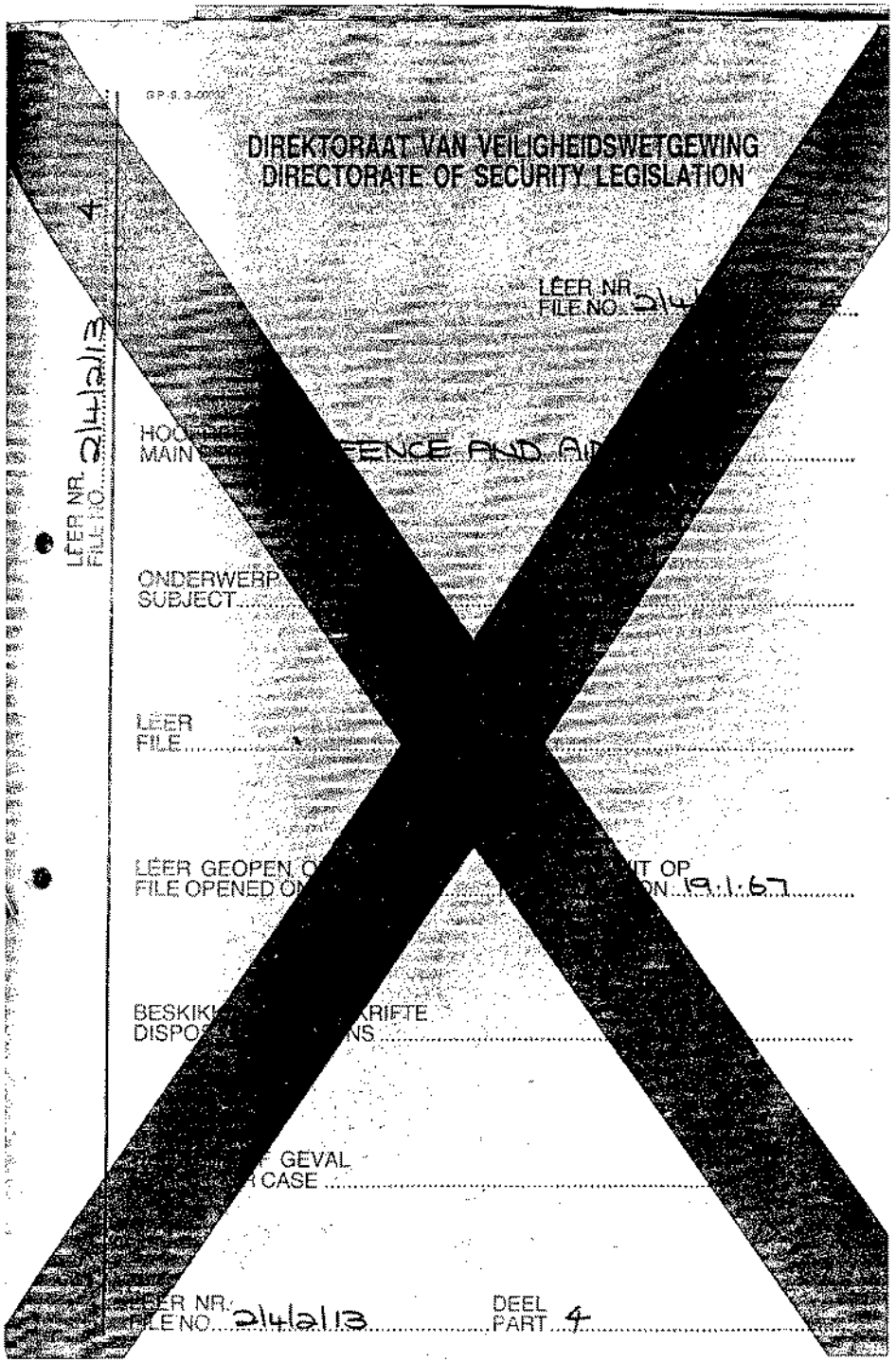


DIREKTORAAT VAN VEILIGHEIDSWETGEWING
DIRECTORATE OF SECURITY LEGISLATION

LÊER NR.
FILE NO. 2/4/2/13

4

LÊER NR.
FILE NO. 2/4/2/13

DEEL
PART 4

KM

NT VAN JUSTISIE

LUGPOS. Kaapstad

2/2/13.

5 -1-1967

PRETORIA

MINISTER OF JUSTICE

G E H E I M.

DIE PRIVAATSEKRETARIS.

DR. RAYMOND HOFFENBERG EN DIE DEFENCE AND AID FUND TEEN DIE MINISTER VAN JUSTISIE.

1. 'n Voorlopige verslag oor die bedrywighede van die Defence and Aid Fund is op 31 Augustus 1966 aan u kantoor gestuur. Sekere briewe wat die verslag vergesel het word nou deur die advokate vir gebruik in bovermelde geding benodig. Dit sal dus waardeer word indien bovermelde stukke per lugpos teruggestuur kan word.

2. Die stukke sal mettertyd aan u kantoor terugbesorg word.

GO 23/12/66
23.12.66
23.12.66

Die Sekretaris

Die verlangde stukke sal hier.

23/12/66

PRIVAATSEKRETARIS,
MINISTER VAN JUSTISIE EN VAN GEVANGENISSE

JACK KUDO APPEALS

An appeal has been lodged against the decision by the Cape Supreme Court to remove the name of Mr. Jack Kudo from the roll of attorneys. It was lodged in Cape Town yesterday.

The notice of appeal was served on the attorneys acting for the Law Society of the Cape of Good Hope and the Registrar of the Supreme Court, Cape Town, and has been forwarded to the Appeal Court in Bloemfontein.

Kudo struck from the attorneys' roll

THE name of a Cape Town attorney, Mr. Jack Kudo, was removed from the roll of attorneys for unprofessional conduct by the Judge-President, Mr. Justice Beyers, in the Supreme Court, Cape Town, yesterday.

It was alleged by the Law Society of the Cape of Good Hope that Mr. Kudo, practising under the name of Jack Kudo and Co., at Dumbarton House, Church Street, Cape Town, submitted three false accounts to the Defence and Aid Fund for criminal appeals, and that he attempted to induce two Cape Town advocates, Mr. B. M. Kies and Mr. H. S. Strauss, to increase the fees marked upon their briefs.

It was also alleged that he offered them a financial inducement — that they would share the increase in fees which he wished them to mark upon their briefs.

Giving evidence at yesterday's hearing, Mr. Kudo said he should not have asked Mr. Kies and Mr. Strauss to increase the fees they had marked upon their briefs. "I should have telephoned the Defence and Aid Fund and told them that counsel had charged less."

ACTED STUPIDLY

Mr. Kudo admitted he made not only an incorrect statement, but also acted "stupid and reckless."

Mr. Justice Beyers: "Why did you go to counsel and offered them more? Are you so averse to earning something?" — "No, but Mr. Kies had put a great deal of work into the case and I was prepared to allow him more than the R42 he had marked on his brief. He wasn't doing justice to himself."

In his judgment, Mr. Justice Beyers said that any man worthy of the name attorney should have found out what counsel had marked on his brief for his appearance before charging his client.

"I have absolutely no difficulty in believing not only in the honesty of Mr. Kies, but also in the correctness of what he has said.

"I accept his evidence that Mr. Kudo tried to persuade him to increase his fee and that they would split the difference.

EVIDENCE "FALSE"

"It rebounds to the credit of junior counsel that they did not accede to this request, in spite of the inducements offered.

"I have not the least difficulty in coming to the conclusion that the evidence given by Mr. Kudo is false and untrue. I don't believe one word of it," the judge said.

"I have difficulty in conceiving of a worse act on the part of an attorney. If there is one, I think it was the next step he took, namely, going to junior counsel, trying to make them a party of his dishonesty and promising them a remuneration for doing so.

"I have come to the conclusion that he is not a fit and proper person to be an attorney, and order that his name be removed from the roll."

Mr. Justice Diemont concurred.

Mr. P. Schock, QC, and Mr. P. W. E. Baker, SC (instructed by Basillie, Watermeyer and Bosman) appeared for the Law Society of the Cape of Good Hope. Mr. M. Seligson, QC, Mr. S. Aaron, SC, and Mr. H. W. Lewy (instructed by Arthur E. Abrahams and Gross) appeared for Mr. Kudo.

Canned clothes for Christmas

LONDON. — Canned clothing is London's latest Christmas fad.

Some husbands can expect to find under their Christmas tree this year tins of socks, vests and pants. A tin-opener has to be used.

Promised, for Carlsmas next year are jumbo-sized cans of suits and coats — "useful," said a London store, "for people going on expeditions." (Sapa-Reuter.)

Nasleep van Dienste vir D.A.F.

BEKENDE PROKUREUR OP 3 AANKLAGTE

Die Burger — 15/12/66

DIE Wetsgenootskap van die Kaap die Goeie Hoop het gister in die Kaapse Hooggeregshof aansoek gedoen dat 'n bekende Kaapse prokureur, mnr. Jack Kudo, van die rol van prokureurs geskrap word.

Die drie aanklagte wat die genootskap teen mnr. Kudo aanhangig gemaak het, spruit uit dienste wat mnr. Kudo in 1964 in opdrag van die nou verbode Defence and Aid Fund gelewer het.

Mnr. Kudo het na bewering twee oorgestelde rekeninge vir betaling aan die D.A.F. voorgelê. Hy het ook na bewering twee Kaapse advokate probeer oorhaal om hul regsgelde vir sekere strafappelle te verhoog sodat mnr. Kudo die D.A.F. kon wysmaak dat hy meer geld aan die advokate uitbetaal het as wat hy in der waarheid gedoen het. Hierdeur wou mnr. Kudo die D.A.F. mislei oor die bedrag wat hy vir die appelle uitbetaal het.

Mev. S. Mittag, voormalige sekretaresse van die D.A.F., het in 'n beëdigde verklaring voor [illegible] president A. W. Beyers en regter M. A. Diemont gesê dat die D.A.F. mnr. Kudo in 1963 gelas het om drie appelsake te behartig. Hy het adv. H. S. Strauss en B. M. Kies gelas om te verskyn.

INGELIG

Op 30 Maart 1964 het mnr. Kudo haar ingelig dat elke appèl R75 sou kos. Mnr. Kudo is [illegible] vir R225 gevra.

Op haar vraag hoe mnr. Kudo die R75 bereken het, het hy dit soos volg gespesifiseer: R25 vir elke dag se voorbereiding, R25 vir die dag se beredenering voor die hof en R25 vir die notering van die uitspraak.

Omdat die regskoste [illegible] buitengewoon hoog gelyk het, het sy [illegible] langs 'n omweg by die betrokke advokate navraag oor hul regsgelde gedoen.

Mev. Mittag het mnr. Kudo later op versoek om 'n gespesifiseerde rekening te verskaf, wat mnr. Kudo op 2 April gedoen het. Hy het die rekening soos volg gespesifiseer: R12 as sy eie regskoste en R63 vir uitbetalings aan die advokaat.

Sy het mnr. Kudo opgebel en hy het gesê dat hy met sy advokate ooreengekom het dat hy (mnr. Kudo) R4 uit elke R25 sou kry.

Mev. Mittag het wel by die betrokke advokate navraag gedoen en [illegible] tot die gevolgtrekking gekom dat mnr. Kudo die valse rekening verskaf het. Sy het die saak aan die Wetsgenootskap voorgelê.

Adv. Kies het getuig dat mnr. Kudo hom op [illegible] April 1964 opgebel het. Mnr. Kudo wou weet of hy sou toestaan dat sy regsgelde verhoog word. Mnr. Kudo het gesê dat hy die D.A.F. [illegible] dat sy regsgelde verhoog [illegible].

Mnr. Kudo het gesê hy wou sy rekening aan die D.A.F. [illegible] omdat hy [illegible] homself wou [illegible] rekening [illegible] mnr. Kudo homself wou [illegible] het gesê dat hy [illegible].

Adv. Kies se regsgelde was R42 en R63 is nooit [illegible].

AANGEMELD

Ge[illegible] het die telefoon mnr. Kudo se versoek met sy kollegas bespreek en die saak by die Wetsgenootskap aangemeld.

Mnr. Kudo het gister getuig dat die R75 wat hy per appèlsaak gevra het, spruit uit 'n telefoongesprek wat hy op 23 Maart 1964 met mev. Mittag aangegaan het. Hierdie bedrag is op die [illegible] grondslag [illegible] sake vir die D.A.F. in die Kaapse streek [illegible] bepaal het.

Die bedrag wat hy aan sy advokaat sou gee, het geheel en al by hom berus. Dit was 'n saak tussen hom en die advokaat.

Die saak duur voort.

Adv. [illegible] Schock, S.C., en D. W. [illegible] Baker, S.C. (gelas deur Bale, Watermeyer en Bosman) verskyn vir die Wetsgenootskap en adv. H. Snitcher, S.C., S. Aaron, S.C., en H. W. Levy vir mnr. Kudo.

37969

2/2/13.

G E H E I M.

22 -12- 1966

Die Kommissaris van die
Suid-Afrikaanse Polisie,
Privaatsak 302,
PRETORIA.

DR. R. HOFFENBERG EN DIE DEFENCE AND AID FUND TEEN DIE MINISTER VAN JUSTISIE.

Die reëling om sekere dokumente in verband met die Defence and Aid Fund wat tans in besit van die beredderaar is deur u middeling na Kaapstad oor te plaas vir insae, indien so verlang deur die regsverteenwoordigers van die eisers in bovermelde geding, word bevestig.

U onderneming om die dokumente in Kaapstad in veilige bewaring te hou en toegang daartoe alleen onder toesig van 'n lid van die Polisie te verleen, word op prys gestel. Daar is geen beswaar daarteen dat afskrifte van die dokumente onder toesig gemaak word nie.

G. M. J. SWART

SEKRETARIS VAN JUSTISIE.

22/12/66

2/2/13

J. 417.

Meld in u antwoord asb, In reply please quote.

Telegramadres / Telegraphic Address: "GOVAT"

DEPARTEMENT VAN JUSTISIE
REGISTRY
ONTVANG / RECEIVED
10/12/1966
DEPARTMENT OF JUSTICE

Alle briewe moet gerig word aan: / All communications to be addressed to: PRIVAATSAK 81, PRETORIA / PRIVATE BAG 81, PRETORIA

Telefoon / Telephone: [illegible] OP/SENT THROUGH

JHduT/HvdW

No. 941/66/B1

Kamer, Room,

REPUBLIEK VAN SUID-AFRIKA—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FONTEINLAAN,
FOUNTAIN LANE,
PRETORIA.

Tamerato!
1. O/S(R) - P 15.12.66
2. HJR. 11/12/66
3. R/K
14.12.66.

PER HAND

13 Desember 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

AKSIE : S.A. DEFENCE AND AID FUND en
R. HOFFENBERG vs. MINISTER VAN JUSTISIE

U verwysing is 2/2/13.

1. Vir u inligting stuur ek u hiermee:

   (a) 'n afskrif van die Verweerder se blootleggingsverklaring;

   (b) 'n afskrif van my diensbrief wat ek vandag aan die Adjunk-Staatsprokureur, Kaapstad gerig het.

2. Ek bevestig dat u dokumente wat in die blootleggingsverklaring genoem is vandag aan u meneer Vorster terugbesorg is. Hierdie stukke moet asseblief beskikbaar gehou word indien dit benodig word.

3. In verband met die deurlees en sortering van die groot massa dokumente in besit van die beredderaar wil ek graag my dank uitspreek teenoor die beredderaar en u ander beamptes wat behulpsaam daarmee was.

J.H. DU TOIT
nms: STAATSPROKUREUR

2/12/13

JHduT/HvdW 941/66/B1

AANGETEKEN 13 Desember 1966

Die Adjunk-Staatsprokureur,
Privaatsak 9001,
K A A P S T A D.

AKSIE : S.A. DEFENCE AND AID FUND en
R. HOFFENBERG teen DIE MINISTER VAN JUSTISIE

U verwysing is 1391/66/CC/1.

1. Met verwysing na u diensbrief van 2 deser, stuur ek u hiermee 'n oorspronklike blootleggings beëdigde verklaring met aanhangsels daartoe en wat op 13 deser geteken en beëdig is deur Sy Edele die Minister van Justisie. 'n Afskrif van die stukke vir bestelling op die eisers se prokureurs is ook hierby aangeheg. Dit word aan die hand gegee dat u die afskrif bestel nie voor 20 deser, maar ook nie later as op 21 deser nie, wat die laaste toelaatbare datum vir bestelling is.

2. Soos u weet en soos u sal merk uit die Tweede Skedule tot die verklaring, is die dokumente wat in besit van die beredderaar is, van 'n baie groot omvang. Indien eisers se prokureurs die dokumente wil inspekteer sal hulle ons baie ruim tyd moet toelaat om die stukke gereed te kry en af te stuur na u kantoor. Dit is wenslik dat u eisers se prokureurs se aandag pertinent daarop vestig wanneer u die blootleggingsverklaring bestel. Voorts, ooreenkomstig die reëling op 8 deser, sal gemelde prokureurs alleenlik die dokumente kan besigtig en afskrifte maak onder toesig van die beredderaar of sy gemagtigde. Geen stukke mag onder enige omstandighede verwyder of beskadig word nie.

3. Indien gemelde prokureurs aandring op 'n voorverhoorkonferensie, moet die datum daarvan asseblief na oorlegpleging met hierdie kantoor gereël

word, sodat/2...

2/2/13

word, sodat reëlings dienooreenkomstig met die Staat se advokate getref kan word.

4. Volgens u diensbrief van 2 deser is n verhoor-datum nog nie bepaal nie. Indien die verhoor vroeg in Februarie 1967 moet plaasvind, moet u asseblief probeer reël dat dit die eerste drie dae in Februarie geskied, aangesien Adv. Hoexter, S.A., op 8 Februarie met n ander saak in Kaapstad sal besig wees.

5. U hulp word hoog waardeer.

J.H. DU TOIT
nms;STAATSPROKUREUR

Was Onregtig' Sê Regter: Skrap Kaapse Prokureur

Maandag het
mei
20/5/66

Court is asked to attorney off the roll

Cape Times 15/12/66

ALLEGATIONS that a Cape Town attorney, Mr. Jack Kudo, tried to induce two advocates to increase their fees for appearances in the Supreme Court were made in the Supreme Court, Cape Town, yesterday.

Before the Judge President, Mr. Justice Beyers, and Mr. Justice Diemont was an application by the Law Society of the Cape of Good Hope for an order removing Mr. Kudo's name from the roll of attorneys.

It was said in papers that Mr Kudo practises under the name of Jack Kudo and Co at Dumbarton House, Church Street, Cape Town.

Mr. J. H. F. Cawood, president of the Law Society, said in an affidavit that during 1964 his society received certain complaints against Mr. Kudo.

It is alleged that Mr. Kudo submitted an account to the Defence and Aid Fund on February 13, 1964, which showed payment of fees to Mr. C. L. Rogers, an advocate, for a criminal appeal in the sum of R50. In fact and to the knowledge of Mr. Kudo this account was false. The fee actually charged by counsel was R21," Mr. Cawood said.

"On April 1, 1964, he intimated to DAF that Adv. B. M. Kies and Adv. H. S. Strauss, who appeared in three criminal appeals and were instructed by him, had each charged R75 for the appeals.

"In response to a request from DAF for a detailed account, he submitted an account showing disbursements of R63 for each appeal. He intended thereby to convey that counsel had charged R63 for each appeal.

"In fact and to his knowledge the account was false. Disbursements of R63 per appeal had not been incurred for counsel's fee or at all."

Mr. Cawood said Mr. Kudo also attempted to induce Mr. Kies and Mr. Strauss to increase the fees marked upon their briefs.

"In consideration for assisting him to conceal the deceit he offered them a financial inducement, namely that they would share the increase in fees which he wished them to mark upon their briefs."

ASKED FOR R225

Mrs. S. Mittag, secretary of the Defence and Aid Fund from September 1, 1963, till February 28, 1965, said in an affidavit that Mr. Kudo informed her telephonically that he had received back the briefs from Mr. Kies and Mr. Strauss and that each was marked R75. He asked for a cheque for R225.

He said the fees were made up from R25 for one day's preparation, R25 for argument in court and R25 for noting judgment.

After informal consultations with counsel concerned, she asked Mr. Kudo for a detailed account. This was supplied on April 2, 1964, and he broke down each amount of R75 into R12 for his own fees and R63 for disbursements.

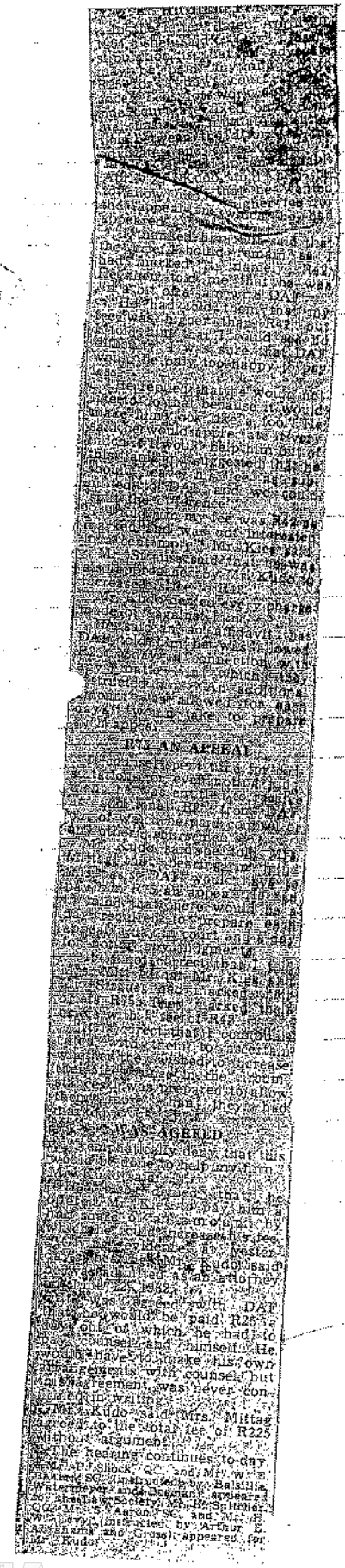
She subsequently discovered that they had charged only R42.

She went to the Law Society to complain and later searched the records of DAF and found an account submitted by Mr. Kudo in respect of an appeal argued by Mr. C. L. Rogers in February, 1964, which also seemed irregular.

The account reflected an appeal lasting two days. To her knowledge it had lasted only one day.

"Mr. Kudo submitted a false account reflecting a payment of R50, whereas in fact Adv. Rogers was only paid R21."

In a letter to the Law Society, which was before the court, Mrs. Mittag said that DAF did not normally work to any fixed rate of legal fees, which depended on the lawyers concerned, the length of any particular case and the funds available.

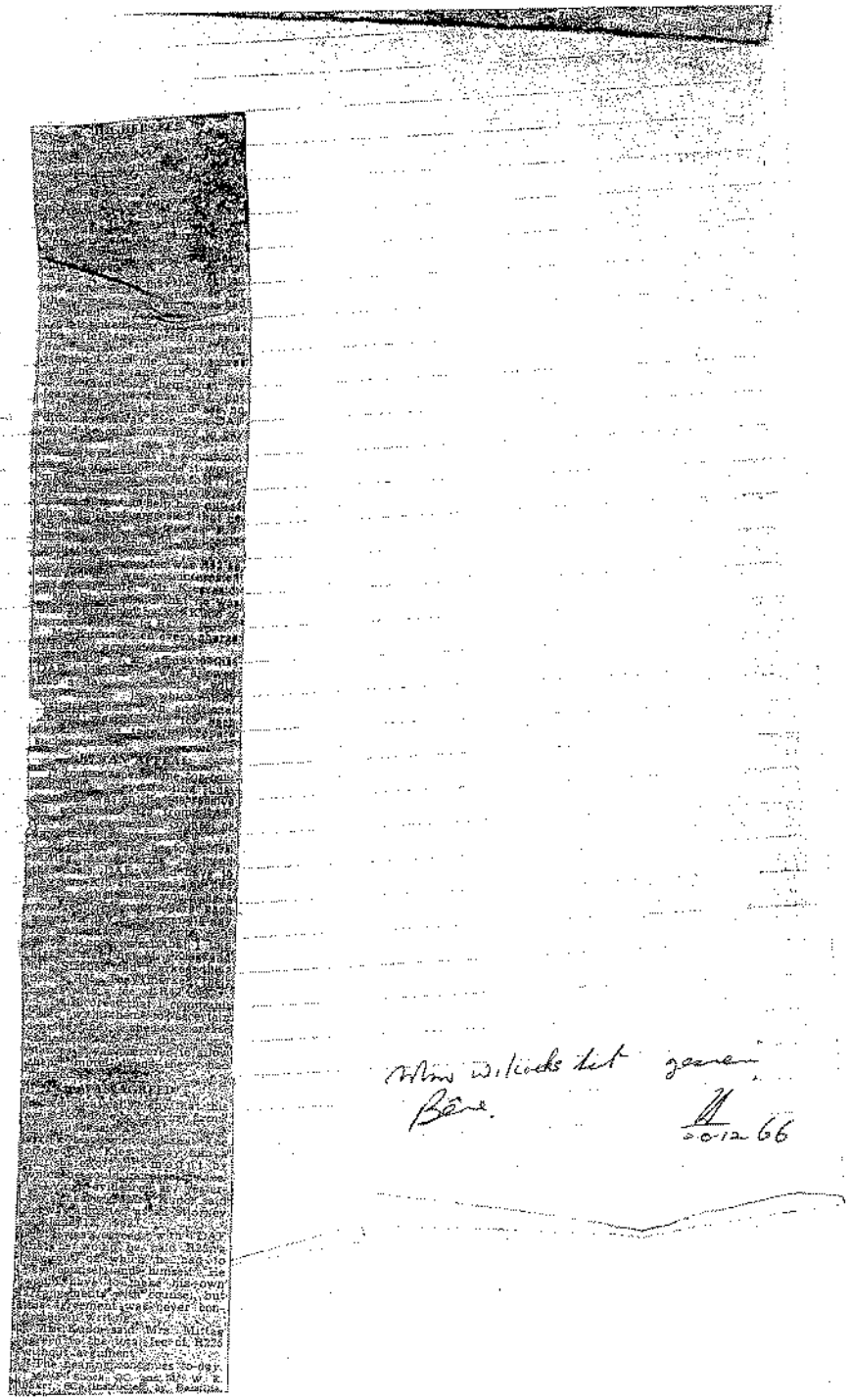


R75 AN APPEAL

HAS AGREED

Mrs Wilcocks let general
Bene.

20-12-66



Miss Wilcocks last year.
Bar.
20-12-66

Defence Fund is still busy in S.A. — Collins

[illegible] PRESS REPORTER

A SUGGESTION that the banned Defence and Aid Fund is still operating illegally in South Africa and that it will continue to do so was made by its chairman, Canon John Collins, in London last week.

The Commissioner of Police, General J. M. Keevy, declined to comment.

Former members of the banned organisation in Johannesburg yesterday denied all knowledge of its continued existence. "As far as I know the banning order killed it stone dead. And there has been no resurrection," a former committee member said.

Canon Collins made his claim in the Church Times.

His article, although noting that the organisation is unjustly and callously banned in South Africa, says: "The Defence and Aid Fund, which operates in both South Africa and Rhodesia, still has an increasing and sometimes an almost overwhelming amount of work to do."

Canon Collins adds: "Ever since 1956 this fund and its independent South African counterparts has stood for justice as conceived by all humane people and in its care for the dependants of political prisoners, for straightforward human compassion.

Darkest hour

"I believe it is essential that we should carry on with this work for as long as we can effectively do so.

"To appear to desert the victims of apartheid in what may well be their darkest hour of suffering, (more especially now that the South African Defence and Aid committees have been so unjustly and callously banned by the South African Government) would be cruel and heartless."

He adds: "The threat to world peace and harmony was implicit in the South African situation of 1950 and has now become open and alarming."

He says that the present situation does not allow organisations like the Defence and Aid Fund to retire from the fields of racial affairs.

What happens in Rhodesia, he predicts, is a key to what will eventually happen in South Africa.

"If the Smith regime is allowed to get away with its defiance of world opinion and the whole of Southern Africa hardens into a White democratic block, then an [illegible] world explosion along racial lines [illegible] inevitable."

DEFENCE AND AID SHOCK: NO BIG MOVE —KEEVY

By HUGH ROBERTON

SPECIAL BRANCH officers have called on several people in Port Elizabeth to warn them that they are breaking the law by belonging to organisations which criticise or even discuss Government policies.

1962 EDICT

THE STAR

COLLINS' S.A. JAIL MOVE

From Our Correspondent

London, Friday.

THE International Defence and Aid Fund is to launch a campaign for the release of political prisoners in South Africa.

The fund's chairman, Canon John Collins, said today that the campaign's two main objectives will be to explore prison conditions in South Africa and press for a United Nations commission to be sent to South Africa to investigate them.

The recent release by the South African Government of the Red Cross report on prisons, the fund claims, is a clear indication of the effectiveness of our campaign even at this early stage.

The new campaign will be launched on Monday night with a public meeting in London. Speakers, including former political prisoners in South Africa, will call for immediate release of all prisoners of conscience in South Africa.

The chairman of the meeting will be Canon Collins and the speakers will include Dennis Brutus, Albie Sachs and Lionel Bernstein.

- 9 -12- 1966

DIE SEKRETARIS VAN JUSTISIE.

MJ. 21.
MG. 7.

Afskrif in opdrag vir u inligting deurgestuur.

U lêer No. 2/2/13 het betrekking.

PRIVAATSEKRETARIS.

Mnr. D.P. du Plessis,
p/a Departement Kriminologie,
Universiteit van Pretoria,
PRETORIA.

- 9 -12- 1966

Waarde Heer,

i/s: VERSOEK OM FONDSE UIT DIE DEFENCE AND AID FUND.

Met verdere verwysing na u brief van 4 November 1966 en in opdrag van Sy Edele die Minister van Justisie, wens ek daarop te wys dat ingevolge die bepalings van artikel 4(3) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), enige oorskot wat daar mag wees nadat die skulde van 'n onwettige organisasie vereffen is, aan een of meer liefdadigheids- of wetenskaplike organisasie betaal moet word. Regtens is bemakings aan private individue dus nie moontlik nie en daar kan dus ongelukkig nie aan u versoek voldoen word nie.

Die Minister wys egter daarop dat hy pas onlangs goedgekeur het dat die oorskot van die bates van die onwettigverklaarde Suid-Afrikaanse Kommunistiese Party, African National Congress en African Resistance Movement aan die Nasionale Raad vir Sosiale Navorsing oorbetaal word spesiaal vir gebruik in verband met navorsing op die gebied van ondermynende organisasies in die Republiek, en dat daar niks is om u te verhinder om by gemelde Raad vir hulp aan te klop nie.

Die uwe,

O. A. DE MEYER

PRIVAATSEKRETARIS.

POP/SK.

GEHEIM. 2/2/13.

DIE SEKRETARIS/MINISTER.

VERSOEK OM FONDSE UIT DIE DEFENCE AND AID FUND: MNR. D.P. DU PLESSIS.

1 (a) Mnr. D.P. du Plessis, 'n nagraadse student aan die Universiteit van Pretoria, berig dat hy tans besig is met 'n proefskrif oor ondermynende bedrywighede teen die Staat. Hy beoog om die proefskrif in die volgende drie dele te verdeel, nl.:-

Deel I: Teorie en Metodologie van Internasionale Kommunisme, insluitende die bespreking van internasionale en nasionale frontorganisasies.

Deel II: Ontleding van die Kommunistiese bedrywighede in S.A.

Deel III: Die Kommunistiese dokumente waarop beslag gelê is en waarin die metodes van, en verband tussen die frontorganisasies spreek.

Deel I van die proefskrif is reeds in konsepvorm voltooi en mnr. Du Plessis werk tans aan die tweede deel van sy proefskrif.

1 (b) Die derde deel van die proefskrif lewer egter probleme op aangesien dit mnr. Du Plessis voor groot uitgawes te staan bring. Hy wil graag die dokumente so na as moontlik aan die oorspronklike weergee en om dit te doen beoog hy om fotostatiese afdrukke van die dokumente te laat maak. Hy het 'n tender van Gestetner gekry vir R2300. Hy is nie in staat om 'n beurs of navorsingstoekenning te verkry om die buitensporige koste te dek nie en verneem derhalwe of daar nie 'n moontlikheid bestaan dat hy vir die doel fondse uit die Defence and Aid Fund kan bekom nie. (4.11.1966).

2/...

2. Ingevolge artikel 4(3) van Wet No. 44 van 1950 moet enige oorskot wat daar mag wees nadat die skulde van die onwettige organisasie vereffen is, aan een of meer liefdadigheids- of wetenskaplike organisasies deur die Minister aangewys betaal word. Hiervolgens is dit duidelik dat bemakings aan private individue nie moontlik is nie.

3. Die bates van die Defence and Aid Fund is nog nie te gelde gemaak nie en dit sal waarskynlik nog geruime tyd duur voordat die saak gefinaliseer is. Intussen het die Minister goedgekeur dat die bates van die onwettigverklaarde Suid-Afrikaanse Kommunistiese Party, African National Congress en die African Resistance Movement aan die Nasionale Raad vir Sosiale Navorsing oorbetaal word met die voorbehoud dat dit alleen gebruik word vir navorsing op die gebied van ondermynende organisasies in die Republiek. Mnr. du Plessis se proefskrif het op ondermynende organisasies betrekking en indien hy nou eers met sy navorsing begin het, mag hy moontlik van die Nasionale Raad vir Sosiale Navorsing hulp ontvang het. Sy proefskrif is egter so te sê voltooi en blyk dit dat hy die geld slegs benodig vir die maak van fotostatiese afdrukke en dat dit dus inderdaad nie vir navorsing op sigself is nie. In die omstandighede word voorgestel dat sy aandag op die bepalings van artikel 4(3) van die Wet gevestig word en hy meegedeel word dat bemakings aan private individue nie moontlik is nie.

4. 'n Konsepantwoord is in die omslag vir die Privaatsekretaris om te teken asseblief indien die Minister goedkeur.

Gewysigde Konsep

COEDOEKEUR — APPROVED
MINISTER

By beantwoording meld asb.
In reply please quote

MJ.21.
MG.7.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

Ministerie van Justisie,
Ministry of Justice,

Uniegebou,
Union Buildings,

PRETORIA.

Mnr. D.P. du Plessis,
p/a Departement Kriminologie,
Universiteit van Pretoria,
PRETORIA.

Waarde Heer,

Insake: VERSOEK OM FONDSE UIT DIE DEFENCE AND AID FUND.

Met verdere verwysing na u brief van 4 November 1966 en in opdrag van Sy Edele die Minister van Justisie wens ek daarop te wys dat ingevolge die bepalings van artikel 4(3) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), enige oorskot wat daar mag wees nadat die skulde van n onwettige organisasie vereffen is, aan een of meer liefdadigheids- of wetenskaplike organisasie/ betaal moet word. Regtens is bemakings aan private individue dus nie moontlik nie en daar kan dus ongelukkig nie aan u versoek voldoen word nie.

~~Verder het ek in opdrag van Sy Edele~~ Die Minister ~~u mee te deel~~ wys egter daarop dat hy pas onlangs goedgekeur het dat die oorskot van die bates van die onwettig verklaarde Suid Afrikaanse Kommunistiese Party, 1) African National Congress en African Resistance Movement aan

~~Die uwe,~~

PRIVAAT~~SEKRETARIS~~.

MJ.21.
MG.7.

Mnr. D.P. du Plessis,
p/a Departement Kriminologie,
Universiteit van Pretoria,
<u>PRETORIA</u>.

Waarde Heer,

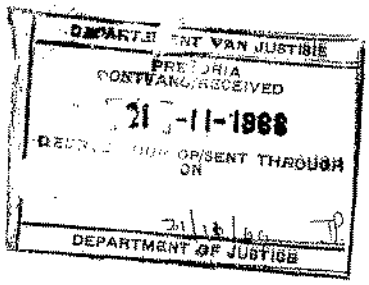
Insake: <u>VERSOEK OM FONDSE UIT DIE DEFENCE AND AID FUND.</u>

Met verdere verwysing na u brief van 4 November 1966 en in opdrag van Sy Edele die Minister van Justisie wens ek daarop te wys dat ingevolge die bepalings van artikel 4(3) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), enige oorskot wat daar mag wees nadat die skulde van n onwettige organisasie vereffen is, aan een of meer liefdadigheids- of wetenskaplike organisasies betaal moet word. Regtens is bemakinge aan private individue dus nie moontlik nie en daar kan dus ongelukkig nie aan u versoek voldoen word nie.

Die uwe,

<u>PRIVAATSEKRETARIS</u>.

die Nasionale Raad vir Sosiale Navorsing
oorbetaal word spesiaal vir gebruik i.v.m. navorsing
op die gebied van ondergrondse
organisasies in die Republiek en
dat daar niks is om u te verhinder
om by genoemde Raad vir hulp
aan te klop nie.



R/1 gsk.
Sien art 4(3) van wet 44/50
23/11/66

RIK.

MJ. 21.
MG. 7.

21 -11- 1966

Mnr. D.P. du Plessis,
p/a Departement Kriminologie,
Universiteit van Pretoria,
PRETORIA.

Waarde Heer,

INSAKE: VERSOEK OM FONDSE UIT DIE 'DEFENCE AND AID FUND'.

Sy Edele die Minister van Justisie het aan my opgedra om die ontvangs van u brief van 4 November 1966 te erken en u mee te deel dat u versoek aandag geniet.

'n Nadere skrywe in die onderhawige verband sal mettertyd aan u gerig word.

Die uwe,

A. J. VLOK
PRIVAATSEKRETARIS.

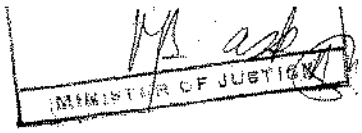
DIE SEKRETARIS VAN JUSTISIE. 21 -11- 1966

In opdrag vir u kommentaar en die voorlegging van 'n konsepantwoord deurgestuur asseblief.

PRIVAATSEKRETARIS.

OSR
22/11/66

R/K
22/11/66



P R E T O R I A.
4 November 1966.

Die Privaatsekretaris,
Ministerie van Justisie,
Uniegebou,
P R E T O R I A.

Geagte Heer,

My telefoniese gesprek met 'n beampte van u kantoor op 3 November 1966 verwys.

In 'n vorige skrywe van my aan die Sekretaris van Justisie het ek sy Edele die Minister van Justisie meegedeel dat ek beoog om my proefskrif oor ondermynende bedrywighede teen die Staat in drie dele in te deel. Tans beoog ek die indeling soos volg:

Deel I: Teorie en Metodologie van Internasionale Kommunisme, insluitende die bespreking van internasionale en nasionale frontorganisasies.

Deel II: Ontleding van die Kommunistiese bedrywighede in Suid-Afrika.

Deel III: Die Kommunistiese dokumente waarop beslag gelê is en waarin die metodes van, en verband tussen die frontorganisasies spreek.

Deel I van my proefskrif is reeds in konsepvorm voltooi en ek werk tans aan die tweede deel van die proefskrif.

Die derde deel van my proefskrif sal my voor groot uitgawes te staan bring. Ek wil graag die dokumente so na as moontlik aan die oorspronklike weergee en om dit te kan doen moet ek fotostaatafdrukke laat maak wat 'n redelike duur proses is. Ek het 'n tender van Gestetner gekry vir R2300. Dit is onder die huidige bedeling van beurs- en navorsingstoekennings nie moontlik om fondse op die wyse te verkry nie.

Graag verneem ek of daar nie 'n moontlikheid bestaan dat ek vir die doel fondse kan bekom uit die „Defence and Aid Fund" nie.

2/...

Indien ek nie geholpe kan raak nie sal ek noodgedwonge die derde deel van my proefskrif moet weglaat. Die derde deel is inderdaad nie nodig vir graaddoeleindes nie, maar vir die eenheid van die hele vraagstuk van Kommunisme wil ek dit graag byvoeg.

Ek sal dit hoog waardeer indien u die aansoek van my aan sy Edele die Minister van Justisie vir oorweging sal voorlê.

Die uwe,

D.P. DU PLESSIS

J.21

Mr. David H. Wheatley,
Muscular Dystrophy Group
of Great Britain,
4 Brancepeth Village,
Durham,
ENGLAND.

Dear Sir,

re: ASSETS: THE DEFENCE AND AID FUND.

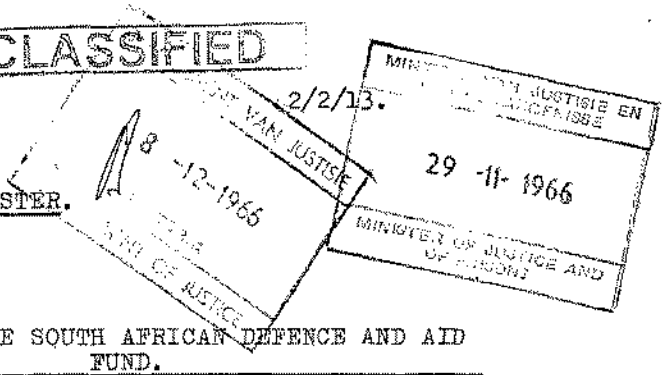
With further reference to your letter dated the 25th March, 1966, I have to inform you by direction of the Honourable the Minister of Justice, that he is by law precluded from designating charitable or scientific organizations outside the Republic of South Africa to which any balance remaining after the payment of the debts of an unlawful organization should be distributed. It is therefore regretted that your request cannot be acceded to.

Yours faithfully,

J.W.G. MEVE

PRIVATE SECRETARY.

SECRET. 2/2/13.



THE SECRETARY/MINISTER.

APPEAL : THE SOUTH AFRICAN DEFENCE AND AID FUND.

1. On the 10th November, 1966, the Supreme Court (Appellate Division) dismissed the appeal by the South African Defence and Aid Fund and its Chairman, Mr. R. Hoffenberg, against the refusal of the Cape of Good Hope Provincial Division of the Supreme Court of South Africa to set aside Proclamation No. 77 of 1966. This Proclamation declared the Defence and Aid Fund to be an unlawful organization.

2. The Appeal Court also dismissed an appeal by the Fund and Mr. Hoffenberg that the Minister be ordered to produce all documents relating to the appointment of a committee in terms of section 17 of the Suppression of Communism Act, 1950, to prepare a factual report in connection with the activities of the said Fund.

3. Copies of the judgments by the Honourable Justices Steyn, C.J., Botha (concurring); Faure Williamson and Trollip (dissenting), are attached for the Minister's information.

22.11.66

22.11.66

7/12/66

DECLASSIFIED

IN THE SUPREME COURT OF SOUTH AFRICA
(APPELLATE DIVISION)

BLOEMFONTEIN, THURSDAY the 10thday of NOVEMBER, 1966.

Before:-

The Honourable Mr. Justice Steyn, C.J.
The Honourable Mr. Justice van Blerk.
The Honourable Mr. Justice Botha.
The Honourable Mr. Justice Faure Williamson.
The Honourable Mr. Justice Trollip, A.J.A.

In the matter between:-

THE SOUTH AFRICAN DEFENCE AND AID FUND	1st Plaintiff
and	
RAYMOND HOFFENBERG	2nd Appellant
and	
THE MINISTER OF JUSTICE	Respondent

Having on Tuesday the 13th day of September, 1966, heard Mr. Grame Duncan, Q.C., with him Mr. L.R. Dison, Counsel for the Appellants and Mr. G.G. Hoexter, S.C., with him Mr. J.D.M. Swart, Counsel for the Respondent, in the Appellants' appeal against the whole of the judgment and order of the Cape if Good Hope Provincial Division of the Supreme Court of South Africa delivered on the 16th May, 1966, and having read the record of the proceedings in the Court a quo;

THE COURT RESERVED ITS JUDGMENT

THEREAFTER on this day

THE appeal is dismissed with costs.

BY THE COURT,

(Sgd.) ?
REGISTRAR.

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE AND AID FUND .... First Appellant.

and

RAYMOND HOFFENBERG ..... Second Appellant.

and

THE MINISTER OF JUSTICE ..... Respondent.

Coram: Steyn, C.J., van Blerk, Botha, Faure Williamson, JJ.A. et Trollip, A.J.A.

Heard on: 13th September, 1966. Delivered: 10/11/1966.

J U D G M E N T.

BOTHA, J.A.:

Under the powers conferred upon him by section 2(2) of the Suppression of Communism Act, 1950 (act No. 44 of 1950) the State President by Proclamation No. 77 of 1966, of the 18th March 1966, declared the organisation known as the Defence and Aid Fund to be an unlawful organisation for the purposes of that Act.

Thereafter the appellants unsuccessfully

2/ applied .....

applied in the Cape Provincial Division for an order, inter alia, (a) declaring that Proclamation No. 77 of 1966 has no application to the first appellant, the South African Defence and Aid Fund, and which the second appellant is the chairman, and (b) setting aside the said proclamation or alternatively declaring it to be of no force or effect.

In this appeal we are concerned only with the dismissal by the court a quo of the appellants' application for an order setting aside Proclamation No. 77 of 1966 or declaring it to be of no force or effect.

The validity of Proclamation No. 77 of 1966 was, both in the court a quo, and in this Court, attacked on the ground that the first appellant was not, prior to the issue of the proclamation, afforded any opportunity, in accordance with the maxim audi alteram partem, of being heard in its defence.

It is clear, and it was common cause, that having regard to the consequences flowing from the declaration of an organisation under section 2(2) of the Act as an unlawful organisation, as set out in sections 3 and 4, such a declaration prejudicially affects the rights of the organisation concerned, and that such an organisation would

3/ therefore

therefore impliedly, in accordance with the well known maxim audi alteram partem, and in the absence of clear indications to the contrary, have the right to be heard before being declared an unlawful organisation. (Builders Ltd. vs. Union Government, 1928 A.D. 46 at pp. 59.60, and R. vs. Ngwevela, 1954(1) S.A. 123). But as has been pointed out by Stratford, A.C.J. in Sachs vs. Minister of Justice, 1934 A.D. 11 at p. 38:-

> "Sacred though the maxim is held to be, Parliament is free to violate it. In all cases where by judicial interpretation is has been invoked, this has been justified on the ground that the enactment impliedly incorporated it. When on the true interpretation of the Act, the implication is excluded, there is an end of the matter."

By section 2(1) of the Act, the Communist Party of South Africa is declared to be an unlawful organisation. Then follows section 2(2) which provides that if the State President is satisfied:-

> "(a) that any other organisation professes or has on or after the fifth day of May, 1950, and before the commencement of this Act, professed by its name or otherwise, to be an organisation for propagating the principles or promoting the spread of

4/ communism.....

communism; or

(b) that the purpose or one of the purposes of any organisation is to propagate the principles or promote the spread of communism or to further the achievement of any of the objects of communism; or

(c) that any organization engages in activities which are calculated to further the achievement of any of the objects referred to in paragraph (a), (b), (c) or (d) of the definition of "communism" in section one; or

(d) that any organization is controlled, directly or indirectly, by an organization referred to in sub-section (1) or pragraph (a), (b) or (c) of this sub-section; or

(e) that any organisation carries on or has been established for the prupose of carrying on directly or indirectly any of the activities of an unlawful organization,

he may without notice to the organization concerned by proclamation in the Gazette declare that organization to be an unlawful organization, and the State President may in like manner withdraw any such proclamation."

Counsel for the appellants conceded that the words "without notice to the organisation concerned" in section 2(2) effectively excludes any right on the part of the organisation concerned to be heard at the stage, at any rate, when the State President finally deals with the matter.

3/ but .....

but contended that the words cited are wholly insufficient to exclude the implied right of the organisation concerned to be heard at one of the preceding stages envisaged by section 17 of the Act which, as substituted by section 7 of Act 97 of 1965, reads as follows:

> "17. The powers conferred by this Act upon the State President ... except the power conferred under sub-section (2) of section two in respect of an organisation contemplated in paragraph (a) of the said sub-section ... shall not be exercised in relation to any ... organisation ... unless the Minister ... has considered a factual report in relation to that ... organisation ... made by a committee of three persons appointed by the Minister of whom one shall be a magistrate of a rank not lower than the rank of senior magistrate."

It is common cause that the first appellant was not, prior to its declaration as an unlawful organisation under section 2(2), afforded any opportunity of being heard at any one of the stages contended for by counsel; hence his argument that the principles of natural justice having been violated, Proclamation No. 77 of 1966 was invalid.

Counsel contended, in the light of the

provisions of section 17 cited above, that the principles of natural justice apply in relation to the proceedings contemplated by that section, and that the first appellant was therefore entitled to be heard in his defence either before the committee, appointed under the section, made its factual report to the Minister, or before the Minister, having considered the report, submitted the matter to the State President for a declaration under section 2(2). Counsel's main argument was directed to the question whether the first appellant, not having been afforded an opportunity of being heard by the Minister before submission of the matter to the State President, was in law entitled to be heard by the committee, constituted as it was, before the latter made its factual report to the Minister.

Counsel for the respondent, relying mainly on the judgment of this Court in Cassam vs. Cos-Kappse Komitee van die Groepsgebiederaad, 1959(3) S.A. 651 (A) at pp. 659/60, submitted, however, that the question whether the first appellant was entitled to a hearing at either of the two preceding stages mentioned, depends upon whether the committee, in preparing and submitting its

7/ factual .....

factual report to the Minister, and upon whether the Minister, when considering the committee's report, exercised functions of a quasi-judicial nature. The question whether or not the committee or the Minister exercised functions of a quasi-judicial nature depends again, he submitted, on whether they, by the exercise of their functions, affected the rights of the first appellant. He contended that neither the Minister nor the committee made any decision affecting the rights of the first appellant, and that therefore they did not exercise functions of a quasi-judicial nature. (Real Printing Co. (Pty.) Ltd. vs. Minister of Justice, 1969(2) S.A. 782 (C) at page 784.)

Counsel for the appellants countered this submission by contending that the decision in Cassem's case has no bearing upon the issues in the present case as the Governor-General, in establishing group areas under section 3 of the Group Areas Act, No. 41 of 1950 - the statutory provisions which were considered in that case, - did not exercise functions of a quasi-judicial nature, as the State President clearly did in the present case when declaring the first appellant to be an unlawful organisation under

8/ section .....

section 2(2) of Act 44 of 1950. Counsel's submission amounted to this, that a statutory body conducting an enquiry prescribed as a pre-requisite to the exercise by another statutory authority of quasi-judicial nature, even although it takes no decisions affecting rights, and that, unlike the Group Areas Board in Gassem's case, whose enquiry preceded the exercise by the Governor-General of purely executive functions, the functions of the committee in the present case were therefore functions of a quasi-judicial nature. As the maxim audi alteram partem is not expressly or clearly excluded in relation to the proceedings by the committee, so the argument went, the first appellant was entitled to be heard in its defence by the committee before the latter submitted its report to the Minister. For this proposition counsel relied on such cases as Dabner vs. South African Railways and Harbours, 1920 A.D. 583; Ngcobo vs. Chief Native Commissioner for Natal and Others, 1936 N.P.D. 94; Denby and Sons vs. Minister of Health, 1936(1) K.B. 337; Marriott vs. Minister of Health, 1938 (154) L.T.R. 471 and Local Government Board vs.

Attridge, 1915 A.D. 120. I return to these cases later in this judgment.

I cannot agree that the decision in Cassem's case has no bearing upon the issues in the present case. It is quite clear from a long series of cases in this Court (see e.g. R. vs. Ngwevela, supra, at p. 127; Laubscher vs. Native Commissioner, Piet Retief, 1958(1) S.A. 546 (A) at p. 549; Minister van Naturellesake vs. Monnakgotla, 1959(3) S.A. 517 (A) at p. 521, and le Roux vs. Minister van Bantoe Administrasie, 1966(1) S.A. 481 (A) at p. 490/91), that, apart from other possible requirements, the incorporation of the maxim audi alteram partem can only be implied where a "statute empowers a public official to give a decision prejudicially affecting the property or liberty of an individual", or, what amounts to the same thing, where a statute empowers a public official to exercise, in relation to the property or liberty of an individual, quasi-judicial functions. The test enunciated on page 660 of the judgment in Cassem's case for determining whether the functions of a statutory body are of a quasi-judicial nature or not, namely whether or not it is clear, apart from other possible requirements, that the rights of persons are affected by the

10/ exercise .....

exercise thereof, is therefore clearly of general application, and is not limited to statutory bodies conducting enquiries, as in Caussen's case, in connection with or as a pre-requisite to the exercise by the prescribed deciding authority of functions which are not of a quasi-judicial nature.

The question whether Parliament has in any particular case either expressly or by clear implication excluded the incorporation of the maxim audi alteram partem can only arise where, upon the true construction of the enactment concerned, the incorporation of the maxim is implied, for where it cannot be implied, there is obviously n o need to exclude it. The first question to be determined must, therefore, always be whether the enactment concerned impliedly incorporates the maxim. The answer to that question must, as indicated above, primarily depend upon whether the enactment is one empowering a statutory official or body to give a decision affecting the rights of another.

The paramount question to be determined in the present case, is, therefore, whether the rights of the first appellant were in any way affected by the exercise by the committee of its functions under section 17 of the Act. If they were, the incorporation of the maxim is prima facie implied. If they were not, it cannot be said that Parliament

In determining whether the rights of the first appellant were affected by the exercise by the committee of its functions under section 17, the fact that it was not itself required to give any decision affecting the rights of the first appellant, may be important, but is not necessarily conclusive (Cf. Pahmar vs. South African Railways and Harbours, supra, and Ngcobo vs. Chief Native Commissioner for Natal and others, supra). That would depend upon whether or not there existed, in the light of the relevant legislative provisions, such a direct causal relationship between the committee's factual report under section 17, and the State President's decision under section 2(2), as to justify the conclusion that the rights of the organisation concerned were affected by the report. (See Gaqaga's case, supra, at pp. 659/60).

It is quite clear from the provisions of sections 2(2) and 17 that neither the Minister nor the State President in the exercise of their functions limited to the facts contained in the committee's factual report. Either may rely also on facts obtained from other sources, such as information obtained in consequence of an investigation by an authorized officer under section 7. Indeed a decision to declare an organisation to be an unlawful organisation may validly be based on facts other than the facts contained in

the committee's report. The Committee is not required to make any recommendations, or to make any findings on any of the matters mentioned in section 2(2) and in regard to which the State President is required to be satisfied before declaring an organisation an unlawful organisation. The committee is indeed not required to decide anything. Although the committee's factual report and the consideration of the report by the Minister are therefore essential and important steps that may lead to a proclamation under section 2(2(, and may even substantially contribute to it, it cannot be said that, in terms of the relevant provisions of the Act, there exists between the report and the decision by the State President to declare an organisation an unlawful organisation, such a causal relationship as to justify the conclusion that the rights of the organisation are affected by the report.

A similar test was applied in Cassem's case at p. 459/60 to determine whether the rights or persons were affected by the exercise of its functions by the Group Areas Board under sections 27 and 28 of the Group Areas Act, and is, in my view, equally applicable in the determination in the present case of the question whether the rights of an organisation are affected by the exercise by a committee of its functions under section 17. It is true that in the light of

the statutory provisions considered in Cassem's case, the functions of the Governor-General under section 3 of the Group Areas Act were not of a quasi-judicial nature as are the functions of the State President under section 2(2) of Act 44 of 1950.(see Cassem's case at p.659.) The proceedings of the Group Areas Board were, therefore, prescribed as a condition precedent to the exercise by the Governor-General of functions which were not of a quasi-judicial nature, and, on that basis, in the absence, possibly, of clear provisions to the contrary, the Board itself would not, any more than the Governor-General, have exercised functions of a quasi-judicial nature. (Cf. Minister of the Interior vs. Bechler and Others, 1948(3) S.A. 409 (A) at pp. 432/3). For the purpose of determining whether the Group Areas Board exercised quasi-judicial functions or not, it may therefore have been unnecessary, in the light of the statutory provisions considered in Cassem's case, to determine whether the rights of persons were affected by the exercise of its functions, but the gist of the argument addressed to the Court on behalf of the appellant in that case was that the rights, interests and property of persons were prejudicially affected by the exercise by the Group Areas Board of its functions under sections 27 and 28 of the Group Areas Act, and that for that reason alone the Group Areas Board was bound by

14. the/.....

the rules of natural justice. It was to test the correspondence o that submission that this Court considered the question whether there existed, in terms of the relevant provisions of that Act, such a causal relationship between the report of the Board and the issue of a proclamation under section 3 of that Act, as to justify the conclusion that the rights of persons were indeed affected by the Board's report. The test applied in Cassem's case is therefore clearly of general application for determining whether the rights of persons are affected by an enquiry conducted by a statutory body which is not itself required to give the decision affecting such persons' rights, irrespective of whether such an enquiry is prescribed as a condition precedent to the exercise by the deciding authority of executive or quasi-judicial functions.

The remarks of Innes, C.J. in Dabner vs S.A. Railways and Harbours, supra, at p.398, relating to the application of the elementary principles of natural justice to the proceedings of tribunals which, although they do not themselves make decisions affecting rights, are specially created to deal with specific disputes relating to administration or discipline are not in my view applicable in relation to the proceedings of a committee under section 17 of Act 44 of 1950, which is not appointed to enquire into any specific dispute, but merely to collect facts. Unlike the committee's report, which does not

necessarily form the basis of the State President's decision under section 2(2), it is clear from the judgment in Pabner's case and the statutory enactments there considered, that the very purpose of an enquiry conducted by a tribunal of the kind there in question, was to enable the deciding authority to come to a decision on the basis of the tribunal's report and its conclusions on the evidence adduced before it. Such an enquiry, in effect, constitutes with the deciding authority's decision thereon, one single proceeding, and it would be improper for the deciding authority to base a decision prejudicially affecting rights on anything but the tribunal's report. A report by such a tribunal therefore constitutes the very causa causans of the deciding authority's decision as if he had himself conducted the enquiry. That the principles of natural justice should apply in relation to the proceedings of such a tribunal is therefore clear, but its proceedings are, neither in character nor in the result, comparable to the proceedings of a purely fact-finding committee under section 17. For the same reasons the decision in Ngcobo vs. Chief Native Commissioner for Natal and Others, supra, appears to me also to have no bearing on the issues in this case, for there also the tribunal in question was specially

created under section 24(1) of the Natal Native Code to enquire into a specific dispute in which the applicant was concerned, and the tribunal's report was intended to enable the Supreme Chief to give a decision thereon in regard to the dispute enquired into. The other cases to which we have been referred, viz. Denby and Sons vs. Minister of Health, 1936(1) K.B. 337; Harriett vs. Minister of Health, 1946 (154) L.T.R. 47, and Local Government Board vs Arlidge, 1915 A.C. 120, are for the same reasons distinguishable from the present case. The tribunals referred to in those cases in relation to the proceedings of which the principles of natural justice were said to apply, were also specially created to enquire into questions in dispute between parties. Their reports were clearly intended to form the basis of the deciding authorities' decisions in regard to the disputes enquired into, and were therefore causally linked therewith. The proceedings of these tribunals, and the purpose of their enquiries, therefore differ entirely from the proceedings and the purpose of a committee under section 17 of Act 44 of 1950.

There is a marked contrast between the relationship seen to exist between the proceedings at an

enquiry conducted by a tribunal of the kind referred to in the cases cited and the decision based thereon by the prescribed deciding authority, on the one hand, and the relationship between the proceedings of a committee under section 17 and the decision of the State President under section 2(2), on the other hand. Although the report of the committee must be considered before a decision under section 2(2) is taken, the decision need not be based thereon. Indeed, as already indicated, the decision may be based on facts and considerations other than the facts contained in the committee's report, and may even be inconsistent with such facts. No causal link can therefore in terms of the relevant provisions of the Act be said to exist between the committee's report and the State President's decision, and, unlike in the case of proceedings conducted by a tribunal such as is referred to above, they cannot in any way be regarded as constituting one single proceeding. And if they did, the question would arise whether the words "without notice to the organisation concerned" in section 2(2) were not intended to relate to the whole and therefore to every part of that proceeding.

It has been suggested that the express requirement in section 17 of a factual report by a committee

presided over by a senior magistrate strongly points to the conclusion that the first appellant was entitled to an opportunity of making representations to the committee relative to the charges against it. The constitution of the committee does not, however, alter its essential character from that of a mere collector of facts to something else, or confer upon it functions not conferred by the section. The reasons for its constitution may very well have been to ensure an unbiased and relevant factual report; but however that may be, it cannot be said that it would not have been so constituted if it had not been found to afford to the organisation concerned an opportunity of being heard. There is nothing in section 17 indicative of an intention to incorporate therein the maxim audi alteram partem. If anything, a contrary intention rather seems to appear from a consideration of the kind of legislation here in question, and from the expressed exclusion of the maxim at the only stage where the rights of an organisation can be affected. The purposes of the Act are clearly the maintenance of order and the protection of the safety of the State. These purposes are best achieved by prompt preventive action, and could be defeated by affording to an organisation of the kind referred to in paragraphs (a) to (d)

19. of section/....

of section 2(2) an opportunity of being heard by the committee before submitting its report to the Minister. (Cf. R. vs. Halliday, 1917 A.C. 260 at p.271, and Sachs vs Minister of Justice, supra, at pp. 35 and 38).

Reference has been made to section 7(1) of the Act which authorises the Minister, if he has reason to suspect "that the purposes, activities or control of any organisation are such that it ought to be declared an unlawful organisation under sub-section (2) of section two", to designate any person as an authorised officer to investigate the purpose or activities of the organisation or the manner in which it is controlled. For the purposes of exercising his functions, wide powers are conferred upon an authorised officer by section 7(3). An investigation by an authorised officer is not a pre-requisite to a proclamation under section 2(2), whereas an investigation by a committee under section 17 is. An investigation under section 7 may precede or follow upon an investigation under section 17, and the information obtained from both sources may be relied upon for a declaration in respect of the same organisation under section 2(2). No assistance to the solution of the problem in this case can therefore be

20. derived/.....

derived from a consideration of the provisions of section 7, except perhaps to say that, if it cannot be seriously contended that the organisation whose affairs are being investigated under section 7, has a right under that section to be heard in its defence by the authorised officers, and I do not think that it can be so contended, there is no reason why an organisation is entitled to a hearing by a committee under section 17, as both the committee and the authorised officer are mere collectors of fact and their functions do not substantially differ.

A difficulty presents itself if the principles of natural justice were to be held to apply in relation to an investigation by a committee under section 17, and that difficulty arises by reason of the fact that such a committee is not appointed to enquire into a specific dispute or charge against the organisation. The principles of natural justice would not be satisfied by merely affording the organisation concerned an opportunity of being heard or of placing information before the committee relevant to the general question whether or not it is such an organisation as is referred to in section 2(7)

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of the Act, without disclosing to it the substance of any prejudicial allegations of fact against it. In the absence of such a disclosure any hearing afforded the organisation concerned by the committee would be more or less valueless. (see Minister of the Interior v.s. Bechler and Others, supra, at pp. 451/2). But when a committee commences its investigation under section 17, it is not aware, and cannot be aware, of any prejudicial allegations of fact against the organisation concerned, and is therefore not able to afford to the organisation an opportunity of controverting such allegations. If during the committee's investigation it becomes aware of facts prejudicial to the organisation, the disclosure of such facts would not necessarily ensure a fair hearing to the organisation concerned, for it may in the event be declared an unlawful organisation on other facts which it could not have been afforded an opportunity by the committee of controverting. Though these considerations would not, if the principles of natural justice clearly applied in relation to an investigation by a committee under section 17, relieve the committee from observing those principles as far as it is able to do so, they nevertheless provide a further indication, I think, that the character of

22/the .....

the committee's functions are not such as to justify the inference that Parliament intended the principles of natural justice to apply in relation to the exercise thereof.

It seems to me therefore, that it is only by the exercise by the State President of his powers under section 2(2) that an organisation's rights are in law prejudicially affected, and were it not for the words "without notice to the organisation concerned" in section 2(2) the first appellant would have been entitled to an opportunity of controverting the prejudicial allegations against it before the issue of the proclamation. An organisation's rights are not affected by the exercise under section 17 of their functions by the Minister or a committee appointed under that section, and the first appellant was therefore not entitled to a hearing by either of them.

In my view the appeal fails and should be dismissed with costs.

Steyn, C.J.
Van Blerk, J.A. } I agree

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE

AND AIR FORCE ..... 1st Appellant

AND

RAYMOND HOFFENBERG ..... 2nd Appellant

AND

THE MINISTER OF JUSTICE ..... Respondent

CORAM: STEYN, C.J., VAN BLERK, BOTHA, FAURE WILLIAMSON,

J.J.A. et THOLLIP, A.J.A.

HEARD 13th September 1966. DELIVERED 10th November 1966

J U D G M E N T

STEYN, C.J.

I agree with the judgment of my brother Botha. I shall only add a few remarks in connection with certain English cases relied upon by counsel for the appellants. They are Local Government Board vs. Arlidge 1915 A.C. 120; Denby and Sons vs. Minister of Health 1936(1) K.B. 337 and Nakkuda Ali vs. Minister of Health (1950) A.C. 465. These cases deal with Housing Acts. The relevant provisions relate to the power of local

authorities to make certain orders in respect of dwelling-houses. In terms of the earlier legislation an appeal lay from such an order affecting any house to a Local Government Board, while in terms of the later legislation, such an order had to be confirmed by the Minister of Health. In regard to an appeal to the Local Government Board, the relevant Act of 1909 (9 Edw. 7, ch. 44) was to the effect that the Board could not dismiss an appeal without having first held a public local enquiry. In practice, apparently, the enquiry was not held by the Board as such but by a deputy. In regard to confirmation of an order by the Minister of Health, par. 4 of the first Schedule to the Housing Act, 1930, provided that where an objection had been made and had not been withdrawn, the Minister "shall, before confirming the order, cause a public local enquiry to be held and shall consider any objection not withdrawn and the report of the person who held the enquiry, and may then confirm the order, either with or without modification." In this context, in the one case of an appeal, and in the other of an objection against confirmation, to be dealt with by the deciding authority, it is quite clear, I think, that the

provision...../3

provision for a public local enquiry implied the concept of audi alteram partem, and would I venture to think, have done so even if the function of the deciding authority were considered to be purely executive or administrative. By providing for a public local enquiry in such circumstances, the Legislature disclosed an unmistakable intention that an interested party was to be heard. In Arlidge's case (supra) at p. 144 Lord Parmoor said: "The obligation on the Local Government Board to hold a public enquiry in the locality is to enable the facts on either side to be ascertained by oral testimony, subjected to the test of cross-examination, if either party should so require, and to ensure in this respect a full opportunity to the appellant to be heard before dismissing his appeal against the decision of the local authority." Referring to the description in the Act of the enquiry as a "public local enquiry", Lord Moulton observed (at p. 147 ibid): "The effect of the insertion of the word "public" appears to me to be that every member of the public would have a locus standi to bring before the enquiry any matters relevant thereto so as to ensure...../

to ensure that everything bearing on the rights of the owner or occupier of the house affected, or the interests of the public in general, and of the public living in the neighbourhood in particular, would be brought to the knowledge of the Local Government Board for the purpose of enabling it to discharge its duties in connection with the appeal." Lord Moulton states the scope of such an enquiry in more comprehensive terms, but from the very nature of such an enquiry the right of the parties themselves to be heard would, I consider in this context, be more obviously implied in the term "public local enquiry" than the right of any other member of the public. On the other hand the legislation considered in these cases contained no express provision to the effect that an owner or occupier had no claim to be heard by the deciding authority. It is apparent, therefore, that the provisions which the English Courts were interpreting in these cases differ materially from theprovisions we have to consider in this appeal. The Act specifically excluded the right to be heard by the deciding authority and the enquiry to be held by a committee under section 17

in anything...../5

is anything but a public enquiry for the purpose of enabling the deciding authority to deal with an appeal or objection lodged by an interested party. I can find nothing in the reasoning reflected in these cases which would lead to the conclusion that, the right to be heard by the deciding authority having been explicitly excluded, a right to be heard by the committee is to be implied.

VAN BLERK, J.A. – I agree.

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE AND AID FUND First Appellant.

and

RAYMOND HOFFENBERG. Second Appellant.

versus

THE MINISTER OF JUSTICE Respondent.

Coram: Steyn C.J., Van Blerk, Botha, Faure Williamson JJ.A.

et Trollip A.J.A.

Heard: September 11, 1966. Delivered: 10 November 1966.

J U D G M E N T.

FAURE WILLIAMSON J.A.:

This appeal relates to the dismissal of an application made by the two appellants to the Cape Provincial Division for an order, inter alia, on notice of motion declaring that Proclamation No. 77 of 1966 issued by the State President on March 18, 1966 is of no force and effect. The first appellant is an association of persons with a constitution expressing its objects as being, in brief, (a) to protect "human rights and civil liberties"; (b)

to..... /2.

to assist persons thought to have lost any such rights or liberties and (c) to collect funds to carry out its objects. The second appellant is the chairman of such association.

The proclamation in question was issued by the State President in terms of the provisions of section 2(2) of Act No. 44 of 1950, the Suppression of Communism Act, as amended. In terms of that sub-section the State President "may without notice to the organisation concerned by proclamation in the Gazette declare the organisation to be an unlawful organisation". This he may do if he is satisfied that the organisation is one of any of the five alternative types of organisations referred to in sub-paragraphs (a), (b), (c) (d) or (e) of the sub-section.

The consequences of any organisation being so declared unlawful are set out in sections 3 and 4 of the Act. Amongst other consequences it becomes, for example, immediately unlawful for any person to continue to be a member or officer of the organisation or to carry on in the direct or indirect interest of the organisation any activity which the organisation could have previously engaged in. Furthermore, all the assets of the organisation vest in a liquidator to be appointed who has power to realise them, to pay the debts of the association and the costs of liquidation out of any proceeds thereof.

In terms of section 4(3) any surplus remaining after such payment of debts and liquidation costs is to be distributed to such scientific or charitable organisations as may be designated by the Minister; in terms of sub-section (8) of the same section any property of the organisation which is not liquidated in terms of sub-sections (3) to (4) is to be "disposed of in such manner as the Minister may direct." In other words, the organisation is thereby completely liquidated and all its

assets...... /3.

assets really confiscated and devoted to such purposes as the Minister may determine.

It was contended on behalf of the appellants that the proclamation is invalid because no opportunity was afforded the first appellant to make representations as to the justness of such a drastic penalty being imposed upon it; in fact, prior to the publication of the proclamation, neither the association nor its members were aware that it was contemplated that such steps should be taken against it. Whether in law the first appellant should at some stage have been afforded the opportunity in question. On his behalf of the Minister it has been contended that the terms of the statute authorising the declaration of the first appellant as an unlawful organisation in terms of the Suppression of Communism Act excluded the necessity for any such opporunity.

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There are numerous judicial decisions in our courts in which consideration has been given to the well recognised general principle "that when a statute empowers a public official to give a decision prejudicially affecting the property or liberty of an idividual, that individual has a right to be heard before action is taken against him, unless the statute expressly or by necessary implication indicates the contrary"; cf. for example the remarks of Centlivres C.J. in R. v. Ngwevela 1954(1) S.A. 123 (A.D.) at p. 127 F. It is a principle which is probably inherent in the legal systems of most modern civilized communities and helpful reference has been made, for instance, by our courts, for the purposes of comparison, to its development in the courts of England. It is sometimes said to be embodied in the maxim audi alteram partem; or again it has been termed a requirement of natural justice - a somewhat vague and elastic term which in its turn has been described as only fair play in action. In a recent case in the House of Lords in England of Ridge v. Baldwin and Others (1963) 2 All E.R. 66 Lord Morris, for example, referred to it in the following terms at p. 102 H; -

"It...../3.

> "It is well established that the essential requirements of natural justice at least includes that before someone is condemned he is to have an opportunity of defending himself and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet; ..... here is something which is basic to our system; the importance of upholding it far transcends the significance of any particular case."

The very extensive field in which this principle has been found to be operative in England is discussed in some detail in the opinion of Lord Reid in the same case; see in particular his remarks reported at p. 73 H to p. 74 D and his reference to war - time legislations at p. 76 F et seq.

That the principle is just as basic in our own system of justice is made clear by the numerous reported decisions of our courts in which the maxim audi alteram partem has been considered and applied. That there are, of course, proper and legitimate circumstances in which the operation of this maxim must be regarded as having been restricted is, however, equally clear. To quote, for instance, the words of Stratford A.C.J. in Sachs vs. Minister of Justice 1934 A.D. 11 at p. 38, "sacred though the maxim is held to be, Parliament is free to violate it." The

learned acting Chief Justice went on to add that in all cases where by judicial interpretation the maxim has been invoked this has been justified on the ground that the enactment impliedly incorporated it." That does not necessarily mean that, before the maxim is applicable, the court must seek and find an express or implied incorporation of the principle or maxim in the statute in question. If a deprivation of rights or of liberty is provided for, the enquiry commences, in my view, from the opposite angle: has there been expressly or by necessary implication a removal of the basic right to know that a penalty is proposed and to make representations thereanent? That this is so is made clear, I think, by the remarks of Centlivres C.J. in Ngwevela's case quoted above after referring to this particular quotation from Sach's case.

It has been particularly in regard to the exercise of their statutory powers and functions by ministers of state or by administrative officials that the application of the above mentioned principle or maxim has given rise to difficulty, both in our own courts and in

those.....17.

those of England. It would seem obvious that certain types of decisions made by such persons should not be subjected to the necessity of first observing some sort of rule of natural justice before coming to a conclusion. Other types of decisions again may postulate a prior observance of some such rule. One broad demarcation between the two types of functions or decisions which has been applied from time is that which designates some proceedings or decisions, as being of a quasi-judicial nature and others as being of an administrative nature. The former, it has been suggested, may require the observance of some rules as to a "fair hearing" the latter may never require any such thing. This line of distinction is reflected, for instance, in remarks of Lord Reid in the case referred to above of Ridge v. Baldwin and Others. After referring to a number of cases relating to the application of the principle under discussion, he went on say at p. 75 I:-

> "In cases of the kind with which I have been dealing the Board of Works or the governor or the club committee was dealing with a single isolated case. It was not deciding, like a judge in a lawsuit, what were the rights of the person before it. But it was deciding how he should be treated -something analogous to a judge's duty

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in imposing a penalty. No doubt policy would play some part in the decision - but so it might when a judge is imposing a sentence. So it was easy to say that such a body is performing a quasi judicial task in considering and deciding such a matter and to require it to observe the essentials of all proceedings of a judicial character - the principles of natural justice. Sometimes the functions of a minister of department may also be of that character and then the rules of natural justice can apply in much the same way. But more often their functions are of a very different character. If a minister is considering whether to make a scheme for say an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors and it would be quite wrong for the courts to say that the minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down. And there is another important difference. As explained in Local Government Board v. Arlidge 1915 A.C. 120 a minister cannot do everything himself. His officers will have to gather and sift all the facts including objections by individuals and no individual can complain if the ordinary accepted methods of carrying on public business do not give him as good protection as would be given by the principles of natural justice in a different kind of case."

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The decision that a new road or railway should be constructed involving the expropriation of the land of certain private owners is obviously a decision on a question of policy and not a decision to deprive any one person of his land. It seems quite clearly not a "quasi judicial" decision to penalise somebody, even although some persons may become affected thereby and thus also to claim compensation. Similarly the decision to create a certain group area under the provisions of Act No. 41 of 1950 would seem to be a "policy" decision, which, though it could affect certain persons, is certainly not a quasi - judicial decision to deprive any person of property which could give rise to such rights as were claimed by the affected person in the case of Cassem en 'n Ander v. Oos-Kaapse Komitee van die Groepsgebiederaad en Andere 1959(1) S.A. 651 (A.D.)

Whether the segregation of the functions or powers of ministers and administrative officers into "administrative" and "quasi-judicial" functions or powers and the labelling of any such function or power as belonging to the one group or the other group will in every case

satisfactorily...../10.

satisfactorily dispose of the question as to how that function or power should be exercised in relation to the person to affected thereby, is an enquiry upon which I do not intend to embark in dealing with thepresent matter. I, however, fear the rigidity which such classification and labelling may induce. I appreciate the value, in its proper sphere, of a scientific analysis and sub-division under proper nomenclature of the applications in practice of a legal principle. I think, however, it is possible that in the case of the basic principle of "fair play" under consideration, an undue limitation may be placed upon its scope by an attempt to define its applicability entirely by means of type or class tests. The essential feature in each instance is, I think, the true meaning and effect, in the surrounding circumstances, of the enabling statutory provision. In this respect I would associate myself with the remarks of Schreiner J.A. in the case of Pretoria North Town Council v. A.I. Ice-Cream Factory 1953(3) S.A. 1(A.D.) at p. 11 A-C to the following effect:

> "The classification of discretions and functions under the heading of "administrative", "quasi-judicial" and "judicial" has

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been much canvassed in modern judgments and juristic literature; there appears to be some difference of opinion, or of linguistic usage, as to the proper basis of classification, and even some disagreement as to the usefulness of the classification when achieved. I do not propose to enter into these interesting questions to a greater extent than is necessary for the decision of this case; one must be careful not to elevate what may be no more than a convenient classification into a source of legal rules. What primarily has to be considered in all these cases is the statutory provision in question, read in its proper context."

Reference can also be made in this respect to the "konklusie" to an article on "Die Kwasie-Judisiële Administratiewe Handeling" appearing at pp. 218 to 219 of Nommer 3, Band XXXIX (1966) of the Tydskrif vir Hedendaagse Romeins-Hollandse Reg.

The making of decisions by Ministers of State or by senior administrative officials under the complex conditions of a modern state has resulted in the necessity, in many cases, of there being different stages involved in the whole process prescribed for the makingof any such decision. This aspect was referred to by Viscount Haldane in the well known and much quoted early English case of Local Government Board v. Arlidge 1915 A.C. 120 at p. 133 This passage is mentioned by Lord Reid in the quotation.

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set out above from the case of Ridge v. Baldwin and Another,

Under a certain Housing Act in England a local authority could make a closing order in respect of a dwelling house. An appeal lay against any such order to the Local Government Board, the chairman of which was a minister, in terms of rules determined by the Board. Such rules provided inter alia that no appeal could be dismissed before a public local inquiry had been held by a Board housing inspector. It was held that an appellant who had duly been allowed to appear at the prescribed public local inquiry had no right to see the report made by the Board's inspector upon the public local inquiry nor any right to be heard by the deciding officer or officers of the Board. In dealing with the position of the administrative body to which the duty of enquiry had been entrusted, the Lord Chancellor said that:

> "The result of the enquiry must, as I have said, be taken, in the absence of directions in its statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume

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of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials and he has discharged his duty if he sees that they obtain these materials for him properly. To try and extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a judge in a court he is not only at liberty but is compelled to rely on the assistance of his staff."

The Ardidge case is an example of a process for arriving at a decision which could perhaps be called, more properly, the exercise of a quasi-judicial discretion and not a purely administrative descretion and in which the two functions of enquiry into the facts and of giving the eventual decision were divided between two bodies. The fact that the first body, the enquiry body, could given no decision, did not mean that its proceedings were not to be conducted judicially and fairly; that it should so act was taken as implied from the stuture. The fact that the eventual decision was made by the Board did not on the other hand mean in the

circumstances...../14.

circumstances disclosed, that the Board was itself bound to give the appellant a hearing.

There seems nothing improbable or improper or inconvenient in the fact that in a statute authorising a minister, or other officer of State, for instance, to liquidate an organisation or to impose severe penalties on an individual, provision is made for a procedure whereby any necessary preliminary enquiry into the circumstances is to be made by some person or body on behalf of such minister or other officer of State. Pressure of work or inconvenience or impropriety may, on the other hand, even render it undesirable that such a minister or officer, should himself undertake the work of sifting and weighing the relevant facts or of entertaining representations or arguments or submission. If the possible end result of such a composite procedure is that the rights or liberties of a person or body can be taken away, it would generally be surprising if no provision were expressly or impliedly incorporated whereby the affected person or body is given an opportunity at some stage during such proceedings of learning what was suggested as being a fitting penalty to

be imposed and of submitting why such a penalty should not be imposed. Cases undoubtedly can and do arise where it is impolite or against the interests of safety of the state to give any forewarning of an intended protective measure; or there may exist other paramount consideration necessitating a denial of the right of a prior opportunity to meet the proposed steps. The terms of the statute itself may lead to a necessary inference that for some such reason that position exists. But the mere fact by itself that the procedure for the making of any such decision has been divided up or departmentalised does not give rise, in my view, to any necessary implication that a denial of such a right was intended by the Legislature.

The issue of an order or the making of a decision by a minister or other state official after the type of composite or dual procedure mentioned may of course give rise to the exercise of both quasi judicial functions and administrative functions in the one matter. This type of position was recently discussed by Hodson L.J. in the Court of Appeal in England inthe case of R. v. Registrar of Building Societies (1960) 2 All E.R. 549 at p. 560. He

there.../16.

there referred to "the hybrid capacity of a minister or official who, when holding an enquiry, may be acting in a judicial capacity but may at the time of making an order be acting in an administrative capacity." The two capacities and the two types of duties, it was accepted, "go together and are compatible one with the other." In each case the relevant statutory provisions had to be considered and the duty of the official who conducted the inquiry had to be considered having regard to the language of the statute which imposed the duty on him.

It is not necessary here to detail the facts of the above case but shortly it involved the question whether the Registrar of Building Societies had acted properly and fairly before making an order against a society under a certain section of the Prevention of Frauds Act of 1958. In terms of the section the registrar was authorised, with the approval of the Treasury, to make an order in certain circumstances against a society which in effect would entirely prevent it from conducting its business of accepting deposits and making loans. There was express provision for prior notice to be given by him

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to the society in question and for the affording, on request, of an opportunity to make representations to him. In an application on certain grounds for an order of certiorari, the registrar contended he was at all times acting in an administrative capacity and that therefore no such application could be entertained. Alternatively it was suggested that from the time when he finally made up his mind to seek Treasury Approval to the order which he intended to make, he shed his judicial habit and put on again his administrative clothing." In dealing with this submission Lord Parker C.J., presiding in the court a qua remarked at p. 834 G:-

> "It seems to me here that the natural approach where an official is given the power of life and death - because it almost amounts to that - over a building society, is that one would naturally expect to find that at some stage of the proceedings he should act in a quasi-judicial capacity, and for my part, although I find it unnecessary to come to a final conclusion in the matter, I think at the moment when he enters on the hearing and up to the time when the order is made, he is acting in a quasi-judicial capacity."

The power vested in the State President under the statutory provisions relevant to this matter are certainly

no less extensive and drastic than the powers of the Registrar of Building Societies thus described by Lord Parker.

I have referred above briefly to the nature of the power conferred on the State President under section 2(2) of the Suppression of Communism Act of 1950 and to the far reaching consequences, specified in sections 3 and 4, of his exercising such power. The pre-requisite prescribed therein for his causing to be published in the Gazette a declaration that any organisation is an unlawful organisation in terms of section 2(2) is that he "is satisfied" that it is any one of the several types of organisations referred to in sub-paragraphs (a), (b), (c) (d) and (e) of that sub-section. It was not contended by the appellants in this matter than the State President was in any way expressly or impliedly under any obligation to do anything else but satisfy himself on the information placed before him that the organisation was of a type specified. That attitude was not surprising in view of the terms of the sub-section, for it is in express terms provided that the State President can act in this regard "without notice to the organisation concerned" - a provision which clearly

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and necessarily precludes a right to any sort of hearing at that stage of the procedure for the declaration of an organisation as unlawful under the sub-section in question. The policy or expendiency of such a provision is in no way presently material but nevertheless it creates a position which can be seen to be desirable for several points of view, that of practicability being at least one. Furthermore it is a position which can be seen frequently to exist in other legislation in regard to the "hybrid" procedure referred to above and which the circumstances of government and administration in the complexities of modern states give rise to. It is also not necessary to attempt to classify or designate the exact nature of the actual decision of the State President after he has been "satisfied".

From other provisions of the Act it is possible to see the manner in which the information upon which the State President can become "satisfied" is to be garnered and sifted. In particular section 7 confers upon the Minister power to appoint an authorised officer to investigate the purposes and activities whenever he "has reason to suspect" that any organisation ought to be

declared .../20.

declared unlawful under section 2(2) of the Act. Such an officer is given extremely wide powers to enable him to carry out his functions - powers, for instance, to enter any premises, seize documents, question persons. One of his duties in terms of sub-section 2of section 7 is, if so directed, to compile a list of all office bearers, members or active supporters of the organisation being investigated. A proviso requires him not to put any name on such a list unless ht has given the person a reasonable opportunity of shoiwing that his name should not be placed thereon. The investigation on behalf of the minister of an organisation under this section is not a necessary part of any proceedings to declare an organisation unlawful under section 2(2); it is merely a means whereby the Minister can obtain any information he deems desirable in order to enable him to decide whether any steps should be taken under the Act against a "suspected" organisation. There can be no foundation for a suggestion that a suspected organisation should receive any notification that it is to be investigated or that it is has any right of being heard in regard to or during any investigation under section 7;

nor.../21.

nor has any such suggestion been made.

Under section 17 of the Act, however, there is provision for an integral part of the proceedings to declare an organisation unlawful under section 2(2). It is there provided that no proclamation can be issued by the State President under that sub-section (except in regard to an organisation to be dealt with under sub-paragraph (2)(a) thereof, to which special considerations may apply) "unless the Minister --- has considered a factual report in relation to that --- organisation --- made by a committee consisting of three persons appointed by the Minister of whom one shall be a magistrate of a rank of not lower than the rank of a senior magistrate." It was not suggested that section 2(2)(a) is of any relevance in regard to the first appellant. There is no express provision at all for any notice to be given of the appointment of such a committee, of any meeting thereof or of any duty upon such committee to entertain any representations at all on behalf of the organisation to be reported on.

The consideration by the Minister of the prescribed "factual report" is an essential part of the

whole/.... 22.

whole composite proceeding for the declaration of an organisation as unlawful. There are really three essential phases of the proceedings which enable such an organisation to be "liquidated" in the manner provided for in section 3 and 4: there is first the framing of a factual report upon facts ascertained, sifted and selected by a committee in a manner not specified at all: there secondly is a consideration of such factual report by the Minister, in the light, obviously, of such information as he may have also obtained as the result of any investigation he may have ordered under section 7, followed by a decision of the Minister as to whether he should place the matter before the State President for further action against the organisation: and thirdly there is the consideration by the State President for further action against the organisation: and thirdly there is the consideration by the State President of any facts placed before him in order to satisfy him of the nature of the organisation and if he is so satisfied, the issue of the necessary proclamation.

All three phases constitute, it seems to me, part of one whole composite procedure for the "liquidation" of an undesirable organisation. The fact that the different steps have to be taken by different persons or bodies

does not alter the essential nature of the whole procedure regarded as one for the attainment of that particular object. Because of the essential nature of the proceedings as a whole, I think, it is to be expected that at some stage thereof there would, in the light of the general principles discussed above, be some opportunity for the prospective victim to put forward for consideration whatever reason it can be to why it should not be liquidated. Save in regard to that phase which relates to the act of the State President, there is no express provision by Parliament taking away that right ordinarily enjoyed by a person about to be penalised.

Practical reasons, such as those discussed above in certain decisions to which reference has been made, suggest that it is shown by the procedure adopted that Parliament did not desire representations to be made during the phase relating to the acts of the Minister. That is emphasised by the fact that provision is made for a prior phase during which it would be particularly convenient for any representations to be made on behalf of the organisation to a body which necessarily consists of at least one

experienced.../24.

experienced judicial officer. It was never suggested, either, on behalf of the appellants that a hearing could be demanded in relation to the ministerial phase.

I can find no warrant for reading into the relevant sections of the Act a necessary implication that the general principle or maxim discussed above is of no application at all in relation to any proceeding for the declaration of an organisation as unlawful. The fact that in some sections of the Act express provision is made for persons being given a hearing, including the proviso to section 7(2) mentioned above, is not of sufficient potency, to my mind, to give rise to any such inference; as to the limited value of the maxim expressio unius est exclusio alterius in this respect, see the remarks of Centlivres C.J., in Ngwelvela's case supra at p. 130 H.

In argument the decision of this Court in Cassem en 'n Ander v. Ons-Kaapse Komitee van die Groepe-gebiederaad (supra) was urged upon us by counsel for the Minister in support of his submission that the Act excluded any right at all for an organisation to be heard at any stage. In my view that case dealt with such different

circumstances/... 25.

circumstances that it is of no assistance in deciding whether in the sections of the Act here relevant, there is a clear implication that Parliament intended that the principle had to be violated in the interest of the State. I think that an organisation could conveniently and should be afforded an opportunity of making representations to the committee appointed to report upon the relevant facts to the Minister.

It is not necessary to decide or to define exactly how the principle or maxim can be satisfied in the relevant circumstances. It is very clear that the mere existence of such a principle in relation to extra judicial proceedings leading to the infliction or imposition of possible contemplated penal consequences does not necessarily confer the right to a full judicial enquiry with such privileges as discovery, the calling of witnesses, cross-examination and the receipt of full particulars of charges or of prejudicial information. It may well be that all that is required for "fairness and justness" in the particular circumstances is a notification that proceedings are contemplated under a particular sub-paragraph or sub-paragraphs

of the sub-section and that any written representation will be considered by the enquiry committee. It is not unusual for applicants like the present appellants who are claiming the right of being heard in a so called quasi-judicial proceedings to make exaggerated claims as to what they are entitled to. The general principle certainly never entitles them to claim all the privileges enjoyed at full judicial proceedings. It merely enjoins a fair opportunity of attempting to show "innocence" or facts in mitigation - the term "innocence" is used figuratively.

Inasmuch as it is my view that a total exclusion of the principle or maxim is issue from the whole of the proceedings to declare the first appellant an unlawful organisation cannot be read into the statute, it follows that the court a quo should have granted an order in terms of prayers (a) and (b) of the notice of motion with costs.

The appeal should accordingly be allowed with costs and the order of the court a quo altered accordingly.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE AND AID FUND — 1st Appellant

and

RAYMOND HOFFENBERG — 2nd Appellant

and

THE MINISTER OF JUSTICE — Respondent

CORAM: STEYN, C.J., VAN BLERK, BOTHA, FAURE WILLIAMSON, JJ.A. et TROLLIP, A.J.A.

HEARD: 13th September 1966 DELIVERED: 10/11/66

J U D G M E N T

TROLLIP, A.J.A.

I agree with Williamson J.A. that the appeal should be allowed with costs for the reasons given by him. There being a divergence of opinion, I would like to add some reasons of my own for coming to that conclusion.

Because the State President has to be satisfied about the existence of certain facts before he can outlaw a particular organisation (section 2 (2)), and the outlawing seriously prejudice that organisation for it leads inevitably

to its final liquidation (sections 3 and 4), these are pre-eminently the kind of statutory provisions in which the law presumes the duty to observe the "sacred maxim", audi alteram partem, at some stage before such action is taken. The only question that therefore arises here is, does the Act itself expressly or by necessary implication exclude its application?

The only express provisions relevant to that question is in section 2 (2): it says that, if the State President is so satisfied, "he may without notice to the organisation concerned" outlaw it. As Williamson J.A. points out, however, the procedure for outlawing an organisation comprises three essential separate stages: (1) the inquiry and reporting by the committee in pursuance of section 17: (2) the consideration of its report by the Minister; and (3) the action by the State President. That in the final stage no notice need be given to the organisation does not necessarily mean that no hearing need be afforded it at one of the earlier stages; indeed, it could well indicate the contrary - no notice need then be given, for a hearing is to be afforded at an earlier stage. However, I need not express a firm view thereon, for Mr. Hoexter, for the respondent, expressly refrained from contending that no notice at stage (3) meant no hearing at stages (1) or (2). I shall also assume that, because section 17 only

requires /...

requires of the Minister that he considers the committee's report, that excludes a hearing at stage (2). That leaves stage (3).

A hearing at this stage is not expressly excluded, but Mr. Hoexter contended that it was excluded by necessary implication because the committee itself is not required to give any decision prejudicially affecting the rights of the organisation. In support thereof, he argued that the committee is a mere collector and reported of alleged facts. One immediately asks, if that were so, why was it then necessary for the Act to provide for a committee at all? The Minister could himself have caused his department to collect such facts, and in any event a collector and reported of alleged facts is ready to hand under the Act in the form of "the authorized officer" in section 7. No. I do not think that the function of the committee can be thus minimised; it has a much more important role to play in the whole procedure. The statements to the contrary is S v. Kathrada 1963 (2) S.A. 5 (T) are in my respectful view wrong, for reasons that follow.

As already pointed out, the State President can only act if he is satisfied about the existence of certain facts; that presupposes that some inquiry is to be conducted to ascertain whether those facts do or do not exist, especially

as/...

as the consequences to the organisation can be so serious; and I have no doubt that it was intended that such inquiry is to be conducted by the committee. In my view, therefore, its function is to inquire into and find upon the facts, and its "factual report" is to be a report of its factual findings; otherwise, it would have been unnecessary to provide for the committee in addition to "the authorised officer" - the mere collector of alleged facts. That view, too, is appreciably strengthened by the number and qualifications of the members of the committee; it is to consist of three members, one of whom must be a senior magistrate. It could hardly have been intended that the experience and training of such a senior official was to be used, and the time and energy of all three members was to be expended, so uneconomically in their merely perfunctorily collecting and reporting on alleged facts, a task which "the authorised officer" does on his own. On the contrary, I think that the very nature of the committee proclaims that its true function is not only to collect the alleged facts, but also, throughthe expert guidance of the senior magistrate and the collective wisdom of all three members, to sift and make findings on them. And, of course, such findings could be potentially prejudiced to the organisation. The reason is that, although the Minister and the State President, in respectively

considering and deciding the issue, are not confined to or bound by the committee's "factual report", it was nevertheless intended that it would constitute the basis for the ultimate decision, for the issue is essentially one of fact and not policy. A sufficient causal relationship therefore exists between the factual report of the committee and the State President's decision to warrant the inference that the organisation has to be heard by the committee before it renders its report. The committee is certainly suitably constituted to afford such a hearing. Moreover, a factual report that does not take into account the organisation's version of the facts might be unhelpful or worthless, or, even worse, misleading; that could not have been the kind of report that the Legislature had in mind.

In practice, too, it should not be difficult for the committee to afford the organisation a proper hearing. (I use "hearing" throughout without any precise connotation, for it is unnecessary in this case to define exactly the kind of hearing that ought to be given). The inquiry under section 17 is to be conducted, not <u>in vacuo</u> as a fishing expedition, but into the belief or suspicion entertained by the Minister, warranting his appointing the committee, that the particular organisation is guilty of one or more of

the offending activities mentioned in section 2(2). That would be the "charge" against the organisation, which the committee could and should put to it during the inquiry. Nor does the language of the relevant provisions reveal any need for such haste in outlawing an organisation as to precluds its first being heard; on the contrary, that a committee has first to inquire into and report on the facts indicates that care rather than haste is to preponderate. It is true that outlawing an organisation is dictated by reasons of State security, but that by itself is not sufficient to exclude a hearing; otjerwise the decision in Ngwevela's case, supra, would have gone the other way. In any event, if the Legislature had been concerned about any of the factors just mentioned, it would probab;y have expressly excluded the right of hearing, as it could so easily and simply have done by some provision similar to that in section 2 (2), relating to the final stage of the procedure.

I come to the conclusion, therefore, that the statutory provisions relating to the committee's functions, so far from impliedly absolving it from having to hear the organisation before rendering its factual report, actually tend to cinfirm the presumption that it is its duty to do so.

Mr. Hoexter relied heavily on Cassea's

case, supra, for the contention that, because the committee cannot give any final decision adversely affecting the organisation, its proceedings were not quasi-judicial, necessitating its having to hear the organisation. But, in my view, that case is distinguishable. Where, the Governor-General was empowered under section 3 (1) of the previous Group Areas Act, No. 41 of 1950, to proclaim a group area "whenever it was deemed expedient"; before doing so he had to consider the report and advice of the Group Areas Board, formulated after an enquiry conducted according to the procedure prescribed by sections 27 and 28. At an inquiry by the Board into a proposed group area some interested persons claimed to be entitled to certain rights of hearing, which was disputed. According to section 3 (1) the Governor-General's decision whether to proclaim or not depended upon expediency, that is, on policy as well as on facts; he was obviously therefore not confined to or bound by the Board's report; his was also a decision affecting not an individual but the public, or a section of it, owning or occupying land in the area concerned. Consequently, whatever such a decisio may be labelled, whether an act of state or delegated legislation or the like, it was clearly not of the kind in which it would be legally presumed that at some stage leading up to proclamation, the audi alteram partem rule

should be observed. (See p. 659 D to G). In that fundamental report, therefore, Cassem's differed right at the outset from the present case, for here that presumption does operate; or to put the difference in the terminology used in Cassem's case; here the functions of the officers concerned are quasi-judicial, there they were not. Consequently, in Cassem's case affected members of the public had no right of hearing before the Board other than these expressed or necessarily implied in the sections regulating its procedure. The rights claimed were not expressly provided for, but it was contended that they were necessarily implied. This Court, however, held that, as the Governor-General was not bound by the Board's report or advice, and as the Board could not itself make any decisions adversely affecting the rights of any persons, the Board's functions was not inherently quasi-judicial, and the claimed rights of hearing could not therefore be implied. Aagain, the particular point at issue there was entirely different; here the right of hearing is legally presumed to exist, the point being whether it is excluded by necessaru implication; there, the rights of hearing did not expressly or presumptively exist, and the point was whether they were included by necessary implication; consequently, I do not think that the decision in Cassem's case on the latter point is decisive of

the former point in the present case. It follows that I must respectfully disagree with the views to the contrary expressed in Real Printing Co. (Pty) Ltd. v. The Minister of Justice 1965 (2) S.A. 782 (C) at p. 784, where, in a problem similar to the present one, Cassem's case was applied as being decisive.

Of the case quoted by Mr. Duncan for the appellant, Williamson, J.A. has referred to Arlidge's, and I need only refer to two others. In Denby (William) & Sons Ltd. v. Minister of Health (1936) 1 KB 337, according to clause 4 of the first schedule to the English Housing Act, 1930, the Minister of Health was obliged, before confirming a slum clearance order made by a local authority, to "cause a public local inquiry to be held and (to) consider any objection not withdrawn, and the report of the person who held the inquiry". The Minister, in deciding, was not bound by the report; he merely had to consider it together with the local authority's scheme for clearance and the objections thereto. The person holding the inquiry, too, could not give any final decision adversely affecting the rights of the local authority, or owner, for that was reserved to the Minister, but obviously his report could be potentially prejudicial to either. Swift, J. said at p. 342:-

"It was argued before me that the per-

ter of infomation.... I do not think that this is the right view to take of the position of the person who hold the inquiry. He is in my opinion, an administrative officer helping in the administration of the Act of Parliament, but he comes more nearly to the position of a judicial functionary, or as nearly to that position as the Minister himself does. It seems to me obvious that he, in discharging his duties, must be bound by the dictates of natural justice."

And at p. 347:-

"The Minister ... is an administrative officer who has imposed on him the duty of deciding whether an order of the local authority shall or shall not be effective. In deciding this matter the Minister ... like the local Government Board (in Arlidge's case) must act in accordance with the dictates of natural justice which have been laid down by the courts. If ... by ... the instructions of the Statute creating and empowering them, some of their duties have to be carried out by other persons, those other persons are bound by the like considerations".

In Ngcobo v. Chief Native Commissioner for Natal and Others 1936 N.P.D. 94, the Chief Native Commissioner was obliged by section 24 (1) of the Natal Native Code "to make inquiry personally or otherwise, as he may deem best, for the information of the Supreme Chief" in the event of any tribal quarrel or dissatisfaction. The Commissioner appointed a Board to conduct such an enquiry and report to the Supreme Chief /...

Chief. Its functions were purely advisory; it had no power to make any order dealing with the subject of its inquiry; it simply had to report to the Supreme Chief, the Governor-General, who alone could act (see p. 102). Nevertheless, it was held inter alia by Feetham J.P., Matthews and Hathorn JJ. concurring, that the applicant, a native chief involved in the inquiry, was entitled to a hearing by the Board (pp. 100, 105).

These cases, as Mr. Duncan contended, support the above conclusions.

GEHEIM. 2/2/13.

DIE SEKRETARIS/MINISTER.

EKSEPSIE : SOUTH AFRICAN DEFENCE AND AID FUND EN R. HOFFENBERG TEEN DIE MINISTER.

1. 'n Afskrif van die uitspraak op die eksepsie deur die Kaapse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika en 'n afskrif van die verweerskrif wat ingedien is namens die Minister in bovermelde saak is vir die Minister se inligting aangeheg.

2. Die Staatsprokureur berig dat 'n datum vir die verhoor van die saak self nog nie bepaal is nie, maar dat dit waarskynlik vroeg in Februarie 1967 sal plaasvind.

[redacted]

3. Voorgelê vir die Minister se inligting.

1.12.66

1.12.66

S/K

Nie nodig nie.

Bêre

5/12/66

2/2/13.

J. 417.

Telegramadres: „GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

Telegraphic Address: "GOVAT."
All communications to be addressed to
PRIVATE BAG 91, PRETORIA.
Tel. No. 3-8031.

21-11-1966

DEURGESTUUR OPVOENT THROUGH ON

21-11-66

DEPARTMENT OF JUSTICE

JHduT/HvdW

Meld in u antwoord asb:
In reply please quote:
No. 941/66/B1
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

21 November 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A.

AKSIE : S.A. DEFENCE AND AID FUND en R. HOFFENBERG teen DIE MINISTER VAN JUSTISIE

U verwysing is nommer 2/2/13.

Vir u inligting stuur ek u hiermee n afskrif van elk van die volgende:

(a) Die hof se uitspraak op die eksepsie;

(b) Die Verweerskrif wat ingedien is namens die Verweerder.

n Verhoordatum vir die verhoor self, is nog nie bepaal nie, maar dit word verwag dat die verhoor sal plaasvind gedurende die eerste paar dae in Februarie 1967.

J.H. DU TOIT
nms: STAATSPROKUREUR

2/2/12 CL.

IN THE SUPREME COURT OF SOUTH AFRICA.
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

I.658/66.

In the Matter between:

SOUTH AFRICAN DEFENCE AND AID FUND 1st Plaintiff,
and
RAYMOND HOFFENBERG 2nd Plaintiff,

and

THE MINISTER OF JUSTICE Defendant.

JUDGMENT delivered this day of September, 1966.

CORBETT, J.: On the 18th March, 1966 and in terms of sec. 2(2) of the Suppression of Communism Act, No. 44 of 1950, as amended, there was promulgated in the Government Gazette a Proclamation (No. 77 of 1966) whereby the State President declared as association known as the Defence and Aid Fund to be an unlawful organization under that Act. Thereafter this association (1st plaintiff) and the chairman of its management committee (2nd plaintiff) instituted action against the Minister of Justice (defendant) claiming an order declaring Proclamation No. 77 of 1966 to be of no force and effect or, alternatively, setting aside this Proclamation, together with costs of suit.

The particulars of claim annexed to plaintiffs' combined summons, as amended, commence by referring to the promulgation of Proclamation No. 77 of 1966 and then proceed as follows:-

2. In order/...

2/2/13

"2. In order to be able validly to issue such Proclamation the State President had to be satisfied:-

(a) that the 1st Plaintiff professed by its name or otherwise to be an Organisation for propagating the principles or promoting the spread of Communism, or

(b) that the purpose or one of the purposes of the 1st Plaintiff was to propagate the principles or promote the spread of Communism or to further the achievement of any of the objects of Communism.

(c) that the 1st Plaintiff engaged in activities which were calculated to further the achievement of any of the objects referred to in paragraph (a), (b), (c) or (d) of the definition of Communism in Section 1 of the Suppression of Communism Act No. 44 of 1950.

(d) that the 1st Plaintiff was controlled directly or indirectly by the Communist Party of South Africa or by any Organisation referred to in sub-paragraphs (a), (b) or (c) of this paragraph, or

(e) that the 1st Plaintiff carried on or had been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organisation.

3. (a) There were no grounds upon which the State President could have satisfied himself as to the matters referred to in the preceding paragraph hereof and if any grounds were placed before him they were without any foundation, alternatively no reasonable man could have been satisfied that the 1st Plaintiff fell within the purview of the matters referred to in the preceding paragraph.

(b) In the premises the State President failed to satisfy himself as aforesaid, alternatively in purporting to so satisfy himself he did not apply his mind to the relevant facts, alternatively any consideration that he gave to so satisfying himself was purely arbitary and did not amount to the exercise of a proper discretion.

4. In the premises/...

2/2/13

4. In the premises the Declaration by the State President that the 1st Plaintiff is an unlawful Organisation is wrongful and unlawful and of no force and effect and the said Proclamation is of no force and effect."

A request for further particulars having produced a negative response from the plaintiffs, defendant took exception to the combined summons, as amended, on the ground that the particulars of claim annexed thereto lacked the averments necessary to sustain an action for the relief claimed and, accordingly, failed to disclose a cause of action. The notice of exception elaborates at some length the grounds upon which the exception is founded but it is not necessary to detail these grounds inasmuch as they will appear from the argument of defendant's counsel, to which I shall refer more fully later on in this judgment.

Before considering the merits of the exception it is necessary to dilate briefly upon the power granted to the State President by section 2(2) of Act 44 of 1950 to issue a proclamation declaring an organization to be an unlawful organization and upon the grounds which must be established in order to mount a successful attack upon the validity of such a proclamation. Section 2(2), as amended, provides as follows:-

"(2) If the State President is satisfied -

(a) that any other organization professes or has on or after the fifth day of May, 1950, and before the commencement of this Act, professed by its name or otherwise, to be an organization for propagating the principles or promoting the spread of communism; or

(b) that the/...

(b) that the purpose or one of the purposes of any organization is to propagate the principles or promote the spread of communism or to further the achievement of any of the objects of communism; or

(c) that any organization engaged in activities which are calculated to further the achievement of any of the objects referred to in paragraph (a), (b), (c) or (d) of the definition of 'communism' in section one; or

(d) that any organization is controlled, directly or indirectly, by an organization referred to in sub-section (1) or paragraph (a), (b) or (c) of this sub-section; or

(e) that any organization carries on or has been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organization,

he may without notice to the organization concerned by proclamation in the Gazette declare that organization to be an unlawful organization, and the State President may in like manner withdraw any such proclamation."

The reference in this sub-section to the "State President" must be read as meaning the State President acting by and with the advice of the Executive Council, i.e. the State President-in-Council (see sec. 2 of Act 33 of 1957, read with sec. 3 of Act 32 of 1961). For the sake of brevity I shall, however, continue to speak merely of the State President.

Before the State President is entitled to exercise this power to declare an organization to be an unlawful organization he must be satisfied that one or more of the conditions set forth in paragraphs (a) to (e) of sec. 2(2) obtain. In order to satisfy himself in this way he must have before him some information relating to such matters

as the aims/...

as the aims and objects or the organization in question, its membership, organization and control, the nature and scope of its activities, what its purpose is and what it professes to be. Some indication as to how this information is obtained and placed before the State President is to be found in the Act itself. Thus section 7 provides for the appointment by the Minister of Justice of an authorised officer to investigate the purposes, activities or control of any organization which the Minister has reason to suspect ought to be declared an unlawful organization. To enable him to carry out such an investigation the authorized officer is given wide powers by the section. He may, for instance, enter upon premises without notice; require the production of documents; seize documents; examine and make copies of documents; require explanations from persons regarding entries in documents; question certain persons with regard to the office-bearers and membership of the organization; and require certain persons to appear before him for questioning. In addition it is provided by section 17 that the power conferred upon the State President by, inter alia, sec. 2(2) - except for the power to declare unlawful an organization such as that contemplated in paragraph (e) of the sub-section - shall not be exercised in relation to any organization unless the Minister has considered a factual report concerning that organization made by a committee of three persons appointed by the Minister and one of whom shall be a senior magistrate. These provisions thus indicate two of the sources from which information about an organization may come to the Minister. Beyond that, however, the Act is silent.

It does not/...

It does not indicate how this information is to be used by the Minister or what the procedure thereafter should be. I have no doubt that in accordance with the usual constitutional practice in such matters (cf. Minister of the Interior v. Lockhat and Others, 1961(2) S.A. 587, 599-600) the Minister, having considered the matter, would lay the relevant information, together with his own views and recommendation, before the Executive Council which would then decide whether it was satisfied that the necessary grounds for declaring the organization unlawful existed. If it was so satisfied and it was decided to exercise the power to declare the organization unlawful, then the State President would be advised accordingly. In collecting the relevant information, the Minister would clearly not be confined to the two sources of information indicated by the Act. Nor would the Executive Council, in coming to its decision, be confined to the information laid before it by the Minister (cf. Cassem v. Oos-Kaapse Komitee van die Groepsgebiederaad 1959(3) S.A. 651, 659-60).

I turn now to the possible grounds upon which the exercise of the power granted by sec. 2(2) may be assailed in a Court of Law. It is a necessary condition to the exercise of this statutory power that the State President should be satisfied upon one or more of the matters listed in paragraphs (a) to (e) of the sub-section. The content of this kind of condition is often referred to as a "jurisdictional fact" (see Minister of the Interior v. Bechler and Others 1948(3) S.A. 409, 442; Rose-Innes, Judicial Review of Administrative Tribunals in S.A., pp. 99-100) in the sense that it is a fact the existence

of which/...

of which is contemplated by the Legislature as a necessary pre-requisite to the exercise of the statutory power. The power itself is a discretionary one. Even though the jurisdictional fact exists, the authority in whom the power resides is not bound to exercise it. On the other hand, if the jurisdictional fact does not exist, then the power may not be exercised and any purported exercise of the power would be invalid.

Upon a proper construction of the legislation concerned, a jurisdictional fact may fall into one or other of two broad categories. It may consist of a fact, or state of affairs, which, objectively speaking, must have existed before the statutory power could validly be exercised. In such a case, the objective existence of the jurisdictional fact as a prelude to the exercise of that power in a particular case is justiciable in a Court of Law. If the Court finds that objectively the fact did not exist, it may then declare invalid the purported exercise of the power (see e.g. Kellerman v. Minister of Interior 1945 T.P.D. 179; Tefu v. Minister of Justice and Another 1953(2) S.A. 61). On the other hand, it may fall into the category comprised by instances where the statute itself has entrusted to the repository of the power the sole and exclusive function of determining whether in its opinion the pre-requisite fact, or state of affairs, existed prior to the exercise of the power. In that event, the jursidictional fact is, in truth, not whether the prescribed fact, or state of affairs, existed in an objective sense but whether, subjectively speaking, the repository of the power had

decided/...

decided that it did. In cases falling into this category the objective existence of the fact, or state of affairs, is not justiciable in a Court of Law. The Court can interfere and declare the exercise of the power invalid on the ground of a non-observance of the jurisdictional fact only where it is shown that the repository of the power, in deciding that the pre-requisite fact or state of affairs existed, acted mala fide or from ulterior motive or failed to apply his mind to the matter.(See e.g. Minister of the Interior v. Bechler and Others, supra; African Commercial and Distributive Workers' Union v. Schoeman, N.O. 1951(4) S.A. 266; R. v. Sacks 1953(1) S.A. 392).

It is clear that the pre-requisite to a declaration under sec. 2(2) that an organization is an unlawful organization falls into the latter of the two above-mentioned categories. Not only does this appear from the opening words of the sub-section, "If the State President is satisfied ...." but the very nature of the various matters listed in paragraphs (a) to (e), upon one or more of which the State President is required to be satisfied, proclaims the improbability of the Legislature having intended these matters to be the possible subject-matter of an objective enquiry by the Courts. Inasmuch as this appeared to be common cause between the parties, it is not necessary to enlarge upon this aspect of the matter. It follows, therefore, that a declaration by the State President under sec. 2(2), such as the one made in the present case, cannot be declared invalid merely on the ground that his decision that one or other of the matters described in paragraphs (a) to (e) of that sub-

section/...

section existed was, objectively speaking, wrong or founded upon incorrect facts. On the other hand, the declaration could be declared invalid if it were shown that his decision was actuated by mala fides or ulterior motive or that he had failed to apply his mind to the matter.

Two points remain to be mentioned. As I have already indicated an exercise of the power granted by section 2(2) involves two decisions. The first of these consists of the State President being satisfied upon one or more of the matters listed in paragraphs (a) to (e) and constitutes the jurisdictional fact. The second consists of the decision to exercise the power, the jurisdictional fact having been found to exist. Once it is clear that the jurisdictional fact did exist, then it is difficult to see upon what grounds the further decision to exercise the discretionary power to declare the organization unlawful could be challenged in a Court of Law; but, inasmuch as plaintiffs' case does not touch upon this aspect of the matter, it is unnecessary to pursue this point. The second point arises from the fact that the power under sec. 2(2) is exercised by the issue of a proclamation. It was not disputed, however, that, if the power had been invalidly exercised, the Court was entitled to declare the proclamation to be of no force of effect. Indeed this seems to me to represent the true position (see S. v. Naicker 1965(2) S.A. 919).

Having thus stated the legal character of the power granted by sec. 2(2) and the grounds upon which a particular exercise of the power may be assailed in a

Court/...

Court of Law, I must now turn to examine the allegations in the particulars annexed to plaintiffs' combined summons in order to see whether they are sufficient to sustain the claim for an order declaring the Proclamation to be of no force or effect. The relevant paragraphs of these particulars are quoted above. The gist of plaintiffs' cause of action is contained in paragraphs 3(a) and 3 (b). Paragraph 3(a) contains various allegations of fact and paragraph 3(b) states various conclusions which are drawn "in the premises". The factual allegations in paragraph 3(a) are three in number and may be paraphrased thus:

(a) that there were no grounds upon which the State President could have satisfied himself that any of the matters listed in paragraphs (a) to (e) applied in the case of 1st plaintiff;

(b) that, if any such grounds were placed before him, they were without any foundation; and

(c) that, alternatively, no reasonable man could have been satisfied that the 1st plaintiff fell within the purview of these matters.

The conclusions drawn in paragraph 3(b) are stated alternatively and also in a three-fold form and are in effect that in relation to the 1st plaintiff the State President -

(i) failed to satisfy himself upon the matters listed in paragraphs (a) to (e); or

(ii) in purporting to so satisfy himself, did not apply his mind to the relevant facts; or

(iii) considered these matters in an arbitrary fashion and did not properly exercise his discretion.

On behalf/...

On behalf of the defendant (excipient) it was submitted by Mr. Hoexter - correctly in my view - that the conclusions stated in paragraphs 3(b) had to be read in association with the factual allegations in paragraph 3(a). This is so not only because of the form which this pleading takes but also because the conclusions in paragraph 3(b), standing alone, would not be sufficient to sustain a cause of action (see Jeewa v. Donges, N.O. and Others 1950(3) S.A. 414, 423). Mr. Hoexter further submitted that the allegations in paragraph 3(a), which have been stated as (a) and (b) above, could not sustain a cause of action since they amounted to allegations that the decision of the State President regarding the existence of one or more of the matters or conditions described in paragraphs (a) to (e) of sec. 2(2) was, objectively speaking, wrong. It would follow, in the light of the legal principles expounded above, that these allegations would not be justiciable in a Court of Law and, therefore, would disclose no cause of action. I am inclined to think that this further submission, too, is sound but for the reasons which follow it is not necessary to express any final view upon the point.

The third allegation in paragraph 3(a), stated as (c) above, read in conjunction with paragraph 3(b) - and more particularly with the conclusion stated therein that the State President failed to apply his mind to the relevant facts - seems to me to advance a different, and prima facie valid, ground for challenging the validity of the State President's decision. In effect the allegation is made that no reasonable man placed in the position of the State President could have come to the decision to

which/...

which he did and that, accordingly, it must be inferred that in purporting to satisfy himself upon the matters in issue he failed to apply his mind to the case. In Scottes and Callinicos v. City Council of Johannesburg (1935 T.P.D. 101) the Court heard an application for a mandamus directing the respondent council to approve certain building plans. These plans had been rejected by the council under a statutory power in terms of which it was entitled to do so if it was of the opinion that the projected building would interfere with the amenities of the neighbourhood. In discussing the grounds upon which the Court could interfere with the decision of the council Greenberg, J. said (at p. 104):

> "Mere unreasonableness of a decision by a local authority may not be a ground for interference, but a local authority is presumed to be composed of reasonable men and when it gives a decision which is such that it could not properly have been given by any reasonable man, then the Court is fully justified in assuming that the authority has been moved by improper motives or has not properly applied its mind to the matter."

The principle embodied in this dictum represents a well-cognised ground for interference by the Court with the exercise of a discretionary power (see Union Government v. Union Steel Corporation (S.A.) Ltd. 1928 A.D. 220, 236-7) and, in my view, it applies also to the case where the right to exercise a discretionary power is made dependent upon the existence of a jurisdictional fact and that jurisdictional fact consists of the repository of the power satisfying himself, subjectively speaking, upon certain matters (see e.g. African Commercial and Distributive Workers' Union v. Schoeman, N.O. and Another, supra;

Brits/...

Brits Town Council v. Piensaar N.O. and Another 1949(1) 1004; S. v. Naicker and Another, supra). It is evidently upon this principle that the plaintiffs rely for the cause of action embodied in what I have termed the third allegation in paragraph 3(a) of the particulars, read together with paragraph 3(b) thereof, and it seems to me that these and other authorities establish that this is a valid cause of action.

While conceding that generally speaking the above-mentioned principle constitutes a good basis for challenging the validity of the exercise of a discretionary power on the ground of the non-existence of the jurisdictional fact, Mr. Hoexter contended that the principle did not apply in the present case and that consequently the above-mentioned portions of plaintiffs' particulars did not disclose a cause of action. He relied upon the well-known principle that a pleading is excipiable if it is based upon an allegation of fact, evidence in support of which would be inadmissible at the trial (see F.J. Hawkes and Co. Ltd. v. Nagel 1957(3) S.A. 126) and argued that since the plaintiffs in this instance would have to rely upon legally impermissible evidence to establish that the State President failed to apply his mind to the matter, the particulars were excipiable. Developing this theme, Mr. Hoexter emphasized that the question as to whether or not a reasonable man could have decided that one or more of the matters listed in paragraphs (a) to (e) of section 2(2) existed in the case of 1st plaintiff had to be determined with reference to the information actually laid before the Executive Council. This information might or might not coincide with the true

facts/...

facts. Evidence of the true facts - or what plaintiffs averred were the true facts - would thus be legally irrelevant. Moreover plaintiffs would be precluded from leading or eliciting evidence as to what information was actually placed before the Executive Council by the exclusionary rules based upon public policy and the interests of the State. Therefore, concluded counsel, since no evidence could be adduced to support this alleged basis for declaring the Proclamation invalid, it was excipiable and disclosed no cause of action.

Mr. Hoexter was not able to cite any authority in support of this line of argument. It is true that in determining whether the decision of the State President was so unreasonable that it could be inferred that he did not apply his mind to the matter the trial Court would be concerned not with what plaintiffs contended to be the true and relevant facts but with the information in regard thereto laid before the Executive Council, upon whose advice the State President acted. Moreover, I can visualize that in seeking to establish what this information was the plaintiffs may be confronted with considerable difficulties at the trial. Indeed these difficulties may prove so insurmountable that the plaintiffs may not be able to avoid a decree of absolution from the instance. I do not wish to be understood as prophesying that that will be the outcome of this action. It is not my function nor would it be proper for me to do so. I mention the possibility of a decree for absolution from the instance merely because I think that it is at the stage of an application for such a decree that the arguments and difficulties stressed by Mr. Hoexter should appropriately be considered.

To consider/...

To consider these matters at this stage would, in my view, be premature. In reality what defendant's counsel is asking this Court to do is to rule in advance upon the admissibility of all the evidence which the plaintiffs would seek to adduce at the trial and in that way to non-suit them at the exception stage. This may be a legitimate procedure when the basic fact upon which a cause of action is founded would be inadmissible in evidence, as for example where a litigant relies upon an oral agreement evidence of which would be excluded by the parol evidence rule (cf. F.J. Hawkes and Co. Ltd. v. Nagel, supra); but that is not the position here. Evidence of what information was placed before the Executive Counsil is not inherently inadmissible, however difficult it might be for plaintiffs to obtain such evidence. Moreover, this Court is completely in the dark at this stage as to what evidence the plaintiffs propose to lead. Facta probanda may be established by direct evidence thereof or by means of circumstantial evidence from which inferences are to be drawn. It would be most unwise for this Court to attempt to rule in advance upon the cogency and admissibility of all the possible evidence which plaintiffs might lead at the trial to establish the facta probanda, upon which their cause of action is based. With regard to Mr. Hoexter's contention that evidence of what the plaintiffs contended were the true facts concerning 1st plaintiff would be legally irrelevant and inadmissible, I am not satisfied that this is necessarily so. Plaintiffs might, for example, lead evidence of all the relevant facts concerning this organization and of the facts that were revealed to the authorities in the

course/...

course of, say, investigations by an authorized officer. This evidence might be ruled relevant and admissible on the ground that it could be inferred that this information was eventually laid before the Executive Council. I do not say that the evidence would be ruled admissible at the trial; but the trial court is the proper forum to decide this matter and indeed would be in a far better position to do so. All that I say is that I am not convinced at this stage that such evidence would necessarily be ruled inadmissible.

Furthermore I would adopt a similar approach to the argument based upon evidence being excluded on the ground that it was contrary to the national interest and, therefore, public policy for it to be revealed. Mr. Hoexter mentioned this specifically in relation to the factual report which in terms of section 17 of the Act must be prepared and considered by the Minister before an organization is declared unlawful. Counsel stated that in earlier motion proceedings between these parties it was common cause that such a report had been prepared and, the defendant having objected thereto on grounds of public policy, the Court refused an order for the discovery of documents relating to the appointment by him of the committee charged with the duty of preparing the factual report. It does not seem to me that these facts take defendant's case much further. It is to be noted that in the motion proceedings State privilege was claimed in respect of documents relating to the appointment of the Committee and not, as I understand the position, to the report itself. It cannot at this stage be assumed that at the

trial/...

2/2/13

trial of this action a similar objection would be raised to, say, the production of the report or, at any rate, of such portions thereof as could safely be revealed. According to the most recent decision upon the point (see S. v. Naicker, supra, at p. 934), it would not necessarily follow, if this objection were taken, that the trial Court would uphold it. This would depend upon the basis of the objection and, in certain instances, to whether or not the Court considered the objection to be well-founded.

Finally, as I have already indicated, these arguments do not exhaust the possible types of evidence which the plaintiffs might seek to lead in support of this cause of action. Theoretically it is possible to imagine numerous other types of evidence which would have some probative value. Whether such evidence will be forthcoming at the trial can only be a matter of premature speculation at this stage. If it is forthcoming, then the proper tribunal to assess its admissibility and probative value would be the trial Court.

For these reasons I reject the argument of defendant's counsel to the effect that no cause of action is revealed by plaintiffs' allegation that no reasonable man would have decided that the matters referred to in paragraphs (a) to (e) of section 2(2) existed in 1st plaintiff's case and that in the premises the State President did not apply his mind to this enquiry.

Defendant's exception is accordingly dismissed with costs.

DIEMONT, J.: I concur.

2/2/13

IN THE SUPREME COURT OF SOUTH AFRICA

(CAPE PROVINCIAL DIVISION)

CASE NO. 658/1966

In the matter between:

SOUTH AFRICAN DEFENCE AND AID FUND	First Plaintiff
and	
RAYMOND HOFFENBERG	Second Plaintiff
and	
THE MINISTER OF JUSTICE	Defendant

DEFENDANT'S PLEA

1.

Defendant admits the averments set forth in paragraph 1 of the Amended Particulars of Plaintiffs' Claim.

2.

AD PARAGRAPH 2 OF THE AMENDED PARTICULARS OF CLAIM

Save for saying that the word "or" has been omitted from and should be introduced-

(1) between sub-paragraph (b) and (c); and

(2) between sub-paragraph (c) and (d),

Defendant admits the averments herein set forth.

3.

AD SUB-PARAGRAPH 3(a) OF THE AMENDED PARTICULARS OF CLAIM

Defendant denies each and every averment herein set forth/2...

herein set forth. In particular Defendant denies that there were no grounds upon which the State President could have satisfied himself as to the relevant matters, and that no reasonable man could have been satisfied that the First Plaintiff fell within the purview of the said matters.

4.

AD SUB-PARAGRAPH 3(b) OF THE AMENDED PARTICULARS OF CLAIM

Defendant denies each and every averment herein set forth. In particular Defendant denies that the State President failed to satisfy himself, as alleged or at all; Defendant denies that the State President did not apply his mind to the matter; Defendant denies that the consideration the State President gave to so satisfying himself was purely arbitrary or that it did not amount to the exercise of a proper discretion.

5.

Defendant denies each and every averment set forth in paragraph 4 of the Amended Particulars of Claim. In particular Defendant denies that the said Declaration is wrongful, unlawful and of no force and effect, and that the said Proclamation is of no force and effect.

6.

Defendant admits the averments set forth in paragraph 5 of the Amende Particulars of Claim.

WHEREFORE/3...

WHEREFORE Defendant prays that Plaintiffs' claims be dismissed with costs.

SIGNED AT PRETORIA this 21st day of OCTOBER, 1966

(Sgd: J.D.M. SWART FOR
G.G. HOEXTER S.C.

(Sgd) J.D.M. SWART

COUNSEL FOR THE DEFENDANT

(Sgd) J.R. KEOGH

ATTORNEY FOR DEFENDANT
c/o Deputy State Attorney
7th Floor Garmor Buildings,
127, Plein Street,
Private Bag 9001,
C A P E T O W N

TO : 1. The Registrar of the
Above Honourable Court,
CAPE TOWN

2. PLAINTIFFS' ATTORNEYS
Messrs. Frank, Bernardt & Joffe,
85, St. George's Street,
C A P E T O W N

RH/HvdW
941/66/B1

2/2/13.

Telegramadres: „ GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

Telegraphic Address: "GOVAT."
All communications to be addressed to:
PRIVATE BAG 91, PRETORIA.
Tel. No. 3-8031.

JHduT/HvdW

J. 417.

Meld in u antwoord asb:
In reply please quote:
No. 942/66/B1
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

21 November 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

APPÈL OP MOSIE : S.A. DEFENCE AND AID FUND en R. HOFFENBERG teen DIE MINISTER VAN JUSTISIE

U verwysing is Nr. 2/2/13.

n Afskrif van die Appèlhof se uitspraak is oorhandig aan Meneer Wilcocks. Ter bevestiging meld ek dat die appellante se appèl van die hand gewys is met koste.

J.H. DU TOIT
nms: STAATSPROKUREUR

R/9,
Bie
BO
21/11/66

2/2/13

7 -11- 1986

Adv. P.W.E. Baker S.C.,
Chambers,
1 Dorp Street,
CAPE TOWN.

Sir,

RE: CAPE LAW SOCIETY v. JACK KUDO.

With reference to your letter of the 2nd instant which reached me on the 10th instant I regret to state that the accounting records and documents in my possession will be of very little, if any, assistance to you in proving the allegations against Jack Kudo.

The accounting system of the Defence and Aid Fund was on a basis of receipts and payments. Certain amounts were paid to Jack Kudo & Co. for services rendered in specific cases. It is doubtful whether any of these amounts paid will be of any assistance.

The minutes of the executive meetings reflect that certain queries were raised by the Defence and Aid Fund in connection with the fees claimed by Jack Kudo & Co. It would appear however from the documents in my possession that no finality was reached.

I am however forwarding under separate cover through the Security Branch minutes of executive meetings which inter alia prove that Defence and Aid Fund agreed to fixed amounts for Advocates and Attorneys.

Kindly contact the Security Branch, Cape Town, where the relative documents may be inspected and perused. The documents are tagged.

Yours faithfully,

D. P. WILCOCKS
LIQUIDATOR: DEFENCE AND AID FUND.

17 -11- 1966

Die Kommissaris van die
Suid-Afrikaanse Polisie,
Privaatsak 302,
PRETORIA.

Geliewe die aangehegte dokumente te versend na die Veiligheidstak, Kaapstad waar dokumente wat gevlag is geinspekteer en gelees mag word deur Adv. P.W.E. Baker S.C. van Kaapstad. Indien dit nodig skyn te wees mag die dokumente wat gevlag is gefotostateer word. Die inspektering, lees en fotostatering van gevlagte dokumente moet alleenlik onder toesig van die Veiligheidstak van Kaapstad, plaasvind.

Graag sal ek die verslag met alle dokumente so spoedig moontlik terug ontvang.

Jack Kudo se lêernommer is S.1/5813.

D. P. WILCOCKS
BEREDDERAAR: DEFENCE AND AID FUND.

2/2/13

9 -9- 1966

Adv. F.W.E. Baker S.C.,
Chambers,
1 Dorp Street,
CAPE TOWN.

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RE: CAPE LAW SOCIETY v. JACK KUDO.

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I am however forwarding under separate cover through the Security Branch minutes of executive meetings which inter alia prove that Defence and Aid Fund agreed to fixed amounts for Advocates and Attorneys.

Kindly contact the Security Branch, Cape Town, where the relative documents may be inspected and perused. The documents are tagged.

Yours faithfully,

LIQUIDATOR: DEFENCE AND AID FUND.

GEHEIM.

DIE SEKRETARIS/MINISTER

DEFENCE AND AID FUND BEDRYWIGHEDE: KANNUNIK COLLINS.

1. 'n Diensbrief van die Suid-Afrikaanse Gesantskap, Stockholm, oor die besoek van Kannunik Collins en sy vrou aan Swede, word hieronder vir die Minister se inligting aangehaal, daar dit nie opgesom kan word sonder om afbreuk aan die inhoud daarvan te doen nie:-

"Die volgende het in die konserwatiewe blad Svenska Dagbladet se uitgawe van 27 Oktober verskyn:

'Die politieke gevangenes in Suid-Afrika en hulle families word nou op illegale wyse gehelp nadat die regering vorige lente die werksaamhede waarmee die Defence and Aid Fund sedert 1956 besig was, verbied het. "Welke weë ons gebruik kan ons vanselfsprekend nie bekend maak nie, nie eers hier in Swede nie wat uiters aktief is in hulpwerksaamhede", het John Collins, voorsitter van die organisasie, gesê tydens sy besoek aan Stockholm tesame met sy vrou Dinah wat heel onlangs daarin geslaag het om 'n besoek aan Suid-Afrika te bring.

Defence and Aid Fund se vernaamste taak is om te probeer advokate vir die verdediging van persone wat vir beweerde politieke oortredings gearresteer word, te verskaf. Die organisasie probeer ook om families te help terwyl die huisvader-broodwinner in die gevangenis sit. Bo alles sorg hulle dat kinders sover moontlik nie skade ly nie. Hulpmiddele vir skoolonderrig word uitgedeel en dikwels ontvang die gevangenes ook lesboeke

2/...

en ander leesstof om die tyd in die gevangenis minder ondraaglik te maak.

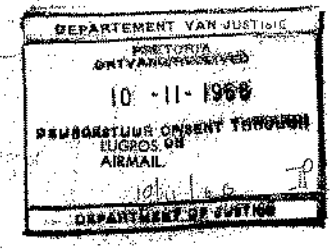
"Ons het ontelbare bewyse dat die bewustheid dat mense in Europa hulle bekommer oor rasverdrukking in Suid-Afrika geweldig baie beteken vir die krag van die versetbewegings" sê mev. Collins. "Tydens my besoek van ses weke daar, wat ek danksy die feit dat ek familie daar het heeltemal wettiglik kon onderneem, het ek beide met voormalige gevangenes en gearresteerdes en ook met hulle families in aanraking gekom. Almal het die versekering gegee dat die op sigself ondraaglike toestand iets verlig was ten gevolge van die steun wat die Defence and Aid Fund gee."

Die Sweedse staat het vorige jaar Sw.kr. 500,000 bygedra, vanjaar staan die bydrae op Sw. kr. 200,000. Die Sweedse fonds vir die slagoffers van rasverdrukking het Sw.kr. 200,000 ingesamel en "Red die Kind" het 'n bedrag opsygesit wat uitsluitend gebruik sal word vir hulpbehoeftige kinders van politieke gevangenes.

Mnr. en mev. Collins se besoek aan Swede vind plaas op uitnodiging van die Sweedse Christensosiaal-demokratiese Bond, die Broederskapsbeweging, met pastoor primarius Ake Zetterberg, die voorsitter, aan die hoof.'.". (27.10.66)

2. Voorgelê.

RIK.



F.A. 36.

126/53/1.

REPUBLIEK VAN SUID-AFRIKA.
REPUBLIC OF SOUTH AFRICA.

DEPARTEMENT VAN BUITELANDSE SAKE,
DEPARTMENT OF FOREIGN AFFAIRS,

PRETORIA.

8 -11- 1966

DIE SEKRETARIS VAN INLIGTING.

→ DIE SEKRETARIS VAN JUSTISIE.

DIE SEKRETARIS VAN BINNELANDSE SAKE.

DIE KOMMISSARIS VAN DIE SUID-AFRIKAANSE POLISIE.

Kannunik Collins.

Aangeheg vir u inligting vind asseblief 'n afskrif van diensbrief 8/6/2/1 van die Suid-Afrikaanse Gesantskap, Stockholm, oor die besoek van Kannunik Collins en sy vrou aan Swede.

SEKRETARIS VAN BUITELANDSE SAKE.

27 Oktober 1966.

Die Sekretaris van Buitelandse Sake,
PRETORIA.

Kanunnik Collins.

Die volgende het in die konserwatiewe blad Svenska Dagbladet se uitgawe van 27 Oktober verskyn :

„Die politieke gevangenes in Suid-Afrika en hulle families word nou op illegale wyse gehelp nadat die regering vorige lente die werksaamhede waarmee die Defence and Aid Fund sedert 1956 besig was, verbied het. ,Welke weë ons gebruik kan ons vanselfsprekend nie bekend maak nie, nie eers hier in Swede nie wat uiters aktief is in hulpwerksaamhede', het John Collins, voorsitter van die organisasie, gesê tydens sy besoek aan Stockholm tesame met sy vrou Dinah wat heel onlangs daarin geslaag het om 'n besoek aan Suid-Afrika te bring.

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Ons het onteilbare bewyse dat die bewustheid dat mense [illegible] hulle bekommer oor rasverdrukking in Suid-Afrika geweldig baie beteken vir die krag van die versetbewegings' sê mev. Collins. ,Tydens my besoek van ses weke daar, wat ek dank sy die feit dat ek familie daar het heeltemal wettiglik kon onderneem, het ek beide met voormalige gevangenes en gearresteerdes en ook met hulle families in aanraking gekom. Almal het die versekering gegee dat die op sigself ondraaglike toestand iets verlig was ten gevolge van die steun wat die Defence and Aid Fund gee.'

/....

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„ Mnr. en mev. Collins se besoek aan Swede vind plaas op uitnodiging van die Sweedse Christensosiaaldemokratiese Bond, die Broederskapsbeweging, met pastoor primarius Åke Zetterberg, die voorsitter, aan die hoof.".

Afskrif aan Londen.

T. te W. N. Pienaar
MINISTER.

~~H/R~~ ~~RA~~ R/K.

Het u 'n afskrif uit die Defence and Aid lêer? [illegible] 24/1/67

S.A. Tronke Onmenslik Wreed, Sê Koerant

Die Burger – 7/11/66

Van Ons Londense Verteenwoordiger

LONDEN.

SOMMIGE politieke gevangenes in Suid-Afrikaanse tronke word onmenslik wreed mishandel deur bewaarders, word beweer in 'n lang berig wat gister verskyn het in die Londense Sondagkoerant The Sunday Times.

Besonderhede van die beweerde wreedhede, wat enige mens met wrewel, afsku en skok sou vervul, is in 'n onderhoud aan die koerant verstrek deur die 41-jarige Kleurling, Dennis Brutus, gewese onderwyser van Port Elizabeth, wat 22 maande in Suid-Afrikaanse tronke was, met inbegrip van sestien maande op Robbeneiland.

Die name van 'n paar bewaarders wat hulle aan verregaande mishandeling sou skuldig gemaak het, word in die berig genoem. Dit blyk dat die berig voortspruit uit 'n veldtog wat deur die International Defence and Aid Fund begin is om „morele druk op die Suid-Afrikaanse regering uit te oefen om die toestande van sy agtduisend politieke gevangenes te verbeter".

Die veldtog sal verskele weke duur en word ingestel op die ervaringe van Brutus in Suid-Afrikaanse tronke, aldus die berig. Brutus hou op die oomblik lesings in Swede, Noorweë, Denemarke en Switserland en sal einde vandeesmaand openbare vergaderings in Londen toespreek, lui die berig.

Defence Fund se appèl is verwerp

DIE Appèlhof het gister in Bloemfontein met koste die appèl verwerp van die Defence and Aid Fund van Suid-Afrika en sy voorsitter, mnr. Raymond Hoffenberg, teen die weiering van die Kaaplandse Hooggeregshof om proklamasie 77 van 1966 nietig te verklaar.

Ingevolge die proklamasie is die Defence and Aid Fund 'n onwettige organisasie.

Die Appèlhof het ook die Defence and Aid Fund en mnr. Hoffenberg se appèl verwerp dat die Minister van Justisie gelas word om alle dokumente te toon wat betrekking het op sy aanstelling van 'n komitee ooreenkomstig artikel sewentien van die Wet op die Onderdrukking van die Kommunisme sodat 'n feitelike verslag opgestel kan word oor die bedrywighede van die Defence and Aid Fund.

Appèl van D.A.F. Is Verwerp

BLOEMFONTEIN.

DIE Appèlhof het gister met koste die appèl verwerp van die Defence and Aid Fund van Suid-Afrika en sy voorsitter mnr. Raymond Hoffenberg teen die weiering van die Wes-Kaapiandse Hooggeregshof om proklamasie 77 van 1966 nietig te verklaar.

Ingevolge die proklamasie is die Defence and Aid Fund 'n onwettige organisasie. Die hof het ook die Defence and Aid Fund en mnr. Hoffenberg se appèl verwerp dat die Minister van Justisie gelas word om alle dokumente te toon wat betrekking het op sy aanstelling van 'n komitee ooreenkomstig art. 17 van die Wet op die Onderdrukking van die Kommunisme sodat 'n feitelike verslag opgestel kan word oor die bedrywighede van die Defence and Aid Fund.

Hoofregter L. C. Steyn het 'n moontlike uitspraak opgestel, waarmee appèlregter P. J. van Blerk saamgestem het. Appèlregter A. F. Williamson en waarn. appèlregter W. G. Trollip het afwykende uitsprake gelewer.

R. D. Mail 15/11/64

DEFENCE AND AID APPEAL DISMISSED

STAFF REPORTER

BLOEMFONTEIN.—The Appeal Court yesterday dismissed with costs the appeal by the South African Defence and Aid Fund and its chairman, Mr. Raymond Hoffenberg, against the refusal of the Cape Supreme Court to set aside Proclamation 77 of 1966.

This proclamation declared the Defence and Aid Fund to be an unlawful organisation.

The Appeal Court also dismissed an appeal by the fund and Mr. Hoffenberg that the Minister of Justice be ordered to produce all documents relating to the committee he appointed in terms of Section 17 of the Suppression of Communism Act and that a factual report about the activities of the Defence and Aid Fund be prepared.

It had been contended for the Defence and Aid Fund in the Cape Court that before the State President could issue a proclamation declaring an organisation unlawful, that organisation was entitled to be heard. The Defence and Aid Fund had received no notice that such action was contemplated against it and had accordingly not been given the opportunity of being heard.

It was therefore contended that the court should grant an order against the Minister compelling him to disclose all documents relevant to the committee he appointed.

... regering na Engeland gestuur.

Die Vaderland 16/11/64

DEFENCE AND AID SE APPEL MISLUK

Die Appèlhof in Bloemfontein het vanoggend 'n appèl van die hand gewys dat die Kaapse Hooggeregshof proklamasie 77 van 1966 ter syde stel, berig SAPA. Daardie proklamasie verklaar die Defence and Aid Fund 'n onwettige organisasie.

Defence and Aid appeal dismissed

THE STAR
1/11/65

BLOEMFONTEIN, Thursday.—The Appeal Court today dismissed the appeal by the South African Defence and Aid Fund and its chairman, Mr. Raymond Hoffenberg, against the refusal of the Cape Supreme Court to set aside Proclamation 77 of 1966.

This proclamation declared the Defence and Aid Fund to be an unlawful organization.

The Appeal Court also dismissed an appeal by the fund tnd Mr. Hoffenberg that the Minister of Justice be ordered to produce all documents relating to the appointment by him of a committee in terms of section 17 of the Suppression of Communism Act to prepare a factual report in connection with the activities of the Defence and Aid Fund.

81/172589
(Z. 14.)

REPUBLIEK VAN SUID-AFRIKA. REPUBLIC OF SOUTH AFRICA.

Verw. Nr./Ref. No. 17/3/5

NAVRAE/ENQUIRIES:

Tel. No. 47088

DEPARTEMENT VAN JUSTISIE
19 -10-1966
PRETORIA
DEPARTMENT OF JUSTICE

KANTOOR VAN DIE—OFFICE OF THE
GEREGSBODE,
PORT ELIZABETH.

14 Oktober 1966.

Die Beredderaar,
Defence And Aid Fund,
Privaatsak 81,
PRETORIA.

I/S: INVENTARIS: DEFENCE AND AID FUND EIENDOM: PORT ELIZABETH.

U diensbrief Nr. 2/2/13 van 31 Augustus 1966 verwys.

Ek wens u te verwittig dat die vloermat op 12 deser aan Mevr. A.M. Scarr van Albertweg 10, Walmer, oorhandig is.

Die Uwe,

GEREGSBODE/PORT ELIZABETH.

Die Vaderland 15/10/46

Politieke aangeklaagdes: ‚STAAT SE REGSHULP TYDELIK'

(Parlementêre Verslaggewer)

DIE regshulp wat aan sogenaamde politieke aangeklaagdes voorsien word sedert die verbanning van die Defence and Aid Fund, is net 'n tydelike maatreël, het die Minister van Justisie en Gevangenisse, mnr. P. C. Pelser, gister in die Volksraad, gesê toe sy begrotingsposte onder oorweging was.

Die begrotingskomitee is gister in sy geheel afgehandel.

Min. Pelser het gesê dit kan nie 'n permanente deel van ons Wet word dat regshulp deur die Staat, waarvoor die Staat ook betaal, verleen word aan mense wat nóg in daardie Staat nóg in sy regspleging glo nie. Sodra die regshulp wat nou aan sulke mense verleen word, sy doel gedien het, sal hy opdrag gee dat dit gestaak word.

Oor die geval Ian Robertson het min. Pelser gesê dat Robertson baie billik behandel is na sy inperking — hy is toegelaat om na Durban te gaan en later ook om sy studies oorsee voort te sit. Daar is gevra dat die skadu van inperking nie oor hom moet hang indien hy wil terugkeer na S.A. nie.

Hy kan hom geensins bind in hierdie opsig nie behalwe om te sê dat alle gevalle van verbannings periodiek hersien word.

Die Minister is ook gevra wat sy houding ten opsigte van inperkings is. Hy het dit duidelik gestel dat hy die vorige Minister se beleid sal voortsit. Nie net noodwendig kommuniste nie, maar ook mense wat die doelstellings van kommunisme bevorder sal ingeperk word. Dit beteken natuurlik nou nie dat daar links en regs ingeperk sal word nie en ook nie dat daar nooit weer hersienings van inperkings sal kom nie.

Daar is ook gesê dat die 180 dae-bepaling net daar is vir beskerming van getuies. Dit is so, maar in sommige gevalle het van die aangehoudenes hulself geïnkrimineer en dan kon dit moontlik gelyk het of hulle onder hierdie bepaling vir ondervraging aangehou is.

Die nuwe regswysigingswetsontwerp sal enige moontlike twyfel oor die saak egter uit die weg ruim, het min. Pelser gesê.

The Transvaler 15/10/64

DEFENCE FUND

Pretoriase Personeel

PRETORIA — Na verloop van 21 dae, van gister af, sal geen verdere eise teen die Defence and Aid Fund deur die beredderaar van die Fund, mnr. D. P. Wilcocks, oorweeg word nie, het die Departement van Justisie gister in 'n buitengewone staatskoerant bekend gemaak.

Die Defence and Aid Fund is op 18 Maart tot 'n onwettige organisasie verklaar.

DEPARTMENT OF JUSTICE

No. R. 1589.] [14 October 1966.

SUBMISSION OF CLAIMS AGAINST THE DEFENCE AND AID FUND.

As notified by Government Notice No. R. 485, dated 25th March, 1966, Mr. David Petrus Wilcocks, Senior Magistrate, has, in terms of section 3 (1) (*b*) of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), been designated as Liquidator of the assets of The Defence and Aid Fund which was declared an unlawful organization by Proclamation No. R. 77, dated 18th March, 1966. No claims against the above-mentioned unlawful organization will be considered by the Liquidator after twenty-one days from the date of publication hereof. The address of the Liquidator is Room No. 401, Veritas Building, Fountain Lane, Pretoria.

DEPARTEMENT VAN JUSTISIE.

No. R. 1589.] [14 Oktober 1966.

INDIENING VAN EISE TEEN THE DEFENCE AND AID FUND.

Soos by Goewermentskennisgewing No. R. 485 van 25 Maart 1966 bekendgemaak, is mnr. David Petrus Wilcocks, Senior Landdros, ingevolge artikel 3 (1) (*b*) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), as beredderaar van die bates van The Defence and Aid Fund wat by Proklamasie No. R. 77 van 18 Maart 1966 tot 'n onwettige organisasie verklaar is, aangewys. Geen eise teen bogenoemde onwettige organisasie sal deur die beredderaar oorweeg word na verloop van een-en-twintig dae na die datum van publikasie hiervan nie. Die adres van die beredderaar is Kamer No. 401, Veritasgebou, Fonteinlaan, Pretoria.

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THE ANTI-APARTHEID MOVEMENT 'LET DOWN'

The Star 14/10/66 2/2/63

From Our Correspondent

LONDON, Friday.

THE Labour Party has let down the Anti-Apartheid Movement in Britain. The movement confessed yesterday that the high hopes it had held for action in southern Africa by the Labour Government have ended in disillusionment.

"While in opposition the present leaders of the Labour Party and Government not only actively opposed apartheid in South Africa, but took several important initiatives to suggest that once in power they would introduce substantial changes in Britain's policy," the Movement says in its annual report.

Millions of people in Africa looked forward to the "advent of a Labour Government but the past two years of Labour's rule have severely disabused them, and indeed many people in Britain, of these beliefs."

The report reflects, too, unhappiness with Labour's performance over Rhodesia.

The movement is "in the red"—partly, it says, because of a Labour Government.

In the past it had been able to depend on campaigning activities to produce its own income, "but for the last two years we have found that the automatic response to our activities is no longer enough to keep us out of the red."

As a result of a Labour Government in Britain they could no longer expect so much official support from constituency Labour Parties and trade unions which once freely distributed the movement's material and contributed to its funds.

Defence Fund forces a hearing

Rand Daily Mail 5/10/66

CAPE TOWN. — Exception by the Minister of Justice to a combined summons by the South African Defence and Aid Fund and its management committee's former chairman, Dr. Raymond Hoffenberg, was dismissed, with costs, by Mr. Justice M. M. Corbett in the Supreme Court, Cape Town, today.

Mr. Justice Diemont concurred.

The summons was for a Supreme Court order setting aside a proclamation on March 18 declaring the fund to be an unlawful organisation.

The fund and Dr. Hoffenberg had averred that there were no grounds on which the State President could have satisfied himself that the fund promoted or propagated communism.

The Minister of Justice will now have to file a plea, after which the matter will go to trial. — SAPA.

to help me."—Sapa.

The Star 6/10/66

Legal aid scheme for N.Z.

From Our Correspondent

WELLINGTON, Thursday. — A legal aid scheme for civil cases will come into force in New Zealand on April 1 next year.

Those who qualify—except in cases of special hardship—will have to contribute £15 towards the cost of proceedings and will be liable to extra contributions in proportion to income and capital resources.

urg. ~~Die Transvaler~~

Min. se eksepsie teen Fund verwerp

KAAPSTAD. — Die Minister van Justisie se eksepsie teen 'n gekombineerde dagvaarding deur die South African Defence and Aid Fund en die gewese voorsitter van sy bestuurskomitee, dr. Raymond Hoffenberg, is gister in die Hooggeregshof hier met koste verwerp deur regter M. M. Corbett. (Regter A. Diemont het saamgestem.)

Die Minister het eksepsie geneem teen die dagvaarding wat beweer dat 'n bevel wat Proklamasie R77 van 1966 as van geen krag is of alternatiewelik, dat die proklamasie met koste tersyde gestel word.

Die proklamasie, wat op 18 Maart in die Staatskoerant verskyn het, het die organisasie as onwettig verklaar. Die Minister van Justisie se eksepsie teen die dagvaarding was op grond daarvan dat dit geen skuldoorsaak bekend maak nie.

ONDERSTEUNING

Regter Corbett het in sy uitspraak gesê dat 'n Strafhof die behoorlike regbank is om die toelaatbaarheid en die bewyskrag van getuienis te bepaal wat die Fonds en dr. Hoffenberg sou wil lei ter ondersteuning van hul skuldoorsaak.

Nadat getuienis gegee is, is uitspraak tot 19 September voorbehou.

Die Fonds en dr. Hoffenberg het aangevoer dat ten einde in staat te wees om wettiglik die proklamasie uit te reik wat die organisasie onwettig verklaar, die Staatspresident oortuig moet wees van 'n aantal punte.

PROPAGANDA

Hulle is o.m.:

Dat die Fonds deur sy naam of andersins te kenne gegee het om 'n organisasie te wees vir die propagering van die beginsels of bevordering van die verspreiding van die Kommunisme;

Die Fonds en dr. Hoffenberg aangevoer het, dat daar geen grond is waarop die Staatspresident homself kon oortuig het oor dié sake; as bewysredes aan hom voorgelê is, was hulle ongegrond;

FEITE

Die Staatspresident het versuim om homself te oortuig. Deur voor te gee dat hy hom oortuig het, het hy nie aandag geskenk aan die betrokke feite nie.

Die Minister van Justisie het gesê dat die gekombineerde dagvaarding nie meer gedoen het as om die hof te versoek om sy beslissing in die plek van dié van die Staatspresident te stel nie.

Die Minister van Justisie sal nou 'n pleidooi moet indien, waarna die saak verhoor sal word. — (Sapa).

E.A. 42.

14/11

REPUBLIEK VAN SUID-AFRIKA.
REPUBLIC OF SOUTH AFRICA.

SECRET

DEPARTEMENT VAN BUITELANDSE SAKE,
DEPARTMENT OF FOREIGN AFFAIRS,
PRETORIA.

23 -9- 1966

THE SECRETARY FOR JUSTICE.

Apartheid : Trust Fund (General Assembly Resolution 2054B(XX).

Attached for your information please find a copy of minute 9/1/12 of the 30th August, 1966, under cover of which a letter to Mr. Astrom, Chairman of the Committee of Trustees for the abovenamed fund, was received from the South African Permanent Mission, New York.

SECRETARY FOR FOREIGN AFFAIRS.

SECRET

I see please
A/S(R) 27/9/66
O/S(R)
H/R 27/9/66
B/A/R 21/10/66.
28.9.66

PERMANENT SOUTH AFRICAN MISSION
TO THE UNITED NATIONS
17TH FLOOR - 300 EAST 42ND STREET
NEW YORK, N.Y. 10017

Ref. No. : 9/1/12.

30th August, 1966.

S E C R E T .

(In triplicate).

THE SECRETARY FOR FOREIGN AFFAIRS.

Apartheid : Trust Fund (General Assembly Resolution 2054 B (XX)).

Our evenly numbered minute of 20th May, 1966, refers.

Attached, for your information, are the original and two copies of a letter, dated 22nd August, 1966, addressed by a Mr. (?) Aad Nuis of Amsterdam, on behalf of the Committee "Ton d'r Op", to Ambassador Astrom in the latter's capacity as Chairman of the Committee of Trustees for the above-mentioned Trust Fund. Although the envelope containing the letter was correctly addressed, it was delivered in error by the postal authorities to this Mission.

It will be noted that Ambassador Astrom's advice is sought as to whether it would be possible for this Committee to earmark a proposed gift to the Trust Fund (£15,000), either whole or in part, for the use of Defence and Aid International. The writer indicates in his letter that it had previously been intended to give the money to the Defence and Aid Fund, but that after the banning of the South African Defence and Aid Fund in March of this year and the subsequent decision of the Netherlands Government to support the Trust Fund instead, the Committee decided to follow suit as its own fund-raising campaign had been set up as a corollary to the Dutch Government's gift. The present enquiry was, however, motivated by news that Defence and Aid International was in urgent need of money to continue its activities.

The hope is expressed that the money could be disposed of in such a way "that the essential unity of purpose of Trust Fund and Defence and Aid is clearly demonstrated". This, it is said, "would greatly enhance the confidence of the Dutch public in both organisations".

You will no doubt be interested in the implication on page 2 (second paragraph) that attempts by "friends of apartheid" in the Netherlands "to discredit organisations for assistance to apartheid victims" have not been unsuccessful.

Copy to The Hague.

F. D. TOTHILL
PERMANENT REPRESENTATIVE.

Amsterdam, August 22nd, 1966.

To Mr. Sverker C. Astrom
Chairman, Committee of Trustees,
U.N. Trustfund for South Africa,
United Nations Organisation
New York.

Dear Mr. Astrom,

During a fund-raising campaign in May and June of this year, our committee raised the amount of about £ 15.000 for legal and social assistance to victims of apartheid in South Africa.

In the planning stage of our campaign we intended to give the money to the International Defence and Aid Fund. We were assisted in many ways by the London headquarters and by the Dutch branch of this organisation.

The ban on the South African Defence and Aid Committees in March, and the subsequent decision by the Government of the Netherlands to give its support to the United Nations Trust Fund for South Africa instead of Defence and Aid International, complicated the situation. Our opinion of Defence and Aid did not change as a result of actions by the South African Government, nor did we see reasons to disbelieve Mr. Collins' statement that his organisation still had access to lawful channels for providing aid. However, our campaign was set up as a corollary to the gift by the Dutch Government. We decided, therefore, to follow its example.

This decision was based on the understanding that the United Nations Trust Fund for South Africa would cooperate closely with Defence and Aid International, and would try to realise exactly the same aims of legal and social assistance to apartheid victims in the Republic of South Africa. We trust you will correct us if we have been wrong about this.

We have now received information that Defence and Aid International is in urgent need of money to continue its ongoing activities. It appears that its fundraising capacity has been badly impaired. The United Nations Trust Fund, by offering an alternative to potential contributors, may have had an unintended by-effect in this respect.

Therefore, we would like to ask you whether a way could be found to earmark our gift to the Trust Fund, either whole or in part, for the use of Defence and Aid International. We would like to make it clear that this request does not reflect a lack of confidence in the United Nations Trust Fund on our part. It is motivated solely by our concern for the position of Defence and Aid International, by our admiration for the work of this organisation so far, and by the relations established during the preparation of our campaign.

We realise that the sum we have to offer is not very large in itself. Something more is involved, however. The gift by the Dutch Government, followed by our campaign, which included an all-night, nation-wide television programme, had an impact on Dutch public opinion. Dutch supporters of apartheid, who are quite numerous, have tried to counterattack. As a result apartheid is an important issue in the Netherlands at present.

Propaganda by friends of apartheid has, from lack of better arguments, concentrated on attempts to discredit organisations for assistance to apartheid victims, and to suggest discord between those organisations. This has been made easier for them by the uncertain situation of the last few months, which often made detailed and firm answers to such allegations impossible through lack of adequate information.

We hope, therefore, that the money entrusted to us can be disposed of in such a way that the essential unity of purpose of Trust Fund and Defence and Aid is clearly demonstrated. This would greatly enhance the confidence of the Dutch public in both organisations.

We sincerely hope that our request will not burden you with a serious problem. We shall welcome any suggestion which gives practicable form to the general considerations in this letter.

A copy of this letter will be sent to the Chairman of Defence and Aid International.

For the committee "Ton d'r Op",

Yours truly,

Aad Nuis
Keizersgracht 18A
Amsterdam
The Netherlands.

N/a S.J. ... 7/10/66.

G.P.-S.755993—1961-62—200-209, S.

ONTVANG/RECEIVED 30-9-1966 DEURGESTUUR OP/SENT THROUGH ON 30-9-66 DEPARTMENT OF JUSTICE

81/42502
(Z. 152.)

Verwysingsno.
Reference No. 2/2/13

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

~~MOET~~ IN DUPLO SAAMGESTUUR WORD.
TO BE FORWARDED IN DUPLICATE.

DEPARTEMENT VAN JUSTISIE

Adres van afsender
Address of sender Sekretaris van Justisie, P/Sak X81, Pretoria

Datum versend
Date of despatch 28/9/66

DEPARTMENT OF JUSTICE

DIE DIREKTEUR,
TAALDIENSBURO,
PRIVAATSAK 195,
PRETORIA.

THE DIRECTOR,
LANGUAGE SERVICES BUREAU,
PRIVATE BAG 195,
PRETORIA.

Ondergenoemde stuk word hierby aangestuur vir
~~* vertaling~~
* nasien van vertaling in Afr. + Engels

The undermentioned enclosure is transmitted herewith for * translation / * revision of translation into

met die versoek dat dit—
* aan hierdie kantoor teruggestuur word.
~~* saam met aangehegte rekwisisie regstreeks aan die Staatsdrukker gestuur word.~~

with the request that it be—
* returned to this office.
* forwarded to the Government Printer together with the attached requisition.

Nadere inligting kan verkry word van mnr. Geldenhuys

telefoon 28761

Further information can be obtained from Mr.

telephone

L.W.—Geliewe vroegtydig in te stuur weens talle versoeke om dringende afhandeling.

N.B.—Please submit in good time in view of numerous requests for urgent completion.

Laatste datum vir voltooiing van werk—
So spoedig moontlik

Latest date for completion of work—

Stuk
Enclosure Indiening van die teen "The Defence and Aid Fund".

Handtekening
Signature [signature]

LEES ASSEBLIEF AANWYSINGS AGTEROP.—PLEASE READ DIRECTIONS OVERLEAF.

VIR GEBRUIK IN TAALDIENSBURO.—FOR USE IN LANGUAGE SERVICES BUREAU.

Datum ontvang.	Roetineno.		Aan seksie.	Vir v. aan.	Vir n. aan.	Registrasie.	Opmerkings.
28 SEP 1966							VOLTOOI EN WORD HIERBY ... COMPLETED AND RETURNED HEREWITH. 29-9-1966 [signature] DIREKTEUR TAALDIENSBURO. FOR DIRECTOR LANGUAGE SERVICES BUREAU.
	V.	N.	Paraaf en datum.	Datum.	Datum.	Datum.	

* Skrap wat nie van toepassing is nie.
* Delete what is not required.

GOVERNMENT NOTICE NO. R. DATE.

SUBMISSION OF CLAIMS AGAINST THE DEFENCE AND AID FUND.

As notified by Government Notice No. R.485 of the 25th March, 1966, Mr. David Petrus Wilcocks, Senior Magistrate, has, in terms of section 3(1)(b) of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), been designated as liquidator of the assets of The Defence and Aid Fund which was declared an unlawful organization by Proclamation No. R.77 of the 18th March, 1966. No claims against the abovementioned unlawful organization will be considered by the liquidator after twenty-one days from the date of publication hereof. The address of the liquidator is Room 401, Veritas Building, Fountain Lane, Pretoria.

GOEWERMENTSKENNISGEWING NO. DATUM.

INDIENING VAN EISE TEEN THE DEFENCE AND AID FUND.

Soos by Goewermentskennisgewing No. R.485 van 25 Maart 1966 bekendgemaak, is mnr. David Petrus Wilcocks, Senior Landdros, ingevolge artikel 3(1)(b) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), as beredderaar van die bates van The Defence and Aid Fund, wat by proklamasie No. R.77 van 18 Maart 1966 tot n onwettige organisasie verklaar is, aangewys. Geen eise teen bogenoemde onwettige organisasie sal deur die beredderaar oorweeg word na verloop van een-en-twintig dae na die datum van publikasie hiervan nie. Die adres van die beredderaar is Kamer 401, Veritasgebou, Fonteinlaan, Pretoria.

2/2/13.

27 -9- 1966

SECRET.

The Commissioner of the
South African Police,
Private Bag 302,
PRETORIA.

DEFENCE AND AID FUNDS FOR SOUTH AFRICA.

A copy of minute No. 35/4/5/126/53/1 dated the 16th September, 1966, received from the Secretary for Foreign Affairs, Pretoria, is attached for your information.

G. Geldenhuys.
SECRETARY FOR JUSTICE.

DEPARTMENT OF JUSTICE
20 -9- 1966
DEUROEETUUR
21 - 9 - 66

E.A. 42.

35/4/5
126/53/1

REPUBLIEK VAN SUID-AFRIKA.
REPUBLIC OF SOUTH AFRICA.

DEPARTEMENT VAN BUITELANDSE SAKE,
DEPARTMENT OF FOREIGN AFFAIRS,

PRETORIA.

19.9.1966

THE SECRETARY FOR JUSTICE.

Defence and Aid Funds for South Africa.

The following excerpt from a report by Gunnar Helander on the "sterling work" of the Defence and Aid Fund which appeared in a Swedish paper is quoted for your information:

"Now that the organisation is banned in South Africa, the money is sent to the Republic via banks in London."

A/S(R) 21/9/66
Copy to Compol done 21/9/66
per. 21.9.66
Bm te kyk an 6

SECRETARY FOR FOREIGN AFFAIRS.

21/9/66

UITSPRAAK VOORBEHOU IN DEFENCE-SAAK

(Kaapstadse Verteenwoordiger)

UITSPRAAK is gister in die Kaapse Hooggeregshof voorbehou in die saak waarby die Defence and Aid Fund aansoek doen dat die proklamasie opgehef word waarvolgens die organisasie vroeër vanjaar onwettig verklaar is.

Dr. Raymond Hoffenberg, gewese voorsitter van die D.A.F., het met die Defence and Aid Fund as eerste eiser 'n gesamentlike siviele dagvaarding teen die Minister van Justisie ingedien.

Die saak is deur regters M. A. Diemont en M. M. Corbet verhoor.

In stukke voor die hof beweer die eiser dat die Staatspresident hom nie daarvan kon vergewis het dat die D.A.F. 'n organisasie was wat die kommunisme versprei het, of dat dit regstreeks of onregstreeks deur die Kommunistiese party beheer was voordat dit op 18 Maart vanjaar onwettig verklaar is nie.

In 'n teenverklaring het die Minister van Justisie beswaar gemaak teen die gesamentlike dagvaarding op grond daarvan dat dit nie 'n eisoorsaak openbaar nie.

Advvv. G. G. Hoexter, S.C. en J. D. M. Swart (gelas deur die Adjunk-staatprokureur) het vir die Minister verskyn. Adv. L. R. Dison (gelas deur Frank, Bernadt en Joffe) het vir die D.A.F. en dr. Hoffenberg verskyn.

Outlawed Defence Aid Fund appeals

Rand Daily Mail 14/9/66

OWN CORRESPONDENT

BLOEMFONTEIN.

THE State President banned the South African Defence and Aid Fund without observing the well-known principles of natural justice, Mr. Graeme Duncan, Q.C., told a full bench of the Appeal Court here yesterday.

Mr. Duncan was arguing the appeal of the fund and its chairman, Mr. Raymond Hoffenberg, against a judgment in favour of the Minister of Justice by the Cape Supreme Court, agreeing with the banning.

"The principles of natural justice were not observed at all. In fact there was no hearing at all and that is what makes this case so startling," said Mr. Duncan.

Mr. Duncan said the State President had declared the fund an unlawful organisation under the Suppression of Communism Act.

Consequences

The consequences of such a declaration were extremely grave as the activities of the organisation had to cease immediately.

Its assets were seized and vested in a liquidator designated by the Minister without the fund and its chairman being given the opportunity to controvert the allegations leading to the banning.

For the Minister, Mr. C. G. Hoexter said any organisation could be declared unlawful by proclamation in the Government Gazette.

The court reserved judgment.

Mr. Graeme Duncan, Q.C., with him Mr. L. R. Dlamini, instructed by Frank Bernadt and Joffe, appeared for the Fund, and Mr. Hoffenberg; and Mr. C. G. Hoexter, S.C., with him Mr. J. D. M. Sweetman, for the Minister of Justice.

Die Volksblad — 14/9/66

Defence Fund appelleer

DIE Suid-Afrikaanse Defence and Aid Fund en sy voorsitter, Raymond Hoffenberg, het gister in die Appelhof in Bloemfontein geappelleer teen die weigering van die Kaaplandse Hooggeregshof om Proklamasie 77 van 1966 nietig te verklaar.

Die Defence and Aid Fund is deur die proklamasie tot 'n onwettige organisasie verklaar.

Die hof is bokgegee om die Minister van Justisie te gelas om alle dokumente in te dien wat betrekking het op die aanleiding van 'n kommissie om 'n feitelike verslag op te stel oor die bedrywighede van die Defence and Aid Fund ingevolge Afdeling 17 van die Wet op die Onderdrukking van die Kommunisme.

Die appèl is aangehoor deur die hoofregter, dr. L. C. de Sievn, regter P. S. van Blerk, regter D. H. Botha, regter A. Faure-Williamson en waarnemende regter W. G. Trollip.

Die appellante is deur die Kaaplandse Hooggeregshof tevrede gestel dat voordat 'n organisasie onwettig verklaar kan word deur 'n proklamasie van die Staatspresident, die organisasie daarop geregtig is om aangehoor te word.

Aangesien die appellante geen kennis gekry het dat optrede teen hulle oorweeg word nie en gevolglik ook nie die geleentheid gegee is om aangehoor te word nie, word die betrokke proklamasie as onwettig beskou, word in die aansoek beweer.

Uitspraak is voorbehou. — Sapa.

[redacted] CLASSIFIED

2/2/13.

LUGPOS.

GEHEIM.

KAAPSTAD.

DIE SEKRETARIS/MINISTER.

DEPARTMENT VAN JUSTISIE
29 -8-1966
PRETORIA
DEPARTMENT OF JUSTICE

VERSLAG : "DEFENCE AND AID FUND".

1. Die Minister se endossement op die voorlopige verslag van die Beredderaar (gevlag memo) verwys. 'n Verdere verslag word aangeheg.

2. Die betrokke verslae is nie bedoel as volledige verslae oor die doen en late van die "Defence and Aid Fund" nie. Trouens, soos in die verslag aangedui handel dit met 'n paar aspekte wat na 'n voorlopige en geensins diepgaande ondersoek aan die lig gekom het.

3. Soos blyk uit die aangehegte verslae was die boekhouding van die "Defence and Aid Fund" geensins na wense nie. 'n Behoorlike ondersoek met die oog op 'n volledige verslag oor hierdie aangeleentheid is dus noodsaaklik. Die Beredderaar is nie 'n deskundige op die gebied van boekhouding nie, en dit is dus noodsaaklik dat 'n rekenmeester aangestel word om die boeke en ander stukke na te gaan. Die aangeleentheid is met die Beredderaar bespreek en hy verwelkom so 'n aanstelling.

4. Indien 'n persoon van die Kontroleur- en Ouditeur-generaal se kantoor aangestel word om hierdie plig te onderneem, kan dit moontlik beweer word dat die ondersoek nie heeltemal onpartydig was nie omdat die ondersoek deur 'n staatsamptenaar gedoen is. 'n Verslag deur 'n heeltemal onpartydige persoon sal waarskynlik meer gewig dra.

DECLASSIFIED...

5. Die aanstelling van 'n privaat persoon om onderhawige aspek te ondersoek sal nie addisionele uitgawes vir die Staat in hierdie verband meebring nie, daar so 'n persoon se fooi uit die fondse van die organisasie betaal kan word. Die nodige voorsorg om geheimhouding te handhaaf sal ook getref word en verwydering van dokumente en stukke van die perseel waar dit tans gehou word sal nie toegelaat word nie.

6. Daar kan verwag word dat so 'n verslag aan die lig sal bring dat daar nie behoorlike rekenskap gegee is van grootbedrae wat vir kleinkas doeleindes getrek is nie, dat groot bedrae in kontant getrek is waarvoor daar nie behoorlike rekenskap gegee is nie, en dat gelde nie altyd gebruik is vir die doel wat die organisasie in sy konstitusie voorgegee het nie. In hierdie verband is ons gedagtig aan die getuienis tot die effek dat party van die geld vir ondermynende bedrywighede gebruik is.

7. Die Nasionale Welsynswet, 1965 (Wet No. 79 van 1965) bepaal dat 'n welsynsorganisasie boeke, rekenings en registers moet hou en van tyd tot tyd verslae en opgawes moet verstrek aan 'n streekwelsynsraad, en dat die boeke, rekenings en ander dokumente wat op die geldsake van die organisasie betrekking het deur 'n beampte deur die Minister van Volkswelsyn en Pensioene aangestel, ondersoek en ouditeer kan word. Hierdie bepaling is klaarblyklik ingevoeg om die misbruik van fondse van die publiek verkry, te verhoed. Hoewel die "Defence and Aid Fund" voorgegee het 'n welsynsorganisasie te wees, (hy het aansoek gedoen om registrasie as sulks maar was nie suksesvol nie), kan dit verwag word dat dit uit die verslag duidelik sal wees dat die belange van die bydraers geensins in ag geneem is by die besteding van die fondse nie.

/3...

8. 'n Verslag oor die geldsake van die organisasie soos hierin beoog, kan, as dit gepubliseer word dien as 'n ontnugtering vir lede van die publiek wat bydraes tot die fondse van die organisasie gemaak het sonder om te beseef waarvoor die gelde werklik gebruik is. In hierdie sin kan so 'n verslag uitstekende reklamewaarde hê.

9. Dit word dus voorgestel dat die Minister goedkeur dat 'n privaat rekenmeester van Pretoria deur die Beredderaar aangestel word om, onder toesig van die Beredderaar, die boeke en ander finansiële rekords en stukke van die "Defence and Aid Fund" na te gaan en 'n verslag daaroor op te stel.

25.8.66
25/8/66
25.8.66
25/8/66.
26.8.66

Goedgekeur
25/8/66

A/S(R.)
die ander stukke word intussen
deur gelees.
26.8.66

om te sien asb
A/S(R)
O/S(R) 30/8/66
H/R
30.8.66
A/S(R) sal oplossing gee aan die aanteling.
30/8/66

2/2/13

J. 417.

Telegramadres: „ GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

"Telegraphic Address: "GOVAT."
All communications to be addressed to:
PRIVATE BAG 91, PRETORIA.

24 - Jul 1966

24.8.66 1
DEPARTMENT

JHduT/HvdW

Meld in u antwoord asb:
In reply please quote:
No. 941/66/B1
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

23 Augustus 1966

Die Sekretaris van Justisie,
P R E T O R I A

AKSIE : S.A. DEFENCE AND AID FUND en
DR. HOFFENBERG teen MINISTER VAN JUSTISIE

U verwysing is No. 2/2/13.

Ek wens u mee te deel dat dit nou gereël is dat die Eksepsie wat opgewerp is namens Sy Edele die Minister, verhoor sal word te Kaapstad op Maandag 19 September 1966. Die nodige opdrag is gegee aan Advokaat G.G. Hoexter, S.A. en Advokaat J.D.M. Swart.

J.H. DU TOIT
nms: STAATSPROKUREUR

25.8.66.

KAAPSTAD.

GEHEIM.

DIE SEKRETARIS/MINISTER.

APPÈL : MOSIE : "S.A. DEFENCE AND AID FUND"
EN R. HOFFENBERG TEEN MINISTER VAN JUSTISIE.

1. Die Staatsprokureur het die Departement in kennis gestel dat die bogemelde appèl ter rolle geplaas is vir verhoor op Dinsdag die 13de September 1966. Dieselfde advokate, wat tydens die oorspronklike verhoor in die Kaapse Provinsiale Afdeling van die Hooggeregshof namens die Minister verskyn het, sal van gebruik gemaak word in die Appèlhof.

2. Dit is gereël dat die prokureurs van die appellante 'n onderneming sal gee dat indien uitspraak in die Appèlhof teen die Appellante gegee word die gemelde prokureurs die respondent se koste tot 'n bedrag van R750.00 sal betaal. (8.8.66).

3. Voorgelê vir die Minister se inligting.

10/8/66
10/8/66
11.8.66.
15.8.66.

A/S(R.)
18.8.66

Telegramadres: „ GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

Telegraphic Address: "GOVAT."
All communications to be addressed to:
PRIVATE BAG 91, PRETORIA.
Tel. No. 3-8031.

J. 417.

JHduT/HvdW

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No. 941/66/B1
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

8 Augustus 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

APPÈL : MOSIE : "S.A. DEFENCE AND AID FUND"
en R. HOFFENBERG teen MINISTER VAN JUSTISIE

U verwysing is 2/2/13.

Met verwysing na hierdie kantoor se diensbrief van 26 laaslede, wens ek u mee te deel dat ek vandag in kennis gestel is deur die Adjunk-Staatsprokureur te Bloemfontein, dat hierdie Appèl neergeplaas is vir verhoor op Dinsdag die 13de September 1966. Die bedoeling is om onverwyld opdrag te gee aan Advokaat G.G. Hoexter, S.A. en Advokaat J.D.M. Swart.

In my gemelde diensbrief van 26 laaslede, het ek dit genoem dat die Appellante n bedrag van R750-00 betaal het aan die Griffier van die Hooggeregshof te Kaapstad as sekuriteit vir die Respondent se koste. In die verband het die Adjunk-Staatsprokureur te Kaapstad my intussen meegedeel dat die Griffier nie bereid was om die bedrag te aanvaar nie en dat dit gevolglik gereël is dat die Appellante se prokureurs, menere Frank, Bernadt en Joffe van Kaapstad, n onderneming sal gee dat indien uitspraak in die Appèlhof teen die Appellante gegee word, dat gemelde prokureurs die Respondent se koste vir n bedrag nie meer as R750-00 sal betaal nie.

J.H. DU TOIT
nms: STAATSPROKUREUR

LASGEWING VIR DIE OPSTEL VAN 'N LYS VAN PERSONE WAT AMPSDRAERS, BEAMPTES, LEDE OF AKTIEWE ONDERSTEUNERS WAS VAN THE DEFENCE AND AID FUND.

Ingevolge die bepalings van subartikel (10) van artikel vier van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950) gelas ek, BALTHAZAR JOHANNES VORSTER, Minister van Justisie u, in u hoedanigheid as beredderaar van die bates van The Defence and Aid Fund, om 'n lys op te stel van persone wat ampsdraers, beamptes, lede of aktiewe ondersteuners was van die genoemde The Defence and Aid Fund.

Geteken te KAAPSTAD op hede die 12de dag van Augustus 1966.

MINISTER VAN JUSTISIE.

AAN: MNR. DAVID PETRUS WILCOCKS,
p/a DIE LANDDROS,
P R E T O R I A.

F

2/2/13.

The Pretoria Representative,
Sunday Times,
P.O. Box 634,
PRETORIA.

Sir,

DEFENCE AND AID FUND.

With reference to your letter of the 4th August, 1966, I have to inform you that section 3(1)(b) of the Suppression of Communism Act, 1950 (Act No. 44 of 1950) empowers the Minister of Justice to designate a person as the liquidator of the assets of an unlawful organization. If directed by the Minister to do so it is the duty of such a liquidator to compile a list of persons who are or have, at any time before or after the commencement of the Act referred to, been office-bearers, officers, members or active supporters of the unlawful organization. The list is in course of preparation.

In regard to the questions pertaining to the publication of such a list your attention is invited to the provisions of subsection (4) of section eight of the Suppression of Communism Act, 1950 which empowers the Minister of Justice to cause any such list or any extract from such list to be published in the Government Gazette.

Yours faithfully,

SECRETARY FOR JUSTICE.

/SvN. 12.8.1966.

1/333/30/1.

GEHEIM.

KAAPSTAD.

DIE SEKRETARIS/MINISTER.

OPSTEL VAN 'N LYS VAN AMPSDRAERS, BEAMPTES, LEDE OF AKTIEWE ONDERSTEUNERS VAN 'N ONWETTIGE ORGANISASIE : DEFENCE AND AID FUND.

1. Die Pretoriase verteenwoordiger van die 'Sunday Times' het navraag gedoen in verband met die lys van ampsdraers, beamptes, lede of aktiewe ondersteuners van die Defence and Aid Fund wat tot 'n onwettige organisasie verklaar is. [redacted]

2. 'n Konsepantwoord is in die omslag vir ondertekening deur die Sekretaris indien die Minister goedkeur.

3. Landdros Wilcocks, Senior Landdros op die personeel van die Landdros van Pretoria is deur die Minister as beredderaar van die bates van die "Defence and Aid Fund" aangewys. [redacted]

4. Ingevolge artikel 4(10) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950) stel die beredderaar 'n lys op van persone wat ampsdraers, beamptes, lede of aktiewe ondersteuners ~~is of~~ was van die onwettige organisasie indien die Minister hom gelas om dit te doen. Die Minister het nog nie so gelas nie.

5. Teneinde enige verdere ondermynende bedrywighede aan die kant van diesulkes aan bande te lê is die Departement

van oordeel/2...

van oordeel dat die ampsdraers, beamptes, lede of aktiewe ondersteuners van dié organisasie gelys moet word.

6. Die nodige lasgewing is in die omslag vir die Minister om te onderteken indien hy goedkeur.

5/8/66
Mo 5/8/66

11.8.66

A/S(R.)

Brief vir afsending in lêer, ash.

12.8.66

Gedoen. APS 15.8.66

A/S(R) O/S(R) 19.8.66

19/8/66

Durban 2/15 mm

DEPARTEMENT VAN JUSTISIE
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This form and envelope should accompany any enquiry.
Hierdie vorm en koevert moet alle navrae vergesel.

1-8-1950

PRETORIA 12 AUG 1950

OFFICE STAMP. KANTOORSTEMPEL

SENT. ONGEGIESEND.

DWE26 ETAT WESTEND DURBAN 27/26 1150 12 =

: JUSTISIE PRETORIA :

= 13 X U DIENSBRIEF 2/2/13 VAN 26 JULIE VERWYS X DOEN BEREDDERAAR ASTAND AN KENNISGEWING SOOS VEREIS BY REEL 70(4) VAN HOFREELS X = SUPREME

+ 13 2/2/13 26/70(4)

Adjunkt-Justisie 2/8/50

SUPREME, DURBAN

L 190X U/13 VERWYS X
BEREDDERAAR STEM TOE TOT TAKSASIE IN SY AFWESIGHEID

BEREDDERAAR: WET 44 VAN 1950

D P Hillcocks
Adjunkt-Justisie
Pretoria
SEKRETARIS VAN JUSTISIE
SECRETARY FOR JUSTICE

2/2/13

J. 417.

Telegramadres: „ GOVAT."
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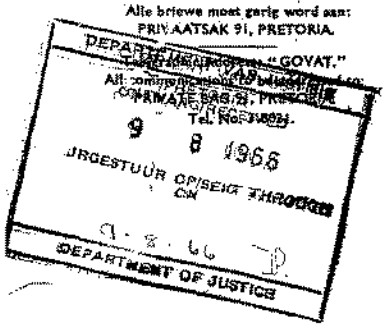
PRIVAATSAK 91, PRETORIA.



JHduT/HvdW

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No. 941/66/B1
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REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

9 Augustus 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

AKSIE : S.A. DEFENCE AND AID FUND en
DR. HOFFENBERG teen MINISTER VAN JUSTISIE

U verwysing is No. 2/2/13.

Met betrekking tot bogenoemde saak, stuur ek u hiermee 'n afskrif van my diensbrief wat ek vandag gerig het aan die Adjunk-Staatsprokureur te Kaapstad.

J.H. DU TOIT
nms: STAATSPROKUREUR

Aan te meld.
A/S(K) 16/8/66
O/S(R) 15.8.66
15/8/66
10.8.66

2/2/13

JHduT/HvdW 941/66/B1

9 Augustus 1966

Die Adjunk-Staatsprokureur,
Privaatsak 9001,
K A A P S T A D

AKSIE : S.A. DEFENCE AND AID FUND en
DR. HOFFENBERG teen MINISTER VAN JUSTISIE

U verwysing is 1391/66/CC/1.

Met betrekking tot bogenoemde saak en u diensbrief van 1 deser, wens ek u mee te deel dat Advokaat Hoexter nou aan die hand gee dat u met Eisers se prokureurs reël dat die Eksepsie wat deur Verweerder opgewerp is nie neergeplaas word vir verhoor nie, maar dat die hele aangeleentheid en die indiening van verdere prosesstukke in hierdie saak agterweë gehou word in afwagting van die Appèlhof se uitspraak in die mosie-prosedure. Aangesien die Appèl op die mosie neergeplaas is vir verhoor op 13 September 1966, meen ek dat die Eisers se prokureurs te vinde sal wees vir hierdie voorstel.

Geliewe my mettertyd van hulle houding te verwittig.

J.H. DU TOIT
nms: STAATSPROKUREUR

G.P.-S.4159887—1957-8—12,000.

U.D.J. 422.
2/2/13.

No. F 17/19/66
DEPARTEMENT VAN JUSTISIE
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8 AUG 1966
Privaatsak 5043,
DEURGESTUUR/POSTED/SENT THROUGH
P.O. BOX
10 · 8 · 66
DEPARTMENT OF JUSTICE

Kantoor van die Griffier van die Hooggeregshof van Suid-Afrika.
Office of the Registrar of the Supreme Court of South Africa.

(Griekwaland-Wes Plaaslike Afdeling), Division),

KIMBERLEY.

8 Augustus 1966.

Die Sekretaris van Justisie,
Privaatsak 81,
PRETORIA.

REKENINGS VIR DIENSTE DEUR PROKUREURS GELEWER -
"DEFENCE AND AID FUND."

Ek wens u te verwittig dat kennis geneem is van die inhoud van u diensbrief No. 2/2/13 van 26 Julie 1966.

P. SMUTS.
GRIFFIER.

Box 2/2/13
24/8/66

EERSPRAAK VOORBEHOU
IN DEFENCESAAK

2/2/13.

J. 417.

Telegramadres: „ GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

JHduT/JVDP.

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REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

PER HAND. 9 September 1966.

Die Sekretaris van Justisie,
P R E T O R I A.

APPEL: MOSIE - S.A. DEFENCE AND AID FUND EN
R. HOFFENBERG teen DIE MINISTER VAN JUSTISIE.

U No. 2/2/13 verwys.

Aangeheg is n afskrif van die Respondent se Argumentshoofde wat vandag by die Appèlhof ingedien word.

J.H. DU TOIT.
nms: STAATSPROKUREUR.

Lodged by:

THE DEPUTY STATE ATTORNEY,
BLOEMFONTEIN.

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE AND AID FUND	First Appellant (First Applicant a quo)
and	
RAYMOND HOFFENBERG	Second Appellant (Second Applicant a quo)
and	
THE MINISTER OF JUSTICE	Respondent (Respondent a quo)

RESPONDENT'S HEADS OF ARGUMENT

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between:

THE SOUTH AFRICAN DEFENCE AND AID FUND — First Appellant

and

RAYMOND HOFFENBERG — Second Appellant

and

THE MINISTER OF JUSTICE — Respondent

RESPONDENT'S HEADS OF ARGUMENT 10

1.

In terms of section 2(2) of Act No. 44 of 1950, if in relation to any organization the State President is satisfied as to any of the matters set forth in sub-paragraphs (a), (b), (c), (d) and (e) of that sub-section, he may -

without/..... 2.

without notice to the organization concerned

by Proclamation in the Gazette declare that organization to be an unlawful organization, and the State President may in like manner withdraw any such Proclamation.

2.

In terms of section 2(2) of the said Act there appeared in the Gazette on the 18th March, 1966 a Proclamation No. R77 of 1966 by the State President in Council declaring the First Appellant to be an unlawful organization.

See: Affidavit by Second Appellant,
Record, p. 3 line 28 - p. 4 line 1;
Respondent's Answering Affidavit,
Record, p. 28 lines 9 - 11.

3.

The validity of the said Proclamation is dependent upon due compliance with the requirements

of/..... 3.

of section 2(2) and section 17 of the said Act..

In terms of section 17 the powers conferred by the said Act upon the State President shall not be exercised in relation to any organization unless the Minister has considered a factual report in relation to that organization made by a committee consisting of three persons appointed by the Minister of whom one shall be a magistrate of a rank not lower than the rank of senior magistrate.

4. 10

The requirements may therefore be summarised as follows -

(a) the Minister must appoint a committee;

(b) the Committee must make a factual report in relation to the organization;

(c) the Minister must consider the factual report;

(d) the/... 4.

(d) the State President must satisfy himself in respect of the matters mentioned in section 2(2) (a) - (e).

5.

Despite the fact that the Appellants noted an appeal against the whole of the Judgment and Order of the Court a quo (Record, p. 152) it is clear from Appellants' Heads of Argument that their appeal is confined to the single issue of whether the said Proclamation is invalid by reason of the admitted failure to afford First Appellant any hearing prior to the publication of the said Proclamation. This issue falls to be determined with reference to the applicability or otherwise in the present case of the audi alteram partem principle.

6.

Just as in the case of Real Printing Co. (Pty) Ltd., v. Minister of Justice, 1965 (2) SA 782 at 784 (A), the essence of the problem is here too -

"whether at any stage, either when the committee is inquiring into the matter, or when the Minister is considering the committee's report, or when the State President is satisfying himself whether he should issue a Proclamation or not an opportunity should be given to the publishers of the periodical of stating their case."

(per DIEMONT, J.,)

7.

(a) In relation to audi alteram partem it has been stated that -

> "The maxim should be enforced unless it is clear that Parliament has expressly or by necessary implication enacted that it shall not apply ....."
>
> (per CENTLIVRES, C.J., in R.v. Ngwevela, 1954(1) S.A. 123 (A.D.) at p. 131).

(b) But it was pointed out by BEYERS, J.A., in Minister of Native Affairs v. Monnakgotla, 1959(3) S.A. 517 (A.D.) at p. 521 that there is much to be said for the view that the requirement of necessary implication -

> "te hoog gestel is en dat die bedoeling van die wetgewer nagegaan moet word en uitwerking daaraan gegee moet word mits die bedoeling maar duidelik is."

See further: Steyn, Uitleg van Wette, 3rd. ed. p. 237.

(c) Whatever / .....

(c) Whatever adjective may be aptest to precede and govern the strength of the "implication" necessary to exclude the operation of the maxim, it is submitted that -

(i) "fundamentally the argument advanced must be answered by reference to the Act ... "

and:

(ii) "When on the true interpretation of the Act the implication is excluded there is an end of the matter" 10

(per STRATFORD, A.C.J., in Sachs v. Minister of Justice, 1934 AD 11 at 38).

8.

On behalf of the Respondent it is respectfully submitted that upon a proper application of the aforementioned principles to the circumstances of the present case First Appellant was not at any stage entitled to a hearing of any nature.

9.

On behalf of the Respondent it is submitted 20

that / .....

that the words -

"without notice to the organization concerned"

expressly exclude the implication of audi alteram partem insofar as the State President is concerned. It is respectfully submitted that the reasoning which impelled the Court in the Real Printing case (supra - at p. 785 C/H- to this conclusion, is sound.

10

It may be true that the Legislature's express exclusion of a hearing by the State President does not by itself inevitably point to the conclusion that no hearing need be given at any other stage prior to the stage at which the State President satisfies himself. It is no doubt further true that before the stage whereat the State President must satisfy himself (and in respect whereof audi alteram partem has been expressly excluded) there were two prior stages at which the First Appellant could have been heard, namely:

(a) when the committee was making its factual report; and,

(b) when / .....

(b) when the Minister was considering the committee's report.

It is submitted, however, that "elemental principles of justice" would entitle an affected party to a hearing only in relation to the exercise of quasi-judicial functions at such prior stages. Speculation as to probable assumptions entertained by the Legislature in relation to what should happen at these prior stages (see para. 4 of Appellants' Heads of Argument) must be conditioned by an appraisal of the true nature of the functions in fact exercised at these two prior stages.

11.

On behalf of the Respondent it is submitted that at the two prior stages the functions exercised were not functions which -

"uit eie aard verrigtings is wat kwasi-geregtelik genoem kan word in die sin waarin die uitdrukking veelal voorkom nie. Voordat die funksie van n statutêr gemagtigde uit die aard daarvan as kwasi-geregtelik in

bedoelde / .....

bedoelde sin beskou kan word, moet, afgesien van ander moontlike vereistes, in 'n geval soos die huidige, eers blyk dat die uitoefening daarvan die regte van 'n persoon sal tref."

(per STEYN, C.J., in Cassem v. Oos-Kaapse Komitee van die Groepsgebiederaad, 1959(3) S.A. 651 (A.D.) at 660 B/D.

See further: Real Printing Co. Case (supra) at p. 784D to p. 785 A;

S. v. Kathrada, 1963(2) S.A. 5 (T);

Hack v. Venterspost Municipality, 1950(1) 172 at 190 (W).

12.

It is submitted that in making its factual report to the Minister the committee is clearly not exercising any quasi-judical function. The committee does not and cannot make decisions which affect the rights of others. Its function is purely administrative. Similarly the status of the Minister's function is purely administrative. Each step preceded the Proclamation but neither necessarily led to the Proclamation.

G.G. HOEXTER S.C.

J.D.M. SWART

Counsel for Respondent.

State legal aid for political accused

People accused of political offences will be future qualify for free legal defence at State expense in the same way as people who are accused of capital offences.

In the past the only political accused who qualified for legal aid were those tried for sabotage which carries the death penalty.

Political accused who cannot pay for their own defences may apply for free legal aid granted if the chief magistrate in the region approves. Application must be made either to a legal aid bureau or to the local magistrate.

The defence will be independent of the State because defence counsel will be appointed by the local Bar Council or Law Society.

Many political accused were helped by the Defence and Aid Fund banned in March last year.

SAAN

Sunday Times

PROPRIETORS: SOUTH AFRICAN ASSOCIATED NEWSPAPERS LIMITED

ROOM 311 THIRD FLOOR VANDERSTEL BUILDINGS PRETORIUS STREET PRETORIA
P.O. BOX 634 PHONE 3-8861/2/3

August 4, 1966.

The Secretary for Justice,
Veritas Building,
P R E T O R I A.

Dear Sir,

Would it be possible to get replies to the following questions connected with the banned Defence and Aid Fund:

1. Following the banning of the fund is a list of members, office bearers, and active supporters of the fund being drawn up?

2. If Such a list is being compiled is it possible toget the names of the people on it?

3. If it is not possible to state the names of the people on any such list, is it possible to say how many names it contains?

4. When will the list be published, and what are the full implications of such "listings".

5. A number of well-known personalities are known to have been connected with the fund, is it likely that all of these people will be "listed" in terms of the Suppression of Communism Act?

An early reply to these questions--if this is possible--would be greatly appreciated.

Yours faithfully,

G. Reilly.
Pta. Representative.

2/2/13.

J. 417.

Meld in u antwoord asb:
In reply please quote:
JHduT/HvdW No. 941/66/B1
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

29 Julie 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

AKSIE : S.A. DEFENCE AND AID FUND en DR. HOFFENBERG versus DIE MINISTER VAN JUSTISIE

U verwysing is No. 2/2/13.

1. Met betrekking tot hierdie kantoor se diensbrief van 1 deser, stuur ek u hiermee afskrifte van die volgende dokumente:

(a) Eisers se Nadere Besonderhede in antwoord op Verweerder se aansoek vir Nadere Besonderhede;

(b) Kennisgewing van Eksepsie wat namens Verweerder opgewerp word;

(c) my diensbrief wat ek vandag gerig het aan die Adjunk-Staatsprokureur te Kaapstad.

J.H. DU TOIT
nms: STAATSPROKUREUR

0/S(R) 10.8.66
1/8/66
9/8/66

IN THE SUPREME COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO. 658/1966

In the matter between:

SOUTH AFRICAN DEFENCE AND AID FUND — First Plaintiff

and

RAYMOND HOFFENBERG — Second Plaintiff

and

THE MINISTER OF JUSTICE — Defendant

PLAINTIFF'S REPLY TO DEFENDANT'S REQUEST FOR PARTICULARS TO THE AMENDED PARTICULARS OF PLAINTIFF'S CLAIM

In response to Defendant's request for particulars to the amended particulars to Plaintiff's claim, Plaintiffs reply as follows:-

(a) The particulars requested are not strictly necessary for the purpose of pleading;

(b) The particulars requested do not arise from the particulars to Plaintiffs' claim;

(c) As to the particulars requested under C(2) and C(3) of the request, the particulars of claim are sufficiently clear.

Under the circumstances Plaintiffs do onot propose supplying the particulars requested.

DATED AT CAPE TOWN THIS 12th DAY OF JULY, 1966

(Sgd) L.E. Bison
PLAINTIFFS' COUNSEL
FRANK, BERNADT & ZOFFE
per:
Plaintiffs' Attorneys,
85, St. George's Street,
CAPE TOWN

To The Registrar,
Supreme Court,
CAPE TOWN

AND TO: The Deputy State Attorney
(Cape)
Defendant's Attorney
7th Floor,
Gamor Building,
127, Plein Street,
CAPE TOWN

IN THE SUPREME COURT OF SOUTH AFRICA

(CAPE PROVINCIAL DIVISION)

In the matter between: CASE NO. 658/1966

SOUTH AFRICAN DEFENCE AND AID FUND	First Plaintiff
and	
RAYMOND HOFFENBERG	Second Plaintiff
and	
THE MINISTER OF JUSTICE	Defendant

NOTICE OF EXCEPTION

BE PLEASED TO TAKE NOTICE that in terms of Rule 23(1) Defendant delivers an exception to First and Second Plaintiffs' Combined Summons as amended in that the particulars of claim thereunto annexed, as amended, lack averments necessary to sustain an action for the relief therein claimed, and the said Combined Summons therefore fails to disclose a cause of action.

The grounds upon which the exception is founded are the following:-

1.

The relevant declaration by the State President in Proclamation No. 77 of 1966 (see paragraph 1 of the particulars of Plaintiffs' Claim) was made by virtue of

the powers/2.....

the powers vested in the State President by section 2(2) of Act No. 44 of 1950.

2.

The matters set forth in sub-paragraphs (a), (b) (c), (d) and (e) of paragraph 2 of the Combined Summons are all matters whose determination, in terms of section 2(2) of Act 44 of 1950, has been left to the subjective opinion or the personal satisfaction of the State President.

3.

For the purposes of section 2(2) of Act No. 44 of 1950 the decision of the State President cannot be impugned in a Court of Law on the grounds that to persons other than the State President the decision may appear erroneous, or inequitable, or unreasonable.

4.

(a) The opening sentence of paragraph 3(b) of Annexure "A" to the Combined Summons states:

"In the premises the State President failed to satisfy himself as aforesaid."

(b) Paragraph 3(a) of the said Annexure "A" sets forth no averments in support of the relief claimed other than the averments that the State President's decision was wrong or that it was unreasonable. In consequence the conclusion in the said opening sentence of paragraph 3(b) of the said Annexure "A" is not sustained by the "premises" set forth in paragraph 3(a) of the said Annexure "A", and in fact does not amount to an

allegation/3.....

allegation that the State President failed to satisfy himself in terms of section 2(2) of Act No. 44 of 1950.

(c) In consequence paragraph 3(a) and the said opening sentence of paragraph 3(b) of the said Annexure "A" set forth no averments in support of the relief claimed other than that the State President's decision was wrong or unreasonable.

5.

(a) The remaining and alternative averments which follow the said opening sentence in paragraph 3(b) of the said Annexure "A" contain no averments that the State President did not in fact achieve a subjective opinion.

(b) The said remaining and alternative averments furthermore do not contain any allegation that in satisfying himself the State President acted male fide or dishonestly or that he was actuated by some improper motive.

(c) In consequence the said annexure "A" contains no effective averment that the State President was not duly and properly satisfied within the meaning of section 2(2) of the said Act No. 44 of 1950.

6.

In consequence the Combined Summons does no more than to invite the Court to substitute its decision for that of the State President. On the limited averments

set forth/4....

set forth in Annexure "A" to the Combined Summons the claim of the First and Second Plaintiffs is not justiciable by this Honourable Court.

W H E R E F O R E Defendant prays that First and Second Plaintiffs' Combined Summons be set aside with costs.

DATED and SIGNED by Defendant's Counsel at PRETORIA on this the 29th day of JULY, 1966.

(Sgd) J.D.M. SWART
for: G.G. HOEXTER

(Sgd) J.D.M. SWART
COUNSEL FOR DEFENDANT

DATED AND SIGNED by Defendant's Attorney at CAPE TOWN on this the day of AUGUST, 1966

(Sgd) H.J.P. Schutte
DEFENDANT'S ATTORNEY
c/o Deputy State Attorney
7th Floor - Garmor Bldg.
127, Plein Street,
Private Bag 9001,
C A P E T O W N

TO: The Registrar of the
Supreme Court,
CAPE TOWN

AND
TO: MESSRS. FRANK, BERNARDT & JOFFE
PLAINTIFFS' ATTORNEYS
85, St. George's Street,
C A P E T O W N

Received copy hereof this
day of 1966.

JHdwT/HvdW

JHdeT/HvdW 941/66/H1

LUGPOS - SPOED POS 29 Julie 1966

Die Adjunk-Staatsprokureur,
7de Verdieping, Carmorgebou,
Pleinstraat,
K A A P S T A D

AKSIE : S.A. DEFENCE AND AID FUND en
DR. HOFFENBERG vs. MINISTER VAN JUSTISIE

U verwysing is 1391/66/CC/1.

1. Met betrekking tot bogenoemde saak, stuur ek u hiermee n oorspronklike Kennisgewing van Eksepsie tesame met drie afskrifte daarvan. Gelieve die eksepsie as Verweerder se prokureur te teken en dit onmiddellik op die Eisers se prokureurs te bestel en die oorspr@nklike by die Griffier van die Hooggeregshof in te handig. Ek is jammer dat die dokumente op so n laat stadium aan u gestuur word, maar dit is vandag eers deur my van Advokate ontvang.

2. Ek sal mettertyd weer met u in verbinding tree in verband met n geskikte datum van verhoor vir die Eksepsie. In hierdie verband sal weer gebruik gemaak word van Advokate Hoexter en Swart.

3. Erken asseblief ontvangs hiervan.

J.H. DU TOIT
nms: STAATSPROKUREUR

2/2/13.

J. 417.

Meld in u antwoord asb:
In reply please quote:
No. 941/66/B1
Kamer/Room.

JHudT/HvdW

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

26 Julie 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

APPÈL : MOSIE : "S.A. DEFENCE AND AID FUND " en H. HOFFENBERG teen DIE MINISTER VAN JUSTISIE

U verwysing is 2/2/13.

Ek wens u mee te deel dat die Adjunk-Staatsprokureur te Kaapstad my voorsien het van drie afskrifte van die appèlrekord in bogenoemde saak. Volgens die Adjunk-Staatsprokureur is n bedrag van R750-00 deur die Appellante betaal aan die Griffier van die Hooggeregshof te Kaapstad as sekuriteit vir die Respondent se koste. So gou as wat n verhoordatum toegeken is deur die Griffier van die Appèlhof, sal ek u dienooreenkomstig inlig.

J.H. DU TOIT
nms: STAATSPROKUREUR

① aan te stuur
29/7/66
② Bare
29/7/66
29.7.66

Telegramadres: „JUSTISIE."
Telegraphic Address: "JUSTICE."

Alle briewe geadresseer te word aan SEKRETARIS VAN JUSTISIE.
All Communications to be addressed to SECRETARY FOR JUSTICE.

Telefoon
Telephone.....

REPUBLIEK VAN SUID-AFRIKA
REPUBLIC OF SOUTH AFRICA

By beantwoording gee op
In reply please quote
No. 2/2/13.

DEPARTEMENT VAN JUSTISIE,
DEPARTMENT OF JUSTICE,
VERITASGEBOU,
VERITAS BUILDING,
PRIVAATSAK 81,
PRIVATE BAG 81,
PRETORIA.

SIEN AANHANGSEL.

26 -7- 1966

REKENINGS VIR DIENSTE DEUR PROKUREURS GELEWER - "DEFENCE AND AID FUND".

1. Die "Defence and Aid Fund" is by Proklamasie 77 van 1966 ingevolge die bepalings van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet 44 van 1950) tot onwettige organisasie verklaar.

2. Voor die onwettigverklaring het die organisasie verskeie prokureurs opdrag gegee om namens persone, wat weens hulle politieke bedrywighede daarvan aangekla is dat hulle oortredings van die landswette gepleeg het, op te tree.

3. Die beredderaar, wie se plig dit is om die skulde van die organisasie uit sy bates te vereffen, het verskeie rekenings van prokureurs vir dienste gelewer aan "Defence and Aid" ontvang. Die rekenings word nou aan die betrokke prokureurs teruggestuur met die versoek dat dit aan hulle plaaslike Griffier vir taksasie voorgelê word. Dit sal derhalwe waardeer word as dit die takseermeesters opgedra sal word om alle dusdanige rekenings wat voorgelê word te takseer.

G. M. J. SWART
SEKRETARIS VAN JUSTISIE.

AANHANGSEL.

DIE GRIFFIER,

Provinsiale Afdeling Kaap die Goeie Hoop
van die Hooggeregshof,
KAAPSTAD.

Oos-Kaapse Afdeling van die Hooggeregshof,
GRAHAMSTAD.

Natalse Provinsiale Afdeling van die
Hooggeregshof,
PIETERMARITZBURG.

Oranje-Vrystaatse Provinsiale Afdeling
van die Hooggeregshof,
BLOEMFONTEIN.

Transvaalse Provinsiale Afdeling van die
Hooggeregshof,
PRETORIA.

Suidwes-Afrika-afdeling van die
Hooggeregshof,
WINDHOEK.

Plaaslike Afdeling Durban en Kus van die
Hooggeregshof,
DURBAN.

Plaaslike Afdeling Griekwalandwes
van die Hooggeregshof,
KIMBERLEY.

Witwatersrandse Plaaslike Afdeling van
die Hooggeregshof,
JOHANNESBURG.

24120

2/2/13.

14-7-1966

The Director of Military Intelligence,
P R E T O R I A.

SOUTH AFRICAN JUSTICE.

I attach for your information a copy of minute No. 109/5 dated the 6th July, 1966, together with the annexures thereto, received from the Secretary for Foreign Affairs, Pretoria. It will be appreciated if you will return the attached booklet, entitled "The Purge of the Eastern Cape", to the said Secretary for Foreign Affairs, after perusal.

S. S. TERBLANCHÉ
SECRETARY FOR JUSTICE.

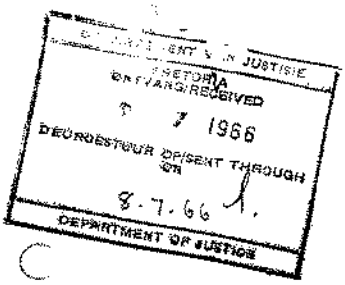
The Secretary for Foreign Affairs,
P R E T O R I A.

Copy for your information.

S. S. TERBLANCHÉ
SECRETARY FOR JUSTICE.

File
14.7.66.

2/2/18 R/K afd.



109/5.

E.A. 42.

REPUBLIEK VAN SUID-AFRIKA.
REPUBLIC OF SOUTH AFRICA.

DEPARTEMENT VAN BUITELANDSE SAKE,
DEPARTMENT OF FOREIGN AFFAIRS,

PRETORIA.

6 7 1966

THE SECRETARY FOR JUSTICE.

South African Justice.

I attach for your information a copy of an article, entitled "South African Justice", which appeared in the "New Statesman" of 20th May, 1966. Also enclosed is a booklet published by Christian Action under the title of "The Purge of the Eastern Cape".

Since only one copy of the abovementioned booklet is available, it will be appreciated if you can, after having dealt with it, forward it to the Director of Military Intelligence, asking him to return it to this Department.

J W L Steward
SECRETARY FOR FOREIGN AFFAIRS.

Done 14.7.66

RK, Pls forward booklet to DMI. Copy of forwarding ltr to Secy for Foreign Affairs
8/7/7.

R.K.

R.A. 42.

126/53/1

REPUBLIEK VAN SUID-AFRIKA.
REPUBLIC OF SOUTH AFRICA.

DEPARTEMENT VAN BUITELANDSE SAKE,
DEPARTMENT OF FOREIGN AFFAIRS,

PRETORIA.
12 -7- 1966

DIE SEKRETARIS VAN JUSTISIE.

"Defence and Aid"

Aangeheg vir u aandag vind asseblief, n foto-afdruk, van n koerantartikel wat in die "Rand Daily Mail" van 28 Junie 1966 verskyn het.

W.D. Steward
SEKRETARIS VAN BUITELANDSE SAKE.

Om te sien gaan.
O/S (R) Jo 1417.
R/AL Adm 14/7/66
BD 14/7/66

Dutch raise £45,000 for S.A. fund

AMSTERDAM. — Holland had so far raised more than 250,000 guilders (about £15,000) for victims of South Africa's apartheid policy, journalists were told at a Press conference given by the Dutch leader of the Defence and Aid Fund in Amsterdam yesterday.

The Press conference was also addressed by Canon John Collins, of London's St. Paul's Cathedral.

Canon Collins said the ban on the South African committees of the Defence and Aid Fund would not affect the fund's activities.

Since the ban the fund had continued to distribute money to the same extent, "only along different channels." He did not identify these channels.—S.A.P.A.-Reuter.

2/2/13.

J. 417.

Meld in u antwoord asb:
In reply please quote:
No. 941/66/B1
Kamer/Room.

JHduT/HvdW

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

V E R T R O U L I K

Julie 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A.

HOOGGEREGSHOF AANSOEK : SOUTH AFRICAN DEFENCE AND AID FUND en R. HOFFENBERG

U verwysing is No. 2/2/13.

Met betrekking tot bogenoemde saak, en hierdie kantoor se diensbrief van 15 laaslede, stuur ek u hiermee, vir u inligting, n afskrif van elk van die volgende dokumente:

✓ (a) Gewysigde Nadere Besonderhede wat deur Eisers verstrek is en op 23 laaslede bestel is op die Adjunk-Staatsprokureur, Kaapstad;

✓ (b) n Aansoek om Nadere Besonderhede wat aangevra word namens verweerder, en

✓ (c) n Afskrif van my diensbrief wat ek vandag gerig het aan die Adjunk-Staatsprokureur te Kaapstad.

J.H. DU TOIT
nms: STAATSPROKUREUR

① Aan toegevoeg. 4/7/66
② Bew. lêer 2/2/13.
4/7/66

A/S(R) No 4.7.66.
O/S(R) No 417
Aan ½ sien aan 6
4/7/66

COPY/HvdW

Served at Cape Town on 23/6/66

IN THE SUPREME COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

Case No. 658/1966

In the matter between:

SOUTH AFRICAN DEFENCE AND AID FUND

1st Plaintiff

and

RAYMOND HOFFENBERG

2nd Plaintiff

and

THE MINISTER OF JUSTICE

Defendant

AMENDED PARTICULARS OF PLAINTIFF'S CLAIM

---

1. On the 18th MARCH 1966, there appeared in the Government Gazette Proclamation No. 77 of 1966 in terms of which the State President declared the Organisation known as the Defence and Aid Fund to be an unlawful Organisation.

2. In order to be able validly to issue such Proclamation the State President had to be satisfied:-

   (a) that the 1st Plaintiff professed by its name or otherwise to be an Organisation for propagating the principles or promoting the spread of Communism, or

   (b) that the purpose or one of the purposes of the 1st Plaintiff was to propagate the principles or promote the spread of Communism or to further the achievement of any of the objects of Communism.

(c)/.....

(c) That the 1st Plaintiff engaged in activities which were calculated to further the achievement of any of the objects referred to in paragraph (a), (b), (c) or (d) of the definition of Communism in Section 1 of the Suppression of Communism Act No. 44 of 1950.

(d) That the 1st Plaintiff was controlled directly or indirectly by the Communist Party of South Africa or by any Organisation referred to in sub-paragraphs (a), (b) or (c) of this paragraph, or

(e) that the 1st Plaintiff carried on or had been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organisation.

3. (a) There were no grounds upon which the State President could have satisfied himself as to the matters referred to in the preceding paragraph hereof and if any grounds were placed before him they were without any foundation, alternatively no reasonable man could have been satisfied that the 1st Plaintiff fell within the purview of the matters referred to in the preceding paragraph.

(b) In the premises the State President failed to satisfy himself as aforesaid, alternatively in purporting to so satisfy himself he did not apply his mind to the relevant facts, alternatively any consideration that he gave to so satisfying himself was purely arbitary and did not amount to the exercise of a proper discretion.

4. In the premises the Declaration by the State President that the 1st Plaintiff is an unlawful Organisation is wrongful and unlawful and of no force and effect and the said Proclamation is of no force and effect.

5. At the time of the coming into force of the said Proclamation the 2nd Plaintiff was the Chairman of the Management Committee of the 1st Plaintiff and as such, is substantially interested in the subject matter of this action.

W H E R E F O R E /....

W H E R E F O R E Plaintiffs claim:

(a) An Order declaring the Proclamation R 77 of 1966 is of no force and effect, alternatively, setting aside the said Proclamation;

(b) Alternative relief;

(c) Costs of suit.

DATED at CAPE TOWN this 22nd day of JUNE 1966

FRANK, BERNADT & JOFFE

per: ?

Plaintiff's Attorneys,
85 St. George's Street,
CAPE TOWN

(Sgd) L. Dison
Plaintiff's Advocate

TO:

The Registrar,
Supreme Court,
CAPE TOWN

AND TO:

The Deputy State Attorney (Cape)
Attorney for the Defendant
7th Floor
Garmor Building,
127 Plein Street,
CAPE TOWN

IN THE SUPREME COURT OF SOUTH AFRICA

(CAPE PROVINCIAL DIVISION)

CASE NO. 658/1966

In the matter between:-

SOUTH AFRICAN DEFENCE & AID FUND	First Plaintiff
and	
RAYMOND HOFFENBERG	Second Plaintiff
and	
THE MINISTER OF JUSTICE	Defendant

DEFENDANT'S NOTICE IN TERMS OF RULE 21

I. RULE 21:

For the purpose of enabling Defendant to plead Defendant calls upon Plaintiffs to furnish the following further particulars in connection with paragraph 3(b) of the Amended Particulars of Plaintiffs' Claim -

(A) INASMUCH as the judgment of this Honourable Court in the motion proceedings between the same parties and in respect of the same subject-matter (case No. M.286/66) necessarily involved a judicial determination that Plaintiffs were unable to controvert Defendant's statements that:

(1) Defendant/2...

(1) Defendant duly appointed a committee in terms of section 17 of Act 44 of 1950 to prepare a factual report; and,

(2) this committee duly prepared such a report; and

(3) such report was considered by Defendant before the powers conferred by the Act in relation to First Plaintiff were exercised by the State President;

(B) AND INASMUCH as Plaintiffs aver, inter alia, that in "satisfying" himself -

(1) the State President did not apply his mind to the relevant facts;

(2) the State President's consideration was purely arbitrary and did not amount to the exercise of a proper discretion;

(C) DEFENDANT REQUIRES PLAINTIFFS TO STATE UNEQUIVOCALLY WHETHER THEIR AMENDED PARTICULARS OF CLAIM INVOLVE ANY OF THE UNDERMENTIONED, AND IF SO, WHICH:

(1) a denial of any of the facts set forth in sub-paragraphs (1), (2) and (3) of paragraph (A) above;

(2) a denial/3...

(2) a denial that the State President "satisfied himself" - in a subjective sense - as to one or more of the matters set forth in section 2(2) of Act 44 of 1950;

AND IF NOT:

(3) an averment that in satisfying himself the State President -

(a) was actuated either by mala fides, or by an improper or ulterior motive, or by malice; or,

(b) was in any way whatever not exercising his powers honestly and in good faith.

DATED and SIGNED by Defendant's Counsel at PRETORIA on this the 1st day of July 1966

(Sgd) G.G. Hoexter

(Sgd) J.J.M. Strauss
COUNSEL FOR DEFENDANT

DATED and SIGNED by Defendant's Attorney at CAPE TOWN on this the day of JULY, 1966.

(Sgd) H.J.P. SCHUTTE
DEFENDANT'S ATTORNEY
c/o Deputy State Attorney
7th Floor - Garmor Bldg.
127, Plein Street,
Private Bag 9001,
CAPE TOWN

TO: The Registrar, of the
Supreme Court,
CAPE TOWN

AND

TO: MESSRS. FRANK, BERNARDT & JOFFE
PLAINTIFFS' ATTORNEYS
35, St. Georges Street,
CAPE TOWN

Received copy hereof this
day of 1966

JHduP/HvdW
941/66

JHduT/HvdW 941/66/B1

LUGPOS - SPOED AFLEWERING | Julie 1966

Die Adjunk-Staatsprokureur,
Privaatsak 9001,
K A A P S T A D.

AKSIE : S.A. DEFENCE & AID FUND en
DR. HOFFENBERG vs. MINISTER VAN JUSTISIE
NO. 658/66.

U verwysing is 1391/66/CC/1.

Met verwysing na u diensbrief van 23 laaslede, stuur ek u hiermee n oorspronklike aansoek om Nadere Besonderhede ingevolge Hofreël 21, tesame met twee afskrifte daarvan. Geliewe dit so gou as moontlik te beatel op Eisers se prokureurs en die oorspronklike by die Hof in te dien.

Dit is oorspronklik oorweeg om terselfdertyd kennisgewing aan Eisers te gee ooreenkomstig Hofreël 23, dat besonderhede van die eis vaag en verwarrend is, maar heroorweging is aan die saak geskenk en Advokate het besluit om eers n aansoek om Nadere Besonderhede in te dien. Na ontvangs van die Nadere Besonderhede, sal dit waarskynlik nodig wees om gebruik te maak van Hofreël 23. Onder hierdie omstandighede en ten einde Advokate in staat te stel om die nodige kennisgewing binne die voorgeskrewe tyd op te stel, sal ek dit waardeer as u na ontvangs van die Nadere Besonderhede, dit weer onmiddellik per lugpos aan hierdie kantoor sal stuur.

J.H. DU TOIT
nms: STAATSPROKUREUR

Canon Collins criticizes Dutch action

From Our Correspondent

AMSTERDAM, Tuesday

Canon John Collins last night criticized the Dutch Government for transferring the 100,000 guilders (£7,000) originally intended for the British Defence Fund to Aid to the United Nations Trust Fund.

He was addressing a meeting protesting against the invasion of Abyssinia and the restoration of the Emperor.

It was understandable, he said, that Holland did not wish to interfere with the affairs of another country, but when fundamental matters were at stake—as Nazism was, he thought—she had to intervene.

The meeting, organized by the Left-inclined Committee South Africa and the Students' Committee South Africa, was attended by about 200 people.

P/S 27-6-66

~~SECRET~~.

THE SECRETARY/MINISTER.

DEFENCE AND AID FUND: LEGAL REPRESENTATION IN CRIMINAL CASES WITH A POLITICAL BACKGROUND.

(Experience of Mr Judge President Beaumont)

1. A copy of a judgment delivered on the 3rd June, 1966, by the Honourable the Judge President of the Eastern Cape Division of the Supreme Court of South Africa, is attached for the Minister's information please. (Judgment).

2. In so far as it pertains to the Defence and Aid Fund, the judgment is summarised for the Minister's information:-

Since 1962 the Eastern Cape Division of the Supreme Court of South Africa has tried some sixty odd cases involving so-called political charges. Where counsel were not already provided for by the accused the court has in every case offered counsel to the accused for their defence and until a year ago, such counsel were readily accepted. Then the Defence and Aid Fund started to appoint counsel for the defence of the accused. Some six months ago the court found that persons charged in so-called political trials refused pro deo counsel, and demanded that counsel be instructed by the Defence and Aid Fund. When such a demand was made every effort was made to contact the various offices of the Defence and Aid Fund. It was found that when that fund had not instructed counsel, it was not prepared to instruct counsel, apparently because it was satisfied that the court would appoint counsel for the accused in those cases. In certain trials, despite assurances that the Defence and Aid Fund was not prepared to provide representation, the

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20/6/68

accused refused to accept the assurances and the court went to the lenght of adjourning the trials to enable the ~~accused~~ to contact that fund directly. During the past six months accused have emphatically refused to accept counsel appointed by the court. Judge ~~Justice~~ Jennett surmises that this attitude may well be attributed to the refusal by counsel to carry out instructions which are not relevant to the conduct of the defence.

It is clear that apart from other harm done by the Fund, it also harmed the administration of justice in this country. GO 23/6/66 23.6.66 ~~23/6/66~~ 23.6.66 24.6.66.

J. 428.

Reference No.
Verwysingsnommer.
17/7/2

REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA.

Office of the Registrar of the Supreme Court of South Africa.
Kantoor van die Griffier van die Hooggeregshof van Suid-Afrika.

DEPARTEMENT VAN JUSTISIE
PRETORIA
ONTVANG/RECEIVED
17 -6- 1966
DEURGESTUUR OP/SENT THROUGH ON
DEPARTMENT OF JUSTICE

Oos-Kaapse Afdeling.

Privaatsak 1011,
GRAHAMSTAD.

14 Junie 1966.

Die Sekretaris van Justisie,
Veritasgebou,
Privaatsak 81,
P R E T O R I A.

DIE STAAT TEEN NTIBIXELWA EN ANDERE

3.6.66

'n Afskrif van die uitspraak in bogemelde saak word aangeheg vir u inligting.

W.P. VAN OUDTSHOORN.

GRIFFIER.

WPVO/HM.

Om te sien asb.
O/S(R)
A/R 20/6/66
A/R. 20/6/66
A/K. 21/6/66

Per minute to minister for information
16.

IN THE SUPREME COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION)

3rd June, 1966.

THE STATE versus (1) METESE NTIBIXELWA, (2) SINDILE HEADMAN NCAPAYI, (3) HOUGHTON SOOI, (4) PHILIP SELLO.

JUDGMENT AND VERDICT.

J E N N E T T , J. P. :

We are clear as to what our verdict should be. We do not propose adjourning, and I shall endeavour to set out in short detail the evidence and our view about it and indicate at once after that what verdict the Court finds. But before dealing with the facts in this case I want to make some remarks to point the background to this case in the light of a number of cases that have come before this Court.

Since 1962 or thereabouts this Court has tried some sixty odd cases involving political charges and in that I include charges of sabotage, sending recruits out of the country and membership of banned and illegal organizations. In every case without exception the Court has offered counsel to the accused for their defence, and until about a year ago counsel were readily accepted, with the exception of those cases, of course,

in which counsel were already provided by the accused persons being able to supply their own legal representative. Then a year or so ago there came to our knowledge a fund called the "Defence-in-Aid Fund", and that fund in very few cases in this Court, but in a number of cases in regional magistrates' courts within the Court's jurisdiction, instructed counsel for the defence of the persons accused. Then some six months ago we found that persons charged before this Court in political trials refused pro Deo counsel, and demanded counsel instructed by the Defence-inAid Fund. When such a demand was made the Registrar of this Court and the Attorney-General and his assistants took great trouble to contact the various offices of the Defence-in-Aid Fund in each case and found that when that fund had not instructed counsel it was not prepared to instruct counsel apparently because it was satisfied that the Court would appoint counsel for the accused in those cases. There have been trials here in which, despite assurances by the Court and the Attorney-General that the Defence-in-Aid Fund was not prepared to provide representation, the accused persons refused to accept the assurances, and the Court went to the length

of adjourning the trials in order to enable the accused to contact directly that fund and to ascertain from the fund's representatives that the Court's and the Attorneys General's assurances were correct. I go further now. I say that the Attorney-General has after a great deal of effort arranged with the Department of Justice, which has agreed, to appoint counsel for the defence in any and all cases in this Court and other courts in its jurisdiction when the charges presented against the accused ~~were~~ are of this political character. It has been found in the last five or six months that the accused in these trials have emphatically refused to have counsel appointed by the Court. That applies in this case and the Attorney-General has in this case got the written refusal of the accused. It may well be that that attitude is motivated by the refusal of counsel to carry out instructions which are not relevant to the conduct of the defence. That is a surmise, but there ~~has~~ have been quite clear indications to support that conclusion.

Another feature has developed recently and been consistent in all cases here and in the regional courts, and that is that applications have been made by accused

defending themselves, having refused counsel, for the calling of witnesses in custody on Robben Island and elsewhere, and one of the witnesses most frequently required is one Govan Mbeki. When such a request is made by undefended persons then the State pays the expense of the witnesses' attendance, and of course the Court regards that as perfectly fair. If counsel were representing an accused such counsel might often refuse to make such an application because counsel concerned might not be satisfied that the evidence is material to the defence. The Court does not grant an application of that kind, that is calling a witness by undefended accused or defended accused who cannot afford the conduct money of the witness unless the defence can satisfy the Court that the evidence of the witness concerned is material to the defence, and I stress that as a feature because it will emerge later that it is on that ground that I have refused the applications made by the accused.

I come to the present case. There are four accused, all apparently men of some education except possibly No. 1 accused. Three of them were able to address the Court in English and very well too, and able to conduct the cross-examination of witnesses in

English, and very well too. When the case started, before pleading the accused each intimated that he had an application to make. No. 1 said he wished to be examined by a doctor as he had been assaulted on 7th June, 1965, and although he accepted that he was under doctor's treatment and had had a doctor's treatment he persisted in this application because he said his jaw was sore and he could not speak properly and he could not hear very well. Well, the trial had not been in progress for very long before it was quite apparent to the Court that his ability to speak was clear and that he had no real difficulty in hearing, which of course leads one to wonder why an application was made at all.

No. 2 made an application for the return to him of his clothes. He complained that his clothes had been taken away and that he had not got them yet. He suggested that they were in Pretoria, but his application was not pertinent to the case and so it was refused. Then we heard finally from warrant officer Senekal that his clothes are at the New Law Courts at Port Elizabeth and are ~~were~~ available to him whenever he wishes to get them.

Then No. 3 had an application to make. He wanted

to know who issued the further particulars with which they had been supplied, and he was informed that it was learned counsel who appears for the State. Then he indicated that he wanted the dates of certain meetings which were alleged to have occurred. It was pointed out to him that both in the charge and in the further particulars the State said it did not know the exact dates and that it was within a certain period.

Then No. 4 wanted to know under which branch they fell, the Security Branch or the Prisons Department. He says he had been kept in solitary confinement and he wants to know why; and the Court pointed out to him that it could not concern itself with matters of that kind if they had no bearing on the present case - as they had not.

The accused then pleaded not guilty and the trial proceeded.

Why I have made these remarks is that the result of this non-representation can in a particular case have very unhappy consequences, and in the instant case questions were asked by the accused which the Court had to point out might lead to evidence which it should not hear being given. In fact as the cross-examination

of warrant officer Senekal proceeded the case became no better for the accused, although the Court is going to disregard entirely what was said. During the first day and again at the end of that day's hearing I pointed out to the accused that in their cross-examination they were not indicating whether or not they denied the allegations made by the State witnesses. Cross-examination was often confined to a subsidiary issue, and the Court was left in the dark as to what line the defence really wanted to take.

At the beginning of the second day's hearing No. 4 accused, who was then cross-examining a witness, made the statement that they were not interested in winning the case, as he put it, but again, as he put it, would not tolerate false versions. Some of the questions put in cross-examination indicated that the defence disagreed only with the details or reasons for certain of their alleged conduct. A notable example lies in the allegation that it was agreed by the regional committee that No. 2 should be sent out of the country for military training. I shall be referring to this again but put it shortly here. The State evidence was to the effect that as

the recruitment of persons to undergo military training was virtually failing, only three persons having been sent from the Port Elizabeth area, No. 2 accused was selected to go for such training as the "National House", as they call it, was insisting on five more recruits. Then witnesses went on to say that because his wife might on finding him gone resort to enquiries with the police and might cause certain information against them to be divulged which might lead to their apprehension and so, they allege, it was decided that his wife should also go out of the country. Then they went on to say that he went to Middledrift to contact her where she lived. It was arranged that he should meet Jackson Fuyisile at King William's Town who would give him a ticket, and presumably that he would then go out of the country. The defence on the other hand insisted that No. 2 accused was being sent out of the country because the police were on his tracks. The defence did not as cross-examination went on suggest that this was not a decision by the committee; and then there was a lot of cross-examination as to whether or not the meeting place with Jackson was to be East London or King William's Town. To put it shortly the defence did not in its cross-examination

indicate that there was any committee decision, but we are prepared to accept what was disclosed in their unsworn statements, that their case really was that No. 2 had got word that he was wanted, and that it was the general committee that decided that he should leave the country.

I shall deal with the evidence in detail later but to put it in its proper place now, I mention that at the end of the trial, when the accused were asked to embark on their defence, each made an application for the calling of certain witnesses. That application was made before they ~~decided~~ were prepared to decide whether to give evidence or not to do so. No. 1 wanted a man called Marks to be called, but on questioning it soon became clear that he had no idea what Marks was going to say, so that the Court could not say that his evidence was material or was even going to be favourable to the accused. I should mention here that Marks is the name of the owner of the house where certain meetings were held that I shall deal with. Then No. 2 wanted Freddie Kola to be called to describe the "general study" group. He had no idea what Freddie Kola was going to say. He also wanted Govan Mbeki to be called. The evidence of Govan Mbeki in the result in unimportant because of the view we take

in this case. But again both in the case of Kola and Mbeki the Court was not persuaded that there was any reason to call them. He did not know whether they were going to give material evidence for the defence. Then No. 3 wanted the evidence of Cecil Mangaba and Samuel Peter, Mangaba in relation to a particular meeting, which I am afraid I cannot find in the evidence because his name was not referred to earlier. With regard to Samuel Peter he wanted him to explain the difference between Umkonto we sizwe and the African National Congress. There was no indication that either of the witnesses would give evidence that would help the defence in any way, and so those applications were all refused. No. 4 accused did not make application for the calling of witnesses, but asked for an adjournment until Monday to prepare his case. After he had pointed out that gaol conditions were difficult for preparing notes, the Court decided this morning to give them ample opportunity, when they were provided with time, writing materials and suitable conditions in which to prepare their statements or arguments as the case may be.

Thereafter each of the accused emphatically refused to give evidence under oath. They know what

a serious feature this might be. But as in all these cases the Court regards it as only a factor, and does not take too serious a view of failure to give evidence in the case of undefended persons. Its only effect is that it becomes relevant when one is weighing the evidence because there is no reply under oath to the State case and no submission to cross-examination. I should mention in passing that it fits in exactly with the pattern that has been developing consistently throughout the whole of this series of cases that the Court has been trying for the past few months that accused persons have refused to give evidence even when they have been represented by counsel.

I come to the case itself. There are three charges, and the first alleges that between July 1962 to 8th June 1965, which latter date is the date of arrest of all these people, the accused (I put it very shortly) conspired with each other and others to procure the commission of acts of violence, like attacking government buildings, etc., launching attacks upon the white population and commencing guerilla warfare against the

government; and alleged also in the first count is that they incited etc. the commission of these acts; and then the last references in the charge are merely formal references to comply with the requirements of the Act. But they are not formal in the sense that the Court must find the existance of one or more of the features (a) to (e). Well, on that score I say in passing that there is no difficulty because if they did attack government building and did attack the whites there would be danger to the health and safety of the public and the maintenance of law and order among other things.

The second count relates to the possession both of firearms and explosives, and covers the same period as in count No. 1.

The third count, which also covers the same period of times, alleges that they incited people to go out of the country for military training and did themselves undergo or attempt to undergo such military training or conspired together to get people out; and we shall indicate later what view we take as to the category in which the conduct of any one of the accused falls in the charge sheet.

The evidence comes mainly from four witnesses.

They are John Petros, Mountain Ngesi, Thabo Motsoeneng and Transkei Nqayi. There was also a man called Brian Klaas. All these people are accomplices whose evidence must be regarded with great caution, and all the members of this Court are well aware of that. I propose dealing with the first two at this stage, but before mentioning what their evidence consists of, we give our impression of them. Both John Petros and Mountain Ngesi are obviously persons with much less intelligence than certainly Nos. 2, 3 and 4 accused; each created a favourable impression, particularly Ngesi. Both said that they were members of the A.N.C. after its banning. Their evidence was directed in the main to two meetings held in September/October, 1964, or thereabouts. Those meetings they said were held at the home of one Marks in Kwazekele Location and were A.N.C. meetings. They mentioned the names of a number of persons who were present. Both of them said Tweni was present and he arranged for the attendance of both of them, and both of them said that accused Nos. 1 and 3 were present; and both of them with very slight differences gave the content of the speeches that were made there. I intimated to No. 3

earlier that so far as he is concerned these meetings at Marks was not important in the Court's view because of his admission in his statement that he was a regional contact. But when I mention him now I do so simply to keep the narrative in proper form. The witnesses said that No. 1 accused addressed the meeting by saying that the A.N.C. had been torn to pieces, leaders had been taken away; and those that had been left had to work very hard; money was required, and both of them said that twenty cents per head was paid there and then; and both said that No. 1 said that violence was going to be used; they were going to kill the whites. One of them said that he said that they had some bombs but not sufficient; and finally that the plans were that the attacks should be made on the whites on the beaches and trains and other gathering spots in December, 1964. The fact that they all received this enthusiastically, as the witnesses claim, does not matter now. We deal in particular with No. 1.

Then they describe another meeting at the same place in October, 1964, where one of them said that the same person/were present except Ghuchu. Again it was Tsheutshu Tweni who arranged the meeting, so they say, or for

their attendance at any rate. They said No. 1 accused spoke in a similar strain to his remarks to the previous meeting; and referred to recruiting and making bombs. Both say that another man called Mko then addressed the meeting. Then they say that No. 1 spoke again.

There is one special feature that calls for comment here. They both say that they saw a man talking to No. 1 who was accompanied by No. 3 outside that meeting, a man who never came into the meeting. They did not know him but they were able to point Transkei out as the person, and when Transkei Nqayi gave evidence (and I shall refer to him in detail later) he said that that was the occasion when he was taken by No. 3 accused to be introduced to the chief recruiting officer, No. 1 accused; that he spoke to them outside, and that he did not go into the meeting. That is significant corroboration.

So much for the evidence which really involves, as far as we are concerned, accused No. 1 on this count, count No. 1. I shall refer to his other activities as disclosed by the other evidence later.

The next two witnesses will be dealt with

together. They are Thabo and Transkei. The second of these created a very favourable impression. Thabo is obviously one of the top leaders of the A.N.C. in this area, but we are quite sure he did not disclose anything more than he considered necessary for the present case; and we view his evidence with suspicion, and it would probably not receive very favourable treatment were it not that it receives so much support from the evidence of Transkei. I want to deal shortly with what their evidence was. Thabo says he formed some political study groups in the A.N.C. early in 1964. There was one of them and he mentioned persons in it including No. 2. He says this study group was drawn from the more intelligent members of the A.N.C. for the assumption of leadership duties to replace leaders who were arrested or otherwise fell out. He says that the study groups had the design to train them politically and to train them in sabotage and the development of a policy of violence against the government. He says he actually instructed the group and other groups in the commission of sabotage which was designed to develop into guerilla warfare. That study

group he says was dissolved because ~~he~~ some and members of the group were transferred to other branches. At that stage he says No. 2 was enthusiastic and of average ability. He was brought into the next group that was formed. That was towards the end of 1963; but thereafter he lost confidence in No. 2, who was not diligent in his attendance at the lectures. Thabo says that he, Thabo, was actually sent to Johannesburg for training, and that he was there trained how to make gunpowder and bombs. He returned to Port Elizabeth and there at No. 3's home he gave him lessons in the making of gunpowder. He described the ingredients and says he left the ingredients at that place, and he says that later on he trained certain others, Kola and Mbuti. Then he says there was a study group formed which consisted of Freddie Kola, Sello, Transkei Nqayi, Dan Fuyisile and No. 3. He says too that No. 3 also assisted in drafting a leaflet exhorting violence. He said too that No. 3 was the contact with the chief recruiting officer, No. 1. He says that later to a meeting No. 3 submitted a report from No. 1; that of course is evidence only against No. 3; it is not evidence against No. 1. He says that he, Thabo, fell into disfavour at one stage. However we are

taken up in his evidence to the point towards the end of 1964 when he was arrested.

He says that when he was released shortly afterwards, either in December or the beginning of January of the following year, he was begged by persons whom I shall refer to to join the then constituted regional committee, and he refers to Nos. 2 and 4 and Transkei as being members of that committee. Now there is quite a serious discrepancy here between him and Transkei, but it is easily explicable. Transkei says it was not the committee who begged Thabo to join but Thabo begged them to take him back. Then he describes that there were meetings of the regional committee, and he says that No. 1 was called to one of the meetings, and the meeting was held at Transkei's home with himself, No. 2, No. 4 and Transkei, and he says there a report was made by No. 1 that he was failing badly in his recruiting campaign. Jackson had been to Johannesburg and had returned with the instruction from National House that five more people must be sent. Obviously something had to be done, and it was decided that No. 2 should go; and, because they were afraid if his wife did not leave with him she might divulge information, it was decided that she too should go. It was

arranged, although he did not deal with the arrangements himself, that accused No. 2 should meet up with his wife at Middledrift and Jackson would in due course contact him at King William's Town and supply the tickets necessary for the journey. He refers to one other item which is significant, and that is that there were certain monies received and that No. 4 accused was instructed to take R20.00 to accused No. 1, as No. 1 was in full time employment of the organization underground. That is not evidence against No. 1.

Transkei gave evidence and he said that accused No. 3 had actually asked him to join the study group in 1964. He refers to the persons in the study group and mentions Brian Klaas, Jackson Fuyisile, Thabo Motsoeneng and one Douglas Tshutshu. He says that the subjects that were discussed included sabotage and guerrilla warfare. He also talks about the distribution of leaflets by No. 3, but we pay no regard to that. Then he made a significant statement. He said the group he joined dissolved after two to three months because one of them, Douglas, was arrested and because Brian Klaas got what we call in banal language cold feet. I have already said that Transkei referred to this meeting at Marks' where he met

No. 1 outside. Then he said that a further study group was formed, which included Philip Sello and that was the same group as was referred to by Thabo; and he too says that the lectures included instruction on violent action. He too says that No. 3 was the contact with No. 1. He too refers to only three people having been recruited; and then he made a strange statement. He says that one day he heard Thabo arrange with No. 3 to go and get training in the making of bombs. This is again before the rejoining of Thabo. After early 1963 he says that a committee was formed consisting of Nos. 2, 3 and 4 accused and others, Fuyisile being one of them, and that No. 2 was chairman. He spoke also about the appointment of officers at that meeting and about R20.00 being sent through No. 4 to No. 1; and then he came to the stage where he referred to Thabo begging to be taken back and the committee agreeing. He detailed an incident, which I mention merely in passing, where the "High Command" sent a man called Mnuymania down with instructions to "liquidate" somebody, and how Mnuymania had referred to his having received training in China. He says the local committee disagreed with the instruction. Then he refers in complete detail to this meeting at

which it was decided that No. 2 should be sent out. I do not propose repeating his evidence. It coincides almost completely in all details with that of Thabo. He states by whom the arrangements were made and he refers to the reasons for No. 2 accused being sent out of the country.

That shortly is the evidence of these four witnesses, and I refer briefly to the evidence of Brian Klaas. No proper intelligence test could have been carried out on him because from his appearance and demeanour in the witness box it was apparent that he was a very bad choice as a prospective leader. He is a simple individual, and it is quite apparent that he became afraid of participation and left the study group. The value of his evidence lies in the fact that it is plainly acceptable all the way, and it establishes that there was this type of study group that they referred to and that he was a member.

That leaves incidental evidence, as it were, to be considered. Firstly, there is the evidence of Senekal, who described how he went to King William's Town or East London to try and get No. 2 accused, having got some information about his leaving. I think he

was also out to get No. 4 accused, but I am not sure. He described how they were unsuccessful and on their way back at Peddie they saw No. 2 and his wife and No. 4, and how he took them to Port Elizabeth. He gave much more evidence, and that as I have said was unfortunate because certain questions put by the accused did not elicit answers very favourable to themselves, but we are not even regarding that evidence. There is only one other thing, and it does not affect the case. He says that accused No. 4 pointed out where a certain revolver and ammunition were to be found, and that was in the possession of one Sixishe who gave evidence to the effect that No. 4 had handed these over to him.

Finally, there is the evidence of Sergeant Johnson. He says that on the train at Adelaide on 21st December, 1964, he found accused No. 3 with a revolver and sixteen rounds of ammunition.

Bearing in mind that we are dealing in each case with accomplice evidence, we are satisfied that we have before us reasonably good accomplice evidence. I have already referred to the fact that Mountain Ngesi and Transkei Nqayi made very favourable impressions,

and appeared to us to give completely satisfactory evidence. But despite the fact that we feel their evidence is reliable, we turn to see what safeguards there are having regard to the nature of the defence. And here there is no evidence by the accused. They failed to give evidence, each and every one of them, under oath and submit to cross-examination. The matter goes a little further than that. In the case of No. 1 he made a long rambling statement, which I think is fairly described by the learned prosecutor as having no relevance to the case at all. It is true that in the course of what he purported to say he denied his presence at the meetings, but he gave us nothing valuable. In fact he opened his remarks by requesting that a doctor be obtained for his sickness.

I turn to No. 2. He gave no evidence, but indicated that he was a member of a study group which was an intellectual study group which discussed various subjects, but did not have any dealings with subjects like violence. Then he maintained that he was trying to leave the country because he was wanted by the police, and he had received that information. So he

purported to offer that explanation as to why he was found on the road between Peddie and Grahamstown. I tried to point out to him in argument that if he was fleeing from the police it is extraordinary that he was on his way back to the Grahamstown and Port Elizabeth areas.

I come to No. 3 accused. His case is that he was regional contact of the regional committee from 1963 and held that post up to his arrest. The only question that has to be decided here is whether his further claim that he was in such a secluded organization that they were not concerned with violence is a valid claim. The evidence is perfectly clear that this organization, once it was banned in 1960, changed over to a policy of violence, and therefore his admission is a very significant one against him, once we find that this was an organization concerned with violence. It is for that reason that I said to him in argument that it does not seem to me to matter whether he was at the "Marks" meeting or not. He was an officer or office bearer of the regional committee, and we find that the regional committee was a committee then in control of the African National

Congress which was advocating and determined upon a policy of violence.

No. 4 also gave no evidence. I can find nothing in his statement that makes me pause for a moment to think that further investigation is necessary. In his case too, therefore, there is the factor that the defence tendered no evidence when one is dealing with a search for safeguards when one has to rely on accomplice evidence. Viewing the evidence in its totality, having regard to the features I have mentioned, we are quite satisfied that the State has fully proved the accused's participation in conduct which falls within count 1 (a), and the evidence for that comes from his attendance at the two meetings at Marks and his statements there.

We are satisfied that the evidence indicates quite clearly that No. 1 was the chief recruiting officer, and his conduct also during the period concerned falls within the ambit of count 3 (3). He is convicted on count 1 and count 3.

We are satisfied that accused No. 2's conduct falls within the ambit of the allegations in count 1 (a) and under count 3 (3). Although we might it

does not seem to me to be necessary to hold that he also was guilty of conduct falling under 3 (2) because he was the one who attempted to undergo this training. We leave that out of account. There is no evidence against him on count 2, and that applies to accused No. 1. They are found not guilty on count 2, and convicted on counts 1 and 3.

Accused Nos. 3 and 4 fall to be convicted on all three counts. There is undisputed evidence that they were each in possession of a firearm; that satisfies the requirements in regard to count 2. Their activities as members of the regional committee, and that is all we concern ourselves with at this stage and leave the meetings out of account, establishes their guilt on count 1 (a); and it is because of their membership of the committee that dealt with recruitment, and particularly the recruiting of No. 2 accused, that they are guilty on count 3 (3).

A.G. Jennett.

JUDGE PRESIDENT.

2/2/13.

J. 417.

Telegramadres: „GOVAT."
Alle briewe moet gerig word aan:
PRIVAATSAK 91, PRETORIA.

DEPARTEMENT VAN JUSTISIE.
All communications to be addressed to:
PRIVATE BAG 91 PRETORIA.
Tel. No. 3-8031.

16-6-1966
DIREKTEUR OP SENT THROUGH ON
16.6.66 U.

DEPARTMENT OF JUSTICE

JHduT/HvdW

Meld in u antwoord asb:
In reply please quote:
No. 941/66
Kamer/Room.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

DIE STAATSPROKUREUR,
THE STATE ATTORNEY,
VERITASGEBOU,
VERITAS BUILDING,
FOUNTAINLAAN,
FOUNTAIN LANE,
PRETORIA.

15 Junie 1966

Die Sekretaris van Justisie,
Privaatsak 81,
P R E T O R I A

HOOGGEREGSHOF AANSOEK : SOUTH AFRICAN DEFENCE AND AID FUND en R. HOFFENBERG

U verwysing is No. 2/2/13.

1. Ek erken met dank ontvangs van u diensbrief van 7 deser en wens u mee te deel dat die inhoud daarvan oorgedra word aan die betrokke persone.

2. Vir u inligting stuur ek u hiermee n afskrif van my diensbrief wat ek vandag gerig het aan die Adjunk-Staatsprokureur, Kaapstad. Verdere verwikkelinge sal so gou as moontlik aan u oorgedra word.

STAATSPROKUREUR

Aan te gaan asb.
O/A(R) 17/6
17/6/66
17/6/66.

2/2/13

JHduT/HvdW 941/66

L U G P O S 15 Junie 1966

Die Adjunk-Staatsprokureur,
Privaatsak 9001,
K A A P S T A D

SOUTH AFRICAN DEFENCE AND AID FUND teen RAYMOND HOFFENBERG EN DIE MINISTER VAN JUSTISIE : SAAK NR. M.286/66
658

Ek bevestig die telefoniese gesprek wat ek op 14 deser met u meneer Schutte gehad het toe u meegedeel is dat Advokate Hoexter en Swart die mening uitgespreek het dat die Eiser se aansoek om wysiging nie bestry moet word nie. Nadat die wysiging deur die Hof toegestaan is, sal dit Eiser se plig wees om ooreenkomstig die nuwe Hofreëls gewysigde besonderhede van sy eis op Verweerder te bestel en Advokate verlang dat so gou die gewysigde besonderhede op u bestel word, dat u dit dringend per lugpos aan hierdie kantoor besorg. Daarna sal Advokate oorweeg of n aansoek om nadere besonderhede ingevolge Hofreël 21 aangevra moet word, alternatiewelik of gebruik gemaak sal word van Hofreël 23.

Ek sal dit gevolglik waardeer as u op ontvangs van die gewysigde besonderhede dit onmiddellik aan my per lugpos en spoed aflewering sal stuur.

U verwysing is No. 1391/66/CC/1.

J.H. DU TOIT
nms: STAATSPROKUREUR

J.21

8-6-1966

Mr. David H. Wheatley,
Muscular Dystrophy Group
of Great Britain,
4 Brancepeth Village,
Durham,
ENGLAND.

Dear Sir,

re: ASSETS: THE DEFENCE AND AID FUND.

With further reference to your letter dated the 25th March, 1966, I have to inform you by direction of the Honourable the Minister of Justice, that he is by law precluded from designating charitable or scientific organizations outside the Republic of South Africa to which any balance remaining after the payment of the debts of an unlawful organization should be distributed. It is therefore regretted that your request cannot be acceded to.

Yours faithfully,

PRIVATE SECRETARY.

THE SECRETARY FOR JUSTICE.

Copy transmitted by direction for your information please.

Your file No. 2/2/13 refers.

PRIVATE SECRETARY.

J.21

Mr. David H. Wheatley,
Muscular Dystrophy Group
of Great Britain,
4 Brancepeth Village,
Durham,
ENGLAND.

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re: ASSETS: THE DEFENCE AND AID FUND.

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Yours faithfully,

PRIVATE SECRETARY.

SECRET.

THE SECRETARY/MINISTER.

ASSETS OF THE DEFENCE AND AID FUND.

1. Mr. D.H. Wheatley, on behalf of the Mid-Durham Branch of the Muscular Dystrophy Group of Great Britain, states that the said Group is one of the selected beneficiaries of the Durham University's Rag Fund. The Defence and Aid Fund, which is also a beneficiary, received an amount of R1860 (£930) from the Rag Fund. This amount would presumably have been paid to the Mid-Durham branch of the Group had the Rag Committee paid heed to advice given (presumably by the Group) when the Defence and Aid Fund was nominated as a beneficiary. He now requests that the said amount be donated to this branch. [redacted]

2. The Minister requires comments and the submission of a draft reply. [redacted]

3. The Department is of the opinion that the charitable or scientific organizations referred to in section 4(3) of Act No. 44 of 1950 are limited to organizations in the Republic. The law advisers agree. [redacted]

4. A draft reply is in the cover for the Private Secretary to sign please, should the Minister approve.

25/5/66
27/5/66
1.6.66
3/6/66
3.6.66.

J.21

Mr. David H. Wheatley,
Muscular Dystrophy Group
of Great Britain,
4 Brancepeth Village,
Durham,
ENGLAND.

Dear Sir,

re: ASSETS: THE DEFENCE AND AID FUND.

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Yours faithfully,

PRIVATE SECRETARY.

DIE SEKRETARIS. 2/2/13

BATES VAN ONWETTIGE ORGANISASIES.

Ons word gevra of die woorde "een of meer liefdadigheids- of wetenskaplike organisasies" in artikel 4(3) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet No. 44 van 1950), ook buitelandse organisasies insluit.

Geen duidelike aanduiding word in bogenoemde Wet gevind wat enigsins enige lig op hierdie vraag werp nie. Ons moet ons dus wend tot die reëls wat by die uitleg van wette toegepas word om 'n antwoord op daardie vraag te vind.

Daar is onses insiens twee reëls van interpretasie wat in hierdie geval aangewend kan word en albei lei tot dieselfde antwoord.

Daar is in die eerste plek 'n algemene vermoede dat die wetgewer nie bedoel het om buite sy eie jurisdiksie te gaan nie. Maxwell on Interpretation of Statutes, 11de Uitgawe, verklaar hieroor op bladsy 138 soos volg:

> "Another general presumption is that the legislature does not intend to exceed its jurisdiction. Primarily, the legislation of a country is territorial. The general rule is that extra territorium jus dicenti impune non parentur (Dig. 2.1.20). The laws of a nation apply to all its subjects and to all things and Acts within its territories ..... They apply also to all foreigners within its territories (not privileged

2/.....

like sovereigns and ambassadors) as regards criminal, police, and,indeed, all other matters except some questions of personal status or capacity ..... This indeed does not comprise the whole of the legitimate jurisdiction of a state, for it has a right to impose its legislation on its subjects in every part of the world; ..... but, with that exception, in the absence of an intention clearly expressed or to be inferred either from its language, or from the object, subject matter, or history of the enactment, the presumption is that Parliament does not design its statutes to operate on its subjects beyond the territorial limits of the United Kingdom.".

Aangesien 'n bedoeling dat artikel 4(3) van bogenoemde Wet ook van toepassing moet wees op buitelandse organisasies nie in die Wet duidelik uitgedruk is nie en aangesien so 'n bedoeling nie van die taal, of die doel of die onderwerp of die geskiedenis van daardie bepaling afgelei kan word nie, moet ons aflei dat die Wetgewer bedoel het dat artikel 4(3) alleen van toepassing is op organisasies binne sy eie territoriale jurisdiksie.

Daar is in die tweede plek 'n vermoede dat wanneer 'n wetgewer 'n wet aanneem wat vir die een of ander reg of voordeel voorsiening maak, hy daardie reg of voordeel vir sy eie onderdane bedoel. Artikel 4(3) van genoemde Wet bepaal dat indien daar 'n oorskot is nadat die bereddenaar die skulde van 'n onwettige organisasie betaal het, daardie oorskot oorbetaal moet word aan een of meer liefdadigheids- of wetenskaplike organisasies deur die Minister aangewys.

In hierdie verband verklaar Maxwell on Interpretation of

3/.....

Statutes, 11de Uitgawe, op bladsy 148 soos volg:

> "Generally, we must assume that the legislature confines its enactments to its own subjects, over whom it has authority and to whom it owes a duty in return for their obedience. Nothing is more clear than that it may also extend its provisions to foreigners in certain cases ..... But the presumption is rather against the extension.....".

Volgens Maxwell was dit hierdie vermoede wat toegepas is in Calquhann v. Heddan (1890) 25 Q.B.D. 135. Die vraag in daardie geval was of 'n belastingrabat in England geëis kan word ten opsigte van assuransie wat met 'n Amerikaanse Assuransiemaatskappy aangegaan is, waar 'n Britse wet daardie rabat gemagtig het in die geval van assuransie "in or with any insurance company existing on the 1st November, 1844". Die Amerikaanse maatskappy het op genoemde datum bestaan maar die Hof het beslis dat ten spyte van die algemene woorde "any insurance company", die rabat nie toelaatbaar was nie. In die loop van sy uitspraak het die Hof hom soos volg uitgelaat:

> "It is strongly argued that it therefore comes within the very words 'with any insurance company existing on November 1, 1844.' Now supposing the words 'any insurance company' stood alone, and there were nothing else in the section to modify the view which one would take of their meaning, would it or would it not be right to say that those words in an English Act of Parliament would include all foreign insurance companies, wheresoever they might be? What is the rule of construction which ought to be applied to such an enactment, standing alone? It seems to be that unless Parliament expressly declares otherwise, in which case,

4/.....

even if it should go beyond its rights as regards the comity of nations, the Courts of this country must obey the enactment, the proper construction to be put on general words in an English Act of Parliament is that Parliament was dealing only with such persons or things as are within the general words and also within its proper jurisdiction, and that we ought to assume that Parliament (unless it expressly declares otherwise) when it uses general words is only dealing with persons or things over which it has properly jurisdiction. It has been argued that that is so only when Parliament is regulating the person or thing which is mentioned in the general words. But it seems to me that our Parliament ought not to deal in any way, either by regulation or otherwise, directly or indirectly, with any foreign person or thing which is outside its jurisdiction, and unless it does so in express terms so clear that their meaning is beyond doubt, the Courts ought always to construe general words as applying only to persons or things which will answer the description and which are also within the jurisdiction of Parliament. If, therefore, those words stood alone, I should be of opinion that the insurance companies mentioned must be insurance companies over which our Parliament has jurisdiction and that the section would be confined to such companies.".

Ook op grond van hierdie vermoede is ons van mening dat artikel 4(3) van bogenoemde Wet nie op buitelandse organisasies van toepassing is nie.

Dat 'n wetgewer vermoed word sy wette alleen teen voordele

van persone binne sy eie territoriale jurisdiksie te maak blyk verder uit die beslissing in Le Roux v. Provincial Administration (O.F.S.) 1934 O.P.Q.1. In hierdie geval was daar 'n regulasie, kragtens Ordonnansie No. 15 van 1930(O) uitgevaardig, wat soos volg gelui het:

> "no child, who has completed his sixth year shall be refused admission to a public school....."

Die vraag het ontstaan of 'n ouer wat met sy kind buite die Oranje-Vrystaat woon, op grond van daardie regulasie kan eis dat sy kind tot 'n openbare skool in daardie provinsie toegelaat word. Die betrokke ouer het op bostaande algemene woorde van die regulasie gesteun maar sy eis is verwerp. Volgens die opskrif van die Hofverslag het die Hof soos volg beslis:

> "The word 'child' used in Regulation 3 of Part 5 of the Regulations framed under Ordinance 15 of 1930(O), prohibiting the refusal of admission of a European child to a public school must be limited to those who live within the boundaries of the O.F.S. Province, and no parent living with his children outside the territorial boundaries of the Province can claim the right to have his children admitted to a public school in the Province.".

Ons besluit dus dat die woorde "een of meer liefdadigheids- of wetenskaplike organisasie" in artikel 4(3) van Wet 44 van 1950 beperk moet word tot liefdadigheids- en wetenskaplike organisasies in die Republiek.

P. J. CONRADIE
6/5/66

GEHEIM.

DIE REGSADVISEURS.

BATES VAN ONWETTIGE ORGANISASIES.

1. Die Defence and Aid Fund is by Proklamasie No. R.77 van 1966 gedateer 18 Maart 1966 ingevolge artikel 2(2) van die Wet op die Onderdrukking van Kommunisme, 1950 (Wet 44 van 1950) tot onwettige organisasie verklaar.

2. Luidens artikel 3(1)(b) van die gemelde Wet gaan al die eiendom van so 'n organisasie op 'n persoon aangestel as Beredderaar oor, en die Beredderaar vergewis hom of die bates van die onwettige organisasie voldoende is om die skulde daarvan te betaal. (Artikel 4(1)). Indien daar voldoende bates is tref die Beredderaar alle maatreëls om die skuld te vereffen, (Artikel 4(2)) en indien daar enige oorskot is na-dat die skulde vereffen is, word dit oorbetaal aan een of meer liefdadigheids- of wetenskaplike organisasies deur die Minister aangewys. (Artikel 4(3)).

3. Die vraag het ontstaan of hierdie organisasies beperk is tot plaaslike organisasies, en of dit ook buitelandse organisasies insluit.

4. Geen duidelike aanwysing word in hierdie verband in die betrokke wet gevind nie, maar aangesien die statuut alleen op interne aangeleenthede betrekking kan hê, word die mening gehuldig dat die organisasies bedoel in artikel 4(3) van die betrokke wet suiwer buitelandse organisasies sal uitsluit.

Mnr. T.B. Vorster,
Kamer 534,
Telefoon 33495.

DEPARTEMENT VAN JUSTISIE
PRETORIA
ONTVANG RECEIVED
21 -4-1966
DEURGESTUUR OP SENT THROUGH ON
21/4/66 9.
DEPARTMENT OF JUSTICE

R.K.

By beantwoording meld asb.
In reply please quote
J.21/22/1.

REPUBLIEK VAN SUID-AFRIKA.—REPUBLIC OF SOUTH AFRICA.

Ministerie van Justisie,
Ministry of Justice,

Uniegebou,
Union Buildings,

PRETORIA.

21 -4- 1966

THE SECRETARY FOR JUSTICE.

RE: LETTER DATED 25TH MARCH, 1966, RECEIVED FROM MR. DAVID H. WHEATLEY.

The attached letter is forwarded by direction for your comments and the submission of a draft reply, please.

PRIVATE SECRETARY.

O.S.R.

Bespreek.

22.4.66.

R/9.

① [illegible]
② [illegible] 29/4/66

25/4/66

I9/2

MINISTER VAN JUSTISIE

'9 4 1966

MINISTER OF JUSTICE

PRETORIA.

5

Mr. David H. Wheatley,
Muscular Dystrophy Group of
Great Britain,
4 Brancepeth Village,
DURHAM.
ENGLAND.

Dear Sir,

On behalf of the Honourable the Prime Minister I wish to acknowledge the receipt of your communication dated March 25, 1966, and to inform you that your representations have been referred to the Honourable B.J. Vorster, the Republic's Minister of Justice.

Yours faithfully,

W. J. OLIVIER

PRIVATE SECRETARY.

Die Privaatsekretaris van Sy Edele
die Minister van Justisie,
PRETORIA.

In opdrag deurgestuur.

W. J. Olivier.

PRIVAATSEKRETARIS VAN DIE
EERSTE MINISTER.

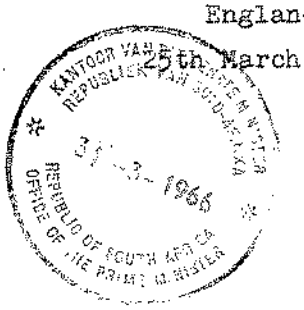
Muscular Dystrophy Group of Great Britain

Mid-Durham Branch.

For the advancement of medical research to alleviate the disability and save the lives of sufferers from progressive muscle diseases

4 Brancepeth Village,
Durham,
England.

25th March, 1966.



The Right Honourable,
Doctor H. F. Verwoerd,
The House of Assembly,
Cape Town,
The Republic of South Africa.

Sir,

In 1965, this Branch of the Muscular Dystrophy Group of Great Britain was selected, in common with certain other organisations, to benefit from the funds raised by the students of Durham University during their Rag Week.

One of the beneficiaries was 'Defence in Aid' which, so I understand, received some £930 as did this Branch. It was recently announced in the press that Defence in Aid has been disbanded, and as a result of this it is assumed the funds in the possession of the organisers will have been appropriated. If this is correct, may I request that consideration be given to the amount quoted above being donated to this charity. It is reasonable to suppose that had the Rag Committee paid heed to advice given when Defence in Aid was nominated, then this Branch would have received the additional sum.

A factor prompting this letter is that I am a nephew, by marriage of Dr. The Honorable Thomas Boydell, and whilst he has no knowledge of my appeal, I am certain he would speak on my behalf.

I remain, Sir,

Yours faithfully,

David N. Wheatley

Group Headquarters: 26 Borough High Street, London, S.E.1. Telephone HOP 5116

2/2/13

THE SECRETARY / MINISTER. 1/6/53

STATE DEFENCE FOR ACCUSED CHARGED WITH CRIMES WITH POLITICAL BACKGROUND.

1. Minute No. 5/5/2/A dated the 11th May, 1966, and annexures received from the Attorney-General, Grahamstown, are in the file ("11.5.66"). The documents concern the activities of the Defence and Aid Fund. It would appear from the documents as if the Defence and Aid Fund made a practice thereof not to provide counsel for the defence of prisoners charged with capital crimes presumably because pro deo counsel would be available in such cases. The majority of such prisoners charged with offences of a political nature, however, refused the services of pro deo counsel because they considered themselves entitled to be represented by counsel briefed by Defence and Aid. The result was that prisoners charged with capital crimes often went unrepresented while Defence and Aid provided for the defence of others charged with less serious offences (11.5.66).

2. Submitted for the Minister's information.

1/6/66.

2/6/66 7/6/66

3.6.66

No 876/66.

6.6.66.

RSA No 876/68

Deal with enquiry in Parliament.

1/6/53.
17/K
15/5/66

16 .66

16/5/66

Verw. Nr./Ref. No.

DEPARTMENT OF JUSTICE

NAVRAE/ENQUIRIES.

Tel. No.

REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

KANTOOR VAN DIE–OFFICE OF THE

Lê asb. aan Min. voor vir afdoening.

[illegible], 1966.

[illegible]

O.S.T. Bespreek met Pro 17.5.66.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

possible. Despite repeated requests by the accused, the Fund did not appoint Counsel. As the accused refused _Pro Deo_ Counsel, offered by the Court, they were unrepresented at the trial. At virtually the same time there were for less serious offences being heard in the Regional Court at which Counsel, brought down from Johannesburg, appeared for the accused.

6. After completing arrangements for the future defence of all accused charged with crimes with a political background, I, on the 15th May 1966, received a telephone call from an attorney who has in the past acted for the Defence and Aid Fund, namely Mr. Arderne, of Solomon, Arderne and Fayan, Port Elizabeth.

7. He prefaced his conversation by saying that he wished to act "loyally" and that it was for this reason that he was telephoning me. He then went on to say that he had just been informed by Ruth Hayman of Johannesburg that an amount of R2000 had been received by her from a private firm of attorneys in London with instructions that the money was to be used for the defence of accused charged with political crimes. I enquired whether it was intended to defend all accused so charged, to which he replied that the limited funds would not permit this. I suggested he passed this information to the Security Police.

[illegible]/TOUF.

H. [illegible] MASTERS
ATTORNEY-GENERAL

IN THE SUPREME COURT OF SOUTH AFRICA.

(EASTERN CAPE DIVISION)

On the 27th October, 1965.

BEFORE THE HONOURABLE JUDGE PRESIDENT MR. JUSTICE JENNETT.

In the matter of:

THE STATE versus

1. JULIUS MTALAHA
2. KOLISILE WILLEM
3. WASHINGTON MABONGO

COUNSEL FOR THE DEFENCE INFORMS THE COURT THAT THE ACCUSED DO NOT WISH HIM TO DEFEND THEM. COUNSEL WAS APPOINTED PRO DEO.

BY THE COURT. Tell the Accused Mr. Interpreter that I understand that they refused to have Counsel?— That is correct.

Can I ask why? — We want one appointed by the Defence And Aid.

Why? — We don't know the gentleman who was supposed to Defend us.

Do you know these people at the Defence And Aid? — Yes we do.

Which of them do you know? — I have just momentarily forgotton his name.

Now you know one? — Yes.

From where? — From Port Elizabeth.

Let me tell them that the Attorney General and the Registrar have been to great pains over the last fortnight. They have been in direct contract with the Defence And Aid on a number of occasions. The Defence And Aid said that they were not defending anyone of the Accused in this series of trials and I think that one of the reasons is because the Court was prepared to offer Counsel to you. It seems to me in the result that the Defence And Aid have had the extraordinary affect of creating in your minds the outlook that the only Counsel you could trust would be the Defence And Aid Counsel. And if that is so, I can only say, and I say it deliberately that they would have done a great disservice.

In due course I might have other comments to offer, and I finally understand from you that you wish to defend yourselves? — If we cannot obtain Counsel from Port Elizabeth, we will then defend ourselves.

You will not obtain Counsel from Port Elizabeth, that I can assure you, unless you pay for Counsel yourselves? — Under the circumstances I wish the trial to continue and I shall defend myself.

Yes. You can inform your colleagues the Defence And Aid in none of the cases being tried in this series right throughout until the end of next week, will receive the Defence And Aid Counsel.

17/7/2

Oos-Kaapse

Privaatsak 1011,

GRAHAMSTAD.

10 Mei 1966.

Die Prokureur-generaal,
GRAHAMSTAD.

PRO DEO VERDEDIGING.

1. Die volgende is n uittreksel uit my diensbrief van 3 Desember 1965 aan die Sekretaris van Justisie soos versoek deur mnr. Taljaard van daardie kantoor:

"Die volgende vyf sake sou op 25, 26, 27 en 29 Oktober en 1 November 1965, onderskeidelik voor hierdie Hof dien.

Die Voorsittende Regter het soos dit die gebruik is, advokate aangestel om namens die beskuldigdes in elk van die sake op te tree.

Met die aanvang van die verhoor van die saak op 25 Oktober 1965, het die vier beskuldigdes te kenne gegee dat hulle weier om van die dienste van die advokaat wat deur die Hof aangestel is, gebruik te maak aangesien die "Defence and Aid" na hul beweer, onderneem het om reëlings te tref dat advokate opdrag sou ontvang om die verdediging waar te neem.

Die Hof verdaag en gelas die Griffier om navraag te doen by prokureurs Feldman & Benn van Port Elizabeth of advokate wel opdrag ontvang het soos beweer deur die beskuldigdes. Nadat die Hof teyredegestel is dat geen advokaat deur die prokureursfirma aangestel sal word nie, is die verhoor voortgesit. Die beskuldigdes is deur die Hof meegedeel dat "Defence and Aid" nie reëlings vir hulle verdediging getref het nie en herhaal die Hof dat n pro Deo advokaat (wat teenwoordig was in die Hof) aangestel is om namens hulle op te tree. Elkeen van die beskuldigdes het daarop die Hof meegedeel dat hulle nogmaals weier om die dienste van n pro Deo advokaat te aanvaar en dat hulle self hul verdediging sal waarneem.

2/.....

Die beskuldigde in die daaropvolgende vier sake het dieselfde houding ingeneem.

Op 1 November 1965 het die Regter-president die Griffier gemagtig om, indien nodig, die volgende verklaring uit te reik:

> "In sabotasieverhoorsake wat sedert 25 Oktober voor hierdie Hof gedien het, het die betrokke beskuldigdes geweier om die dienste van advokate wat op n pro Deo-grondslag deur die Hof aangebied is te aanvaar en te kenne gegee dat hulle die dienste verlang van advokate wat deur "Defence and Aid" aangestel is.
>
> Die Regter-president het die beskuldigdes meegedeel dat na aanleiding van die reeks sake wat nou verhoor word, die Prokureur-generaal vasgestel het dat "Defence and Aid" nie opdragte aan advokate sal gee nie en dat bevestiging van hierdie feit deur die Griffier verkry is ten tye van die eerste saak.
>
> Die Regter-president het daarop gesê dat hy aanvaar dat "Defence and Aid" die advokate sal opdrag gee nie aangesien "Defence and Aid" bewus is van die feit dat die dienste van pro Deo advokate aan die beskuldigdes beskikbaar gestel sal word. Voorts dat dit moontlik is dat die beskuldigdes in die huidige reeks sake wantrouig is teenoor advokate wat nie deur "Defence and Aid" aangestel is nie aangesien "Defence and Aid" in ander sake wel advokate opdrag gegee het.
>
> In elke sabotasiesaak wat voor hierdie Hof gedien het, is pro Deo-advokate aan beskuldigdes beskikbaar gestel".

2. Afskrifte van my diensbrief van 28 April 1966 word aangeheg vir u inligting.

W.P. VAN CUUTSHOORN.

GRIFFIER.

WPVO/HM.

THE SOUTH AFRICAN INSTITUTE OF RACE RELATIONS.
(Incorporated)

CAPE EASTERN REGION

Tel. 2-3606

23 Drake Building,
Jetty Street,
PORT ELIZABETH.

5th April, 1966.

The Secretary:

The Registrar,
Supreme Court,
GRAHAMSTOWN.

Dear Sir,

POLITICAL TRIALS IN THE EASTERN CAPE

I have been asked by my Head Office in Johannesburg to write to you about the above.

Recently the following appeared in the Press:

a) A report of the Department of Information's statement on behalf of the Minister of Justice, issued on 18 March, to the effect that legal aid bureaux have been set up at all centres where members of the legal profession are willing to assist, to provide defence in legal cases provided the applicants quality in terms of a means test devised by each bureau for itself; and that no distinction is made between "political" and other offences. If a bureau does not exist in any particular centre, the help of the nearest available bureau is given, it was stated.

b) A statement by the Minister of Justice, on 22 March, to the effect that obligations in regard to defence entered into by the Defence and Aid Fund will be honoured provided that the fund's assets are adequate.

My Head Office has now asked me to approach you and ask you to ensure that all possible D. and A. Fund commitments regarding defence in pending "political" cases in the Eastern Cape be honoured. Would you please find out which cases (in the Supreme Court and Regional and other Magistrate's Courts) are thus covered. In cases that are not covered, would you invoke the official legal aid machinery to ensure that legal defence will be available to all accused who wish for this and quality in terms of the means test.

I would be grateful of your comments in this connection.

Yours faithfully,

Sheila Penny (mrs.)
REGIONAL SECRETARY.

The Hon. the
Judge President.

Submitted for your information and instructions please.

REGISTRAR

1/6/53.

17/7/2

Eastern Cape

Private Bag 1011,

GR. HAMSTOWN.

28th April, 1966.

The Regional Secretary,
South African Institute of Race Relations,
23 Drake Building,
Jetty Street,
PORT ELIZABETH.

Dear Madam,

PRO DEO COUNSEL.

I wish to acknowledge the receipt of your letter of the 5th April, 1966.

As far as this Division of the Supreme Court is concerned the accused in every case where a charge of contravening Act 44 of 1950 has been involved has been offered pro Deo defence. That practice will be continued.

In some cases that aid has been unnecessary because the Defence and Aid Fund has instructed Counsel for the defence.

In some cases where the D. and A. Fund has not instructed Counsel, the pro Deo defence often has been refused because apparently the accused concerned have felt that the D. and A. Fund should have provided for their defence, presumably because that Fund has provided defence in other cases. When that has occurred the Court and the Attorney-General have made full enquiries and elicited official replies from the representatives of the Fund that it will not be instructing Counsel. When apprised of the enquiries and the replies referred to the accused concerned have generally persisted in their refusal to have pro Deo defence.

I understand that some weeks ago the remarks of the Honourable the Judge President in which he suggested that the D. and A. Fund should advise those accused who might expect D. and A. Fund defence that it would not be provided - received wide publicity.

2/.....

It is not within my competence to ensure that D. and A. Fund commitments regarding defence in pending "political cases" in the Eastern Cape be honoured. Nor can I ascertain which cases are thus covered. Nor have I any power to invoke the official legal aid machinery to ensure that legal defence will be available to all who wish for and qualify for it. The Attorney-General goes to great length to ensure that legal defence is available but is being faced with the refusals that I have mentioned earlier.

Yours faithfully,

W.P. VAN OUDTSHOORN.

REGISTRAR.

WPVO/HM.