

The GAC also recommends that any Security Force established in the country, including the TBVC states, must begin to immediately redress race and gender imbalances both in their composition and functioning at all levels and introduce a Code of Conduct and norms which will create confidence among all the people of South Africa.

1.5 Working Group 01 Terms of Reference

The GAC proposes that Item 1.1.4 (c) of the Terms of Reference of Working Group 01 should be amended to read as follows:

"The amendment and/or repeal of any remaining laws militating against free political activity including the elimination of racial and gender discriminatory laws."

1.6 The Media in the Transition (Recommendation to Working Groups 01 & 03)

The GAC recommends that Working Group 1 and Working Group 3 agree upon a politically neutral Independent Communications Authority which shall:

- * include gender conscious persons;
- * facilitate media access for women;
- * monitor and discourage sexist programmes, articles and advertising;
- * encourage non-sexist, non-discriminatory publications;
- * ensure the participation of women on all media bodies, at all levels;
- * organise that radio and television programmes which educate women about the democratic process and their right to participate therein without fear of intimidation, are prepared as a matter of urgency

WORKING GROUP TWO

**Please note: The Working Group Two Report will
be found in Volume 2 of the Working Documents
for CODESA 2**

WORKING GROUP THREE



TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 3

ASSIGNMENT

Transitional arrangements/interim government/transitional authority.

1. Terms of Reference

WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS it has been agreed that a Working Group of Codesa should be appointed to consider the issue of interim government/transitional arrangements/transitional authority

IT IS RECORDED that the Working Group on transitional arrangements/interim government/transitional authority shall have the following terms of reference:

- 1.1. To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.
- 1.2 To identify the key issues, processes and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.



REPORT OF WORKING GROUP 3 TO CODESA 2

ASSIGNMENT

1. The assignment given to the Working Group was to consider the issue of interim government/transitional arrangements/transitional authority.

TERMS OF REFERENCE

2. To investigate, canvass all possibilities and their application and report upon all proposals and make recommendations with regard to the manner in which the country may be governed and managed until the introduction of a new constitution.
3. To identify the key issues, processes and problems that need to be addressed.
4. To identify areas of commonality and aspects where agreement already exists between participating delegations.

MODUS OPERANDI OF WORKING GROUP

5. The Working Group conducted its work according to the following agenda:
 - 5.1 Method of bringing into being of Interim Arrangements.
 - 5.2 Purposes, Objectives and Time Frames of Interim Arrangements with respect to the period leading up to an election.
 - 5.3 The Executive with respect to the period leading up to an election:
 - 5.3.1 Structure;
 - 5.3.2 Functions.
 - 5.4 The Legislature with respect to the period leading up to an election:
 - 5.4.1 Structure;
 - 5.4.2 Functions.
 - 5.5 Position of present RSA constitution with respect to the period leading up to an election.
 - 5.6 Position of the TBVC and self-governing states with respect to the period leading up to an election.
 - 5.7 Role of the International Community with respect to the period leading up to an election.
6. The Working Group invited all participating organisations to submit proposals regarding the Working Group's brief. All such proposals were duly considered by the Working Group during its deliberations.
7. Submissions received from outside parties relating to the Terms of Reference of the Working Group were also duly considered.
8. To take forward its exploratory discussion the Working Group appointed a Technical Committee, charged with addressing both details of consensus areas emerging and other areas needing discussion. The reports of the Technical Committee formed the basis of the agreements ultimately reached in the Working Group.

INTRODUCTION TO AGREEMENTS REACHED

9. As will appear from the agreements set out below, the Working Group was of the opinion that the transition to democracy involves two preliminary stages. The first stage is one during which preparations will be made for the holding of free and fair elections for an elected parliament under an interim

constitution with the power to draft in terms of agreed procedures a new constitution and to act as an interim legislature. This stage covers the whole of the period up to and including the holding of the elections. The second stage covers the period from the holding of the elections to the adoption of a new democratic constitution and the installation of a new government in accordance with the provisions of such constitution.

10. During the first stage there is a need for a multiparty transitional executive structure to function in conjunction with existing legislative and executive structures, subject to the possible consolidation of the tricameral parliament and the general/own affairs departments. The purpose of the transitional executive structure will be to prepare for and to facilitate the transition to a democratic constitution to which Codesa is committed and in particular, the achievement of a level playing field and a climate favourable to free political participation and the holding of free and fair elections.
11. Legislation, including an amended or transitional constitution, is necessary to make provision for appropriate structures of government which will meet the needs of both stages.
12. The following agreements were reached in regard to the first stage of the transition. These agreements and their implementation are dependent upon agreement being reached by Codesa in respect of the second stage of the transition, including an interim constitution, and general constitutional principles.

BASIC POINTS OF DEPARTURE

13. There is a need for a level playing field and a climate favourable to free and fair elections and free political participation. From this flows the requirement for statutory structures to prepare for the institution of the elected parliament under an interim constitution, and for these structures to focus on meeting these needs. In this regard particular areas of concern should be identified and there should be councils for the identified areas. Thereafter the tasks of each council should be described as well as the executive powers that it would require in regard to such tasks. It would also be possible for the councils to propose legislation. Since the councils must always act within the law, enabling legislation will be required.
14. It is possible that action may take place or legislation be considered outside the councils' defined areas of concern, which may have a negative impact on such areas. Councils should be able to identify these and within their powers require that such actions should not take place or legislation not be proceeded with.
15. There should be an overarching council. One of its tasks will be to familiarise itself with events and developments on the broader political scene in government and elsewhere. It will be able to intervene within its terms of reference if something is happening elsewhere that may negatively affect the levelling of the political playing field or the ensuring of a climate favourable to free political participation.
16. The terms of reference of the overarching body should be the facilitation of the transition to democracy including the levelling of the playing field and the ensuring of a climate for free political participation and for the conducting of free and fair elections, while the individual councils should have the same terms of reference but in specific fields. The powers, duties and functions vested in the transitional executive structure must be exercised in a manner that does not prejudge constitutional options.

THE TRANSITIONAL EXECUTIVE STRUCTURE

17. A transitional executive structure will be constituted by legislation agreed to by Codesa. It will have a multi-party character and will be vested with effective executive powers sufficient to fulfil its terms of reference. The structure will include an overarching council, herein referred to as the TEC (Transitional Executive Council).
18. The TEC will have sub-councils which will be given specific responsibilities in relation to areas of particular concern during stage one of the transition.

POWERS OF THE TEC

19. The TEC will be vested by legislation agreed to by Codesa with powers necessary to enable it to carry out its functions.
20. The TEC will have access to all information (including records of governments and other participants in the TEC) which may be required by it for the purpose of exercising its functions.
21. The sub-councils will report to the TEC and their decisions will be subject to confirmation/amendment by the TEC.
22. The TEC will be able to delegate powers to the sub-councils.
23. The TEC will be able to initiate or participate in negotiations in relation to issues which arise outside the defined areas of responsibilities of its sub-councils, if it is of the opinion that such issues could have an impact on the levelling of the playing fields or the creation and maintenance of a climate in which free and fair elections can be conducted.
24. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to proposed legislation including bills, proclamations and regulations, and of executive actions and contemplated executive actions of all participating governments/administrations that may impact on the levelling of the political playing field and on free political participation.
25. The TEC will be kept informed of and will be able to ask for and be entitled to receive information in regard to actions and contemplated actions on the part of participating political parties/organisations that may impact on the levelling of the political playing field and on free political participation.
26. If, when considering a proposed bill, proclamation, regulation or action, the TEC has reason to believe that it will have an adverse impact upon the maintenance of a climate for free political participation and in which free and fair elections can be conducted, or will disturb attempts to level the political playing field, it may in pursuit of its objectives, taking into account its necessity, require the government, administration or party not to proceed with it.
27. If the government, administration or party concerned is of the opinion that the necessity of the bill, proclamation, regulation or action in its area of application outweighs its adverse impact referred to in paragraph 26, the matter may be referred to the independent election commission.
28. In the defined areas of responsibility of sub-councils of the TEC, ministerial powers and discretions in so far as they affect the levelling of the playing fields, the creation of a climate conducive to free and fair elections or free political participation will be exercised in consultation with the TEC, or a sub-council to which this function is delegated by the TEC. Any disagreement arising out of the provisions of this paragraph may be referred by any participant in the TEC to the Independent Election Commission.
29. The decisions of the TEC made within its terms of reference and its powers as set out above will be binding on and will be implemented by all participants including governments/administrations.

INDEPENDENT COMMISSIONS

30. Independent Election Commission

- 30.1 There shall be an Independent Election Commission to be given the responsibility for the holding of free and fair elections. The Commission will be independent of the TEC and will consist of respected and suitably qualified persons drawn from a broad cross-section of the population, who will be appointed by the State President on the recommendation of Codesa.

30.2 The composition, powers (which shall include the power to resolve disputes as contemplated in paragraphs 27, 28 and 33 hereof) and functions of the Commission shall be enacted in legislation to be agreed to by Codesa.

31. Independent Media Commission: There will also be a Commission/Authority concerned with the media which will be instituted in accordance with recommendations made by Working Group 1. The composition, powers and functions of the Commission will be enacted in legislation to be agreed to by Codesa.

SUB-COUNCILS AND THEIR AREAS OF RESPONSIBILITY

32. Provision will be made in the empowering legislation to be approved by Codesa for the appointment of the following sub-councils. In this section 'regional governments' will be considered to include provincial administrations, self-governing and TBVC states which have elected to cooperate and work within the transitional executive structure.

32.1 Regional and Local Government

This sub-council will acquaint itself with developments in regional and local government; it will identify and take action in respect of aspects of regional and local government that may impact on the levelling of the political playing fields and on a climate conducive to free political participation; and it will facilitate the process towards a democratic dispensation at regional and local levels.

32.2 Finance

This sub-council will acquaint itself with developments in government finance on all governmental levels (including all existing governmental authorities, be they on the central, regional or local government level), to identify and take actions in respect of aspects in that field that may impact on the levelling of the political playing field and on free political participation, and to facilitate this process towards a democratic dispensation addressing the field of governmental financing including intergovernmental financing. In particular, one of the prime purposes of this sub-council shall be to monitor and/or frustrate any attempt by any governmental body to favour one or other political party or organisation.

32.3 Law and Order, Stability and Security

This sub-council will acquaint itself with developments in law and order, stability and security at all levels of government (central, regional or local) and concerning all other participants in the TEC; it will take steps to identify and to promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this sub-council will depend upon decisions taken in Working Group 1.

32.4 Defence

This sub-council will acquaint itself with developments concerning defence and military formations at all levels of government (central, regional or local) and including all other participants in the TEC; it will take steps to identify and promote all developments in this field which in its opinion may impact favourably upon the levelling of the playing fields and free political participation, and the creation as far as possible of a climate of peace and stability; it will take steps to identify and to prevent within its powers all developments in this field which in its opinion will impact adversely upon peace and stability, the levelling of the playing fields, free political participation or the transition to democracy. The functions of this sub-council will also depend upon decisions taken in Working Group 1.

32.5 Foreign Affairs

Due to the unique character of this sub-council there is a need for broader discussion concerning it.

32.6 Elections

There may be a need for an election sub-council to provide services and information to the Independent Election Commission. The TEC will decide whether or not there is a need for such a sub-council. The appointment of such a sub-council will not interfere in any way with the independence or powers of the Independent Election Commission.

33. In the event of any dispute arising as to whether any specific matter or sphere of action falls within the ambit of any of the above objectives, definitions and/or concepts, such dispute may be referred by any participant in the TEC or sub-council, as the case may be, to the Independent Election Commission.

POWERS OF SUB-COUNCILS

34. The legislation agreed to by Codesa will make provision for the sub-councils to be given all powers necessary to enable them to carry out their tasks effectively within their terms of reference.
35. Such legislation will include a provision empowering sub-councils to have access to all information (including records of governments/administrations and other participants in the TEC) which they may require for the purpose of carrying out their tasks within their terms of reference.

COMPOSITION OF THE TEC AND SUB-COUNCILS

36. The TEC will be appointed by the State President on the recommendation of Codesa. It will consist of at least one member from each of the governments/administrations who commit themselves to comply with and implement the decisions of the TEC and at least one member from each of the political organisations participating in Codesa, provided that such organisations also commit themselves to comply with and implement the decisions of the TEC. Should parties not presently in Codesa wish to participate in the transitional executive structure, the TEC will have the power to recommend at its discretion that the TEC be enlarged to accommodate them, provided that they commit themselves to comply with and implement the decisions of the TEC, and in that event, the State President will make the necessary appointment. The removal and replacement of members of the TEC, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties, will be made by the State President on the recommendation of the TEC.
37. A sub-council will have a multi-party character and will ordinarily consist of up to six members who will be formally appointed by the State President on the recommendation of the TEC. There may be special circumstances in which more than six members will be necessary for the proper functioning of a sub-council and the enabling legislation will make provision for this. The removal and replacement of members of a sub-council, and the temporary appointment of a person as a substitute for a member who is absent or unable to perform his or her duties will be made by the State President on the recommendation of the TEC.
38. Members of the TEC and its sub-councils will be full-time executives, will be provided with the infrastructure necessary to enable them to carry out their duties, and their conditions of service will be prescribed in the legislation under which they are constituted.
39. Members of the TEC may serve on one or more of the sub-councils, or may be given special responsibility by the TEC for matters outside the defined areas of responsibility of the sub-councils, within its terms of reference.
40. The size of the Transitional Executive Structure will be kept as small as is reasonably possible.

MEETINGS OF THE TEC AND ITS SUB-COUNCILS

41. All members of sub-councils, and Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of the TEC and its sub-councils, may attend meetings of the TEC by invitation and speak on matters affecting their sub-councils or departments, and should attend when matters relating to their sub-councils or departments are being discussed.
42. All Ministers of governments/administrations participating in the TEC whose departments may be affected by the functioning of a sub-council, and who are not members of the sub-council concerned, may attend meetings of the sub-council and speak on matters affecting the functioning of their departments, and should attend by invitation if a matter affecting the functioning of their departments is being considered.

HOW DECISIONS WILL BE MADE

43. The TEC and the sub-councils will endeavour to take their decisions by consensus. Where consensus cannot be achieved a majority of at least eighty per cent will be sufficient for a decision of the TEC, provided that if any government, administration or party is of the opinion that the necessity of the minority opinion prevailing outweighs the adverse impact referred to Paragraph 26, the matter may be referred for adjudication as contemplated in Paragraphs 27, 28 and 33.

STATES OF EMERGENCY

44. This issue will depend on decisions taken in Working Group 1.

IMPLEMENTATION AND TIME FRAMES

45. Subject to Paragraph 12 and agreement by Codesa to the provisions of this report, Codesa should ask its Management Committee (MC) to ensure that all outstanding matters required for implementation are resolved within agreed time frames. Once this is completed to its satisfaction, the MC is delegated the authority to activate and implement the agreements of this report.

OUTSTANDING MATTERS

46. Matters requiring further discussion are as follows:
 - 46.1 Composition of the TEC
 - 46.2 Composition of the sub-councils
 - 46.2 Composition, powers and functions of the Independent Election Commission
 - 46.4 Sub-council on foreign affairs
47. Legislation is required to give effect to the agreements contained herein.

CONCLUSION

48. In view of the fact that this report covers the first stage of the transition, further discussion is required concerning the details of stage two (as envisaged in paragraph 12).

WORKING GROUP FOUR



TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 4

ASSIGNMENT

Future of TBVC states.

1. Terms of Reference

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS the parties recognise the need to provide for 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

AND WHEREAS the reality of the current existence of a number of separate but parallel institutions such as different administrations, civil services, armed forces, police forces and judiciaries as well as differing laws in certain instances which presently exist in South Africa, and the TBVC states; calls for a re-evaluation of this situation

AND WHEREAS in the event of re-incorporation the need to ensure that the lives and livelihood of people in the affected territories shall not be subjected to any unnecessary disruption

IT IS RECORDED that the terms of reference of the Working Group on the future Re-incorporation of the TBVC states are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above to consider whether and how:
 - (a) to make recommendations to Codesa regarding the manner in which the constitutional status of the TBVC states may be affected by the outcome of negotiations within the framework of Codesa;
 - (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;
 - (d) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (e) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
 - (f) land transfers by South Africa to these states;

- (g) citizenship;
- (h) any other matters which the working group may consider relevant to its brief.

1.1.5 If re-incorporation is decided upon in respect of any TBVC state, matters that will need to be addressed include:

- (a) proposals for the re-incorporation into South Africa of a TBVC state;
- (b) consider the question of transitional arrangements in those states which want to be incorporated;
- (c) the time frames for such a re-incorporation and related processes;
- (d) disposal/transfer of assets of TBVC governments;
- (e) optimal use of existing infrastructure;
- (f) review of development project priorities;
- (g) good administration during transition;
- (h) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
- (i) consider future of civil service in such states;
- (j) the exact form of authority in the TBVC territories;
- (k) harmonisation of legislation and taxation;
- (l) orderly termination of bilateral and multilateral agreements and treaties;
- (m) servicing and repayment of TBVC state debts;
- (n) ensuring public accountability of actions taken for the purposes of re-incorporation;
- (o) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.



REPORT OF WORKING GROUP 4 TO CODESA 2

1 Terms of reference for Working Group 4.

A copy of the terms of reference of working group 4 is attached.

2 Explanation of the way working group 4 conducted its business.

2.1 Working group 4 created four sub groups to look at the following issues:

2.1.1 Sub group 1 - testing the will of the people

2.1.2 Sub group 2 - citizenship

2.1.3 Sub group 3 - practical, financial and administrative implication of reincorporation

2.1.4 Sub group 4 - constitutional, legal and political implications of reincorporation.

2.2 Each delegation was represented in the sub groups.

2.3 Working group 4 determined the terms of reference for each of the sub groups, based on its own Terms of Reference. Copies of the terms of reference are annexed marked annexure B,C,D and E.

2.4 Working group 4 held 10 meetings.

2.5 Submissions were received from members of the public and organisations.

3 Points of agreement reached:

3.1 Working group 4 reached consensus on the following issues:

3.1.1 Re-incorporation

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

3.1.2 Transitional arrangements

The TBVC states will participate in transitional arrangements as proposed by Working Group 3, on the understanding that these arrangements shall *mutatis mutandis* impact on the TBVC governments and territories in the same way as they impact on the South African government and the RSA.

3.1.3 Testing the will of the people

The people of the TBVC states shall take part fully in the processes of constitution-making and transitional arrangements, including elections, as may be proposed by Working Groups 2 and 3. Their participation will be arranged in such a way that their votes in a national election shall signify support for or rejection of re-incorporation. The results of such an election shall constitute a sufficient test of the will of the people.

3.1.4 Restoration of citizenship

South African citizenship will be restored to the citizens of all the TBVC states who would have been South African citizens but for the constitutional independence of the TBVC states, immediately after the testing of the will as envisaged in paragraph 3.1.3 above.

3.1.5 Reservation

It is recorded that the Bophuthatswana government reserves its position in relation to paragraphs 3.1.2, 3.1.3 and 3.1.4.

3.2. Consensus was reached on a number of issues relating to the practical, financial and administrative effects of reincorporation.

3.2.1 Reincorporation

Eighteen parties share the view that reincorporation of the TBVC States into the new South Africa is desirable. However, Bophuthatswana reiterates its preference for non-reincorporation, but states that every option which promises a better future or a future at least as good as its present position will be regarded as a feasible and realistic option for consideration.

The demarcation of functions and responsibilities on the first, second and third levels of government have not yet been clarified. Where reference is made to future government responsibilities, it should be regarded as being in accordance with the constitutional proposals and interim government arrangements formulated by Working Groups 2 and 3.

3.2.2 Retention of Business Confidence and Taxation

The parties are unanimous that the process of reincorporation should be conducted in such a way that it ensures retention of business confidence. Working Group 4 recommends that:

3.2.2.1 Where there is a conflict between RSA legislation and that of the respective TBVC states, temporary exemptions be granted until the new legal system is in place, the details of which will be considered by a committee (see 11 below.)

3.2.2.2 The harmonization of labour legislation throughout South Africa including stipulations on a stable relationship with unions is needed to boost business confidence.

3.2.2.3 Working group 4 is unanimous that there should be harmonisation of the taxation regime. The tax system of the TBVC states should be brought in line with the applicable tax laws in the RSA. This process should apply to all forms of tax structures e.g. company tax, personal tax etc. The question of tax concessions may be considered in relation to regional development issues.

3.2.2.4 A formal statement of intent be issued by Codesa 2, by which

businesses are informed of the proposed harmonisation of legislation, specifically tax and labour legislation.

3.2.3 Land Transfers

Working Group 4 has reached sufficient consensus on this matter that:

- 3.2.3.1 No further attempts be made to identify new land for transfer to the TBVC governments.
- 3.2.3.2 Land currently in possession of the South African Development Trust should remain in the hands of the Trust until its dissolution, whereafter it will be transferred to the SA Government (successor in title.)
- 3.2.3.3 The moratorium should apply to all land in the Schedule to the Borders of Particular States Extension Act 2 of 1980 which has not yet been excised from South Africa.
- 3.2.3.4 This moratorium will apply to all TBVC States.

Reservation

Bophuthatswana indicates that such a moratorium could be perceived as a negative implication to be considered carefully.

Ciskei states that the moratorium should not apply to the transfer of land to individual communities who have not as yet received the land promised.

The meeting also notes the concern of the SA Government and the National Party about certain legal and contractual obligations which have to be fulfilled as well as land purchased from individual South African citizens which has not yet been transferred.

3.2.4 Disposal/Transfer of Assets and Liabilities

The parties share a common view that the assets and liabilities of these states should be transferred to the new government on reincorporation.

3.2.5 Optimal Use of Existing Infrastructure

Working Group 4 reached agreement that due care should be taken in ensuring that existing structures are optimally used during transition and after reincorporation.

- 3.2.5.1 It is recommended that all structures and functional operations such as education, health, unemployment insurance etc. should continue functioning during transition, until they are replaced by rationalized structures and operations.
- 3.2.5.2 Existing financial arrangements and transfers should continue

uninterrupted until they are replaced by new arrangements.

3.2.6 Review of Development Project Priorities

On reincorporation, prioritisation of development projects should form part of the national/regional prioritisation programme. The Development Bank of Southern Africa which has been closely linked with the development projects in these states could provide a useful service in this regard.

3.2.7 Good Administration during Transition

Efficient and accountable administration should be maintained during transition. The current administration should remain in place until orderly rationalisation takes place as a result of absorption into a non-racial national/regional service. The Subgroup proposes that:

- 3.2.7.1 Administration be reorganised around existing structures.
- 3.2.7.2 On reincorporation, personnel from the TBVC states should be absorbed into the national/regional structure.
- 3.2.7.3 The TBVC Administration should operate under the supervision of the Interim Government during transition.

Reservation

Bophuthatswana reiterates that this is only applicable once a decision in favour of reincorporation is taken.

- 3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are:
 - 3.2.7.4.1 The administration of justice
 - 3.2.7.4.2 Civil service
 - 3.2.7.4.3 Parastatals
 - 3.2.7.4.4 Security and other public services.

3.2.8 Future of the Civil Service

Civil servants should retain their existing salaries, benefits, conditions of service, etc. Any adjustment in the conditions of service should be occasioned by a process of rationalisation as a result of absorption into a non-racial national/regional service. It is recommended that:

- 3.2.8.1 There should be no retrenchment of workers in these administrations as a result of reincorporation prior to an extensive rationalisation programme in the new South African civil service.

3.2.9 Servicing and Repayment of TBVC Debts

The servicing and repayment of TBVC debts should be the responsibility of the new national/regional government as soon as the states have been reincorporated. The working group notes that a new government will have to consider how to deal with debt irregularities, if any.

3.2.10 Proposed Appointment of Committees

Working group 4 is unanimous that two committees be appointed to conduct investigations and to undertake consultation with concerned parties into various aspects as will be indicated in each case.

3.2.10.1 Composition of Committees

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

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

3.2.10.2 Terms of Reference of the Committees

A committee on the retention of business confidence and use of existing infrastructure will be tasked to investigate and make recommendations to the relevant parties on the following:

- 3.2.10.2.1 Harmonisation of tax regime.
- 3.2.10.2.2 Harmonisation of labour legislation.
- 3.2.10.2.3 Possibility of granting temporary exemptions from tax.
- 3.2.10.2.4 Introduction of export and other investment incentives.
- 3.2.10.2.5 Protection of existing tax concessions for a reasonable period.
- 3.2.10.2.6 Consideration of retention of Schedule 3 concessions under the Regional Industrial Development Programme.
- 3.2.10.2.7 Protection of existing investments.
- 3.2.10.2.8 Investigation of the causes and effects of mass action on business confidence.

Reservation

The ANC expressed its concern that this should not prejudice its right to undertake mass action in general.

- 3.2.10.2.9 Whether the process of harmonisation should be implemented incrementally.
 - 3.2.10.2.10 Whether, where prejudices arise, exemptions should be granted for a definite period
 - 3.2.10.2.11 Whether the granting of exemptions should be fairly automatic up to a certain date.
 - 3.2.10.2.12 A close study of the taxation system to be undertaken.
 - 3.2.10.2.13 The whole question of optimal use of existing infrastructure during transition and after reincorporation.
 - 3.2.10.2.14 Any other matters relevant to the above issues.
- 3.2.10.3 A committee to look into the question of good administration during transition and the future of the civil service with particular regard to the following:
- 3.2.10.3.1 Reorganisation of administration around the existing structures.
 - 3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporation.
 - 3.2.10.3.3 The following questions in regard to the civil service, security service, parastatals etc.
 - uniformity of salaries and conditions of service.
 - security and transferability of pension benefits.
 - assimilation and training of skilled staff.
 - appointment on merit i.e. qualifications, experience and ability irrespective of race, colour, creed or sex.
 - strict adherence to the IMF norm that the total civil service remuneration should not exceed 30% of the national/regional income.
 - rationalisation of excessive bureaucracy on a humane basis.

- 3.2.10.3.4 An extensive rationalisation programme of the public services involving the SATBVC states.
- 3.2.10.3.5 The appointment of a non-partisan body to implement the process of rationalisation.
- 3.2.10.3.6 Any other matters relevant to the above issues.

3.2.11 Practical Implications

The following will be the practical implications of reincorporation:

- 3.2.11.1 The reincorporated state will again fall under the geographic jurisdiction of the RSA.
- 3.2.11.2 That state's people will be South African citizens.
- 3.2.11.3 That state will become subject to the authority of the government of South Africa under the new constitution, interim or final.
- 3.2.11.4 The reincorporation process will have to be formally legislated through the relevant legislative bodies.
- 3.2.11.5 The "international" boundaries between that state and the RSA will fall away.
- 3.2.11.6 The need for diplomatic ties between the RSA and those states will fall away.
- 3.2.11.7 If all four TBVC states are reincorporated, South Africa would once more be undivided, thus achieving one of the main objectives of the Declaration of Intent signed by the parties to Codesa.
- 3.2.11.8 It is as well to mention that if any TBVC state were to decide not to be reincorporated, it would have to seriously consider the effects that decision would have on that state.

Reservation

The Bophuthatswana Government reconfirmed its position that, in the event of non-reincorporation, all existing bilateral agreements should continue to be in operation.

- 3.3 Consensus was also reached on mechanisms of addressing the political, legal and constitutional implications of reincorporation. It was agreed to establish a technical committee. This committee should consult the Gender Advisory Committee. It should investigate within the context of the terms of reference of sub group 4 of working group 4 the following:

- 3.3.1 the relationship between South Africa and the TBVC states during the transitional phase;

- 3.3.2 consider legislation that would be required to effect reincorporation;
- 3.3.3 consider legislation and/or measures that would level the political playing field;
- 3.3.4 harmonisation of legislation.

4 Points not yet covered by working group 4 from the terms of reference

Mechanisms of dealing with some of the aspects of the terms of reference not yet covered by working group 4 are suggested in paragraphs 3.3 above.

- 4.1 strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
- 4.2 the time frames for such a re-incorporation and related processes;
- 4.3 the exact form of authority in the TBVC territories;
- 4.4 harmonisation of legislation and taxation;
- 4.5 orderly termination of bilateral and multilateral agreements and treaties;
- 4.6 ensuring public accountability of actions taken for the purposes of re-incorporation;
- 4.7 the identification of specific constitutional, legal and political measure and steps which will have to be taken to effect re-incorporation.

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TERMS OF REFERENCE FOR SUB-COMMITTEE 1 "TESTING THE WILL OF THE PEOPLE"

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) testing the will of the people concerned regarding re-incorporation or otherwise, of the TBVC states, by acceptable democratic means;
 - (b) strategies to keep the people of the TBVC states fully informed, especially to avoid unfortunate misunderstandings;
 - (c) the method to be employed to test the feeling of the people (referendum? opinion poll? election?);
 - (d) deciding on who will be entitled to express an opinion (citizens? residents of TBVC states? and/or citizens also resident outside these states, within South Africa).

TERMS OF REFERENCE FOR SUB-COMMITTEE 2 "CITIZENSHIP"

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the question of citizenship (dual citizenship? single citizenship?);
 - (b) the time-frames for the sub-committee to report;
 - (c) the proposal of the ANC;
 - (d) the proposal of the NPP.

**TERMS OF REFERENCE FOR SUB-COMMITTEE 3
"THE ADMINISTRATIVE, FINANCIAL AND PRACTICAL
EFFECTS OF REINCORPORATION OF THE TBVC STATES"**

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the retention of business confidence, particularly in relation to existing investments in the TBVC states;
 - (b) land transfers by South Africa to these states;
 - (c) disposal/transfer of assets of TBVC governments;
 - (d) optimal use of existing infrastructure;
 - (e) review of development project priorities;
 - (f) good administration during transition;
 - (g) the formulation of appropriate measures and steps to be taken to ensure that in the process of re-incorporation of a TBVC state, interruption or disruption in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum;
 - (h) consider future of civil service in such states;
 - (i) servicing and repayment of TBVC state debts.

TERMS OF REFERENCE FOR SUB-COMMITTEE 4
"THE POLITICAL, LEGAL AND CONSTITUTIONAL EFFECTS
OF REINCORPORATION OF THE TBVC STATES"

WORKING GROUP 4

1. Terms of Reference

IT IS RECORDED that the terms of reference of the Sub-Committee are as follows:

- 1.1 To investigate and report upon all proposals and make recommendations with regard to the relationships between South Africa, the TBVC states and the people of those states under a new South African constitution.
- 1.2 To identify the key issues and problems that need to be addressed.
- 1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.4 Specifically, but without vitiating the generality of the above to consider:
 - (a) the exact form of authority in the TBVC territories;
 - (b) harmonisation of legislation and taxation;
 - (c) orderly termination of bilateral and multilateral agreements and treaties;
 - (d) ensuring public accountability of actions taken for the purposes of re-incorporation;
 - (e) the identification of specific constitutional, legal and political measures and steps which will have to be taken to effect re-incorporation.

WORKING GROUP FIVE

TERMS OF REFERENCE FOR WORKING GROUPS FOR CODESA

WORKING GROUP 5

ASSIGNMENT

Time frames and implementation of Codesa's decisions.

1. Terms of Reference

- 1.1 WHEREAS the parties at Codesa have committed themselves in the terms set out in the Declaration of Intent as amended from time to time

AND WHEREAS it is necessary to record agreements which are reached at Codesa and to implement such agreements and, accordingly, to prepare in draft form the documentation which is required for effect to be given to such agreements

AND WHEREAS it has been agreed that a Working Group on the Implementation of Agreements/Decisions shall be appointed by Codesa to identify the steps which need to be taken by the parties to Codesa

AND WHEREAS it is desirable to advise on the possible time frames and target dates

IT IS RECORDED that the terms of reference of the Working Group on time frames and the implementation of Codesa's agreements/decisions are as follows:

- 1.1.1 To investigate and report upon all proposals and make recommendations with regard to appropriate time frames and target completion dates for all of the processes and assignments being undertaken by Codesa, its working groups and other bodies created as a result of agreements/decisions of Codesa.
- 1.1.2 To identify the key issues and problems that need to be addressed.
- 1.1.3 To identify areas of commonality and aspects where agreement already exists between participating delegations.
- 1.1.4 Specifically, but without vitiating the generality of the above, consider whether and how to address:
- (a) the need for a regularly updated comprehensive list of all the decisions, actions and processes involved;
 - (b) the co-ordination of the activities of Codesa and its subsidiary bodies to ensure the greatest possible efficiency of the process towards a democratic South Africa;
 - (c) the practicability of setting of target completion dates for all agreements/activities/decisions;
 - (d) the monitoring of the process and the adjustment of targets whenever necessary;
 - (e) the dissemination of up-to-date information in respect of progress made to all Codesa participants, interested parties and authorities;
 - (f) to address the identification of legislation that needs to be enacted or amended;
 - (g) to assist in formulating the terms of the legislation or amendments;
 - (h) realistically attainable time frames;
 - (i) practical effect of implementation of agreements;

- (j) the legality of the process in relation to time frames to be negotiated within the context of constitutional continuity;
- (k) any other matters which the working group may consider relevant to its brief.

REPORT OF WORKING GROUP 5 TO CODESA 2

1. Introduction

The Terms of Reference given to WG5 by CODESA 1 (Addendum A) involved inter alia:

- 1.1. The monitoring of progress made in Working Groups 1-4
- 1.2. The establishment of time frames within which Codesa process should operate and
- 1.3. The identification of legislation emanating from the Codesa process and the drafting thereof.

In order to conduct its work more effectively, it was necessary to clarify how certain issues emanating from the other Working Groups should be dealt with, and after consultation with the DMC it was agreed that issues pertaining to the administrative process and procedure should be addressed by the DMC, and issues pertaining to political process and content should remain the responsibility of WG5.

2. Progress Made:

2.1. Structure of WG5

It was decided at an early stage that WG5 should be divided into two Sub-groups; Sub-group 1 dealing with time frames, and Sub-group 2 dealing with legislation. Each Sub-group divided into 4 Task Groups, viz 1-4, which dealt with progress being made in Working Groups 1-4 respectively.

2.2. Identification of key issues

After studying the minutes of the other Working Groups, WG5 identified and recorded those key issues which it felt should be addressed by Codesa.

2.3. Modus Operandi of Working Group

In order to effectively carry out its duties, WG5 established the following:

- 2.3.1. A process of studying the minutes of the other WGs so as to identify tasks for WG5 such as establishing time frames and the need for legislation.
- 2.3.2. A mechanism for dealing with decisions which require draft legislation so that the final documents correctly fulfil the requirements arrived at by the Codesa process.
- 2.3.3. A proposal for a committee of suitably qualified experts to assist with the drafting of legislation.

2.4. Proactive identification of required legislation

In the absence of firm proposals for new legislation, WG5 decided to be proactive and identified the following:

2.4.1. Discriminatory legislation

Using a Law Commission draft report, a list of 68 acts was examined to determine which contain racial and gender discriminatory provisions which may require attention.

2.4.2. Electoral Bill

Deciding that if truly democratic elections are to be held in the near future, a suitable electoral act will be required. WG5 began an examination of existing electoral acts in preparation for the drafting of a new act for South Africa.

3. Monitoring Role of Working Group 5

Problems were experienced by WG5 in endeavouring to monitor the Codesa process. This resulted in WG5 Steering Committee meeting with the DMC to discuss the problem which led to the following decision being taken:

"Copies of the minutes of all other Working Group plenary sessions, together with summaries of recommendations and agreements emerging from these plenaries, should be made available to WG5 at the earliest possible opportunity."

The lack of real progress in achieving the goals inherent in WG5's Terms of Reference is largely due to the lack of progress in the other Working Groups with regard to clear recommendations concerning time frames and the need for draft legislation.

4. Matters outstanding

4.1. Terms of Reference

Unfortunately, little progress has been made by WG5, the main reason being that by the very nature of its Terms of Reference its work is reactive rather than proactive. This has led to a certain degree of frustration on the part of the delegates serving on WG5.

4.2. Drafting of Legislation

While a mechanism for dealing with decisions that require draft legislation has been arrived at, the following are outstanding matters (see 2.3.2. and 2.3.3.):

4.2.1. The need and/or constitution of a Drafting Committee.

4.2.2. The constituting of a panel of experts

4.2.3. The interaction of a Drafting Committee with existing Codesa structures and respective governments/administrations regarding draft legislation.

5. Recommendation

The dearth of work for WG5 emanating from other Working Groups has led to much frustration within WG5 and its members.

It is recommended, therefore, that WG5 should only be brought into session when clear agreements and decisions concerning its Terms of Reference are forthcoming from Working Groups 1-4.



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