

TRC Amnesty hearing

ON RESUMPTION: 29TH SEPTEMBER 1999 - DAY 2

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. [p 20]

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. [p 20]

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. [p 21]

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. [p 22]

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. [p 22]

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. [p 22]

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. [p 23]

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. [p 25]

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. [p 25]

the Magoos bar attack falls into this category as indicated in our First Submission to the TRC. [p 26]

"... 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." [pgs 26 & 27]

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? [p 27]

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. [p 27]

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? [p 27]

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. [p 28]

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. [p 28]

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. [p 28]

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. [p 30]

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. [p 30]

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. [pgs 30 & 31]

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. [p 35]

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. [p36]

As an incident is referred to in the Truth And Reconciliation's Armed Forces Hearing, held on 10 October 1997 in Cape Town [p36]

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? [p38]

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. [p39]

MR ISMAIL: Yes, I do. I in fact was an Instructor in the use of explosives. [p41]

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. [p 41]

MR ISMAIL: Yes, well, it is not a mine as such, it is an explosive that has been encased. [p 42]

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. [p 42]

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. [p 42]

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. [p 43]

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. [p 43]

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. [pg 43 & 44]

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. [p 44]

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? [p 45]

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. [p 46]

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. [p 46]

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? [p 47]

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 refracturing towers, the decision was taken not to carry out that attack. [p 47]

MR RICHARD: What is a vapour cloud explosion? [p 47]

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? [p 48]

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. [p 48]

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

MR ISMAIL: Yes. [p 48]

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. [pgs 48 & 49]

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. [p 49]

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. [p 50]

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? [p 50]

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. [p 51]

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. [p 52]

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. [p 52]

MR RICHARD: He was, I am informed, on duty on irregular and unpredictable days. [p 52]

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? [p 53]

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? [p 53]

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. [p 53]

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. [p 54]

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. [p 54]

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. [p 55]

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. [p 56]

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. [p 56]

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 – [pg 56 & 57]

"... 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." [p 58]

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. [p 58]

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? [pgs 59 & 60]

MR ISMAIL: Certainly so, yes. [p 61]

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? [p 61]

MR ISMAIL: Then there wouldn't have been an operation because it was aimed at Security Force personnel. [p 62]

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. [p 62]

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? [p 62]

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. [pgs 62 & 63]

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. [p 63]

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. [pgs 64 & 65]

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. [p 66]

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. [p 66]