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WORKING GROUP 4 MEETING ON MONDAY

17 FEBRUARY 1992: 6.2 s AREAS OF.
RESEARCH REQUTRED IF RE-INCORPORATION
OF THE TBVC STATES INTO SOUTH AFRICA

IS AGREED UPON

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

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

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Map of the nine Development Regions

INDIVIDUAL PARAGRAPHS OF THE TERMS OF REFERENCE
DIVIDED ACCORDING TO SUB-ITEMS 6.2.1 (7.2.1),
6.2.2 (7.2.2) ANDi

Sub-Item 6.2.1 : The Administrative,
Financial and Practical Effect of Re-incor-
poration (Related to Sub-Item 7.2.1)

4.1.1.2 Identification of the key issues
and problems that need to be
addressed.

4.1.1.3 Identification of Areas of Commonality and
Aspects where Agreement already
exists between Participating Delegations.

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the desirability or otherwise
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such states

the retention of business con-
fidence, particularly in
relation to existing investments
in the TBVC states

land transfers by South Africa
to these states

any other matters which the
working group may consider
relevant to its brief

disposal/transfer of assets of
TBVC governments

optimal use of existing infra-
structure

review of development project
DELO Le's

good administration during
transition

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measures and steps to be taken
to ensure that in the process
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tion in administration and the rendering of services and in the daily lives of people in the affected areas are reduced to an absolute minimum

Mstodo.S (i) Uae wurewieea Of cle Gilwall semvice in such states

Ay ele ieoh (G3) harmonisation of legislation and taxation

Modo d S (1) oraclercilyy ce@icmlneieiom @ir loi lleveeyea.ll and multilateral agreements and treaties

Ay ie) eG) ees rave Chinn Gpecinclan ep aime miss Ona \ie state debts

Sub-Item 6.2.2 : The Political, Legal and

Constitutional Effect of Re-incorporation
(Related to Sub-Item 7.2.2)

Ayelet

To investigate, report upon 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.

Identification of the key issues and problems that need to be addressed.

Areas of commonality and aspects where agreement already exists.

(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

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

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unfortunate misunderstandings 15

Alot. 4 (e) the) retentions om business cons
fidence, particularly in
relation to existing investments
in the TBVC states 15

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Asin 45 a (hn) eany, others mattonmawinmichwa: he Working
Group may consider relevant to its
brief 16

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

All. Sith eee pio Do sidlllic@ hOrumElC re-incorpo-
ration into South Africa of a
TBVC state 16

4.1.1.5 (b) consider the question of
transitional arrangements in
those states which want to be
incorporated 16

Apalesie to Cc) ae Cea eelin herelaclie for such a
re-incorporation and related
processes 16

4.1.1.5 (j) the exact form of authority in
the TBVC territories 7

Ate Sh (ny) ensuusinGe Dubie accountability
of action taken for the purposes
of re-incorporation W

Aveleepie 5) ano) ee identification of specific
constitutional, legal and poli-
tical measures and steps which
will have to be taken to effect
re-incorporation 17

Sub-Item 7.1 : Sub-committee 1: To investigate the
effect if re-incorporation of the TBVC states is not
decided on.

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Codesa rearding the manner sia
which the constitutional status
of the TBVC states may be affected
by the outcome of negotiations
within the framework of Codesa 19

SOUTH AFRICA
TRANSKEI
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REFERENCE
* Industrial

Development Points
& Deconcentration

Points

Self- governing
National States

LEBOWA
GAZANKULU
KWANDEBELE
KAK GWANE
KWAZULU
QWAQWA

LO 300

Walvis Bay

- Atlantis

Cape Town

*
eo
Upington

Freee adapts

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REGIONAL INDUSTRIAL DEVELOPM ENT IN THE SATBVC STA TES AND
THE SELF-GOVERNING
NATIONAL STATES

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my Mafikeng Brits

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Kimbderleye,

*
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* haba Nchu
Botshabel

see Inset
Port Elizabeth

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ea Siyabuswa

hite River *

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Newcastle EG oulewen

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

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

The key issues that need to be addressed, may include
Roe RepeOP EGO valet eye

(a)

(d)

The nature of the constitutional arrangements
between South Africa and each of the TBVC
states.

How will outstanding land matters be dealt
with?

The nature of the constitutional arrangements
within each of the TBVC states. Some of the
matters which will require attention here are
as follows:

lets the TBVC states participate in a
transitional government; Â® how) will this affect
their sovereignty and time of reincorporation?

How will the absence of voters' rolls be
addressed?

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Methods of testing public opinion on

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the 2BVG sitatkesre eq bye way Of mal sekenendumy,
plebiscite or opinion survey.

The maintenance of good government, sound
administration and proper services. Subjects
which need to be addressed are as follows:
(5) eainanc lalancmE COnOMmucm AS Pecans

The debt of the TBVC states.

Administration of the income and
expenditure of the TBVC states.

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funds.

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(ii) Managerial and organisational aspects

Managerial and technical know-how.

Position of the military in the TBVC states.

Rationalisation of government institutions and parastatal institutions to prevent duplication with South Africa.

The position of civil servants and members of the services, whose offices are quintriplicated.

(alas) SS@iavalec}
Regional development plans.

Means of ensuring continuation of services
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A multitude of bilateral and multilateral agreements exists in this respect. Provision will have to be made for the continuation of
(Che) srungiti Ons) ae ho Gasca ELOS Clmc Grace Menirc provide.

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

These would include the following:

Legal system.

System of public administration and financial management.

Public services.

Language.

Military.

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

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

(b)

the desirability or otherwise of the
re-incorporation of such states:

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

The people of the TBVC states may be

better served by the regions and their say will
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context.

The issue of duplication of structures.

Rationalization of structures and staff in
the TBVC states.

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

This will have to be addressed in the following
ways:

(i) By the protection of existing rights in
any re-incorporation agreement.

(abat)) By the major parties to Codesa being aware
of the consequences of their economic (and
political) policy pronouncements.

(iii) By the maintenance of good government and
administration, especially with regard to

finances.

(iv) By the maintenance of political stability
and industrial peace.

(v) By the maintenance of law and order.

(Geis) By resolving contentious issues which
exist between Governments and/or
organisations in the SATBVC states.

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

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

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Gonsulder relevant) to its briek

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RE-INCORPORATION IS DECIDED UPON IN RESPECT OF

ANY TBVC STATE, MATTERS THAT WILL NEED TO BE
ADDRESSED INCLUDE:

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Disposal/transfer of assets of TBVC

governments:

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

Optimal use of existing infrastructure

Existing infrastructure could include matters
such as the following:

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- Government administration blocks
- Parastatal-owned buildings
eC OUIates)

= POSIG OicLCGOS

= Pesos

= POLIGe Scacions

= Government garages

- Railways

- Roads

= jdslicgjoyoeics)

- Planes

- Government vehicles

- Military equipment

- Embassy buildings

- Government housing

= SEBBOAadcastungqusemvaces
â\200\224 Deine

- National parks

- Archives

Review of development project priorities

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

Good administration during transition
The Structural Adjustment Agreements with respect

to the TBVC countries will foster good
administration. Aspects which could

receive attention, include the following:

Interchange of staff in key posts.
Rationalization of Public Service.

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income on public servants (in accordance with
IMF norms).

Control of pension funds.

Management of state debt.

Training and motivation of staff.
Compilation of regional development plans.
Limit expansion of establishment.

New gradings of posts and salaries of public
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Taking steps to ensure proper financial
accountability.

4.1.1.5 (h) The formulation of appropriate measures and steps

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(i)

to be taken to ensure that in the process of
re-incorporation of a TBVC state, interruption or

disruption in administration and the rendering of

services and in the daily lives of people in the
affected areas are reduced to an absolute minimum.

- Some of TBVC staff may be absorbed into the
central South Africa public service.

- The staff of participating government services
may have to be integrated into a specific
regional government.

- As part of the constitutional negotiations, a
division of functions will have to be made
Cimeously between the central and regaonal
governments.

Consider the future of the civil service in such
states.

The future of the public services is a

matter which will be determined by the nature
of the constitution which is negotiated at

Codesa - whether it will be a single service
or a federal arrangement with multiple
SemEveuces).

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

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

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departments and parastatal organisations within a specific region.

- Determination of services which can be done on an agency basis.

= The assignment of skilled staff to the regions in an equitable manner.

= MNS ieretelatioiloe) of staff.

- Norms and standards with respect to eg. health services and education which will be applicable in the respective regions;

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Se Wisco heise oielsiseyssOtmmsitciicmeisOMmrae gq om neo region, with retention of pension.

- Salaries and fringe benefits in the different TRO PEO MNS Ie

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(expenditure on public servants to be in
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accountability in the public services.

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have its own Public Service Act and Public
Service Commission.

- Establish what will happen to public
servants who do not wish to be transferred
to new regional governments in a federal
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- Deal with position of superfluous or
redundant public servants.

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continue with their work in the regions.

It will be necessary to pay attention

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the TBVC States when an agreement of
re-incorporation is negotiated.

Harmonisation of legislation and taxation.

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position of the existing legislation in the TBVC

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states when an agreement of re-incorporation is negotiated.

Orderly termination of bilateral and multilateral agreements and treaties.

LEGAL CONSEQUENCES OF RE- INCORPORATION

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

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

The following consequences will have to be investigated:

The status of existing agreements

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

The status of existing legislation

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

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

Other legal consequences

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

Steps to. ensure Ene Cont nlane emo Samo emclanc legal actions.

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The position of the Administration including

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the Civil Service and Armed Forces.
The position regarding State debt.
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(m) Servicing and repayment of TBVC state debts

Attention will have to be given to this matter.

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

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

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

IDENTIFICATION OF THE KEY ISSUES AND PROBLEMS THAT
NEEDERLONBETADDRESSED

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

(a) The nature of the constitutional arrangements
between South Africa and each of the TBVC
SeEBNESOS 6

When will the sovereignty of the TBVC states
be affected?

What acts, regulations and agreements will
have to be amended, repealed or terminated?

(b) The nature of the constitutional arrangements
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matters which will require attention here are
as follows:

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government, how will this affect their
sovereignty and time of reincorporation?

What form of local government is envisaged?

Methods of testing ublic opinion on the
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states: eg. by way of a referendum, plebiscite
or opinion survey.

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((2)) The position regarding rights created under TBVC legislation, which do not exist under south African legislation - more favourable taxes, land ownership and land use, casinos, censorship.

(g) Issues of general interest

National anthem, national symbols, languages,
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(h) The time-frame for re-incorporation

(To be dealt with by Working Group 5)

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

Legal system.

System of public administration and financial
management.

Public services.

Language.

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

â\200\231 The Governments of three of the TBVC states have
in one form or another indicated that they
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South Africa.

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

affected when -

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have negotiated agreements on the surrender
of sovereignty by the TBVC states concerned
and on all necessary transitional

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arrangements; and

(at ab)) the South African legislature and the
necpece authorities of the TBVC states
ave -

repealed certain legislation eg. the
Status Acts; and

adopted into domestic legislation the
terms of the agreements which have been
negotiated.

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

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

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

Codesa will make its own arrangements

to disseminate information, eg by way of press
statements and paid advertisement campaigns
(radio, TV, press, posters, schools,
competitions, etc).

the retention of business confidence,
particularly in relation to existing investments
in the TBVC states:

This will have to be addressed in the following
ways:

(i) By the protection of existing rights in
any re-incorporation agreement.

(ii) By the major parties to Codesa being made
aware of the consequences of their
economic (and political) policy

pronouncements.

(iii) By the maintenance of good government and
administration, especially with regard to

finances.

(iv) By the maintenance of political stability

and industrial peace,

(v) By the maintenance of law and order.

(vi) By resolving contentious issues which

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

Citizenship

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Any other matters which the working group may consider relevant to its brief

IF RE-INCORPORATION IS DECIDED UPON IN RESPECT OF ANYSS LBVGRE STATE MAT TER Gan Aue Wil oer Om SE ADDRESSED INCLUDE:

(a)

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

Consider Eherquestion Of tuansi tonal arrangements in those states which want to be

incorporated:

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

Time-frames for such a re-incorporation and related processes:

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The time-frames will affected by -

(a) the speed at which Codesa completes its task;

(b) the decisions taken on how the will of the inhabitants of the five states should be tested;

(c) whether and how quickly the SATBVC governments accept re-incorporation;

(d) the speed at which solutions to

practical issues can be negotiated in the
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bilateral re-incorporation agreements; and

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legislation regarding re-incorporation can
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The exact form of authority in the TBVC
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This can only be decided once Working Group 2 has
submitted its proposals to Working Group 4 and
these have been accepted by the participants of
Codesa in Working Group 4.

Ensuring public accountability of action taken
for the purposes of re-incorporation.

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

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legal and political measures and steps which will
have to be taken to effect re-incorporation

RE-INCORPORATION STEPS

Re-incorporation can only be achieved by way of
negotiation and via a bilateral

re-incorporation agreement. The whole process of
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Africa will involve aspects of both the
international and municipal law.

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Acceptance of the proposed transitional
government and constitution of South Africa or
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new constitution.

The intention to transfer sovereignty to South
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South Africa, must exist.

The decision to hold referenda to establish
democratically the wishes of their people in
each state.

The enactment of the necessary legislation to

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accordance with internationally accepted norms.

The holding oLenererenda::

If the people agree with that which they are to
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Government of South Africa for re-incorporation must be made.

Negotiation of a bilateral re-incorporation agreement.

STEPS TO BE TAKEN BY THE SOUTH AFRICAN GOVERNMENT:

The holding of a referendum in South Africa to test the wishes of the voters of South Africa.

If the people agree on re-incorporation and the requests IE OS GQ) LINGO NOISE LOIN have been received from the TBVC states, the negotiation of the re-incorporation agreements can begin.

RE-INCORPORATION AGREEMENTS

The re-incorporation agreements shall provide the legal basis ifx@)Ta the assumption of sovereignty by South Africa over the territories of the TBVC states.

All aspects of the loss of sovereignty and its legal consequences must be dealt with in these agreements.

The practical implications of re-incorporation must be addressed in the agreements.

LEGISLATIVE STEPS

The TBVC states will each have to repeal their Const eEuUETons, One other sdecnees granting eaaemem independence.

South Africa will have to repeal the Status Acts through which independence was granted to Ehem BV Ceshteawe sr.

All the states will simultaneously have to pass similar legislation enacting the provisions of the re-incorporation agreements and thus incorporate them in their municipal law.

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

SUB-ITEM 2)

4.1.1.4 (a) to make recommendations to Codesa
regarding the manner in which the constitutional
status of the TBVC states may be affected by the
outcome of negotiations within the framework of

Codesa

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

maintained.

