

IJ

3

PÂ» mÂ«\.\.\â\200\224.~mo\ 6\* wqu/Ã©ï-\201

nâ\200\230.

CQOODCEOS..A

:iileïï-\201ïï-\202Zme&Â§iïï-\20211i3

REPORT OF WORKING GROUP 4 TO CODESA 2

Terms of reference for Working Group 4.

A copy of the terms of reference of workmg group 4 is attached marked annexure A.

Explanation of the way working group 4 conducted its businms.

2.1

!\J

L)

f.)

b)

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

2.1.1

2.1.2

2.1.3

2.1.4

Sub group 1 - testtng the WIâ\200\235 of the people

Sub group 2 - citizenship

Sub group 3 - practtcal. ïï-\201nancxal and administrative impicattion of retncorporomtton

Sub group 4 - constttutttional. legal and political itnplicauons of remcorporatton.

Each delegnuon was rcpresentnted m the sub groups.

Working group 4 dctertmned the terms of reference for each of the sub groups. based on us own Terms of Reference. Copies of the terms of reference are annexed marked annexure

\_&CDde

waking group 4held 10 meetmgs. .

Submissions were recetved from members of the public and orgamsattons.

Points of agreement reached:

3.1

Working group 4 reached consensus on the following Issues:

3.1.1

3.1.2

3.1.3

Reoincommttton

All delegations have no objection in pnnciple to the re-mcorporatton of the TBVC 5m.

Transnional arrangements

The TBVC states will participate in tramttional an-angements as propowd by

Working Group 3. on the undetsundtng that these amngements shall mutaus

mutandis impact on the TBVC governments and temtories tn the same way 15 they

impact on the South African government and the RSA.

Testing the WIâ\200\235 of the Epic

The people of the TBVC state: shall take part fully in the processes of constttutttion-making and tmnsnional arrangements. tncludtng electrons. as may be proposed by

Workmg Groups 2 and 3. Their pametpanon wlll be arranged m such a way lhâ\200\234

their votes tn 3 nntttional electton shall sigmr'y support for or rejectton of re-

incorpornttou. The results of such an electton s'tnll constttute a sufïï-\201cient test of the

will of the people.

3.2.

3.1.4

3.1.5

WGICDSLW!

WOWNC CIOL'P 00m "NIT TO CODISA III! MAY

Restoration of citizens'ntg

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.

Reservation

It is recorded that the Bophuthatswana government reserves 115 positions in relation to paragraphs 3.1.2. 3.1.3 and 3.1.4.

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

3.2.1

3.2.2

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 decided. 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.

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.)

3.7 " " The harmonisation 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 51315 511011Id 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 12.x concessions may be considered in relation to regional development issues.

3.2.2.4 A formal statement of intent be issued by Codes: 2. by which

3.2.

WGâ\200\230IQSZWS

womnc cnour Â«Jun union To COOISA um mu!

busnesses are informed of the proposed harmomsatton of  
legislation. spxti-\201cally tax and labour legtslatton.

Land Transfers

Working Group 4 has reached sufi-\201cient consensus on thus matter that:

3.2.3.1 No further attempts be made to tidenttt'y new land for transfer to the  
TBVC governments.

3.2.3.2 Land currently in possession of the South African Development  
Trust should rematin tn the bands of the Tmst unttl its dissolution.

whereafter tt WIâ\200\234 be transferred to the SA Government (successor  
in tttle.)

3.3.3.3 The moratonum should apply to all land 1:: the Schedule to the  
Borders of Pamcular States Extentton Act 2 of 1980 whtch has not  
yet been excxsed from South Afnca.

3.2.3.4 This montonum wull apply to all TBVC States.

Reservation

Bophuthatswana indicates that such a moratonutn could be perceived as a negative  
implicaun to be consIdered carefully.

O

Ciskei states that the momtonum should not apply to the transfer of land to mdividual  
communes who have not LS yet recetved the land pronuseu'.

111: meettng also notes the concern of the SA Government and the National Party  
about certatn legal and contractual obligations which have to be fuli-\201lled as well as  
land purchased from individual South African cxuzens which has not yet been  
transferred.

Disposal/Transt'er of Assets and Liabilities

The pantes share I common view that the usets and liabilities of these states should  
be transferred to the new government on remcorporauon.

Optnnal Use of Existing Infrastrucmre

Working Group 4 reached agreement that due care should be taken 11: ensuring that  
extsttng structures are optimally used dunng transmon and after remcorporatton.

3.2.5.1 It is recommended that all structures and i-\201mcuonai operations such  
as educatton. health. unemployment insurance etc. should contmue  
funcuomng dun'ng transttton. unttl they are replaced by rauonahzed  
structures and openuons.

3.2.5.2 Existing i-\201nancnal arrangements and transfers should continue

WGJICDS\200\231LW!

WORKING GROUP WM" \200\234PO" TO CODBA 111! MAY

uninterrupted until they are replaced by new arrangements.

Review of Development Project Pn'orm'es

On reincorporation. pn'onnsauon of development projects should form part of the national/regional pnontisaun 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.

Good Adminstruon 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 should be reorganised around existing structures.

3.2.7.2 On incorporation. 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.

Reservancy

Bophuthatswana reserves that this is only applicable once a decision in favour of incorporation is taken.

3.2.7.4 Certain basic services will have to continue uninterrupted during transition. These are: -

3.17.4.1 The administration of justice

3.2.7.4.2 Civil service

3.2.7.4.3 Paramilitary

3.17.4.4 Security and other public services.

Future of the Civil Service

Civil servants should maintain their existing salaries. benefit conditions of service. etc

Any adjustment in the conditions of service should be achieved 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.

3.2.10

WGâ\200\230IWSZW!

WOWNG CIOUP uourr "PORT TO CODBA Ill! MAY

Servxcing and Repayment of TBVC Debts

The servtcing and repayment ofTBVC debts should be the responSibility of the new nauonal/regtional government as soon as the states have been reincorporated. The working group notes that a new government WIâ\200\235 have to cousxder how to deal wnh debt trregulanttes. if any.

Proposed Appomttnt of Commtttees

Working group 4 is unammom that two commtttees be appomted to conduct invesugattons and to undertake consultatton thh concerned parttes lnlo vanous aspects as thl be indicated in each case.

3.2.10.1 Composuion of Commtttees

Each commune should be a nine-member multt-pany cornmtttee

conststng of: '

3.2.10.1.1 i-\20lve rcpresntattves. one from each of the SATBVC adtmntstrattons.

3.2.10.1.2 four representattvcs nonunated by the rematnmg pames at Codesa.

3.2.10.2 Terms Of" Reference 01' the Commtttees

A commtttee on the retentton ot' busmess conĩ-\20ldence and use of extstmg infrasmtcture Will be tasked to invesugate and make recommendattons to the relevant pames on the followmg:

3.2.10.2. Harmomsauon of tax regtme.

3.2.10.2.2 Harmonisation of labour legtslatiou.

3.2.10.2.3 Posmbility ot' gmttng temporary exemptions from tax.

3.2.10.2.4 Introduction of export and other tnvestment mcenttves.

3.2.10.2.5 Protectton of extstmg tax concesswns for a reasonable penod.

3.2.10.2.6 Constderation ot' retentton of Schedule 3 coucessxons under the Regtional Industnal Development Programme.

3.2.10.2.7 Protection of existing mvesttncnts.

3.2.10.2. Investigation of the causes and effects of mass actton on busmas conĩ-\20ldence.

Ul

WGIICâ\200\230DSZWS

WORKING GIOU? 00M" IIP0ITTO CODBA 111! MAY

Reservation

The ANC expressed us concern that thus should not prejudice its right to undertake mass acuo n m general.

3.2.10.2.9 Whether the process of harmomsauon should be implemented incrementally.

3.2.10.2.10 Whether. where prejudices anse. exemptions should be granted for a deiï-\201mte penod

3.2.10.2.â\200\235 Whether the gmntmg of exempttons should be fairly automattc up to a cemm date.

3.2.10.2.12 A close study of the taxauon system to be undertaken.

3.2.10.2.13 The whole quesndn of opttmal use of exxstmg infrastructure dunng transution and after remcorporauou.

3.2.10.2.14 Any other matters relevant to the above issues. .

3.2.10.3 A commnttee to look into the question of good adumustrauon' during transntion and the future of the cxvil semce wuh pamcular regard to the following:

3.2.10.3.1 Reorganisation otâ\200\230 adrrumStrauon around the exxstmg structures.

3.2.10.3.2 The subsequent absorption of the TBVC personnel on reincorporatton.

3.2.10.3.3 The following questions 111 regard to the civil servnce. security servnce. parastatals etc.

- uniformity of salaries and conditions of service.

- security and transrâ\200\231erability ot' pensnon beneïï-\201ts.

- usinnlation lnd traimng of skilled staff.

- appointment on ment Le. qualiïï-\201catxons. expeneuce and ability irrespecnve of race. colour. creed or sex.

- strict adherence to the IMF norm that the total civil

scnnce remunemuon should not exceed 30% of the

national/regtonal income.

â\200\230 ' - rationalisation of cxcssnve bureaucracy on a humane basxs.

WGâ\200\230ICDSIWS

WOIKJNC atom WW? IIP0" TO CODL'A III! MAV

3.2.10.3.4 An extenswe rattonalisation programme of the public servtces tnvolvtnq the SATBVC states.

3.2.10.3.5 i-\201le\_appotntment of a non-pamsan body to Implement the process of nttonalisatton.

3.2.10.3.6 Any other matters relevant to the above issues.

3.2.11 Practical lmplicattons

The following thl be the practical lmplicattous of reincorporatton:

3.2.11.1 The re'mcorporated state wtl1 agatn fall under the geographtc junsdtctton Of the RSA.

3.2.11.2 That stateâ\200\230s people Will be South African Ctizens.

3.2.11.3 That state thl become sublect to the authonty of the government of South Africa under the new consttutttion. tntenm or i-\201nal.

3.2.11.4 The retncomoratton process Will have to be formally legtslated through the relevant legtslative bodies.

3.2.11.5 The 'iutemattonal' boundanes between that state and the RSA wtl1 fall away.

3.2.11.6 The need for diplomattc ttes between the RSA and those states wll1 fall away.

3.2.â\200\234.7 If all four TBVC states are reincorporated. South Africa woulcl once more be uudtvided. thus achtcvng one of the math objecuves of the Declaration of Intent Signed by the pames to Codesa.

3.2.11.8 It is 1: well to meuttou that If any TBVC state were to decide not to be retncorpomted. it Would have to senously consm'er the effects that decxswn would have on that state.

Reservatton

nae Bophuthatswana Government reconi-\201rmed xts position that. tn the event of non-retncorporatton. all extsttng htlatrat' agreements should conttnue to be m operatton.

3.3 ConsenSus was also reached on mechamsms ot'addresstng the political. legal and constt ruttonal

lmplicattons of remcorporatton. It was agreed to establish a techmcal commtttee. "1111's commtttee should consult the Gender Advisory Commtttec. It should investtgate thhin the context of the term of reference of sub group 4 of worms; group 4 the t'ollowmg:

3.3.1 the relations'mo between South Africa and the TBVC states dunng the tmnsmonal phase:

â\200\230 WGOâ\200\230CDSIW!

WORKING GROUP WM" â\200\234PORT TO CODBA III! MAY

. 3.3.2 consnder legtslatton that would be required to effect retncorporatton:

3.3.3 consnder iegtslatton and\or measures that would level the political playtng  
i~\201eld:

3.3.4 harmomsatton of legtslation.

Poian not yet covered by working group 4 from the terns of reference

Mechanisms ot~ dealing With some of the aspects of the terns of retâ\200\230emece not yet  
covered by working

group 4 are suggested in paragraphs 3.3 above.

4.1

4.3

4.4

4.5

4.6

, 4,7

strategtes to keep the people of the TBVC states fully informed. especially ta avoxd  
unfortunate rmsundersundmgs:

the time frames for such a reomcorporatton and related processes:

the exact form of authonty tn the TBVC temuortes:

hannomsation of legislatton and taxatton:

orderly termmatton of bilateral and multilateral agreements and treaties:

ensunng public accountability of acttons taken for the purposes of re-mcorporatton:

the ndenttî~\201canon otâ\200\231 spemî~\201c constttuttonal. lcgaf and political manure  
and steps which'wtll

have to be taken to ctfect re-incorpomtton.â\200\230 '

-oOo-Â«