whole exercise taken and financed as a Codesa exercise which could be scheduled to take place concurrently in all the TBVC States. As this exercise has a direct bearing on Transitional or Interim arrangements it must be tackled expeditiously using mechanisms which achieve results as soon as it can

possibly be arranged. Mechanisms to keep people informed will also have to be devised.

A suitable climate to ensure that political parties, interest groups and individuals canvass freely for their supporters to make their choice wisely and without intimidation, will be desirable. That should be seen as the beginning of a democratic process and free political participation. In preparation thereof use will have to be made of an unbiased media as a source of information.

1.1.4(e) A sub-committee will have to be established to look into ways and means of retaining business confidence in relation to existing investments in the TBVC States.

1.1.4(f) Land transfers by South Africa to the TBVC States should be suspended until the will of the people is known regarding re-incorporation. It is assumed that as a result of reincorporation there will be a re-determination of boundaries along geographic and economic lines.

1.1.4(g) Where re-incorporation has been opted for there should be common South African citizenship for all.

1.1.5(a) Proposals for re-incorporation into South Africa will

be guided by findings and recommendations of a sub-committee which we consider is needed for this.

- 1.1.5(b) Transitional arrangements in those States which will have opted for re-incorporation should be brought about in such a way as to ensure that the lives of the affected people are not disrupted. The existing administrative machinery should remain intact until suitable substitute arrangements are in place.
- 1.1.5(c) Working Group 4 will have to liaise closely with W/G 5 regarding the time frames and related processes.
- 1.1.5(d) The question of disposal/transfer of assets of TBVC governments should be looked into by a sub-committee.
- 1.1.5(e) A sub-committee is proposed to investigate and make proposals on the optimum use of existing infrastructure in these States.
- 1.1.5(f) A sub-committee is also proposed to investigate and make recommendations on reviewal of development project priorities.
- 1.1.5(g) Close liaison is required between delegates on Working Group 4 and those in Group 3 to ensure that there will be good administration during the transition.

5(h)

(i)

Appropriate measures and steps will have to be taken to ensure that in the process of re-incorporation of a TBVC State, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum.

1.1.5(j)

The exact form of authority in the TBVC territories will have to be co-ordinated with the proposals of Working Group 3.

1.1.5(k)

The question of harmonisation of legislation and taxation should be handled by a sub-committee which is hereby proposed.

1.1.5(l)

The sub-committee proposed to address issues raised in 1.1.4(a) could be tasked to make proposals regarding the orderly termination of bilateral and multilateral agreements and treaties affecting these States.

1.1.5(m)

All assets and debts of the affected States shall be surrendered to the proposed Interim Government subject to such conditions as will be agreed upon.

1.1.5(n)

The question of ensuring public accountability was well canvassed when we addressed the testing of the will of

the people under 1.1.4(c).

1.1.5(o) As in 1.1.5(1) this aspect could be tasked to the sub-committees recommended under 1.1.4(a).

THE FRAMES AND IMPLEMENTATION OF CODESA'S DECISIONS

TRANSKEI'S DRAFT POSITION PAPER

INTRODUCTION

The universal discrediting and condemnation of apartheid underlines the illegitimacy of the present apartheid government. The declared intentions of the regime to move away from apartheid, however, do not mean that the present government and its constitution is legitimate. Its illegitimacy remains hence the need for a transfer of power from the minority to a democratic and legitimate government of the majority.

As participants in Codesa have committed themselves in terms set out in the Declaration of Intent it is incumbent on each to ensure that proposals that are presented to the working groups are consistent with democracy and do not militate against the spirit and letter of the Declaration of Intent.

History has proved that transition from oppressive systems to democracy raises the expectations of the people to higher levels. This is particularly so to the deprived section of the population whose demands for change are accentuated by the contrast between the privileged few and the deprived majority. It must be under-

It is understood that this process of transition takes place at a time when our country is ravaged by a crisis of unprecedented proportions.

It is therefore very important for us to direct our efforts and resources in managing this process to meet these legitimate expectations whilst at the same time allowing the democratisation process to assert itself without artificial and unnecessary delays which are meant to bolster one's sectional interests which may be imposed on us.

What should be our guiding principle is the overall objective that we have set ourselves in the Declaration of Intent, to which we have committed ourselves, thus acknowledging that this objective represents the interest of the majority of the people of South Africa.

We, the Transkeian delegation, would therefore like to propose the following time frames and target completion dates for the whole of this process:-

2. TIME FRAMES

STRUCTURE	TASKS	TIME FRAMES
CODESA	Working Groups negotiate agreements on the basis of their terms of reference.	February 1992
	- Agreements adopted by full sitting of Codesa.	3-4 months

- Agreements drafted into Bills by Codesa sub-structures
- passed by tricameral parliament April-May 1992
- Codesa completes its work May 1992

INTERIM GOVERNMENT

- Interim Government takes off May 1992
- continues to govern as a sovereign government until a democratic government is installed. Sept. 1993

- Detailed negotiations on the question of re-incorporation and implementation as agreement is reached June-July 1992

- Campaign for elections
- Registration of Voters
- Elections for Constituent Assembly 30 Dec. 92

CONSTITUENT ASSEMBLY

- elects chair and establishes rules of procedure Dec. 1992/ Jan. 1993
- negotiates new constitution on the basis of constitutional principles agreed upon at Codesa. 3-4 months
- adopts a new constitution May 1993

FORMATION OF PARLIAMENT AND GOVERNMENT

- Constituent Assembly dissolves May 1993
- Election of new parliament 3-4 months
- Formation of democratic government
- Interim Government dissolves Sept. 1993

DEMOCRATIC - formal end of apartheid rule
GOVT.

3. IMPLEMENTATION OF DECISIONS

It is our firm belief that we have committed ourselves to the implementation of agreements reached at Codesa. Furthermore we believe that the agreements of Codesa should be binding on all including the non-participants.

This can be given effect to, if the present parliament in its current sitting enacts legislation which formally establishes Codesa as an institution of authority in order to accord its decisions legal force so that they are valid in the eyes of everybody including the present legislature. Agreements adopted by the full sittings of Codesa which need legislation, shall be drafted into Bills by Codesa sub-structures and legislated upon by the tricameral parliament. Where they clash with any Act of parliament, they should enjoy precedence over the said Act, and such Act should be repealed or amended accordingly.

We are proposing this process because it is our understanding that Codesa is at this stage the body which is part of the process of transformation, which means that any or all decisions related to the transformation will have to be taken only at Codesa until such time that the stage of Interim Government will have been reached.

A drafting sub-committee will have to be established to work on the following:-

- An Enabling Act

- In the main the Act would formally establish Codesa as an institution of authority so that its decisions are valid in the eyes of everybody including the RSA legislature. The Act would also define the mechanism through which decisions, in respect of which legislation is required, shall be legislated upon.

An alternative to the above would be the promulgation of a General Act to undermine all existing Acts that are in conflict with democracy.

- Status Acts

- The sub-committee would make an honest, objective and disinterested evaluation of the purpose, content, essence, and scope of the act with a view to recommending their repeal as a prelude to the re-incorporation of the TBVC States. It is expected that Working Group 4 will work on the details hereof.

The drafting sub-committee should also be given the task of

keeping a regularly updated comprehensive list of all the decisions and agreements of Codesa.

The Working Group Steering Committee will, in consultation with the Daily Management Committee, attend to all administrative (including co-ordination) tasks arising from the terms of reference.

After Codesa II the Management Committee and its sub-structures should co-ordinate the activities of Codesa and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa, and should ensure that up-to-date information in respect of progress made is disseminated to all Codesa participants, interested parties and authorities.

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