

CONFIDENTIAL

FM CAPE TOWN EMBASSY

TO IMMEDIATE FCO

TELNO 246

OF 280900Z JUNE 1988

INFO IMMEDIATE UKDEL HANOVER (S OF S PARTY)

*Die Minister
to note X, please
EON*

SOUTH AFRICA : SHARPEVILLE SIX

1. I CALLED ON THE DIRECTOR-GENERAL IN THE JUSTICE DEPARTMENT TO DISCUSS THE LATEST DEVELOPMENTS IN THIS CASE. HE SAID THAT THE DEFENCE HAD NOW TO DECIDE WHETHER TO PETITION THE ACTING CHIEF JUSTICE FOR LEAVE TO APPEAL AGAINST THE DECISION OF THE TRIAL JUDGE AGAINST RE-OPENING THE CASE. IF THE PETITION FOR LEAVE TO APPEAL WAS REJECTED, IT WOULD STILL BE OPEN FOR THE DEFENCE LAWYERS TO RE-PETITION THE STATE PRESIDENT TO CONSIDER EXERCISING CLEMENCY. THAT WOULD HAVE TO BE MOTIVATED BY NEW EVIDENCE. THE DEFENCE WAS ARGUING THAT THE EVIDENCE OF ONE OF THE WITNESSES HAD BEEN MODIFIED IN RESPECT, IN PARTICULAR, OF THE ACCUSATIONS AGAINST TWO OF THE ACCUSED. IF THE STATE PRESIDENT CONSIDERED THAT THERE WAS INDEED SOME CHANGE IN THE EVIDENCE, IT WOULD BE OPEN TO HIM EITHER HIMSELF TO DECIDE ON THE MATTER OR TO REFER IT BACK TO A COURT FOR INVESTIGATION AND ADVICE.
2. VAN DER MERWE ADDED, SPEAKING PERSONALLY, THAT IN CASES ONE AND TWO, WHERE THE ACCUSED HAD BEEN FOUND GUILTY OF THROWING STONES WHICH ACTUALLY HAD STRUCK COUNCILLOR DHLAMINI, IT WAS DIFFICULT TO CONTEST THAT THEY HAD CONTRIBUTED DIRECTLY TO DHLAMINI'S DEATH. THERE MIGHT, HE ACKNOWLEDGED, BE ROOM FOR MORE ARGUMENT IN RESPECT OF SOME OF THE OTHER CASES.
3. I MADE CLEAR THAT WE HOPED THAT THE PEROGATIVE OF MERCY WOULD BE EXERCISED IN ALL SIX CASES. WE WERE NOT ARGUING ABOUT THE GUILT OF THE ACCUSED, WHICH WAS FOR THE COURTS TO DECIDE, OR ABOUT THE DOCTRINE OF COMMON PURPOSE, WHICH WAS A FEATURE ALSO OF UK JURISPRUDENCE. OUR CONCERN WAS WITH THE SEVERITY OF THE SENTENCES, GIVEN THE PARTICULAR CIRCUMSTANCES OF THIS CASE. AT THE POINT AT WHICH THE DEFENCE RE-PETITIONED THE STATE PRESIDENT, WE WOULD WANT THE TERMS OF THE PRIME MINISTER'S APPEAL TO BE PLACED AGAIN BEFORE THE STATE PRESIDENT. THE DIRECTOR-GENERAL CONFIRMED THAT THIS WOULD BE DONE.

RENWICK