

THE COMMISSION IS RESUMED ON 4 NOVEMBER 1982

MR KENTRIDGE: May it please Your Lordship. Before Mr Von Lieres continues, Bishop Tutu on behalf of the South African Council of Churches would like to make a very short statement to Your Lordship and the members of the Commission, following the proceedings yesterday.

CHAIRMAN: Is it by way of response or reaction to the evidence given yesterday by Cain; if it is, then I think that should wait, because ..

MR KENTRIDGE: It is not. It is more a matter of 10
general importance from the point of view of the South African Council of Churches and the Commission.

CHAIRMAN: How much time is it likely to last?

BISHOP TUTU: Three minutes.

CHAIRMAN: Very well.

BISHOP TUTU: M'Lord, when your Commission began its public session last September, you quite rightly pointed out that the Commission was not conducting a trial, but an inquiry whose perimeters were set by the terms of reference issued by the State President. I expressed then our appreciation 20
for the manner in which the officers of the Commission had gone about their business of obtaining information and documentation from the SACC in such a way as to be least disruptive of the Council's every-day business. The SACC on its part has not obstructed the Commission or its officers in carrying out their work. I wrote to our member churches and overseas partners urging them to make submissions to the Commission, and be ready to appear in person to give oral evidence. The SACC has also sought to help the Commission by participating in the public sessions of the Commission, 30
although/...

although not without opposition from some of the Council's constituency. Our understanding of the nature of the Commission's task is to receive with the help of its officers all possible information relevant to the inquiry the Commission is undertaking, information that may show the Council up in a bad light, as well as information that is favourable to the Council. Since this is not a trial, and the Commission is not seeking as it were to catch the Council on the wrong foot, I want respectfully to express my deep disquiet at certain features of the public session so far. 10

The first is that the Council is presented with substantial memoranda only a few hours before a particular witness is to testify, on the basis of his memorandum. Some of the memoranda require to be responded to by a closely argued answering memorandum, and whilst the SACC can ask for a postponement, I believe the interests of justice would be better served if the Council received adversely critical memoranda well in advance. We learn for instance that one such memorandum was in the hands of the Commission as early as last March. It may only be co-incidental, secondly, 20 and perhaps I am speaking out of turn and so speak under correction, but it is odd that the witnesses called so far have been hostile to the SACC. I exclude Mr Wessels and the other accountants from this description. They carried out their professional assignment with integrity. We know that some of the Council's member churches, and indeed our overseas partners, have made submissions. Are any of their officials going to be called? Are any individuals who have made submissions favourable to the Council, going to be called?

Thirdly, as I pointed out in my testimony, 30

theology/...

theology is at the heart of the Council's work, providing its "raison d'être". Are we going to be subjected to the kind of vitriolic half-truths and whole untruths as featured in the last witness' submission? I have found it exceedingly distasteful that Our Lord Jesus Christ and our faith were virtually trodden underfoot in the way it has happened in the submissions of the last witness, and what transpired during his cross-examination. If we are to be subjected to something similar to what I have described, then Your Lordship without any disrespect being intended towards your Commission, the Council and its representatives give notice that we may have to reconsider our position on further participation in the proceedings of your Commission, until after such theological gruel has been handled. Thank you. 10

CHAIRMAN: Mr Kentridge, this is now said by the Bishop. Thus far I have not had any complaints by you that we have not allowed you any opportunity of studying documentation or preparing yourself. I think that in regard to the Wessels matter you were given the report well before; we allowed you adequate time, we thought, to prepare for cross-examination? 20

MR KENTRIDGE: Yes, absolutely. No, such complaints as I have had, I have made to Mr Von Lieres, for example, with regard to the Roelofse memorandum; we got it very late, that is why I had to ask for some postponement. In the case of Mr Cain, we got it late; I had to ask you to allow me to postpone the cross-examination. But one of the things that has worried us particularly, we have had a very substantial, and I say a very factual memorandum from Brigadier Nieuwoudt who is going to give evidence this morning. It is full 30

of statements which we have to check and consider, and full of documentation; you have seen it. We got this at 4 o'clock yesterday afternoon. We had to make copies for various people, and I mean, counsel is used to studying these things overnight, but many people are mentioned here whom we have never seen or spoken to. I do not like asking for a postponed cross-examination, M'Lord. There may well have been some good reason why we could only get this yesterday afternoon at 4 o'clock, but I prefer to do my best with what I have got, but I think that after all, Bishop Tutu himself who is 10 very much concerned at what is in this memorandum, he was only able to see it this morning, and from my point of view, I do not want to make complaints to you, M'Lord, but from what Bishop Tutu has said - is actually a fact. I would like to place on record that when I have needed a postponement for cross-examination, the Commission has always given it to me. But no one likes to have to do that.

CHAIRMAN: Well, I want to emphasise what I have said before, that there shall be the fullest possible opportunity of leading any evidence that is presented here, and if 20 at any stage the SACC or its counsel feel that time is required, the request is to be made; requests have been made in the past and have been acceded to, and in regard to the witness who is now going to be called, if counsel feels that he needs time to prepared for cross-examination, that will be favourably considered. It is my deep concern that there should be the feeling throughout that fairness has prevailed in the inquiry, and I want to invite everybody concerned to draw my attention to anything which may stand in the way of an adequate presentation of the case. 30

Speaking/....

MR KENTRIDGE: Speaking as counsel, as I have said you have given every opportunity, and I acknowledge that. The other matters that Bishop Tutu has dealt with, in regard to the type of witness who has been called and his attitude to the sort of theological attack made on the SACC by the last witness, of course those are more profound matters, and Bishop Tutu has said what he has to say.

CHAIRMAN: Yes, in regard to that I need hardly say that the Commission is not to be identified with any witness called. Persons have been invited to make representations and that is what happened yesterday. This Commission of Inquiry does not in any way identify with any witness, and it will weigh the evidence given as - and weigh that up against any contrasting evidence. That is our function, and that is the purpose of hearing these people. I repeat, if at any stage the SACC, its counsel or any of the participants, any interested parties feel that they need an adjournment or a fuller opportunity of presenting the case, they need only say so and it will be considered on its merits.

MR VON LIERES: Mr Chairman, perhaps I should lay this matter - I find it very odd that the Bishop could say it is odd that witnesses called so far were hostile to the South African Council of Churches. It appears to me that Your Lordship should perhaps explain to the Bishop, where a commission gets its evidence from. It is people who write in to the Commission at the request of the Commission; the Commission does not search out these witnesses; they come to the fore and submit their own memoranda. It seems to be a dart directed towards the Commission that it calls witnesses who were so far hostile to the SACC. I do not know/....

know whether the Bishop quite understands the nature of -
how a commission functions.

CHAIRMAN: Yes, I am glad you raised that. I should perhaps repeat what I think I have said before, that when we started our inquiry we issued a press statement inviting everybody who has an interest or feels he could make a contribution to do so, and there were responses, and the responses came from people who have now given evidence, specifically in regard to Cain for instance, he responded on his own, made a request to give evidence and that opportunity was given 10 to him, and that is the way in which an inquiry of this sort is conducted. Call the next witness.

ERNST HENDRIK WOLFAARDI NIEUWOUDT, verklaar onder eed:

MNR VON LIERES: U is 'n brigadier in die Suid-Afrikaanse Lugmag, en u is verbonde aan die Hoof van Staf? --- Korrek.

Nou, u het - vertel miskien net vir die Kommissie, die memorandum wat u aan die Kommissie voorgelê het, hoe het dit ontstaan? --- Kan ek net - brei net 'n bietjie meer uit op die vraag asseblief?

Die memorandum, is dit 'n amptelike Weermag- 20
memorandum wat u .. --- Amptelike Weermag-memorandum.

En het u dit voorberei in opdrag van die Weermag? ---
Vorberei in opdrag van die Weermag, heeltemal korrek.

Hierdie memorandum opgesom deel met feite wat verband hou met gewetensbesware en twee ander aspekte, kapelaansdiens oor die grens? --- Ja.

Die feite hierin, het u beheer oor die .. --- Ek het beheer. Uit die aard van my aanstelling is - ressorteer dit onder - het ek beheer oor hierdie feite.

En dit is nou die praktiese feite. Wat van die 30
teologiese /...