

TRC Amnesty hearing

ON RESUMPTION: 29TH SEPTEMBER 1999 - DAY 2

CHAIRPERSON: Good morning.

ADV PRIOR:

ISMAIL: (s.u.o.)

MR RICHARD: Thank you Chairperson. Where we left off yesterday evening, there were a number of matters outstanding. The first was the status of a Section 29 record, the other was the issue of statistics as derived from various sources and the third point was the material from what I could say, various archives. With regard to the statistics, I am waiting for various reports from Pretoria and elsewhere and I will leave that point until I get them. Archival material, I thank Mr Dehal for making available what he has, unfortunately there are no indexes and keys to the various photographs extant any more, but I will deal with that as best I can as we go, I regret to say I haven't read 21 volumes of the various appeal records overnight. Then, I then proceed to the status of the Section 29 record. I believe what can be the starting point is the matter that is common cause, that Volume C is the product of information gained on cross-examination via the provisions and mechanisms provided for in Section 29. I don't believe I need to address further. The only factual matter that I may deal with there is I make the comment, but it doesn't prepare that a prepared statement was handed in, unless it is not part of the bundle, but that does not affect the argument. Once Section 29 governs the matter, reference needs be made to Section

MR DEHAL: Mr Chairperson, as I see it, the main reason is that firstly 29 proceedings were by its very nature, held *in camera*, were intended to adduce evidence against prosecution. In this particular case, the Attorney-General here in Natal, had gone public on his intention to arrest and possibly charge Mr Ismail and Mr McBride and there was lots of talk in public and directly by the Attorney-General that he intends to re-open the so-called Magoos bar case and as a result of all of that, there was scurrying and rushed applications, one of which was Mr McBride's application and indeed Mr Ismail's application. These applications proceeded the hearings. Now, one approached the 29 hearings with that prospect in mind, that the hearings would be confidential and never used at any hearing subsequently.

JUDGE PILLAY: You are talking about the Attorney-General of that time?

"... if you were an officer, member or office bearer or supporter of any political organisation, body or liberation movement, state the name thereof",

there you list three. The African National Congress, MK and the South African Communist Party. I would like it if you would kindly advise me what the - distinguish between being a member of MK is, as opposed to being a member of the ANC and what the consequences of that distinction is?

MR ISMAIL: Mr Chairperson, firstly all members of MK are or were regarded as members of the ANC, however MK was the armed wing of the ANC, not all members of the ANC were members of the armed wing. I do not know if Mr Richard wishes me to now elaborate

the objectives of MK, etc. I don't think that is necessary, the documents that were submitted earlier, speak for themselves, they lay out what MK stood for, etc.

MR RICHARD: The second part of my question was what is the consequence of making the distinction as far as your answer to the question is?

CHAIRPERSON: Do you mean why did Mr Ismail distinguish between his membership of MK and ANC, in answering this particular question?

MR RICHARD: Correct.

MR ISMAIL: Basically to elaborate that I was a member of the ANC and of MK, of the armed wing of the ANC. It does therefore not mean that you know, we don't see, we see them as separate organisations or that - rather the one was a subset of the other. But as I elaborated, not everybody was a member of MK, not every member of the ANC was a member of MK and just to highlight that.

MR RICHARD: Would it be correct to infer from your answer that members of the ANC who weren't members of MK, might have amongst them a group with an opinion that did not support the armed struggle or the way the armed struggle was being carried on?

MR ISMAIL: Not that I am aware of.

JUDGE PILLAY: Mr Richard, it will be foolhardy to subscribe to a political organisation that supported the armed struggle, is that not so? That is set out in the documentation provided to us in this hearing?

MR RICHARD: I am aware that it is set out, but the question has been answered, so I proceed. Now, at pages 53 and 54, you also say that you were a member of the South African Communist Party and in the last three items under 7(b) you recount that you were the Zonal Co-ordinator of the SACP at the Funda Camp, a member of the SACP Regional Committee in Maputo and then in 1991 a member of the SACP Regional Committee in Lusaka. Did the fact that you belonged to the Communist Party as well as the ANC, have any particular import or consequence in the situation?

MR ISMAIL: Which situation are we talking of?

MR RICHARD: The situation during the period covered by your application?

MR ISMAIL: I do not understand the importance of that question, I do not also see ...

CHAIRPERSON: Sorry, perhaps if you could rephrase it, I myself cannot quite get what you - relating to, because the applicant was a member of two political parties, he might have been getting higher up instructions from both sides, sometimes maybe conflicting or not? I am not quite sure, if you could perhaps just rephrase it and then ...

MR RICHARD: Were you taking instructions from two different parties?

MR ISMAIL: Mr Chairperson, firstly we've got to recognise that when MK was formed, the SACP was very much part of its foundation. There was no conflict of interest ever brought

about with regards to MK activities, that members of the leadership of the ANC and the SACP were often the same, that they did not give conflicting instructions, nor was any conflict created as a result of the membership of these organisations.

MR RICHARD: And therefore it flows that the objectives of the communist movement were consistent at that time, with the objectives of MK and therefore the ANC?

MR ISMAIL: Yes, the SACP was on record as having said that they supported what the ANC stood for, and its fight for the liberation of the country.

JUDGE PILLAY: I think Mr Aboobaker, perhaps the question could be better answered and time saved. In a military sense, did they agree with each other? The SACP/ANC?

MR ISMAIL: Yes, as far as that was concerned, the ANC was seen as the umbrella body for MK and the instructions that were given to MK were consistent. There was no conflict created by either of the organisations.

MR RICHARD: And to go back to my proposition, it means that the South African Communist Party having the objectives of a communist party at that time, had no difficulty in sharing the objectives of the ANC and *vice versa*?

MR ISMAIL: Well, Mr Chairperson, I think when you say *vice versa*, if you are talking a very broad political sense, if you are trying to make out that the ANC is now, ascribes to the same objectives as the SACP, I think you know, there are differences as far as they have in terms of political views and what they ascribe to, but I cannot see how that, those political views affect these hearings. Because when it came to the question of MK, they were at one about it.

MR RICHARD: And therefore when it is said in your application that you pursued various political objectives, you were pursuing those of the joint objectives of the ANC and the SACP at that time, I am not talking about the present?

MR ISMAIL: Yes.

MR RICHARD: Thank you. Now, then during the period 1978 to 1979 you describe yourself as a Zonal Co-ordinator of the South African Communist Party at the Funda Camp, what was a Zonal Co-ordinator?

MR ISMAIL: Well, basically I was appointed by the SACP to look at the activities of the cells in the camps and to advise on, to recruit other people into the SACP, to ensure that there were political discussions amongst the cells of the SACP inside of the camp.

MR RICHARD: And that progresses to 1992, sorry 1982 to 1984, when you became part of the Regional Committee of the SACP? Would that mean you would in addition to performing the functions you have just outlined, assumed other functions as well?

MR ISMAIL: Well, this was in a different area, this was in Maputo and there the responsibilities were to look at the overall functioning of the different cells of the SACP in Maputo and basically, to guide, to have discussions, to ensure that the cells functioned.

MR RICHARD: Now, within the South African Communist Party, in relation to the then Joe Slovo, Commander of MK, where did you fit into the hierarchy, how many levels were there between you and him? I want to cut it down to the minimum number of questions.

MR ISMAIL: With regards to the SACP you are talking about?

MR RICHARD: Yes.

MR ISMAIL: Well, he was on the Polit Bureau and the Central Committee, the next level down were the Regional Committees and then it went down to Zonal Committees and cells.

MR RICHARD: So, again for the sake of brevity and if I am compressing it, and overly compressing it, please say so, there would have been regular and direct communication between you and him?

MR ISMAIL: Well, as a matter of fact Chairperson, I worked very closely with comrade Joe Slovo. I in my capacity as Commissar of Special Operations and he as Commander of Special Operations, worked together and we met whenever I was in Maputo, almost on a daily basis.

MR RICHARD: Now, it then moves on to the next topic, where again I will be as brief as I can, there are various references to various matters made in the First and Second Submissions made by the ANC to the Truth and Reconciliation Commission, were you a party to the authoring of those submissions?

MR ISMAIL: Yes. I have been asked to put together some parts of it, in relation to Special Operations and other parts, those drafts had been given to the ANC and that was then put together by other members of a Drafting Committee.

MR RICHARD: And indeed, your level of involvement may be outlined by the fact that when the Truth and Reconciliation Commission held the Armed Forces Hearing in Cape Town, you were a participant in those hearings?

MR ISMAIL: Yes, that is so.

MR RICHARD: And - so that means it follows that when it comes to matters mentioned in those various documents that I have just referred to, that is the First and Second Submissions of the Armed Forces transcript, you indeed had as good a working knowledge of the facts behind those submissions and documents as any other in relation to the areas where you contributed?

MR ISMAIL: Yes, I think they had reasonable knowledge of it. At later stage when the documents were being finalised, I wasn't always present because I had my normal work that I did.

MR RICHARD: Do you have available to you copies of the written submissions that I have outlined?

MR ISMAIL: Yes, I do.

MR RICHARD: Now, before I start referring to page numbers, is yours the bound and published rendition of the document, or a copy of the document as printed off the internet site run by the TRC?

MR ISMAIL: The bound copy.

MR RICHARD: I will try my best, I have the internet version, so that means our page numbers will not correspond.

MR DEHAL: Sorry, I apologise for the interjection, Mr Chairperson, I for one don't have any copies of any of these documents and therefore do not follow the questioning. My learned colleague Ms Kooverjee raised it unfortunately with Mr Berger, but he did not have any additional copies. I don't think he is obliged to give us copies. So subject to that ... (intervention)

CHAIRPERSON: Yes, I think if you can keep notes of the references, etc, we can see if we can get copies and make them available.

MR DEHAL: Thank you. Sorry, I apologise, I think it was Mr Berger's Instructing Attorney.

CHAIRPERSON: Mr Richard, proceed. I don't know how we are going to get across the problem with different page numbers, but let us try our best.

MR RICHARD: I have experienced it before, that is why I asked the various questions. If one turns to what I believe should be the third page of the written Second Submission, it is under the section headed "Manifesto - Nature of the South African Conflict" and where it will be on the page, I have no idea, but it is the paragraph which reads -

"... in its conduct of armed struggle, the ANC sought to avoid civilian injury and loss of life."

JUDGE PILLAY: Mr Richard, can you just hold on, we just trying to locate the passage that you have referred to.

CHAIRPERSON: It is page 4, it is the submission dated the 12th of May 1997, the green one, page 4 and on the right hand side of the page, right in the middle - "in its conduct of the armed struggle ..."

MR ISMAIL: I see it, yes.

MR RICHARD: Have you found the section?

MR ISMAIL: Yes.

MR RICHARD: I will read it for the benefit of the record again-

"... in its conduct of armed struggle, the ANC sought to avoid civilian injury and loss of life. It ensured that its combatants understood the reasons behind the armed struggle as well as the

factors required to win to our side the overwhelming majority of South Africans."

Now, that quote could be said and again, if I over-summarise it, correct me, to be the bottom line of the instructions, the education and the philosophy that you wished to infiltrate into both the non-combatant and combatant members of the ANC and the SACP, in short?

MR ISMAIL: Sorry the question, I thought you were making a statement.

MR RICHARD: Is that in short the encapsulated essence of what the education and instructional object of the instructions given to you Forces and members, was?

Thurs

MR ISMAIL: Mr Chairperson, if one looks at that paragraph, it says "the ANC sought", that is what it would have liked to have done, at the same time, elsewhere in these documents and if you look at the Kabwe Conference sections, it talks about not having the fact that civilians present, to allow the ANC from being prevented from acting against the Security Forces. There came a time in the struggle and let me put a theoretical or hypothetical case, if we are in a combat situation and you have ANC combatants fighting against Forces of the regime and there are other civilians present at that time, often you found that the Security Forces were firing at the crowd and perhaps even at combatants. The responsibility for that would have been then that would we then say that the ANC cadres or the combatants should not then fire back and that the Security Forces therefore had the leeway and to continue fighting in which ever way they wanted? Because often the situation was created that the Forces of apartheid were ready to go on and fight and oppress and it was only when the Liberation Forces were able to fight back and strike at them, that they began to feel the pain and the hurt, it is when they themselves bled, that they realised that they did not have the stomach to die for apartheid.

MR RICHARD: And however, when it comes to the major premise and starting point of what the approach was, subject to your amplification that you have just given us, that paragraph that I quoted, is a very short summary of that major premise?

MR ISMAIL: It sought initially to avoid all casualties, it started with sabotage campaigns. Over the years the struggle evolved, as the viciousness of the apartheid regime increased, the response of the masses and its armed wing, also changed.

MR RICHARD: I understand what you have said, but to rephrase my question in a simple yes or no, is that a very, very brief summary of the premise upon which the philosophy of the ANC in relation to civilian casualties, was based?

MR ISMAIL: Mr Chairperson, I have said that the ANC sought at different stages to avoid civilian casualties. There came times when it could not avoid it.

CHAIRPERSON: I think the statement said that the ANC sought to avoid civilian injury and loss of life. You would agree with that?

MR ISMAIL: Yes, I said that right at the outset, but I am elaborating.

CHAIRPERSON: The question was, wasn't that civilians died and they were responsible for it, it is just that, that was, would you agree that this very briefly sums up the policy that the ANC during the period of the struggle sought to avoid civilian injury and loss of life?

MR ISMAIL: I would say yes.

MR RICHARD: This document was written long after Kabwe and indeed for the purposes of this Commission, however, in the sense that it was written afterwards, it is reflective of the policy as at the cessation of the armed struggle?

MR BERGER: Chairperson, in fairness to the witness, the quotations and the witness has answered the question really, the quotations that my learned friend is relying on, are set out in a brief introductory paragraph headed "Manifesto". In the very same document at page 65, the ANC deals with the Kabwe Conference, in that very document. My learned friend, in questioning Mr Ismail, should place ... (tape ends) ...

MR RICHARD: Is it not correct that this document was written in preparation for this Commission, yes or no?

MR ISMAIL: Yes, it was.

MR RICHARD: And subject to all of what is said in it, and not only the excerpts, is it a statement of what the policy of the ANC was as at the end of the armed struggle in 1990?

MR ISMAIL: It sought to explain the policies, it outlines details where possible, of what the actions were, etc. There aren't only policy statements, there are various statements inside of it.

CHAIRPERSON: Yes, these documents deal with the ANC's policies, standpoints during the period 1960 through to 1994?

MR ISMAIL: They do Mr Chairperson, but especially when you look at Volume 2.1, these were Further Submissions and the responses by the ANC to questions raised by the Truth Commission and they sought to answer those questions that were put.

MR RICHARD: I have established that subject to your answers that it states the evolution and development of the ANC's policy during that period and then if we turn to the next page, there is a paragraph which starts, it may be lower down on your page -

"... we are also mindful that armed conflict meant that combatants on both sides confronted one another on various terrains and various circumstances."

Have you got that paragraph?

MR ISMAIL: Yes, I have.

MR RICHARD: There the paragraph goes on -

"... we expect a balanced appreciation of the circumstances that obtained at the time."

What is meant by that phrase?

MR ISMAIL: Well Mr Chairperson, we've got to firstly look at the responsibility of the State, the resources that the State had at its disposal and what they were supposed to have done, and that is to have basically been protecting the people of the country, not been at war with them, which they never succeeded in, nor did they intend to, because they basically had vilified the people of the country, on the other hand, the ANC had meagre resources at its disposal and it had to fight with the limited resources that it had, in fighting a strong and powerful enemy and that one's got to look at what happens in relation to that, the responsibilities that each carried, the Liberation Movement carrying the responsibility for freeing and liberating the country with the resources at its disposal and with the State that had all these resources, that it utilised in basically oppressing and repressing the population.

MR RICHARD: Does that extend to mean that in judging the activities of the ANC, it should be differently judged to another party to the conflict?

MR ISMAIL: I do not see how we can judge them in the same way. The objectives of each of those, were different. Would you judge the Nazi perpetrators in the same way that you did the allies? In the course of the war, millions of civilians died. In the Soviet Union alone, 20 million plus died. The majority of them, civilians. No action was ever taken against the allies, they were there, they were seen as liberators. The Nazi regime were the perpetrators of the heinous crimes, crimes against humanity and it is they that were put on trial. In this case, apartheid was deemed a crime against humanity and for that, you cannot simply say that you take the two things and see them as the same. They weren't the same, they were opposing poles.

MR RICHARD: Isn't it also common cause and you have made mention of the Second World War, that in any conflict if one looks at the behaviour of both sides, that at various times and to various degrees, both sides might have committed what we call gross human right violations?

MR ISMAIL: Mr Chairperson, in the course of a war, in the course of a struggle, mistakes were made, mistakes were committed. The ANC has been open and honest about those, it talks about these, it talks about the situation in the camps, but it never sought to commit atrocities like the apartheid regime did.

MR RICHARD: To continue, and this time as we go through the pages, the numbering will be even more out, but it should be around page 14 of your documents, it is paragraph 2.2 entitled "Armed Operations and Civilian ..." ...

CHAIRPERSON: It is page 13.

MR RICHARD: Page 13. There is starts, and for the benefit of the record I read -

"... the TRC has asked for detailed information on 'the scope and scale of legitimate MK operations as well as attacks not in accordance with ANC policy which had become a trend in the

late 1980's. In a separate question the TRC asked to what extent do the MK Commanders in the front line States take responsibility for actions, especially those involved in civilian targets of cadres inside the country."

Now, it is correct that you were a Commander in the front line States?

MR ISMAIL: Yes.

MR RICHARD: In your evidence yesterday, you answered a question, your counsel put it to you "do you take responsibility for Mr McBride's activities" and your answer was yes. So that means that even though there might have been mistakes, you still take responsibility?

MR ISMAIL: I do, and I would like to elaborate Mr Chairperson. The responsibility of command is such that you cannot simply take responsibility for some things, or the good things, and if something went wrong you then say "oh well, this has nothing to do with me". Command means you take responsibility for all of the actions, of those people, because if you are responsible for arming those people whatever they do, they do because of what was intended by you. Whether it turns out that way or not.

CHAIRPERSON: Wouldn't you qualify that at least if somebody blatantly refuse to obey an order and acted contrary to an order, would you take responsibility for that?

MR ISMAIL: No Mr Chairperson. I am talking in the context of furthering the political aims and objectives of the organisation, of the ANC. We are not here talking about actions, if someone went and stole something, we do not take responsibility for that and the ANC is on record as having said that. But I also want to state that the ANC at all times take responsibility for what it sees as legitimate actions or actions carried out by those cadres in the furtherance of the struggle, unlike many in the apartheid regime who when the chips were on the table, turned tail and refused to even acknowledge that they were part of the system. We do take responsibility, the ANC leadership takes responsibility.

MR RICHARD: Now, on the next page ..

ADV PRIOR: Chairman, with respect, Mr McBride had something to say to his Attorney about me, I don't know - he pointed his finger in my direction, I don't know if I am supposed to react to that? I don't intend to ...

CHAIRPERSON: Is there a problem at all? Sorry Mr Richard, you may continue.

MR RICHARD: Thank you
Chair. Then over the next page
and

a half, various answers are given
until at the fifth paragraph of

the next page I would guess
under the section "Armed
Actions

and Civilian Casualties", there is a reference to the Magoos bar

attack and in the second paragraph of that section, there is a

paragraph which says -

"... as indicated in our First Submission, a number of attacks did take place carried out by MK which were not in line with ANC policy."

Do you see the two quotes that I have referred to?

MR ISMAIL: No, could you indicate how that paragraph starts please?

MR RICHARD: The first paragraph that I am referring to, is the second paragraph in the section entitled and headed "Armed Actions and Civilian Casualties".

CHAIRPERSON: It starts with the word "as indicated in our First Submission ...", is that the one?

MR ISMAIL: I've got that, yes.

MR RICHARD: The next paragraph that I am referring you to is a paragraph, three paragraphs down which starts "gathering tactical Intelligence". Do you have the two paragraphs that I intend to refer to?

MR ISMAIL: Yes.

MR RICHARD: Thank you. Now, in the first paragraph I have referred to, a statement is made that a number of attacks did take place carried by MK, which were not in line with ANC policy. Do you know which attacks this submission is referring to?

MR ISMAIL: Unfortunately not, but it does seek to explain circumstances around these.

MR RICHARD: I have established that you have a far better working knowledge of this document and the background to it, than I might ever get by studying it. Would there be any manner whereby I might establish which attacks are being referred to?

MR ISMAIL: Mr Chairperson, when it came to the question of the Second Submission, I was not as involved in the drafting of any of these and I would suggest that perhaps Mr Richard should request the ANC to then get the people who drafted those sections, to come and answer that, if he so wishes. But generally there were questions asked and the ANC certainly sought to explain that there were problems and then what it did about it, or what was the explanation behind these. It did not refer to specific operations, but it then says "look, this is the kind of thing that did happen." There is elsewhere and later on, it explained some of

these. Perhaps it refers to what follows in subsequent paragraphs, it talks about Silverton, it talks about the Amanzimtoti bomb.

MR RICHARD: Now, my question was quite simple and straight forward and I believe you have answered it. I said are you able to refer me to which attack are being referred to, which were not in line with ANC policy and you have answered that you cannot.

MR ISMAIL: Mr Chairperson, I think we are playing word games here. I have just indicated that these, some of these illustrations here are by way of example. If you expected me to now produce the entire list of all those operations, I cannot.

MR RICHARD: Now who within the Drafting Committee within the ANC, who prepared this document, would be able to give us that information?

JUDGE PILLAY: You are talking about the long list?

MR RICHARD: Lists of attacks which were carried out by the ANC, which were not within ANC policy, where would I get that information?

MR ISMAIL: Well, perhaps you can get Mr Gill Mtchitenzi or Jeanette Annandale.

MR BERGER: Chairperson, with respect, there appears to be no relevance to my learned friend's last question.

CHAIRPERSON: He is wondering whether Mr Ismail knows who might have a list or not.

MR RICHARD: The relevance comes out of the next quote, which is in the second paragraph I referred to where it is said -

"... the Magoos bar attack falls into this category as indicated in our First Submission to the TRC."

MR BERGER: No Chairperson, with respect, my learned friend must read the whole paragraph and see what category is being referred to.

MR ISMAIL: Yes.

MR BERGER: It is not at all the category that my learned friend thinks is being referred to, let him just read the paragraph.

MR ISMAIL: Just to quote it talks of the gathering of tactical Intelligence. You cannot take things out of context.

MR BERGER: In fact it specifically says -

"... at times attacks which appeared to be aimed at civilian targets, were nothing of the sort."

That is the category that is being referred to.

MR ISMAIL: Yes.

CHAIRPERSON: Mr Richard, the way you phrased your question and - it might have led to a misinterpretation, was because you were dealing with the first paragraph you referred to namely attacks which were not in line with ANC policy and now your next question was, your next statement was that Magoos falls into that category, but in fact, it would be fairer if you had to read out the whole paragraph, because I don't think it just goes straight from that one sentence in the second paragraph of the section, to the last sentence of paragraph 5, just linking them straight up without any qualification at all.

MR RICHARD: Chairperson, I will be less economical with my questioning. Let's look at that paragraph in which the reference to the Magoos bar appears. It starts -

"... gathering tactical Intelligence was the responsibility of the units on the ground. This was exceptionally difficult, given the conditions in the country. At times, attacks which appeared to be aimed at civilian targets, were nothing of the sort. The cadre may have had information to the effect that an SADF or SAP group would be present at a particular railway station or hotel or restaurant, at a particular time, but due to a range of difficulties ranging from faulty Intelligence to devices which malfunctioned and go off the wrong time, an explosion occurs apparently senselessly in a civilian area. The Magoos bar falls into this category as indicated in our First Submission to the TRC."

It is a question, not a proposition. It would appear and I ask whether it is so, that this paragraph and section of the document, is describing the Magoo Bar attack as the ANC styled it in this document, it is not my words, as one of the ones that were either erroneous or not in line with policy or a mistake or attributable to some other malfunction in the system, yes or no?

MR ISMAIL: Mr Chairperson, I think the answer to that question is really in that paragraph itself, and it says that -

"... the gathering of tactical Intelligence was the responsibility of units on the ground, and this was exceptionally difficult given the conditions inside the country. It says at times attacks, which appeared to be aimed at civilian targets, were nothing of the sort. The cadre may have had information to the effect that an SADF or SAP group would be present at a particular railway station or hotel or restaurant at a particular time, but due to a range of difficulties ranging from faulty Intelligence, devices which malfunctioned, go off, an explosion occurs apparently senselessly in a civilian area. I think that speaks for itself."

MR RICHARD: The next question is the Magoo Bar attack, was it the result of faulty information or a device that went off at the wrong time, or what was the case, what is implied, what is meant by that?

MR ISMAIL: Mr Chairperson, as I understand that this operation was carried out on the basis of Intelligence that Security Force personnel frequented the Why Not. If it falls into that category, that is the answer to it.

MR RICHARD: So ...

JUDGE PILLAY: Mr Richard, why do you suggest that something was wrong with that attack, that it was a result of faulty Intelligence or such like?

MR RICHARD: Judge, with respect, it flows as the witness has said, from the language of the paragraph. Why is the Magoos bar attack put into the category of a mistake? My question is why, what was the mistake?

JUDGE PILLAY: I am not too sure whether it is properly categorised in your interpretation.

MR RICHARD: I won't repeat the question, but I will phrase it differently. What category is the Magoos bar attack being put into? The sentence reads -

"... the Magoos bar attack falls into this category."

My question is what category is being referred to?

MR ISMAIL: The category of where the gathering of tactical Intelligence was the responsibility of units on the ground, where there may have been difficulties, where perhaps intended targets were not present at the time when it may have occurred, but that in itself, does not prove anything, because I do not know, I have not had the opportunity or do not have the information of the people that were there at the time, and perhaps that can be gone into.

MR RICHARD: Now, I am aware of what you have said about your personal participation in the preparation of this document, but where would I get access to the information that they prepared it from?

MR ISMAIL: Well, I am sure you can question Mr McBride, because he was the person that actually acted on the ground.

MR RICHARD: However, and it is possibly argument, but I put it to you the ANC's own documents concedes that the Magoos bar fell into a special category?

MR ISMAIL: Perhaps because of the outcome, but it seeks to explain what was intended and perhaps what the outcome of it was.

MR BERGER: Chairperson, is my learned friend putting to the witness that there were no Security Force personnel present at the time that the bomb went off? Is he putting that as a fact?

MR RICHARD: It is a matter that I have checked repeatedly with victims and with the Investigating team relating to the prosecution, the statement is that it is denied that there were any Security personnel at the time.

MR BERGER: Chairperson, that is not the same as saying that there were no Security personnel. I am asking if my learned friend is putting as a fact on his instructions, that there were no Security personnel present at the time the bomb exploded?

MR RICHARD: I will then put it in the assertion, there were no Security personnel.

MR ISMAIL: However, Mr Chairperson, the - Mr McBride has stated that these were places that he thought or has understood that Security Forces would be there, he had reconnaissance or Intelligence information to that, in that regard and I think when he is on the stand, perhaps that needs to be taken up with him.

MR RICHARD: Quite correctly, yesterday you stated that you did not make any effort whatsoever to verify or ascertain the basis of what Mr McBride's beliefs were, as to - you accepted his *ipso dixit*?

MR ISMAIL: Yes, his assertion was that, his information was that Security personnel frequented that place. I accepted that, that is what I have stated.

MR RICHARD: Now on the next page, and unfortunately I can only guess where it will be, there is a paragraph which begins "maintaining discipline in guerrilla and conventional armed forces"...

CHAIRPERSON: Page 15, third last paragraph on the left hand side of the page.

MR ISMAIL: I have it, thank you.

CHAIRPERSON: Perhaps if you want to carry on reading it, just for the record purposes, Mr Richard.

MR RICHARD: Thank you Chairperson. It reads -

"... maintaining discipline in guerrilla and conventional armed forces is also fundamentally different. In the case of a guerrilla force, discipline flows from a thorough understanding of the political objectives of the armed struggle, not from the threats of court martial or punishment."

Is that a statement with which you agree?

MR ISMAIL: Yes.

MR RICHARD: And it was the objective that you sought to achieve and the ideal that you sought to live up to?

MR ISMAIL: Yes.

MR RICHARD: Now, it would flow that it is correct to say that the consequences of a mistake of bombing civilians as opposed to legitimate targets, would be understood by the operatives?

MR ISMAIL: Yes.

MR RICHARD: Now, it appears from the numerous papers before me, that at the time, rightly or wrongly, certain opinions held in America and Britain were to the effect that the ANC was not a freedom organisation, but a terrorist operation?

MR BERGER: Chairperson, what is ...

MR ISMAIL: Chairperson, that needs to be treated with contempt. Those very same people in Britain and America at the time, were people that collaborated with the apartheid State. They were the ones that actually shared information with the racist regime at the time, they were the ones that said the ANC was a terrorist organisation. Those are the same people who today, hail South Africa and the ANC as being leading the democratic principles in the world, as having a constitution which is amongst the best in the world, founded by this government, led by the ANC. I put it to you that whatever they said then, has no basis because they basically were founded on a principle that they would oppose people fighting for the liberation of their country.

MR RICHARD: Was it not also important at that time, and we are now talking about the middle 1980's to the end of the 1980's, to obtain support from those countries, America and Britain.

CHAIRPERSON: Where are we going Mr Richard for the purposes of us making a finding here?

MR RICHARD: The point that I am making is quite simple, that in due course we will hear evidence as to why Mr McBride was prepared to accept that his acts were his own acts, not those of the organisation and it was so as to protect his organisation. The point I am making in relation to this particular paragraph is quite simple, what he said at his trial is quite consistent with a man who understood that he should protect his organisation from the brand of terrorism.

MR BERGER: Chairperson, if my learned friend is going to quote from a document, in fairness the document should be placed before Mr Ismail for his comment, if indeed it is permissible to do so. I suggest that perhaps, if there is any cross-examination of this sort, and if it is relevant at all, it should be directed to Mr McBride to explain why he said certain things at certain times in his life, under certain circumstances.

MR ISMAIL: And if I may appeal Mr Chairperson, I am not sure whether Mr Richard is making a statement or he is asking a question. I was still waiting for the question that followed upon what he said.

MR RICHARD: My question was straight forward and simple. From the import of the paragraph I read, is it not correct yes or no, that an operative would commit acts only consistent with the objectives of the ANC at the time?

MR ISMAIL: Yes, and the objectives of the ANC at the time were to strike at Security Force personnel, that is what we sought to do, that is what Mr McBride sought to do.

ADV SIGODI: Mr Richard, is it your instruction that the Magoos bar was never patronised by the Security personnel? Is it in dispute that it was ever patronised by Security personnel?

MR RICHARD: My instructions are that on that day, there were no Security personnel amongst the injured.

ADV SIGODI: Yes, I accept that, but is it in dispute that it was ever patronised by Security personnel on a regular basis?

MR RICHARD: Chairperson, with respect, it is elementary straight and crooked thinking, for me to make the proposition that the Parade Hotel was never patronised by members of the Security, would be far too wide.

ADV SIGODI: Yes, but what the applicant is putting is that we had information from Mr McBride that this place was a place which was regularly patronised by Security personnel and if the victims are disputing that, then put that to him, is it the victims' case that this place was never patronised by Security personnel, thus making it an illegitimate target or we can hear that on that particular day, the victims are saying that there were no Security personnel, we can accept that. But is it disputed that it was ever patronised, that the applicant or at least Mr McBride had no reasonable basis for putting the bomb there on that day?

MR RICHARD: To answer the question specifically, it is denied and disputed that Mr McBride made any honest or diligent effort to conduct a meaningful reconnaissance of the place. It is alleged that he did what he did without heed for the consequences of innocent civilians in the pub or pubs at the time, and without applying his mind to what in fact he was doing, in other words his allegation that he did a reconnaissance upon which he could make the statement that he does, is disputed and he will be put to the proof thereof.

ADV SIGODI: Yes, but shouldn't that be put to Mr McBride then as the person who did the reconnaissance, how far can we take this matter in so far as the present applicant is concerned?

MR RICHARD: This particular witness and applicant is the one who was the Commander of the unit in which Mr McBride served, and it is he who accepted Mr McBride's say so, that it was a legitimate target. Now, if Mr McBride had a thorough understanding of the political objectives of the armed struggle, and was compliant and supported thereof, and had applied his mind to it, the consequences of bombing a civilian target, must have been well know, that is the purpose and relevance of this line of questioning. Does this witness accept that or not and having said that, I may ask the question, do you accept what I have just said as a summary?

MR ISMAIL: Mr Chairperson, basically the information that was before Mr McBride was that that was frequented by Security Force personnel. It was in line with the objectives of the ANC. The political objectives of the ANC were to strike at Security Force personnel, wherever and whenever and as far as I am concerned, the ANC accepts political responsibility for it.

MR RICHARD: We will discover from Mr McBride what he did to inform himself of the situation, we have discovered from you that you knew nothing as to what he did to base his opinions. Let's proceed. Lower down on the page -

" ...we have described the conditions under which the Kabwe Conference was held in our First Submission."

I believe we have covered the point, but it is correct that the effect of the Kabwe Conference as stated in this document, is less emphasis was placed on avoiding civilian casualties at all costs, and I emphasise ...

MR ISMAIL: Mr Chairperson, could you - before you just dive on, indicate to us where exactly you are reading from.

CHAIRPERSON: It is the last paragraph on page 15, on the left hand side of the page, it begins "we have described the conditions..."

MR ISMAIL: I have that, thank you.

MR RICHARD: My question is very shortly, what is the relevance of the word "less" in that paragraph, less emphasis was placed?

MR ISMAIL: That means that we needn't always pay heed to avoiding civilian casualties if we were striking at Security personnel.

MR RICHARD: But emphasis was still placed on avoiding civilian casualties?

MR ISMAIL: Mr Chairperson, it says "less emphasis".

MR RICHARD: In other words the factor of civilian casualties was still a factor to take into account?

MR ISMAIL: Mr Chairperson, perhaps I should refer Mr Richard to the quote by the President of the ANC at the time, comrade O.R. Tambo and as he put it, I will summarise and I quote -

"... I will summarise the position taken by the Conference in these terms, that the struggle must be intensified at all costs. Over the past nine to ten months at least, at the very least, there have been many soft targets hit by the enemy, nearly 500 people have now died in that period, massacred, shot down, killed secretly. All these were very, very soft targets, they belonged to the sphere of the intensification of the struggle. What we have seen in places like the Eastern Cape is what escalation means for everybody. The distinction between hard and soft targets, is going to disappear in an intensified conflict in an escalating conflict."

That is what we are talking about. We are talking about atrocities committed by the regime and the ANC's position that they were going to strike back.

MR RICHARD: What you have just said, did not flow from any question I asked, but I would understand you to mean that ...

MR BERGER: Chairperson, with respect, my learned friend asked a specific question about soft targets, Mr Ismail answered that question directly.

MR RICHARD: My question in reply to what you have just said to me, does that imply it was justified for the ANC to hit civilian soft targets?

MR ISMAIL: The ANC accepted that there would be civilian casualties as it struck against the racist Forces of the apartheid regime.

MR RICHARD: And yesterday to remind you, we went through various hypothetical situations, do we need to go through it again?

MR ISMAIL: Not in the way you put them, I don't see what the relevance of it was.

MR RICHARD: If one then goes to paragraph 4.3.1, the heading of that is 1985 - The Kabwe Conference and Controversies Surrounding the Issues of Soft Targets. In my bundle it is page 71.

MR BERGER: It is page 65.

MR RICHARD: "Targets were identified as follows ...", have you got that paragraph?

MR ISMAIL: Yes, I have. Page 66.

CHAIRPERSON: Page 66?

MR RICHARD: On the basis of what you had just said, which is set out above the paragraph that I am referring to and other factual matters relevant to the time, is it correct that targets at the Kabwe Conference, were to be identified as stated there and the paragraph reads -

"... targets were identified as follows: the racist army, police, death squads, agents and stooges in our midst and the call to take the war to the white areas, is defined as follows - strengthening our workers' organisations and engaging in united action in the factories, mines, farms and suburbs."

Then the second point -

"... spreading the consumer boycott to all areas of the country."

The third point -

"... organised and well planned demonstrations in the white suburbs and central business districts."

Third -

"... forming underground units and combat groups in our places of work and taking such action as sabotage in the factories,

mines, farms and suburbs and disrupt the enemies' oil, energy, transport, communications and other vital systems."

Next -

"... systematic attacks against the army and police and the so-called area defence units in the white areas. Well planned raids on the armouries and dumps of the army, police, farmers, and so on to secure arms for our units."

Now, when we talk about the Kabwe Conference, isn't that in essence what the direction and policy that came out of it?

MR ISMAIL: Yes.

MR BERGER: Chair, if one reads the statement in context, is it not that this was following on from an official pamphlet, that is referred to a paragraph a little higher?

CHAIRPERSON: Yes, but I think the question that he put, is not unfair.

MR ISMAIL: I said yes.

MR RICHARD: It is in the context of what I have just read out, that a well trained operative would operate?

MR ISMAIL: Yes. And that that attack would fall into the category of systematic attacks against the army and police and the so-called area defence units of the white areas.

MR RICHARD: I then turn and would ask your comments, on Appendix 4. There is a list of MK operations ...

CHAIRPERSON: It is on page 72, Appendix 4.

MR RICHARD: Now, if I examine that list in detail, I see that every item starts with the word "economic" SAP buildings, "economic" skirmish with SAP. Why were those classifications made to the events listed therein?

CHAIRPERSON: I would just like to get clarification, are you saying that "economic", they are not all prefaced by them being economic.

MR RICHARD: Sure, what I say is each item and I will start at the top of one ...

CHAIRPERSON: ... a broad category, if one starts at the beginning 30 November 1976, skirmish with SAP and then it describes very briefly the incident and then the next one on the 8th of January of that year, economic. So each one's got a different category. Is your question why have they ...

MR RICHARD: Why were they classified in the first place?

MR ISMAIL: It was basically to identify the nature or type of operation that had been carried out. In this case, if one turns to page 87, you see where it refers to the Why Not and MAGOOS, it talks of SADF personnel.

MR RICHARD: I beg your pardon, your page reference is?

CHAIRPERSON: Page 87 he referred to, that is the one which contains the ...

MR ISMAIL: If you go to the date.

CHAIRPERSON: The incidents during June 1986, 14 June 1986.

MR ISMAIL: 14 June 1986.

MR RICHARD: Now, is it not correct if I look at an item such as the 8th of January 1982, Mobil fuel storage depot, (indistinct) blast, the next one, December of that year, personnel activity. Those classifications in effect make a statement?

MR ISMAIL: Sorry Chairperson, I don't find the 8th of ...

CHAIRPERSON: If you could just mention those dates again please Mr Richard, I missed them and I haven't got the ...

MR RICHARD: Let me rephrase the question. As we go through each and every one of these classifications in this part of the schedule, the Annexure. is it not correct that the statement, economic, SADF building, skirmish with SAP, in effect classifies that action as a legitimate target?

MR ISMAIL: It classifies it.

MR RICHARD: As a legitimate target?

MR ISMAIL: I don't know how you seek from going through these lists, you know whether it is legitimate, illegitimate or what. It is listed as an MK operation.

MR RICHARD: My proposition is straight forward and simple, I read out a fairly lengthy paragraph from the submission where it speaks of what was resolved at the Kabwe Conference and the criteria as to how operatives should carry on their activities. I then go to the Annexure and I say examine the classifications item by item on that Annexure. I then make the proposition, the classifications item by item read with the Kabwe summary that I have read out, mean to me as an ordinary reader, that the author of this document intended me to assume that this list is a list of legitimate activities? Is that correct or not correct?

MR ISMAIL: Yes.

MR RICHARD: It is correct?

MR ISMAIL: Yes.

MR RICHARD: Now, I then proceed to Appendix 5 and now that interestingly enough is entitled "Armed Actions for Which Target Category And Or Responsibility Is Uncertain". There is no classification in the manner that we have outlined in Appendix 4, correct?

MR ISMAIL: Yes.

MR RICHARD: Now, I will start listing them as they start on the 25th of November 1977. Bomb explodes at Carlton Centre, Johannesburg, 14 injured. Then the next one, bomb explodes on Pretoria bound train. The lower down the page, three limpet mines explode in department stores in Durban causing limited damage, but no injuries. Bomb explodes at night club at Umlazi Hotel, 30 children injured. Next item, bomb explodes in OK Bazaars, no injuries, and so it goes on. Now, it would appear that this is the list in which the attacks would appear to be persons other than Security Force personnel, is that not an obvious inference?

MR ISMAIL: No, it is not. If it - it says at the outset "please note, this list includes all incidents we have found in press reports and from SAIRR annual surveys, which cannot be classified according to target categories used in the Appendix headed "List of Known MK Operations", in addition we are uncertain as to whether these attacks were carried out by *bona fide* MK members, some appear to be the result of operational difficulties, others very probably false flag operations. Here we may also say the bombing of COSATU House which was previously ascribed to Shirley Gunn, when in fact it was carried out by the murderous Forces of the apartheid State, some of those were also, could also have been listed at various times.

MR RICHARD: And then if we go to May 1986, I refer to two items there. ?May 1986, SAP say a 50 kilogram bomb was found under a car in downtown Durban. That corresponds from my analysis to the Pine Parkade bomb that was found and for which Mr McBride - is there any reason why this was not put in the other list, Appendix 4?

MR ISMAIL: Mr Chairperson, if operatives didn't always give the information or at the time when this was written, if the information was not known and if it was still being investigated by the ANC, it was then put into this list. There were times when certain things were pointed out to the drafters, but because of time pressure, etc, it stayed in this list, and they did not always move it.

MR RICHARD: And in argument I will submit that the inference and the only apparent inference that can be drawn from the two lists, is those that expose civilians to injury or did injure civilians, we put in the doubtful category, as opposed to those that were legitimate targets.

MR ISMAIL: No sir, that is not drawn from this.

MR BERGER: Chairperson, how can my ...

MR RICHARD: Is there any comment on what I will argue?

JUDGE PILLAY: Are you entitled to put that to him, is there sufficient basis for having to say so?

CHAIRPERSON: You are free to argue it, what Mr Ismail, how Mr Ismail views your argument, is that very important?

MR RICHARD: What I have given Mr Ismail an opportunity to reply to is that we have two lists before us. One, a list of what in accordance with the Kabwe test that I outlined some minutes ago, are legitimate incidents, that is Appendix 4, then in Appendix 5, a list of what are obviously events in which civilians were either injured, killed or put in danger for which the ANC does not take unequivocal responsibility, and I say an inference may be drawn. He has the opportunity to reply to me.

MR ISMAIL: Mr Chairperson, I have responded to that question already and I would suggest that Mr Richard please read the introductory note. It explains itself, I have already alluded to it, and I think it is time that we really took note of the answers that are being given and it indicates quite clearly there are cases where the ANC does take responsibility, it said basically that these are things, it is uncertain, it does not then say that these are things that were classified as civilian targets, etc, and therefore the ANC does not take responsibility for it.

MR RICHARD: Your answer has been noted. As an incident is referred to in the Truth And Reconciliation's Armed Forces Hearing, held on 10 October 1997 in Cape Town, I would refer you firstly and I hope this time the pages are consistent, to page 11.

MR ISMAIL: 11 of?

MR RICHARD: And that is where ...

CHAIRPERSON: Page 11 of which document, Mr Richard?

MR RICHARD: The transcript of the evidence received by the Truth And Reconciliation Commission at its Armed Forces Hearing.

CHAIRPERSON: Sorry, do we have that before us Mr Prior?

JUDGE PILLAY: What Volume would that be?

CHAIRPERSON: It is not part of our papers, but anyway if you can then put it and read it out, because we don't have it before us Mr Richard, that section that you wish to refer to.

MR RICHARD: Thank you. Now, at page 11 and I will read out what the now retired Minister, Mac Maharaj, said.

"... If we look at our submission in August 1996, page 52 in the second column, half way down, we referred to a pamphlet that the ANC distributed in the country called "Take The Struggle To The White Areas", it made a call to the people and it gave them a guidance of what they should be doing in taking the offensive in the struggle. It was not just saying "take arms and start shooting", it said number one ..."

MR BERGER: I am sorry to interrupt my learned friend, what is the reference?

CHAIRPERSON: Page 11 of the Armed Forces Hearing, page 52...

MR BERGER: Of which Volume?

CHAIRPERSON: That is the pamphlet that you were referring to when we were talking about the Kabwe ...

MR BERGER: Yes, but the reference that I have is at page 66, that is why I was just trying to see if there was another reference.

CHAIRPERSON: I haven't looked at it. Page 52 you say Mr Richard?

MR RICHARD: Again, on the printout that I've got, it has got page 11 of 54.

CHAIRPERSON: Is that the submission of August 1996?

MR RICHARD: No, this was 7 - 10 October 1997.

CHAIRPERSON: The reference of the pamphlet on page 52, it was page 52 of what ...

MR BERGER: Chairperson, we have found it. It is in the First Submission of August 1996.

CHAIRPERSON: So I have it here, it is the correct reference.

MR RICHARD: The now retired Minister of Transport, was giving evidence and said in the context of what was disciplined action, industrial action, not shooting away like cowboys, and I read the section. Are you aware of the hearing that I am quoting?

MR ISMAIL: Yes, I am.

MR RICHARD: Were you present?

MR ISMAIL: Yes, I was.

MR RICHARD: And for the sake of brevity, do you believe that Minister Maharaj gave a fair summary of what the policy of the ANC was during the 1985/1990 period?

MR ISMAIL: Yes.

MR RICHARD: I will hand in the documents. Then if we proceed further, there Mr Maharaj made this comment in answer to a question by Mr Lax and I will read the question and the answer -

"... If I could just follow that up, I hear you. I hear the difficulties of operational command, we heard that from APLA themselves and we heard it now, how difficult that became as the struggle intensified as more and more people were recruited, training became less intensive and more difficult as the struggle intensified. But what we are trying to gain and understand of in essence is for example, the so-called notorious

MAGOOS bomb where the vast majority of victims were civilian in that particular case, we have heard that it was a last minute decision to change the nature of the target, the specified place. Cadres on the ground made that sort of decision, what sort of censure in the light of what subsequently happened came from the high command when it became apparent that this was a big mistake in a sense, what steps were taken?"

Mr Maharaj answered -

"... then I think that the MAGOOS bar has again been dealt with extensively by us and what we showed was that in the ordinary operational situation we were living in, in an environment where the overwhelming majority of our actions were correct, well targeted, achieved what they set out to achieve. Then we come to a number of operations that begin to move in the grey, faulty, Intelligence, false flagging, enemy Force penetrating and misleading our forces on the ground, directing them towards a target not in keeping with our policy. It is in that situation that as command, we have to take correct actions."

Now again, you were present at these hearings, why was MAGOOS bar put in that grey or faulty Intelligence category?

MR ISMAIL: Mr Chairperson, the Intelligence that was available at the time through Mr McBride would have indicated that Security Force personnel do frequent that place. Perhaps right at that moment, Intelligence may not have been available or some other circumstances pertained. The point is, it is known that civilians, some civilians were killed or injured in that operation, and it was put to Mr Maharaj that you know, if this was - and what he then said, he talked about the category of the Intelligence, which is what the ANC documents also speak of.

MR RICHARD: Chairperson, I had looked at the clock and I don't know if I saw it correctly, it is five past one, before I go onto the next topic, I have left the submissions and previous hearings.

CHAIRPERSON: Yes, it will be, it is just in fact a little before one, but it will be a convenient time to take the lunch adjournment. We will take the lunch adjournment now.

MR RICHARD: Thank you Chair.

COMMITTEE ADJOURNS

ON RESUMPTION:

ABOOBAKER ISMAIL: (s.u.o.)

CHAIRPERSON: Yes, thank you. Mr Richard?

CROSS-EXAMINATION BY MR RICHARD: (cont)

Thank you Mr Chair. The last of the documents that I wish to bring into this record is an excerpt from the Pretoria hearings which related to the Church Street bomb and at 132 of that.

CHAIRPERSON: Is that the transcript of the hearing?

MR RICHARD: About just over half way down the page, Mr Trengove SC asked this question and I would like to ask you whether there is anything you would like to add or subtract from your answer. The question was -

"... it is correct that the ANC policy was never to select targets whose sole objective was to strike ...

MR BERGER: Chairperson, it is "is it correct".

MR RICHARD: Sorry -

"... is it correct ...", do you have that quote?

MR BERGER: And it is the second page 132, there are two page 132's. There is page 132 in-chief and then the numbering starts again.

CHAIRPERSON: I've got that now, so it is the second page 132. I think if you could just read it from the beginning again, Mr Richard.

MR RICHARD: Thank you Chairperson. The question put by Mr Trengove was -

"... is it correct that the ANC policy was never to select targets whose sole objective was to strike at civilians?"

And your answer Mr Ismail was -

"... yes, that is correct."

My question is whether you would like to add anything to that answer or amplify it or confirm it?

MR ISMAIL: I confirm it Mr Chairperson.

MR RICHARD: Thank you. The next question put went -

"... it is also correct that when cadres departed from the ANC policy as did happen, the ANC acted to reassert control",

then your answer at that hearing was -

"... that is so, especially with reference to what Adv Visser had talked of with the Wimpy Bars or whatever, that at that point,

when the NEC felt that it was going in the wrong direction, they immediately instructed all of the Military Headquarters to go out immediately and deal with the matter."

My question is the same, anything to add or subtract or simply confirm?

MR ISMAIL: I confirm Mr Chairperson.

MR RICHARD: Now, I do not intend to reopen the Wimpy Bars debate, that was sufficiently canvassed at that hearing, but in relation to car bombs, was there ever any discussion at NEC level or any instruction given to the various Military Headquarters?

MR ISMAIL: Mr Chair, if the question is was there any problem with regards to car bombs and the targets chosen, there were no problems with that, not that I know of.

MR RICHARD: And the second part of that question, simply to put it into the record, were there or were there not any instructions given regarding car bombs?

MR ISMAIL: Are you talking now broadly, about all car bombs, about whether we should use car bombs or not, or are you talking about problems that may have arisen out of it, I am just trying to...

CHAIRPERSON: Sorry Mr Richard, also if you could perhaps just make it clear, instructions from what level to what level as well?

MR RICHARD: Thank you Chair, to clarify, in your answer to Mr Trengove's question, reference was made to Wimpy Bars. I don't intend going into the Wimpy Bar story, it is traversed in this bundle. Now as there were instructions from the NEC concerning Wimpy Bars and limpet mines, when they instructed all of the Military Headquarters, my question then is was there or was there not an analogist or similar instruction ever concerning car bombs?

MR ISMAIL: Mr Chairperson, there was no analogist instruction with regards to car bombs.

MR RICHARD: Thank you. Now, before I put a photograph before you to describe and tell us about, can I ask you what is your knowledge of explosive devices? Do you have knowledge?

MR ISMAIL: Yes, I do. I in fact was an Instructor in the use of explosives.

MR RICHARD: I hand you five pictures, numbered 72, 73, 74, 75 and 76. I will describe what they are after walking across. Those photographs were exhibits in a trial of Mr McBride and were items allegedly found in one or other of the Dead Letter Boxes or caches. My interest in them is to hear from you what they are.

CHAIRPERSON: Are they all the same or are they different?

MR RICHARD: Regrettably I haven't had a chance yet to make copies.

CHAIRPERSON: Perhaps if you can deal with them by number Mr Ismail, starting with number 72, through to 76 and then just say what it is, whether it is a limpet mine or whatever, or handgrenade, or whatever it is.

MR ISMAIL: Mr Chairperson ...

MR DEHAL: Sorry Mr Chairperson, may I just interject at this point, I am being corrected by my client in so far as the reference to these photographs as being exhibits in the trial are concerned, I am told and it would appear correct, I remember this trial occurred more than, I think in the year 1986, so I cannot remember each and every detail, but that the bundle consisting of that Leverarch file which Mr Richard has, was used in the trial, but not every photograph was handed in as an exhibit, so that these photographs may in all probability not be exhibits *per se*.

CHAIRPERSON: Thank you. Do you accept that Mr Richard?

MR RICHARD: I accept that. As I have explained ...

CHAIRPERSON: We will just regard them as photographs, where they were used in the past, etc, is of no consequence.

MR ISMAIL: Mr Chairperson, with regards to Exhibit 72, that looks like a photograph of the extended charges, two of them. I believe if my memory serves me right, they were the SZ6 charges which are at the bottom and the one at the top, is a square mine, also high explosive, which is I think an SZ3.

CHAIRPERSON: (Indistinct)

MR ISMAIL: Yes, well, it is not a mine as such, it is an explosive that has been encased.

CHAIRPERSON: In a square casing?

MR ISMAIL: Square casing.

CHAIRPERSON: And it is an SZ6?

MR ISMAIL: SZ3, I think.

CHAIRPERSON: Something like that, yes.

MR ISMAIL: The rectangular charge. The lower one, Exhibit 73 is a close up of that and showing the hole ...

JUDGE PILLAY: Of what was that?

MR ISMAIL: At this point?

JUDGE PILLAY: Of the rectangular?

MR ISMAIL: Of the rectangular mine, it is showing the point where a detonator is fitted in. Again, it is a close up of that, of the SZ6 at the bottom and I believe they are connected by a wire or it looks like something just to keep the two mines together. Exhibit 74 basically on the one side shows the SZ6 mine and on the other side, the rectangular charge with the underside and I don't know whether this is just scrapings of paint or - that came off the charge, and it's got the markings in Russian on the side here.

CHAIRPERSON: It is basically the same mine, the same square...

MR ISMAIL: Yes.

CHAIRPERSON: If we call it the square mine?

MR ISMAIL: Yes. Exhibit 75 would be the two SZ6 mines, the ends of it, showing the end at which the fuse, a fuse can be inserted on the other side, where a detonator can be inserted and at the bottom there, it would be a handgrenade fuse. That is 75. Mr Chairperson, Exhibit 76 which is a black and white photograph, basically shows two mines, again linked together, the SZ6 mines, long ones, with the rectangular charge on top of them, and then a handgrenade in front of it.

MR RICHARD: Thank you. And the square explosive device or mine, what would that be used for?

MR ISMAIL: It is basically a charge, it can be used under varying circumstances.

CHAIRPERSON: Would it be used as a mine as such, would it send off shrapnel?

MR ISMAIL: No.

CHAIRPERSON: And kill people if it went off in their presence? It wouldn't be used as a mine like a limpet mine?

MR ISMAIL: Mr Chairperson, no, it is not, in fact it might be closer to a limpet mine, because it is a charge, which is simply encased in a box. It is not a mine as in a landmine in the ordinary sense that if you step on it, it would go off, or in the case of an anti-tank mine, if a heavy vehicle went over it, it would then be set off. It is basically just explosives that are packed in and for ease of use, it has the holes in it, etc, so that people then don't have to handle ordinary explosives, but it is an explosive that is encased. All of these are encased explosives. The one point I think that we should just take note of, is that all grenades, landmines, etc, all of those things, do have a shrapnel affect. In fact if you took an F1 grenade, the bulk of it is the metal part around it, and you know, you have a small core of high explosives inside of it. When it explodes on the inside, it will send out shrapnel.

MR RICHARD: Now, I am referring to the rectangular object, what would that be given to an operative for?

MR ISMAIL: To use as an ordinary explosive. It can be used under any circumstance.

MR RICHARD: So it could be used as a part of a car bomb, as part of a device for demolishing a bridge?

MR ISMAIL: Yes.

MR RICHARD: Now, what sort of detonation mechanism would apply to it, would it be the ring or the ...

MR ISMAIL: You can use various detonating mechanisms for it. You could use electrical detonation, you could use mechanical detonation, you could use the mechanical fuses with detonators on it.

MR RICHARD: However, whichever mechanism of detonation one used, one could set it against your clock, whatever the time is, and determine that it would go off at precisely 5-00 pm this evening?

MR ISMAIL: Well, that has nothing to do with the charge itself.

MR RICHARD: With the detonation?

MR ISMAIL: The detonation mechanism is actually what determines the timing.

MR RICHARD: Now with any one of the detonation mechanisms that you have listed, my question is can it be set to go off precisely at a given time in the future?

MR ISMAIL: Some mechanisms can be set to go off at precise times, there are others that cannot be set off to go off at precisely a particular time. In the case of ordinary limpets, because they were dependent on the heat of something, and depending on the ambient temperature, basically because they are mechanical and depending also on the quality of the metal and different batches would differ, you would find that that would have to cut through that metal and then it would go off. It is very inexact, but it gives you a broad range. Often you know, there were a range within this hour to that hour. In the case of the electrical detonators, where they were set for a particular time, they would go off within the time given.

MR RICHARD: However with reference to this rectangular box, a limpet mine type detonation mechanism with the plate of metal which is to be cut through at a differing rate, that wouldn't apply?

MR ISMAIL: You could use it as well, yes.

MR RICHARD: Thank you. So, the answer to the question is depending on the device, you could either set it to go off precisely at a future point in time or not? The long objects with the oval end, what are they?

MR ISMAIL: They are also basically explosives that are encased, basically that is a mixture of TNT and RGX, inside of it, which means that they are more powerful than ordinary TNT of the same weight or equivalent.

MR RICHARD: Would they be referred to as a demolition?

MR ISMAIL: Demolition charges?

MR RICHARD: Yes.

MR ISMAIL: Yes.

MR RICHARD: Now, when it comes to the detonation mechanism, if my assumption is incorrect, please correct me, everything that we have said about the rectangular object applies?

MR ISMAIL: Yes.

MR RICHARD: Now, please ignore 68 and 69, just look at 70 and 71. There we will see two of the rectangular, one of the rectangular objects on top of two of the longer objects? Excuse me while I -

CHAIRPERSON: Yes, Mr Richard.

MR BERGER: Chairperson, before my learned friend continues - I understand, well I think I understand where my learned friend is going with regard to the timing devices, but - and it is not for the purposes of this witness that he seeks information, but it is for the purposes of further cross-examination of another witness, I am sure, but now that he has the answers that he sought Chairperson, and that everything depends on the timing device that was used, it is really of no relevance now, I would submit, to question Mr Ismail on further explosive devices.

MR RICHARD: May I ask the question before we decide its relevance? The fact that there are two of the longer objects, packed underneath the rectangular object, does that have any particular significance or not?

MR ISMAIL: None at all.

MR RICHARD: In other words, that is how they happen to be in that particular carrier bag?

MR ISMAIL: Yes, and I would suggest perhaps it was also perhaps more convenient to carry them in that way.

MR RICHARD: Now my next question regarding ordinance is without going into lengthy detail, from what we know from various hearings, is it correct to say that mortars, rockets, various explosive packages, detonation packs, handgrenades were all available?

MR ISMAIL: To whom?

MR RICHARD: Available, say to the operatives in Gaborone as at 1986?

MR ISMAIL: Yes.

MR RICHARD: And then by the same token, if as we heard yesterday, Mr McBride collected his own ordinance for himself and his operations, they would have been available to him too?

MR ISMAIL: If they were required for him, yew.

MR RICHARD: Simply so it may never be said that I didn't put the proposition to each applicant, I am going to allow you to examine an aerial photograph.

CHAIRPERSON: Is this Mr Richard, a large aerial photograph of the beach front area of Durban?

MR RICHARD: That is correct. Thank you. Now, it is an enlarged aerial photograph of the Durban beach front, Marine Parade area, taken towards the end of 1985 and on the one end of it, can you identify the Natal Command or can you identify anything at all? On the left hand side of the photograph, can you identify what is Natal Command? Have you examined the Natal Command?

CHAIRPERSON: Perhaps if you could point it out, it might be easier, because we are not sure whether the photograph is the right way up or what the left or the right is.

MR ISMAIL: Yes.

MR RICHARD: Here we have the sea and that is east. On the left hand side, we have the north and here on the northern edge of the photograph where the 10 is, we have Natal Command. Do you observe the wooded area next to Natal Command?

MR ISMAIL: I do.

MR RICHARD: The highway under construction and the road on the side where there are parked cars and in front where, despite the number of parked cars in other places, there are no parked cars?

MR ISMAIL: Yes.

MR RICHARD: Thank you. I think we can take it to the Committee to see.

MR ISMAIL: What was the question basically?

MR RICHARD: I will ask the question.

CHAIRPERSON: Sorry at this stage, can we hand you back these photo's, 72 through to 76?

MR RICHARD: Yes, I will have, subject to Mr Dehal, make copies of them. Thank you. You were once upon a time, an Instructor. How would you go about conducting a reconnaissance of the Natal Command from that photograph?

MR ISMAIL: Well Mr Chairperson, if I were to do reconnaissance of the Natal Command, firstly I would locate where the Natal Command was and then depending on what the objective was, would make sure, move all around the area, check the surrounding area, find out everything that went on around it, determine entry and exit points to it, determine where there were weak points to it, determine who occupied it, get as much information about it as was required.

MR RICHARD: Now, when one observed that wooded area to the north of Natal Command, would it not be a fair proposition to make that taking into account that mortars were available, it was open to attack by mortar from that wooded area?

MR ISMAIL: Mr Chairperson, one would have to determine the range of mortars, two whether one could actually fire mortars from a wooded area and I would submit that it is not possible to do that, because for mortars you actually need an open area, because when the mortar strikes at anything or hits anything, it will explode. But if I were to say to you at the operation at Voortrekkerhoogte, when we used the rocket launchers, we sought to strike at the targets within the Voortrekker Military Headquarters. Often you will find that mortars and rockets are very inaccurate, they have a range and can land within a vast range, and they could be off by as much as a few hundred metres. In the case of the mortars, depending on the trajectory, the direction of fire, what you had to get over, what you had to lob it over, etc, it could be used, it may not be used.

MR RICHARD: Now taking the height of the wall around Natal Command, which I estimated to be about five metres, 15 feet, would that create an obstruction to a mortar being fired from a clear vantage point, over it?

MR ISMAIL: Mr Chairperson, again it would depend on your vantage point, it would depend on the trajectory, whether you are on high ground or not, I am not an expert in mortars at all.

MR RICHARD: However to contextualise it, we know from previous evidence that the decision had been made to use a car bomb on this occasion? Taking into account that there is a parameter wall, did you observe that on the south side, there were cars parked adjacent to the wall?

MR ISMAIL: Mr Chairperson, the operatives on the ground had reported, and this is not something that we had started only in 1986, long before then, we had asked them to do reconnaissance and to check about the possibility of striking at enemy personnel and we were saying to them "look at concentrations of enemy personnel". Their report was that the area, it was not possible to strike at concentrations of enemy personnel, because people were not allowed to park around that area.

MR RICHARD: I am putting various propositions to you very shortly, to that it can never be criticised that I did not put propositions to you which I then put to other applicants, and I am not going to go into lengthy debates. Are you aware that there was another attack which was roughly classifiable as successful on the Natal Command?

MR ISMAIL: When?

MR RICHARD: Prior to ...

MR ISMAIL: Will you give us a date and show us where and when it occurred?

MR RICHARD: Let me rephrase the question for the sake of time, are you aware of any other attack on Natal Command?

MR ISMAIL: I am not aware of it.

MR RICHARD: Thank you. At page 6 of A1, there is a list which is entitled "Aboobaker - McBride Incidents in KwaZulu Natal", the first two don't concern us as there were no particular victims or injured that we know of but number 3 is the RPG attack on Mobil oil

refinery. We are aware that prior to May 1984, you personally conducted reconnaissance of that target, yes or no?

MR ISMAIL: You didn't ask a question, you said we are aware that prior to May you conducted reconnaissance. You didn't ask me a question.

MR RICHARD: I said, I said ...

MR ISMAIL: Mr Chairperson, if I may please.

CHAIRPERSON: There was a question.

MR ISMAIL: Can you please put questions, I am waiting for you to go on.

MR RICHARD: Yes or no?

MR ISMAIL: Yes.

MR RICHARD: Now, what conclusion did you come to after your reconnaissance?

MR ISMAIL: At the time the conclusion was it was possible to carry out the attack, it wouldn't have been difficult, however, in the light of the housing around it, and because of the fear of vapour cloud explosions, were we to hit at the refracting towers, the decision was taken not to carry out that attack.

MR RICHARD: What is a vapour cloud explosion?

MR BERGER: Chairperson, before Mr Ismail answers the question, it is not clear that my learned friend acts for anyone injured during this incident. Are these questions simply being asked to test Mr Ismail's credibility or is there another purpose for it?

MR RICHARD: Two points are being made, the first is whether I act for anyone of the victims in that category, the second one is whether I am testing Mr Aboobaker's credibility. The point that I am leading to is that on one occasion it was decided to attack that particular target, and on a later date, it was decided not to. Is that correct? The other way around, sorry?

CHAIRPERSON: I think what Mr Berger is raising is why are you asking this, because you are not representing any of the victims in that incident?

MR RICHARD: I believe that as the representative of the victims that I do represent, it is appropriate for me to question for two reasons - one, full disclosure of what happened and number two, to find out why sometime later it was considered appropriate to take the risk of civilian casualties.

CHAIRPERSON: Yes, I think you can answer that.

MR ISMAIL: I will answer that. Mr Chairperson, experience is what made us change the approach. At the time when we were first planning for the attacks on refineries, etc, we had no experience. We had never been through such an operation. We had to rely on books in this case, we also had a handbook of American Armed Forces which said that if you hit

refractunating towers, you could get a vapour cloud explosion. A vapour cloud explosion would basically be that inside of the refractunator you get the separation of the oil taking place, taking place at a high temperature, there is vapour generated as a result of it, that if that vapour escapes and if it drifts and does not explode immediately, it could drift over a civilian area and that would kill people.

JUDGE PILLAY: What do you mean a civilian area, Mr Ismail?

MR ISMAIL: Well, I am talking of the housing area around it.

JUDGE PILLAY: Residential area?

MR ISMAIL: Residential area.

MR RICHARD: In other words one would have the danger of a fire-ball type phenomena?

MR ISMAIL: Yes.

MR RICHARD: Now on the second occasion ...

MR ISMAIL: No, I am coming to that. With the experience at SASOL, at SASOL 1 for instance, if tanks were hit, you found that what happens is that the fuel escaped and because of any spark that could ignite the fuel, that would start the burning process, but because the fuel is gushing out of the tanks, and those tanks are also contained inside of a well, the way in which they are built, there is a well and the tank is built inside of it, that this then tends to contain the fuel. Also that fuel burns immediately, there isn't that much of a vapour cloud created as in the first case, and given that experience, we then felt that it was okay to hit at storages and to attack those.

MR RICHARD: In other words as a result of experience and further research and development, it was decided that an attack on the Mobil oil refinery was permissible? I then come to item number 7, where I don't represent any of the victims, but again on the basis outlined in relation to item 5, sorry item 6, the previous item, there what we know from the literature, were two limpet mines which did not explode at the same time, could you give us a reason as to why they did not explode at the same time, if they were set to go off at the same time, if their pins were activated at the same time?

MR ISMAIL: If their pins were activated at the same time, but if the splints inside of them are different, then they would go off at different times, depending on the colour of the splint, the type of splint that was used. They could go off at any time, depending on the kind of time delay used. With limpets it was possible to use different time delays.

MR RICHARD: Of what origin were the limpet mines, do you know?

MR ISMAIL: Of Soviet origin.

MR RICHARD: I have here a document which will require re-numbering, it is at the moment labelled C, I am not sure what the next exhibit is.

CHAIRPERSON: I think we didn't give a number to the photographs, numbers 72 through to 76, wouldn't it in fact be C, because we had - oh, yes, Section 29 is C, this would be D, yes.

ADV PRIOR: D.

CHAIRPERSON: B1 through to B4 are the statements handed in by Mr Berger.

ADV PRIOR: The photographs having been alluded to, would they not have been ...

CHAIRPERSON: I think we can just refer to them as photographs numbers 72, with their numbers.

ADV PRIOR: As you please Mr Chairperson.

CHAIRPERSON: You are getting fit, Mr Richard.

MR RICHARD: I am sure the document is familiar to you, but for the sake of the record, please describe what it is?

MR ISMAIL: It is a table, all the parts that are written in Russian, looks like a table that I had seen previously of the one supplied with the limpet mine, however on the side where it gives the colours of the splints, etc, I do not believe that those translations are correct.

MR RICHARD: However, is it not ...

CHAIRPERSON: If we can just get a description for the record, what is it, is it specifications relating to a limpet mine?

MR ISMAIL: Yes. Mr Chairperson, what it would give here, would be the colours of the splints, of the little metal plates and across there it would then give the ambient temperatures, you know it ranges from plus 40 to minus 20 degrees, and then it tells you what are the approximate time frames in the first column of each of those temperature ranges. For instance at an ambient temperature of plus 20 degrees, it would give the average and then from the minimum time to the maximum time.

CHAIRPERSON: Yes, thank you.

MR RICHARD: Thank you. Now taken the ambient temperatures given there, how accurate are those minimum and maximum time periods?

MR ISMAIL: Mr Chairperson, basically if I read to you minimum and maximum time periods in the case of one, it says a minimum time of 15 minutes, maximum time of two hours and average time of 45 minutes. In another case it says at 10 degrees for the red, 10 minutes to four hours and 40 minutes, with an average time of one hour and 45 minutes. One can see that there isn't any great deal of accuracy at all.

MR RICHARD: So then if two identical limpet mines are placed in a room, into which two identical timing slithers or pieces are put in, and are then armed at the same time, no particular person would be able to predict how far about in time they would go off?

MR ISMAIL: No, you would not be able to predict that. You may actually find that they could go off at different times.

MR RICHARD: Which could be as long as 20 minutes apart?

MR ISMAIL: Or more?

MR RICHARD: Or less, oh yes.

MR ISMAIL: Yes.

MR RICHARD: And then if we take the nature of a limpet mine, which is a mine with a magnetic device on it, a magnet, which makes it adhere to a steel surface to be precise, another factor that would make it even more dubious, is the different temperatures of the objects onto which it is placed?

MR ISMAIL: That is so, yes.

MR RICHARD: So when - at the Wentworth substation, when the applicants Mr Webster, sorry Mr McBride and his unit put those two limpet mines, the fact that police who came onto the scene shortly thereafter found another mine which went off, or didn't find it to be more precise, it found them, could as well be accident as planning?

MR ISMAIL: It could have been accidental, it could also have been out of deliberate action.

MR RICHARD: And in fact from the object of facts that we have, it is impossible to assess which it was from the information that I have outlined to you?

MR ISMAIL: Except for the information that we may have from the operatives.

MR RICHARD: The next incident that I come to is that of number 14, which is on page 8 of A1, that is Mr Webster's escape from Edendale Hospital. My questions there are as follows - when you trained your soldiers, did you tell them what their duty would be if they were captured?

MR ISMAIL: Well, by and large, comrades were told to resist answering questions, they were told that they would probably be beaten up, tortured, that at all times, they should think about the ANC and be loyal to the ANC and understand the political objectives. They had to understand that they would find a day in court as well.

MR RICHARD: Was it not also to put it very simply, told to them that their first duty was to escape if they saw the opportunity?

MR ISMAIL: Yes, I think it was understood.

MR RICHARD: A standard piece of instruction that most soldiers receive as lesson 1?

MR ISMAIL: Hm.

MR RICHARD: Now as you have outlined, they were told of various terrible things that might happen to them after they were caught, now we know or I assume and it will be tested in due course, that Mr McBride and Mr Webster were friends, and associates. My proposition and question is wasn't it an ordinary and natural thing for Mr McBride to want to rescue his friend?

MR ISMAIL: Yes, it would be very natural, but at the same time, they were comrades and combatants and I do not see why you wish to infer that any rescue attempt that took place would have been because they were friends only. They have said and Gordon Webster had said to me personally that he had a pact with Robert and that Robert had gone to his rescue and when Robert had been arrested and he was back in exile and after his recovery, he insisted on his right to go back and rescue Robert, despite the fact that we said to him "you know, such opportunities do not occur so often". He insisted because he said he had a pact with the unit.

MR RICHARD: We will deal with it again when Mr McBride gives evidence, however as far as you as a witness and as an applicant goes, that is the proposition and question.

MR ISMAIL: And it has been answered, and I suggest to you that it is because they were comrades in arms.

MR RICHARD: I gave you the opportunity to answer the proposition and I pass to the next sentence.

MR ISMAIL: And I did.

MR RICHARD: Now the next one I come to is item 15, and there I act for Brenda Klein, the former wife of Pieter Klein, or Mr Klein, and as you might or might not know, Mr Klein sustained brain injuries as a result of shrapnel. As the applicants there are described, Mr McBride and Mr Lecordier, and you are not directly implicated beyond being politically responsible, there aren't many questions save to say this, would the fact that Mr Klein was at one point in his life a teacher at a school, particularly reserved for coloured persons in terms of the old law, be a sufficient reason to classify him as a justified or a legitimate target?

MR ISMAIL: No, it would not.

MR RICHARD: And then if we add on to that ..

JUDGE PILLAY: Mr Richard, is there any particular reason you would put that to the witness? Is there a suggestion that Mr Klein was attacked possibly for that reason?

MR RICHARD: The three propositions are teacher, some time police reservist and associated with Labour Party, those are the three factors. Put together, would they ...

JUDGE PILLAY: My question is, is there any basis upon which you base that last question?

MR RICHARD: On a reading of the various papers with which I was briefed, there is a reference to Mr Klein having been a teacher.

JUDGE PILLAY: Fine, carry on.

MR RICHARD: I have outlined three factors, a some time reservist in the Police Force, associated with the then Labour Party and the teacher factor, would that make him a legitimate target?

MR ISMAIL: Especially because he was a reservist, yes.

MR RICHARD: And if it were on a sporadic and irregular basis, would that alter the factor?

MR ISMAIL: Is there any suggestion that it was sporadic?

MR RICHARD: It was sporadic, that is the instruction.

MR ISMAIL: That is not as the operatives had it.

MR RICHARD: However then I put it as a hypothetical proposition, if he was a periodic, if, that is the question I started by asking.

MR ISMAIL: Mr Chairperson, I believe we have been through this yesterday. A reservist is able to go into action at any time, he is able to act against people at any time and therefore can be active at any moment in time. We believe he could be, he should be seen as active.

CHAIRPERSON: Sorry, perhaps if I could ask Mr Richard just for some clarity, when you say sometime or a periodic reservist, was this a question of Mr Klein applying to become a reservist and then being a reservist and then after some time, terminating his appointment and then some time in the future reapplying or do you mean that he was only on duty once a week or whatever, but...

MR RICHARD: He was, I am informed, on duty on irregular and unpredictable days.

CHAIRPERSON: I think what ...

MR ISMAIL: As and when required?

CHAIRPERSON: What Mr Ismail is saying is that what I understand me, correct me if I am wrong, is that if you are a reservist, you do have certain powers, even if you are not on duty, which you can exercise as a reservist?

MR RICHARD: Chairperson, he has answered the question, I am moving on to the next one. I am putting these various propositions simply so that - now, what we do know from the documents and there is a separate bundle which I do not think yet has a number, which is entitled "Grenade Attack of Pieter and Brenda Klein's House on 5 May", it is A7.

MR ISMAIL: Mr Chairperson, I have never had sight of that document, I do not believe that my legal representatives have had a copy of that document either.

CHAIRPERSON: Mr Ismail is not involved in that, as he says save for - he has taken political responsibility for the actions of persons acting under his command.

MR RICHARD: When I introduced the item, I would however point out that there is one or I would say two relevant pieces of paper. One is the one paged affidavit by Mrs Klein, the

former Mrs Klein and the doctor's report. If my learned colleagues would like to take a moment to read those two pages, it certainly wouldn't delay our proceedings.

CHAIRPERSON: Perhaps you can just refer to them more specifically.

MR RICHARD: In your bundle which has just been handed to you, for the sake of the record, there is a statement by Brenda Klein which is headed "Statement for the Truth and Reconciliation Commission", is that document identified? Then there are a number of medical reports. From that bundle we learn that Mr and Mrs Klein were in bed when a handgrenade was thrown through the bedroom window, with the result that both of them were injured and another handgrenade was also thrown at the house but it was deflected and landed in the garden. For the purposes of my question as you were not involved, we work on the assumption that Mrs Klein is and remains and was what she is described in the affidavit, somebody who is not a police reservist or a teacher. My question is would the fact that she was in bed with her husband or in the bedroom with her husband, render her a legitimate target?

MR ISMAIL: Chairperson, the target in that case would have been her husband. I believe unfortunately she was caught in the cross-fire to put it in that way.

MR RICHARD: Now - I would put into the record that as I asked the question, I saw Mr Berger nodding his head.

MR BERGER: I am sorry Chairperson, I don't understand what my learned friend is seeking to infer from the fact that I nodded my head. I am not even sure that I nodded my head, I was talking to my Attorney at the time, but perhaps my learned friend could be clear on what he is seeking to infer from my conduct.

CHAIRPERSON: Yes, Mr Richard?

MR RICHARD: I infer that you were implying that yes, Mrs Klein was a legitimate target, but I leave it.

CHAIRPERSON: But then the witness would not have listened to his legal advisor, because he did not give that answer?

MR ISMAIL: Mr Chairperson, I am sorry you know, with all these legal procedure, but would it not be proper then for counsel on the other side, to withdraw that proposition? I don't even have sight, I am trying to look at you whereas i answer these questions, I don't even have sight of what is happening here. I think it should properly be withdrawn.

MR RICHARD: I am quite happy to withdraw the comment.

CHAIRPERSON: Yes, I think if we can just keep this as behaved, ask questions without making comments that lead to difficulties.

MR RICHARD: Now, I believe that we have taken the Parade Hotel incident as far as we can with you, so I don't ask any further questions on this one. The last incident that I would like to comment on is the incident at the Pine Parkade in Pine Street, Durban. Just to remind ourselves from the record it appears that a bomb was placed under a car and it was discovered

and that the bomb, from the record, was armed, but removed. My question is very, very simple. If that bomb had not been discovered and had been exploded, would it not have been an indiscriminate and random attack on civilians who use the parking garage? It is a hypothetical question, if?

MR DEHAL: Sorry Mr Chairperson, I am instructed to oppose, object to that line of questioning because it is common cause that that device was not established as being a bomb, to term it a bomb premises that all things were in place for the explosion.

CHAIRPERSON: Sorry I didn't hear Mr Dehal, you are saying it wasn't a bomb in that vehicle?

MR DEHAL: Indeed.

CHAIRPERSON: So it would never have gone off?

MR DEHAL: Indeed.

CHAIRPERSON: It is not a question of it being defused?

MR DEHAL: Correct.

JUDGE PILLAY: Then I need clarity on that Mr Dehal, is this an incident for which application is being made by any of the applicants? Because I see it is numbered here as an incident, subjected to an application?

MR DEHAL: Judge, correct, Mr McBride was convicted of this incident, not on the basis that it was a bomb, but on the basis that it was a device that he caused to be placed there in order to induce threats, fears, etc, to persons and public.

MR RICHARD: May we refer to page ...

JUDGE PILLAY: I just asked Mr Dehal to just repeat what he had said.

MR RICHARD: Sorry, I didn't hear, I apologise.

CHAIRPERSON: I think Mr Dehal, there is a little bit of resonance in your microphone, so if you can just speak a little bit slow, sometimes it is difficult to hear exactly what is being said.

MR DEHAL: Thank you. What I am saying simply is this, Mr Richard has asked a question in which he refers to this device as a bomb and the use of the term bomb is what is being objected to. In that, one, it was not a complete device with a detonator, it could not have exploded, never would have exploded. Mr McBride secondly was charged on this as a count, at the hearing he was convicted thereof and hence the application for the amnesty. Perhaps the question ought to be phrased more correctly, least somebody reading this record, gets the wrong inference.

JUDGE PILLAY: Well, what was he convicted of?

MR DEHAL: Sorry Judge, I don't have the record with me, but it was given to my learned colleagues and I can look at it and tell you precisely. If my memory serves me correctly, it related to some disturbance that he had caused and inducement of fear, threat, violence on persons, property in the nature of terrorism, etc.

CHAIRPERSON: Mr Richard?

MR RICHARD: Thank you Chair, I read from page, and this is the page in the bundle of records behind us, 1898. It appears in Exhibit A2 and is part of the judgment in the matter of the appeal in the S v Robert McBride.

CHAIRPERSON: Sorry, could you just repeat that page number?

MR RICHARD: 1898. There is no line number, but it is about a third down the page -

"... Maj Botha succeeded in removing the grenade which was made to appear to be the detonating device. This was taken off in a vehicle with a receptacle designed to take care of such emergencies. It was exploded by Maj Botha at ten o'clock the following morning, not having exploded before then."

Now we know from that part of the judgment it was a device capable of exploding.

MR DEHAL: No Mr Chairperson, I object. Maj Botha caused it to be exploded, because it was not capable of being exploded. Maj Botha took it away, dealt with it in a manner that would cause it to explode and end that device there.

MR RICHARD: My proposition and question that I want to put to the applicant is straight forward and simple, if it had exploded, would not that have been an attack aimed at a civilian target, the premise to it is if it had exploded, and I leave the question there.

MR ISMAIL: Mr Chairperson, the way I understand what is being said here, that it was probably put there as a hoax, as a threat without it being able to go off, if it was able to go off and if there were people around, yes, then that could be construed as such, but being conscious that this could be so, from what I have just heard, it seems as though they did not want it to be so, they simply wanted to say to people this is something they could do, if they chose, but they did not choose it to be so.

MR RICHARD: I asked a straight forward and simple question, premised by the word if. My question is if that device had exploded on the fourth floor of the Parkade, would that not have been an attack on a civilian target? That is the question?

JUDGE PILLAY: Hasn't he answered it?

MR RICHARD: I submit that what he said was not an answer, it was an evasion.

MR ISMAIL: I submit that is my answer.

CHAIRPERSON: I think in any event it would just be, we have heard of propaganda bomb, propaganda bombs which are placed under motor vehicles, so I suppose it would depend Mr

Richard on the place, the time, whether there was a remote control to see that it was going to set off that no one was around, you know, because the whole lot of circumstances, it is not so simple and straight forward.

MR RICHARD: I leave the incident and proceed. I do not know if it is my penultimate question, but probably the second or third last. What sort of relationship did you have with Mr Webster? Was it a friendly, supportive relationship?

MR ISMAIL: Yes, I always had a friendly, good relationship with him. I know that after his arrest and his rescue and when he was in Zambia, he was very insistent on wanting to come back inside the country, I was opposed to it. One, I felt that the police knew him, they would, I thought that they may expect that he may come and try to rescue Robert McBride again and I basically tried to dissuade him from coming back inside the country, but our working relationship was always very cordial.

MR RICHARD: Please bear with me as I decide whether to close at this point. May I beg the indulgence of referring to my clients before I say no further questions.

CHAIRPERSON: Yes, indeed Mr Richard.

MR RICHARD: Thank you. Thank you, no further questions.

NO FURTHER QUESTIONS BY MR RICHARD

CHAIRPERSON: Thank you Mr Richard. Mr Prior, do you have any questions you would like to ask?

CROSS-EXAMINATION BY ADV PRIOR: Thank you Mr Chairman, there are a few matters I wish to canvass, they are not many. Mr Ismail, what struck me going through the vast records that were at our disposal, was a comment made by Gordon Webster during his trial, when he was led by his senior counsel at the time, and I refer to bundle A2 at page 1291 - sorry 1290 and 1291.

MR ISMAIL: Chairperson, I don't believe I have that bundle.

ADV PRIOR: And 1292. Maybe I can just put it to you in the way I thought it appropriate. He was being asked, he had given evidence that he was at odds with you regarding placing a car bomb in Durban, because he didn't, he wasn't convinced that the indiscriminate loss of life was justified and he indicated that you were unhappy with that reaction of his and at page 1292 he indicated between lines 10 to 20, that on a question by his senior counsel -

"... but the suggestion by Rashid that you put a car bomb seemed so directly in conflict with your concern to save lives, how do you explain that? Why should Rashid have said this?"

Then he said -

"... I think Rashid is a blood-thirsty person. This is my opinion."

At the level of, are you able to comment on that, and possibly as I say, it caught my eye while going through those bundles, if you can.

MR ISMAIL: Mr Chairperson, if I may, I think these are records of a person who is there in an apartheid court, having been through racist interrogators, who had been tortured and had been put, and we don't know whether it was ever put to him that if he didn't agree to make such a statement, what would happen to him. We don't know.

ADV PRIOR: It would seem that he was being led by his counsel at that time, when he gave that evidence.

MR ISMAIL: Well, he was up there for his life, people say many things when they have to, when they stare that in the face.

ADV PRIOR: Certainly by your count that he wasn't ill-disposed to the notion of a car bomb placed in Durban?

MR ISMAIL: No.

ADV PRIOR: Was there ever any arrangement between the cadres within Special Ops, that should one be captured and possibly if an escape could not be effected, that that person should be killed in order to silence him?

MR ISMAIL: No, there was no specific instruction in that regard.

ADV PRIOR: Why I raise that, it also, while going through the bundles, A3 at paginated page 18 a statement by Matthew Lecordier had indicated that -

"... Robert said that if he could not get Steve out of the hospital, he would have to kill him because he knows a lot of important things, but he did not say what."

But you have answered the question, you were unaware of any arrangement?

MR ISMAIL: I was not aware of those arrangements, you know, perhaps that was Mr Webster's way of dealing with his operatives.

ADV PRIOR: If I may be bold to summarise what has been going on for the better part of two days, if I understand the instruction given by the high command or the upper command of MK was that at all times, the target should be aimed at Military personnel or Security personnel? That remained the primary target?

MR ISMAIL: Yes.

ADV PRIOR: In the execution of that objective, should civilians be killed or injured, those were certainly regretted and regrettable casualties, but they would not serve as to dissuade one from carrying out the operation?

MR ISMAIL: That is so, yes.

ADV PRIOR: At all times, on my understanding of what has been going on and the evidence that you have tendered, is that the members of MK on the ground, Special Ops in particular, were at all times aware of that objective and obviously the operations that we have seen, were aimed at fulfilling that particular objective?

MR ISMAIL: Of striking at Security Forces?

ADV PRIOR: Yes.

MR ISMAIL: Yes.

ADV PRIOR: Obviously where a wholly or purely civilian target was attacked, then obviously that out of the nature of the target, would fall outside those parameters?

MR ISMAIL: And that is why when the NEC became concerned about such things, they then - Military Headquarters was instructed to contact all the front areas, to contact the people in those areas and to say to them and to instruct the units, to meet with units and to say to them to strike at pure civilian targets was not acceptable.

CHAIRPERSON: But, you are talking about people now being the target, if you struck at an electric installation, electrical installation in a suburban area, that is not Military or Security Force, but that would have been a legitimate target?

MR ISMAIL: That is seen as part of infrastructure and it will blacken out an area or something.

CHAIRPERSON: Yes, that is what I am saying.

MR ISMAIL: It is acceptable.

CHAIRPERSON: Yes, because to use the words civilian targets, it might include electrical installations.

MR ISMAIL: Thank you Mr Chairperson. Civilian personnel.

ADV PRIOR: I think we were just limiting the ambit of the question even further, that and I was coming to the car bomb situation, the instruction there was that a car bomb would be aimed at killing as many enemy personnel as possible?

MR ISMAIL: Yes.

ADV PRIOR: And that was part of, one of the objectives? It seems to me that it is conceded that the very nature of a car bomb is that it causes indiscriminate damage and one cannot always control the direction or the extent of the blast and of the damage?

MR ISMAIL: Well, it depends on the way it is placed, where it is placed, etc. You may find that a car bomb could actually be more accurate than for instance a rocket, depending on the distance from where it was launched, where it was launched from, etc. A car bomb as I have previously described, was seen as a mechanism for delivery. Just as in rocket, you have other mechanisms for delivery, in this case the car was seen as a delivery mechanism.

ADV PRIOR: Yes, it could arrive at a particular spot under its own steam as it were? Yes, that is conceded for example if the car bomb was placed next to a bus full of Military personnel, the affects would be as desired? Would you agree that if one wanted to take out personnel in a particular area, for example a room, for example like the Why Not bar, possibly a more efficient way was to have the explosive device in that locality?

MR ISMAIL: If one could get it in there, yes.

ADV PRIOR: It seems from the Second Submission of the ANC that a concession has been made that - and they call it the MAGOOS and not the Why Not bar - but the explosion at the Parade Hotel, there seems to be a concession that that, because of what was learnt subsequent to the explosion, there were problems with that operation, would that be a too loose a description?

MR ISMAIL: Yes, a bit loose. I think the ANC said that they understood that Intelligence or information existed which was that off duty Security personnel were there, it seems from the outcome of it, that there weren't perhaps as many as were thought at the time, but that is not something that could have been controlled.

ADV PRIOR: Yes.

MR ISMAIL: And for that, they sought to explain that. But they still took responsibility for it.

ADV PRIOR: Yes. As the Commander of Special Operations at the time, did you receive any report back from Mr McBride as to the extent of the attack and the success rate, in other words how many Military personnel or Security personnel were injured, as in the case of the Chamberlain Road where Col Wellman was killed, or subsequently died?

MR ISMAIL: Unfortunately not. Comrade Robert was arrested before he was able to come out of the country after that operation, and subsequent operations, and we never then had the opportunity to talk about it.

ADV PRIOR: Mr Ismail if we, and there has been some doubt as to whether any actively serving Security Force personnel were in the pub at the time, but on the supposition and on the hypothesis that there were in fact no Security personnel, would you agree that the operation then had been seriously compromised by a lack of proper Intelligence or information?

MR ISMAIL: Mr Chairperson, again, I must state, there is no reason why we would doubt the information that Mr McBride had and that he said to us look, he had information where Security Force personnel were concentrated.

ADV PRIOR: And you accepted that he had done diligent reconnaissance?

MR ISMAIL: Yes, all the operations indicated they were diligent in all the work that they did. They were very successful, a very capable unit, highly respected.

ADV PRIOR: Was the emphasis as I understood your evidence, that the legitimate target would be a concentration of enemy personnel?

MR ISMAIL: Yes, that is so.

ADV PRIOR: And just by way of example, five policemen in a pub of 100 civilians, would that be an acceptable concentration to attack in those circumstances?

MR ISMAIL: No, I would say a much larger number.

ADV PRIOR: All right, that would be relative to the - the political objective was important and paramount at all stages throughout the armed struggle, was it not?

MR ISMAIL: Yes.

ADV PRIOR: And the political impact of any operation or I want to rephrase that, not only the military success was important, but it had to serve a political objective? In other words it had to achieve something, is that correct?

MR ISMAIL: Yes.

ADV PRIOR: Because like the Chamberlain Road incident, that was almost used as a blueprint for future operations, I think as you had alluded to yesterday?

MR ISMAIL: Yes, it was instructed to us.

ADV PRIOR: And it was a success, it had achieved the desired objectives and it could be used also to bolster, muster support, popular support?

MR ISMAIL: Certainly so, yes.

ADV PRIOR: And obviously something that was calculated at not reaching those objectives, would not have been easily countenanced by the upper command or the high command?

MR ISMAIL: Well, if they had problems, they would have raised them.

ADV PRIOR: Finally, when I referred to the record of Mr McBride's trial, it seems that the tack that was taken there, was to disclaim any involvement or instruction or knowledge on the part of the ANC? It seems from my reading of the evidence, is that it was something that he decided to do in collaboration with Mr Lecordier and there are varying views as to who actually decided on the end, or the target, being the Parade Hotel. Can you think of any reason why he would not have, why he would have disclaimed that the ANC, that this was part of the armed struggle?

MR ISMAIL: Well, perhaps because when it concerned ANC members, etc, if anything, they got stiffer sentences. It is one possibility, I mean these are all on the terrain of suppositions, etc. Nothing really turns on it.

ADV PRIOR: Lastly, he had indicated to the Court that he could by acting as he did, face disciplinary steps by the ANC? Would that have been in line with what usually happened, should an operation not have conformed with ANC or MK policy?

MR ISMAIL: Well, comrades were called in, they were talked to, people were asked to explain what they were doing, what their objectives were, etc. In this case, had comrade Robert come back, we would have spoken about it, looked at the way he went about it, what were the failures, what did he look at if there were any, what was he trying to do, what was the outcome of it, how could we have improved it? Any suggestion that you know we would simply mete out punitive action against operatives who in good faith went out to carry out an operation, is not so. I don't think this was the style of the ANC, certainly that was not my approach to command.

ADV PRIOR: And lastly, would it have been difficult for yourself or the ANC as a whole, to have reproached Mr McBride for the Parade Hotel incident particularly in the light of the fact that he had already established himself as a legend, a hero as you put it? In other words what I am saying is, would it not have been politically expedient to take him on board as it were, rather than reproach him?

MR ISMAIL: Well, certainly I don't think there would have been reproach as such, because as far as I am concerned, the indication that he had, the information that he had, was that there were Security Force personnel that frequented that bar, etc. Unless one expected him to take the Security Force personnel, put them there and then strike at them, you know, he may not have been able to control all the circumstances at that point in time. As far as I am concerned, we would have discussed it, but I do not see why the whole question of reproach is raised at all. As far as we are concerned, the ANC accepts responsibility for it. It was seen as something which was aimed at Security Force personnel and that the ANC takes responsibility for.

ADV PRIOR: If you took Security personnel out of the equation, then the entire support of that operation, would not be there, is that correct?

MR ISMAIL: Then there wouldn't have been an operation because it was aimed at Security Force personnel.

ADV PRIOR: On the information that you were given?

MR ISMAIL: Correct.

ADV PRIOR: Mr Chairman, thank you very much.

NO FURTHER QUESTIONS BY ADV PRIOR

CHAIRPERSON: Thank you. Mr Berger, do you have any re-examination?

RE-EXAMINATION BY MR BERGER: Very briefly, Mr Chairperson. Mr Ismail, you spoke about Security Force personnel being targeted whether on duty or off duty and you also spoke about the question of whether persons were on active service or not on active service. I understood that there was a distinction between active service, non-active service and on duty, off duty. Could you just elaborate on that?

MR ISMAIL: Soldiers in the afternoon, are generally to be taken to be off duty policemen, however they can be called on duty at any point in time, etc. and therefore they become active immediately. As to the other part, dealing with people that were no longer service as

such or weren't on call-up, but if they then had returned to their normal civilian occupations, they were then seen as being not active at that time.

MR BERGER: So somebody who was off duty, was nevertheless still active?

MR ISMAIL: Was active and could be called on duty within minutes.

MR BERGER: Mr Richard yesterday put a proposition to you which you, because the proceedings ended at that point, never had an opportunity to respond to and he put to you that the ANC did not target Security Forces, in fact he said the ANC conducted a campaign of terror, what is your response to that?

MR ISMAIL: Mr Chairperson, the ANC never sought to conduct a campaign of terror. The inference at that time was also made that we basically were striking at whites. I would like to put it to this Committee that in fact, if you looked at the first Security Force casualties, they were in fact black policemen. If you looked at the attacks in the Soweto area, at the Protea, Morocco police stations, they were black policemen. And any inference that these were aimed at whites, is rejected because through the struggle, all those that were part of the apartheid system, be they black or white, were targeted. This was never a target, an attack against whites. We never fought a racist war. We fought to undo racism. We sought to fight as best we could because we believed we fought a just war, we believed in justice, we tried to limit casualties and if we wanted to go on an indiscriminate campaign of terror, we would not have gone through so much pain in going for targets, trying to get inside of the targets, it is very easy. It takes a few, it takes a pistol or two to kill so many. We never did that. We weren't Barend Strydoms that simply stood there and went pah-pah-pah at so many people. That would have been dead easy. We never sought to do that. We actually thought about the targets at the end of the day, we knew that we had to get to a point, we had to bring the white racist regime to their senses and I believe it is because of the mature policies of the ANC that we have the kind of system in the country today, that we have. You cannot simply make a switch from what people would like to portray the ANC as, and then to have a kind of government, a leadership in this country today, which upholds human rights to the extent that it does. The racist regime would never have been able to make that transformation. At all times they sought to hold onto the power and privilege and I think this kind of suggestion that we were just out on a campaign of terror, is rejected with contempt. South Africa today is still able to continue and to grow, it is beginning to pull together as a united country, because of the maturity, because of the vision and insight of the ANC leadership. President Mandela previously had said you know, we stretch out the hand of friendship to all but he said he had a problem, that very few whites, actually took that outstretched hand. We talk of reconciliation, would a people that were bent on a campaign of terror, stretch out their hand so shortly after what the majority population had suffered for centuries, would they do that? I would say no.

MR BERGER: Mr Ismail, I have one last question. Mr Prior said that, or suggested that it wouldn't have been politically expedient for the ANC to have publicly censored Mr McBride's unit's actions and in particular the bomb outside the Why Not bar. Did any structure of the ANC or MK ever raise with you any problems that the ANC or MK had, I am not talking about publicly, I am talking about in the structures of the ANC or MK, any problems that they had with Mr McBride's unit's operations?

MR ISMAIL: No. They did not.

MR BERGER: Did you ever raise any problems with, that you, did you ever raise any problems within the structures of the ANC or MK with regard to the operations of Mr McBride's unit?

MR ISMAIL: No, I did not.

MR BERGER: Did you ever have any such problems?

MR ISMAIL: No, I did not.

MR BERGER: Thank you Chairperson, I have no further questions.

NO FURTHER QUESTIONS BY MR BERGER

CHAIRPERSON: Thank you Mr Berger. Judge Pillay, do you have any questions that you would like to put to the applicant?

JUDGE PILLAY: Mr Ismail, tell me, can you remember how far apart was the Kabwe decision in respect of civilian casualties and the unfortunate attack on Justice Albie Sacks in Maputo?

MR ISMAIL: I am sorry, I don't recall the nature of the attack on Justice Albie Sacks.

JUDGE PILLAY: Yes. Some other matter that concerns me and we travel the country, I was wondering if you were able to add to this debate that we have within the Commission. It is the question of whether it is necessary to desensitise operatives, or former operatives from what they have been taught and what they are going through and what they have gone through and how to handle it? I ask that especially because there is what I term a Vietnam syndrome that seems to be developing?

MR ISMAIL: Post traumatic stress syndrome?

JUDGE PILLAY: Yes, that type of thing, what is your view on that?

MR ISMAIL: Mr Chairperson, I believe there is a very great need to desensitise all people that have been involved in the war, on all sides. The Department of Defence has actually undertaken programmes to work towards bringing all of the integrated members closer together. One of the important aspects would be to make people not be politically partisan, I know that the old SADF had the approach of saying there were a-partisan, but I don't believe anybody is a-partisan, I think people always have political views, etc. But you can make them non-partisan or ensure that they do not do anything that will further or hinder any political party.

In the furtherance of that, the Department of Defence as part of its transformation programme had actually embarked upon a civil education programme which we had sought and had suggested at some point, that the Minister of Defence put to the Truth and Reconciliation Commission and in fact a letter was written to the Archbishop Tutu, suggesting that we present this to the TRC, that programme is ongoing, it teaches all soldiers about the political life of the country, it talks about the constitution, it talks about what is democracy, it deals with the whole question of civil military relations, it goes on to deal with the law and armed

conflict, it then deals with the whole question very thorny issue of cultural diversity, bringing people from different walks of life together, and lastly then the whole question of military professionalism. In fact we have produced a booklet of guidelines for that purpose. I in fact was the Chairperson of the work group that worked on the guidelines for it, this was a multi-faceted work group set up by the Minister of Defence, some two and a half, three years back, that has since produced the guidelines and I am currently the Chairperson of the Monitoring Committee that is looking at the implementation of these programmes inside of the Department of Defence.

I believe that this serves our purpose well, we go through a very difficult integration process and when tensions rise, I believe that the people will act in one way or the other, people also read certain things into certain actions of one person or another, and unfortunately we have seen the latest examples of it at Tempe. I believe much more needs to be done, a greater impetus needs to be given to programmes like these, where we can bring people together. I also believe that many of the people have not necessarily overcome the stresses of the past, and perhaps much more needs to be done in that regard. A psycho-social support I believe needs to be set up in order to help people overcome the traumas of the past.

JUDGE PILLAY: One last aspect Mr Ismail, another concern of mine is and I have said that I travel the country, it seems this system and procedure, the TRC, is by and large working but this is a particular area that has been ravaged, far too many people have died over the years. To the extent that it is accurately reported in the newspaper that people are still bitter, are you willing to assist if it can be arranged that people get together to speak their minds and come to terms with life?

MR ISMAIL: Mr Chairperson, I would give my right arm to do that. Last year when we convened in Pretoria, what was extremely moving for me was meeting with Neville Clarence, one of the Air Force soldiers that had been blinded as a result of the Church Street blast. We discussed issues and ultimately we met, it was a very difficult process, but I believe something long overdue, something that we all need to do. I have also contemplated doing much more for reconciliation, and in fact with my wife, speak about this whole question, maybe we should think of setting up some kind of institute for reconciliation, where people like myself and others could go in and work whether it is part-time, full-time, etc, and do things in order to bring about greater reconciliation.

With Mr Clarence, given his approach and his attitude, despite the fact that he is totally blind, he says he had accepted that he was a casualty of the war, he understood he stood on the other side, since then I believe we are becoming closer to each other, he has been to my home, had a meal together, and not so long ago, we were looking at the possibility during Arbor Week, of actually planing a tree of reconciliation, which we still intend to do and in fact the, about two weeks ago, I spoke to the Chief of the Air Force about it, and we agreed that early next year, on Air Force Memorial Day or something, we would do something of that sort. But then we thought we would expand it and around the area of the Air Force, we would then plant trees of reconciliation and we would invite people from all walks of life.

The whole question of reconciliation is an extremely important one, and I believe that reconciliation can only be brought about one, if we are honest and truthful about our past, two, if we also accept that we have a common future. President Mandela has often said that the black people of this country have their hand outstretched to the white population, to

march together into the future. Often it is the white population that spurns that hand, that outstretched hand.

I believe the ANC, I believe this government is very genuine when it says this country belongs to all who live in it. We have never sought to drive the whites into the sea, if anything, we have encouraged them to become part of the mainstream to help in rebuilding the country, there is a lot that needs to be done. We need the help of every single person. We need to look at mechanisms to make the whites feel they are also part of a democratic South Africa.

When President Mbeki at the time when he was Deputy President, in Parliament says we are all Africans and he said whites are also Africans, what does he mean by that? He says you are part of us, you don't belong in Europe, they are not Europeans, they are Africans. They are part of our society, they are part of us. To all we say, let us all be part, let us understand that what happened then was because of apartheid, it was that population or section of the population which saw themselves as greater beings than others, that sought to subjugate the black population and we fought against it. We have now come to the point where we need to win them over, make them understand that we are all equals in the land of our birth and together we can work at it. If I am given the opportunity, I will do everything I can. I know in the Natal area we have a huge problem, I know perhaps more than in other parts of the country, and whatever we can do, we will do, whenever. If it is required in part-time to do that, we will do that. At the end of the day I believe there is a broader objective that we have to serve, we have to fight for humanity, we have to fight for peace. If I have to serve time for peace, I volunteer.

May I also just take the opportunity Judge Pillay, to say if required, the guideline manual on civic education, can be made available and if you wish it in the next few days, I can contact my staff and have them send it down as soon as it is possible.

JUDGE PILLAY: Please. Akin to that what you have said now and to my question, is that one gets the uneasy feeling of too much tension in this very hearing, I was wondering if you, I think are best placed to accommodate and to facilitate that road to reconciliation. I don't know if it is possible, but I would dearly appreciate it if you could because on both sides, it seems, there is a bit of tension.

MR ISMAIL: Well Mr Chairperson, to any of the victims or their relatives that may be out there, I would gladly walk up to you and say to you we are sorry for your hurt and your pain. If you wish, I will walk up to each one of you.

Judge pillay: I don't think he is finished, but I am finished.

Mr Ismail: I will take you by the hand and say "let us work together for peace, let us work together for a future of all of our people." and if there are any, i am willing to go up right now.

JUDGE PILLAY: Thank you.

MR ISMAIL: Thank you.

CHAIRPERSON: Thank you. Adv Sigodi, do you have any questions that you would like ask?

ADV SIGODI: I have no questions, Chairperson, thank you.

CHAIRPERSON: Are there any questions arising from questions that have been put by the Panel, Mr Richard?

MR RICHARD: There is one piece of incomplete business from yesterday and that is the comparative statistics from various sources.

CHAIRPERSON: Yes.

MR RICHARD: I am still waiting. I have decided to close my cross-examination at the time I did, rather than detain Mr Ismail and reserve what I am going to say till this point. I think the appropriate procedure that I suggest that we adopt, is once the various sources of various statistics come up with them, which I believe should be tomorrow afternoon by the latest, we submit it through your legal representatives for your comment, to detain you to wait for statistics would not be fair.

CHAIRPERSON: I think that sounds like a reasonable way of doing it and if there is an agreement, there is not a problem. If there isn't an agreement as to that, then maybe between you, you can sort out a way of resolving that.

MR RICHARD: I believe we will sort it out, I don't believe it is insurmountable.

CHAIRPERSON: Yes, thank you. Any questions arising?

MR BERGER: Chairperson, we will wait and get the documents from Mr Richard and then we will give him our response, other than that, we have no further questions.

CHAIRPERSON: Thank you Mr Ismail, that then concludes your testimony.

WITNESS EXCUSED

CHAIRPERSON: I see that it is four o'clock now. I think this would probably be the best time to adjourn, rather than sitting late and starting and not finishing another witness. We will now adjourn until tomorrow morning at this venue, half past nine in the morning.

MR BERGER: Chairperson, it will be Mr Pule.

CHAIRPERSON: Thank you, for Mr Pule's evidence then at half past nine tomorrow morning. Thank you, we will adjourn now.

COMMITTEE ADJOURNS