Azapo fights back against State action

On 10 March 1984, members of the Editorial Collective of **Frank Talk** visited Art Printing Press and loaded 1 138 copies of **Frank Talk** Volume 1 Number 1 into a car. As the car left Fountain Lane, another car began chasing it. A high-speed chase ensued: finally, the car containing the copies of **Frank Talk** was boxed in and Warrant Officer De Wet, accompanied by a few non-white security policemen arrested members of the collective including comrade Thabo Ndabeni (national organizer of AZAPO). The security policemen confiscated every single copy of the first issue of Frank Talk as well as many items belonging to individual comrades.

On 17 March 1984, an interdict was sought in the Durban Supreme Court before Judge Didcott for the immediate return of the copies of the magazine which were seized. It became obvious from arguments presented by the system that there were serious consequences to follow for the Black Consciousness Movement in general and AZAPO in particular. The citation of the case is **Thabo Ndabeni v the Minister of Law and Order and Warrant Officer De Wet.**

De Wet stated in an affidavit that he knew of the contents of **Frank Talk** before it was printed. Attached to his affidavit were the copies of the first two articles, "The Definition of Black Consciousness" and "White Racism and Black Consciousness". As Thabo Ndabeni stated in a replying affidavit: "The originals of the said (articles) must have been in the possession of Art Printers and used by that company to print **Frank Talk"**: this became clear because the inscriptions and deletions on the articles were exactly the same as the one given to Art Printers. Since counsel for the State insisted that De Wet had seen these articles before **Frank Talk** was printed, it does not take much imagination to discover how De Wet obtained the articles.

The contention was that the two articles in question were written by the late Comrade Steve Biko and were printed in a collection of Biko's writings (most of which appeared under the pseudonym "Frank Talk") edited by Reverend Ian Stubbs and entitled "I write what I like". The

Thabo Ndabeni

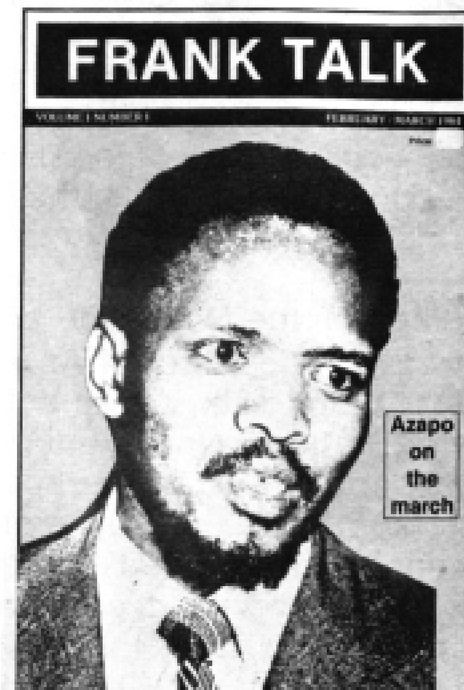
State conceded that this collection was no longer banned.

The contention was that these speeches were delivered at symposia called by the South African Students Organisation (SASO) which is a banned organisation. Thus De Wet concluded that he was entitled to seize all the copies of **Frank Talk** in terms of Section 13(1)(a)(v) of the Internal Security Act, Act No 74 of 1982. This Section decrees that nobody may-

> *"... advocate, advise, defend or encourage the achievement of any of the objects of the unlawful organization or objects similar to the objects of such organization, or perform any other act of whatever nature which is calculated to further the achievement of any such object."*

Section 56(1)(a) of the same Act makes it an offence to disobey this prohibition. The policeman purported to act under Section 20, of the Criminal Procedure Act, Act No 51 of 1977. Briefly, section 20 entitles the State to seize anything which:

(a) *is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of any offence;*



(b) *may afford evidence of the commission or suspected commission of an offence; or*

(c) *is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.*

De Wet considered that the publication of **Frank Talk** contravened the quoted section of the Internal Security Act and that the distribution of the magazing would also be an offence.

The Minister also put up the minutes of the second General Students Council (GSC) of SASO held from the 4th to the 10th July 1971 at the University of Natal Black Section (UNB). The relevant portion is the SASO Policy Manifesto which reads:

1. SASO is a Black students organization working for the liberation of the Black man first from psychological oppression by themselves through inferiority complex and secondly from physical one occurring out of living in a White racist society.

2. We define Black people as those who are by law or tradition, politically, economically and socially discriminated against as a group in the South African society and identifying themselves as unit in the struggle towards the realization of their aspirations.

3. SASO believes that:

   (b) South Africa is a country in which both Black and White live and shall continue to live together.

   (b) The White man must be made aware that one is

Azapo fights back

either part of the solution or part of the problem.

(c) In this context, because of the privileges accorded to them by legislation and because of their continued maintenance of an oppressive regime, Whites have defined themselves as part of the problem.

(d) Therefore, we believe that in all matters relating to the struggle towards realizing our aspirations, Whites must be excluded.

In **S v Nokwe and Others** 1962 (3) SA 71, it was held that the achievement had to be of the specific unlawful organization, not the achievement of the same object or objects by somebody else working independently of and lending no assistance to it. Thus in 1963 Section 2 was amended and the words "... or to objects similar to the objects of any such organization," were added.

Judge Didcott pointed out that whatever objects were similar to the objects of an unlawful organization cannot be determined unless the objects of the unlawful organization were themselves first identified and understood.

The Court said that it had no way of knowing why an unlawful organization has been declared unlawful. SASO was declared unlawful in terms of Proclamation R293 of 1977. No grounds were furnished. The court warned that even if reasons are given in a Proclamation, the real objects of the organization must be established. And the test postulated by Judge Didcott is whether an object is an object distinctive of the particular organization to an extent and to a degree suficient to tie an object with the organization.

Examples given by the judge during the course of argument are illuminating. Say an object of SASO was that workers must get a fair wage and say XYZ Industries has the same object: should XYZ Industries be convicted for furthering the aims of SASO?

Judge Didcott went on to say that on the evidence before him i.e. the SASO Policy Manifesto, BC is a slogan, a label rather than an object. He took the example of two organizations both operating on the slogan "Workers Freedom": Organization A aimed at ensuring that the means of production was in the hands of the working class while Organization B strove to outlaw trade unions because it felt unions impede workers freedom. Organization A and B are clearly at cross purposes despite their common slogan. It follows that the mere fact that both SASO and AZAPO espouse BC is neither here nor there.

Judge Didcott conceded that distinctiveness is by no means an exact criterion: "One can conceive of objects so mundane or innocuous in themselves that, although they are distinctive of some unlawful organisation, no Legislature, not even a Legislature bent on destroying the influence of every such organization, could have feared for a moment that they strengthened its pull.

Using the 'Didcott test', the Court had to decide whether BC was distinctive of SASO. The only definition of BC given was that in the SASO Policy Manifesto. Judge Didcott found that there was nothing in this Manifesto that distinguished SASO eg. opposing integration was common to SASO and, say, the Conservative Party and the idea that Blacks must be self-sufficient is also propounded by, say, Inkatha. What the court really needed, said Judge Didcott, was expert evidence as to what BC is and how BC distinguished SASO (if it did). That alarm bells go off in some people's minds with the mere mention of BC is hardly sufficient to say that BC ***per se*** is unlawful.

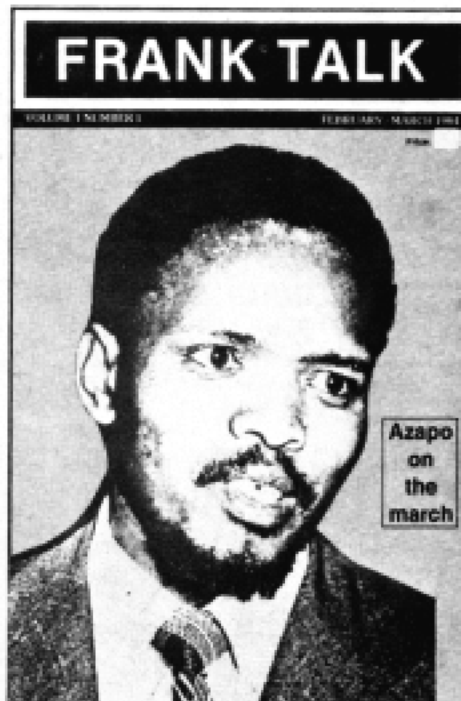
The judge made the telling point during argument that if this was a criminal trial, a discharge of the accused at the end of the State case would be quite inescapable. There is not even a *prima facie* case - there is no case at all!

The judge accepted that De Wet acted in good faith, but that he did not act as a 'reasonable man' would have acted.

Counsel for Ndabeni suggested that in order to contravene Section 13(1)(a)(v), a person must be acting in the interests of the unlawful organization *as such.*

Since an examination of the two articles revealed that care had been taken to remove every reference to SASO the articles could not advise, encourage or defend the achievement of any of the objects of SASO *as such.*

The point was strongly made that the articles by Biko (in fact, the article "White Racism and Black Consciousness" was a joint effort by



Biko and Barney Pityana) were included in the first issue of **Frank Talk** because of their historical interest and that BC had developed since the days of SASO and BPC.

The judge had the following to say about the SASO Policy Manifesto in relation to his test:

"Paragraphs (i) and (v) did not really belong there. Paragraph (i) was descriptive rather than definitive, while paragraph (v) dealt not so much with the concept as with its popularisation. That left paragraphs (ii), (iii) and (iv). These were the paragraphs which defined the philosophy, according to SASO.

"I could not conclude from the information at my disposal that the propagation of Black Consciousness, as thus defined, was an object in the least distinctive of SASO. The definition was broad and general. So were the various ideas it expressed and marshalled. I would not have been surprised to learn that these were taken for granted nowadays by most thoughtful groups and individuals within the Black community, including a large number whose political convictions were far from radical, whose sympathies have never lain with SASO, yet who felt that some such frame of mind was required if Blacks were to overcome the demoralizing effects of subservience and rebuild their self-confidence, their pride. ..."

An order was made by the Durban Supreme Court restoring all but 25 copies of **Frank Talk** to AZAPO.

The State is seeking leave to appeal against Didcott's decision on the following bases:

1. *The Court should not have decided on the lawfulness of the retention but only of the seizure.*

2. *A reasonable man would have*

Battle in the Courtroom

concluded that one of the reasons for SASO's banning was that it promoted BC, thus any person promoting BC is contravening Section 13(1)(a)(v) of the Internal Security Act.

If these grounds of appeal are treated seriously, it means that the system wishes to ban a **philosophy.**

On Tuesday 22 May 1984 there was a nationwide raid on the homes of leading AZAPO office-bearers and members. Every search warrant stated that the police were busy investigating a contravention of Section 13(1)(a)(v) of the Internal Security Act. The criminal trial promised at the **Ndabeni** hearing seemed imminent.

The raids were particularly vicious in that they denuded the AZAPO head office: police took away everything including filing cabinets and pencils.

On 29 May 1984, an action was brought by AZAPO against the Control Magistrate of Durban to have the search warrants used by the policemen declared invalid. The warrants used were in terms of Section 25 of the Criminal Procedure Act.

The Durban Supreme Court held that the test to be used is whether there are reasonable grounds for believing in a certain state of affairs i.e. a danger to the securiy of the state. The magistrate is not a rubber-stamp, he must make up his own mind independently.

The magistrate refused to reveal the grounds upon which he came to the conclusion that AZAPO was furthering the object of a banned organisation. All the state put up were two affidavits by "experts" who claimed that they had reached the conclusion that AZAPO furthered the objects of banned organisations.

Part of Judge Didcott's lucid and hard-hitting judgment are paraphrased below:

"... I find it incredible to be told that there might be grounds which (the state) do not want to tell the court. (The magistrate seemed to) rely on no informant beyond the bare belief of the police ...

*This case has a background which supports this contention ... **(In Thabo Ndaveni v the Minister of Law & Order & Another)** the state gave grounds viz that both SASO and AZAPO believed in BC. The court held that assuming that this common belief exists, and that the understanding of BC is precisely the same, the mere sharing of the belief is quite insufficient to say that the one organization is coming out of the objects of the other.*

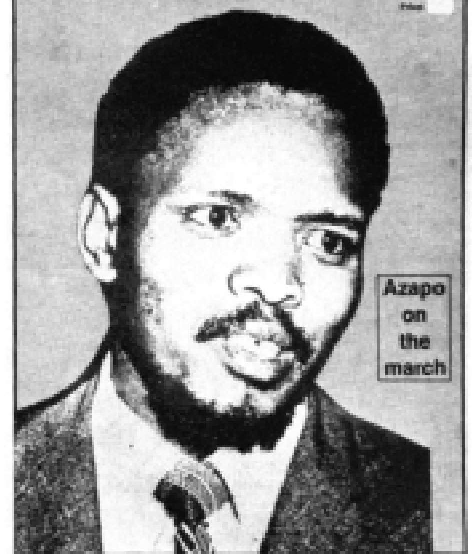
"I ruled then that the ground in question did not and could not without anything more amount to reasonable grounds for the belief in question. As long as that decision stands it is the law - in this province at any event. The same section of the police force features in the present case, some of the same officers, the same organisation and the same banned organisation. If the state relied on something other than common affiliation to BC, it would be in the affidavits in these proceedings ...

The opinions of experts are entitled to some respect. There is no case at all where the opinion of the expert, however eminent, however experienced, however well-versed can bind the court. The expert has to assist the court ... (His mere word) is worth nothing at all if it is supported by no evidence whatsoever.

The personnel of (AZAPO) are being harassed. The police say that (AZAPO) is breaking the law or is preparing to do so in a way that is dangerous. The police exist to enforce the law, the court exists to uphold the law. The court will never hamper the police in the proper performance of its duties. If there is indeed a case against (AZAPO) or if there are true grounds against (AZAPO) it is in the interests of justice to bring (AZAPO) to court ...

If the police are on (AZAPO's) back for no other reason than harassment, it is time they got off its back. (Harassment) is not a proper police function. The police must disclose their hand. They are required to be candid about the facts and grounds on which they rely so that these can be examined in the light of day. If they persist in playing poker (with AZAPO) while not divulging their hand they have only themselves to blame if the court finds there is nothing in their hands at all.

AZAPO will now proceed to recover articles seized in Cape Town, Paarl, Port Elizabeth, Nelspruit and Pietersburg. The scene is set for interesting new developments.



Latest

The state's application for leave to appeal against the judgment setting aside the search warrants has been turned down.

In the meantime the security police returned the bulk of goods seized during their searches.

At the time of going to press, AZAPO officials were still busy sorting through boxes of papers in an attempt to ensure that the police had not forgotten to return some documents.

Contributions for future issues welcomed. Send all contributions to:

Frank Talk, P.O. Box 19360, Dormerton 4015