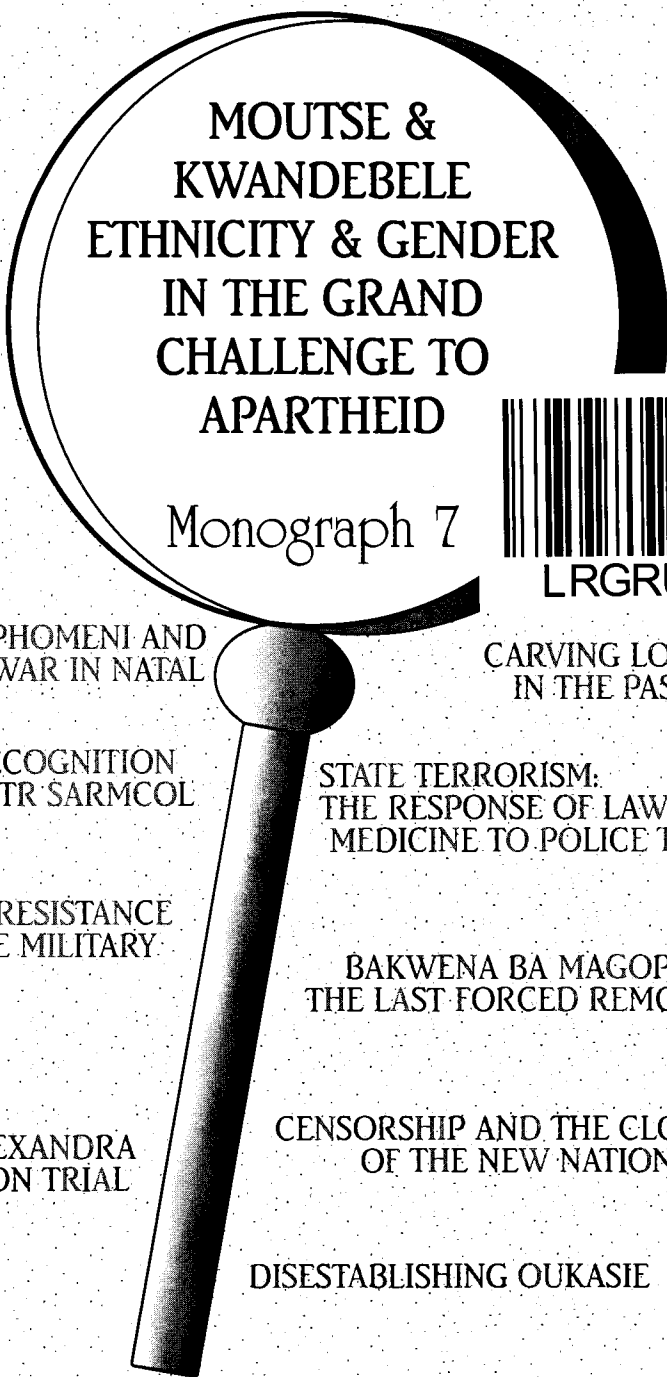
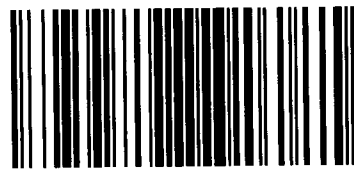


LAW IN THE STRUGGLE AGAINST APARTHEID, 1980 - 1994



MOUTSE &
KWANDEBELE
ETHNICITY & GENDER
IN THE GRAND
CHALLENGE TO
APARTHEID

Monograph 7



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OF THE NEW NATION

DISESTABLISHING OUKASIE

MOUTSE AND KWANDEBELE ETHNICITY AND GENDER
IN THE CHALLENGE TO GRAND APARTHEID

**MOUTSE AND KWANDEBELE:
ETHNICITY AND GENDER IN THE
CHALLENGE TO APARTHEID**

RICHARD L. ABEL

CENTRE FOR APPLIED LEGAL STUDIES
UNIVERSITY OF THE WITWATERSRAND,
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FOREWORD

According to the Grand Design of apartheid, ten ethnic "states" were to be carved out of South Africa's territory to accommodate the political aspirations of the African section of the population, comprising some 70 percent of the country's population. Not all Africans would be expected to live in these "Bantustan states"—together constituting just 13 percent of the land—as the presence of many millions was required in "white" South Africa to provide the labour force for a modern industrial state. However, they would be given citizenship and political rights in these territories, which they might exercise to elect puppet leaders to puppet legislative bodies. In this way the National Party government of South Africa could argue before the international community that there was no race discrimination in South Africa because the African people were citizens of foreign states, in which they exercised their political rights, and only entered South Africa as migrant workers.

The political leaders of four of these ethnic states or Bantustans—installed by the South African government—took "independence," without referenda among their peoples and in the face of opposition. These were Transkei (1976), Bophuthatswana (1977), Venda (1979), and Ciskei (1981), collectively known as the TBVC states. After Ciskei took independence in 1981 none of the other six Bantustans, which all had a measure of self-government, was willing to accept independence as it had become clear to them that there were no real advantages to be obtained from this exercise. After all, the TBVC states were internationally unrecognized and economic failures. This was a major political setback for the National Party government as, if it was to maintain the momentum of apartheid, it was necessary that all, or at least more, of the Bantustans should accept "independence."

The South African government, therefore, welcomed the decision of the unsophisticated and corrupt leadership of KwaNdebele to opt for independence. There was, however, one problem that faced the statemakers. KwaNdebele, the home of the South Ndebele people, was small and underpopulated. The solution arrived at, therefore, was to detach the neighbouring territory of Moutse, occupied largely by North Sotho or Pedi people, from their own Bantustan of Lebowa and give it to KwaNdebele to make it more viable in terms of land and people.

The present study is about the farcical, but tragic, attempt of the South African government, aided by its surrogates in KwaNdebele, to incorporate Moutse into KwaNdebele and to create an "independent" KwaNdebele. The study is about the absurdity of the policy, the brutality of the police and vigilante groups, and the callousness of the white bureaucrats who masterminded the Grand Design of apartheid. It is about apartheid in its dying years; about the last-ditch attempt to create a new "independent" Bantustan to give fresh credibility to apartheid at a time when apartheid in South Africa itself was disintegrating under internal and foreign pressure.

Why did the bureaucrats of Pretoria persist in this ridiculous attempt to salvage apartheid? Essentially it was because a large colonial service had grown up in the South African administration, whose existence depended on the maintenance and expansion of internal colonialism under the banner of territorial apartheid. They could not believe that their Apartheid Empire was soon to collapse and that, like the colonial services of Britain and France in the 1960s, they would be without colonies and careers. So strongly did these white Afrikaans bureaucrats believe in their cause that when Nelson Mandela was released from prison in early 1990 they were still engaged in the process of trying to expand their Empire.

This study is also about the continued confidence of rural African communities in the law and its processes. Despite years of oppression under the law, they persisted in the belief that justice would ultimately triumph in the courts of the land. Unlike many other communities their confidence was ultimately rewarded. Decisions of the courts invalidating the incorporation of Moutse into KwaNdebele, and expanding voting rights to women in KwaNdebele, destroyed KwaNdebele's bid for independence.

Public interest lawyers of the Centre for Applied Legal Studies of the University of the Witwatersrand and the Legal Resources Centre planned and executed the legal strategies that obstructed KwaNdebele's independence. Their successes were a victory for public interest law, which was introduced to South Africa in the late 1970s. Unlike "ordinary" lawyers with busy and diverse legal practices, public interest lawyers were able to make a thorough study of the historical and political background of the situation, before embarking on the legal research and careful preparation required for their legal strategies. In the result this was to prove to be the most effective way of challenging the apartheid state.

The present study gives a thorough and detailed account of the last "fling" of apartheid. It provides an important historical record of the events of this time and the place of law and lawyers in this history. Apartheid was both evil and absurd. The KwaNdebele/Moutse episode illustrates this to the full.

JOHN DUGARD
SEPTEMBER 1994

We started this homeland with only R16.40 in our coffers and only 240 Ndebele people with one school to our credit. We are now able to count our money in millions. I cycled all over getting our people together. Now that we have built expensive schools people want to burn them. Mbhokoto will deal with such people. (Chief Minister Simon Skosana, January 1986)

Government is not exercising any pressure on any resident in the Moutse area to move elsewhere. Consequently it is not dependent upon a possible Parliamentary debate on the Proclamation incorporating Moutse into KwaNdebele. (Minister of Education and Development Aid Gerrit Viljoen, February 1986)

[The government denial that this was a removal] was like telling people sitting in a truck that you are not taking them anywhere. (Maredi Chueu, Moutse member of the Lebowa Legislative Assembly, January 1986)

[T]he excising of Moutse from the jurisdiction of the Lebowa Government took place by statute. . . . The loss of rights associated therewith, consequently, is not caused by Proclamation 227 and the incorporation into KwaNdebele, but by Parliament. Insofar as unreasonableness is the issue, it therefore drops out of consideration. It is not for me to pass judgment about whether that decision was good or bad, desirable or undesirable, wise or unwise. (Justice T T Spoelstra dismissing Moutse's challenge to incorporation, December 1986)

It is not for the purposes of effective administration that self-governing territories are created—the aim is . . . the political development of the various peoples. (Justice Grosskopf allowing Moutse's challenge to incorporation, March 1988)

For a long time, it has been reasonably accepted in South Africa that women are no less eligible than men to express themselves politically. There also is no reason why women are less eligible than men to hold elective office. I believe that the inequality . . . is unfair and therefore not authorized by the 1971 Act. (Justice Eloff granting KwaNdebele women the vote, May 1988)

I. BEFORE INCORPORATION

As the political cost of forced removals increased—notably in the aftermath of Mogopa (see that monograph)—the government pursued its scheme of grand apartheid in new ways.¹ And as the six "self-governing" homelands showed ever greater resistance to accepting "independence," the government looked for inducements. The incorporation of Moutse into KwaNdebele illustrated both strategies.

Moutse District in Northern Transvaal contains 66,000 hectares (139,656 acres) and about 120,000 people. The largest group are North Sotho (or Pedi) Bantoane, who settled there in 1780. Chief Paledi bought the farm Kwarrielaagte in Moutse 3 in 1903; the tribe ultimately bought a total of 11 farms. The Ndebele minority sought land from them only in 1924. Most of the land is "released" under the 1913 Land Act and owned privately or tribally; it was administered as trust land between 1936 and 1972. The district was well developed: 46 primary and 12 secondary schools (attended by 36,000 pupils taught by 748 teachers in 1985), the Philadelphia hospital, churches, tarred roads, and a telecommunications system. One area was said to be rich in minerals; the Johannesburg Consolidated Investment Co. had sought prospecting rights. Since ethnicity was such a critical issue, the government statistics are relevant.

ETHNIC COMPOSITION OF MOUTSE DISTRICT (PERCENT)

GROUP	1970 CENSUS	1980 CENSUS	1986 SCHOOL ENROLLMENT
Xhosa	0.41	1.35	0.98
Zulu	5.77	8.12	11.37
Swazi	4.59	9.73	6.75
South Ndebele	20.16	12.74	10.38
North Ndebele	9.36	11.59	5.35
North Sotho (Pedi)	47.82 ^a	44.36	49.69
South Sotho		1.75	1.57
Tswana	6.84	3.70	9.67
Shanagaan/Tsonga	4.06	5.48	4.50
Venda	0.44	0.66	0.66
Other	0.55	0.52	0.23

^a North and South Sotho combined

The dominant language and culture are North Sotho. All the chiefs were Sotho, as were 16 of the 20 members of the Moutse Regional Authority and 26 of the 30 members of the three community authorities. Sotho was the medium of instruction in 40 of the 46 primary schools.

The government established the Bantoane Tribal Authority in 1956² and upgraded it to the Bantoane Regional Authority five years later.³ Chief Tlokwe Gibson Mathebe was head of both. In 1970 it was renamed the Moutse Regional Authority and expanded to include Mashung Tribal Authority.⁴ When the government created the Lebowa Territorial Authority in 1962 for the North Sotho people it included Moutse as one of the seven constituent units.⁵ Moutse had two elected and two nominated members in the Lebowa Legislative Assembly. In 1982 Lebowa became a self-governing homeland.⁶

During this period Southern Ndebele were being forced off white farms (where they had been labor tenants) and moving to Bophuthatswana and Lebowa. In 1967 I J Mahlangu, who lived in Soweto, launched an organization to promote the idea of an Ndebele nation. S S Skosana (later Chief Minister of KwaNdebele), then living in Klipplaatdrift, began talking to Ndebele leaders and people about seceding and founding their own homeland.⁷ Instead, the government created the Ndzundza Tribal Authority within Lebowa in 1968, recognizing David Mabhogo as chief.⁸ But the Ndebele persisted in seeking recognition. In March 1972 they met officials of the Department of Bantu Administration and Development, which drafted plans for a homeland six months later. These were made final in 1973, by which time three other Ndebele tribal authorities had been established within Bophuthatswana: Manala, Litho, and Pungutsa.⁹ The following year the government upgraded Ndzundza to a Regional Authority,¹⁰ excised it from Lebowa, and made Skosana the chairman.¹¹ In 1975 the government announced plans to consolidate KwaNdebele, adding 52,000 hectares to the original 51,000.¹² Two years later the other three Ndebele tribal authorities were excised from Bophuthatswana and combined to form the Mnyamana Regional Authority.¹³ In October, the government finally created the Ndebele Territorial Authority out of those two components.¹⁴ In 1979 it established the KwaNdebele Legislative Assembly, consisting of 46 nominated members chaired by Skosana.¹⁵ During the ceremonies accompanying the opening of the first session in November 1979, Skosana said "full independence is out of the question at the moment" because of the total lack of infrastructure.¹⁶

In 1979 the Government expropriated nine farms in the Nebo district of Lebowa, thereby excising them from the homeland. Chief Andries Mahlangu, an Ndebele leader who owned part of the land, opposed the government action. Solly Mahlangu, a rival (and later speaker of the Legislative Assembly), approved it and sought incorporation into KwaNdebele. The two groups fought, and Andries Mahlangu was murdered on 25 January 1981. Piet Ntuli, KwaNdebele Minister of the Interior, was charged with instructing Moses Skosana (also accused) and three others to commit the murder. Ntuli's son, Samuel Snyman Ntuli, sought state protection to testify against his father. But all the accused were acquitted in August 1984.¹⁷

In September 1977 Greyling Wentzel, Deputy Minister of Co-operation and Development, first raised the possibility of excising the land around Philadelphia Hospital from Lebowa. Lebowa's Chief Minister, Dr Cedric Phatudi, and his Cabinet

met with Piet Koornhof, Minister of Co-operation and Development, in November 1979 and June 1980. Phatudi arranged a meeting between Wentzel and community leaders on 23 October 1980 when, for the first time, the government told Moutse about the possibility of incorporation into KwaNdebele. Moutse flatly rejected this. The very next day the government gazetted Proclamation 210, which excised Moutse from Lebowa. Dr Phatudi insisted that Koornhof had assured him that the excision was for "administrative reasons," and Moutse would not be incorporated into KwaNdebele. Indeed, Moutse retained four representatives in the Lebowa Legislative Assembly.¹⁸ On 6 November 1980 Chief Mathebe, Maredi Chueu and Godfrey Mathebe (the latter two being Moutse representatives to the Lebowa Legislative Assembly) joined members of the Lebowa Cabinet in a meeting with Koornhof in Pretoria. Koornhof raised the incorporation issue, and Moutse strenuously rejected it. Koornhof and others visited Moutse on 6 November 1981 to explain the government action. He addressed a crowd of 6000 opposed to incorporation.

[I]t was decided by the Central Government that the 1975 consolidation proposals in regard to Moutse be implemented. Consequently the Moutse area was excised from Lebowa with effect from 1 November 1980 and the administrative control was taken over by the Central Government through its Department of Co-operation and Development. . . . There should be no doubt in your minds in regard to this legal fact. The Central Government has taken over the administration, a fact that every one should accept. . . .

According to the 1975 consolidation proposals the Moutse district had to be excised from the area of jurisdiction of Lebowa. . . .

Leaders in Moutse also did not accept the fact that the administration and control over Moutse no longer vested in the Lebowa Government. This hampered good administration and in fact confused the people. . . .

During discussions in regard to the excision of Moutse from Lebowa, I mentioned that the people of Moutse could for the present continue to live here in peace and harmony and that their interests would be catered for after the excision was concluded. Last year during discussions with Chief Minister Dr. Phatudi and Mr. Skosana I stated that no decisions affecting the lives of the citizens of Lebowa living in Moutse would be taken without prior consultation and deliberation with the leaders of Moutse and the Lebowa Cabinet. . . .

Although it was decided that no further steps in regard to the people of Moutse would be taken before further consultations took place, I would like to mention that during the prolonged discussions I and the Honourable the Deputy Minister of Development had with the Lebowa Cabinet and the leaders of Moutse, it was mentioned that the compensatory land for Moutse was in the Immerpan/Saliesloot area . . . approximately 58 000 hectares in extent and comprises highly developed farms inter alia citrus and irrigation. Large arable lands are available.

. . .

The decision to excise Moutse from Lebowa was taken by Parliament long before I became Minister of Co-operation and Development. The Commission for Co-operation and Development again investigated the question surrounding Moutse and in September 1980 the Cabinet of the Republic of South Africa confirmed its decision that Moutse must be excised from Lebowa with effect from 1 November 1980.

He then explained the practical arrangements for those "who wish" to move to Immerpan/Salieslout and concluded: "To the people of Moutse I wish to say that the whole resettlement action will be undertaken in a compassionate manner with your co-operation and that of Lebowa. With your co-operation the whole action can be carried out with a minimum of disruption and inconvenience." He brushed off warnings that incorporation and removal would lead to violence. "If you are going to invoke trouble and violence and bloodshed you are only absolutely foolish. Who will be killed? Black people."¹⁹

KwaNdebele asked to be declared a self-governing territory on 21 August 1980 and was granted that status on 1 April 1981.²⁰ In February of that year Skosana denied that his government was seeking independence. At the same time, however, it was negotiating with Holiday Inns to license a casino—which could only operate after independence since gambling was illegal in South Africa.²¹ The KwaNdebele Legislative Assembly formally expressed its interest in independence in May 1982.²² Skosana and his Cabinet went to Cape Town to meet Koornhof. Although they expected independence to take five years, the government appointed Gilles van der Walt, Director-General of Co-operation and Development, to chair a commission to prepare for it. (Van der Walt was later convicted of fraud, sentenced to five years imprisonment, and struck off the roll as an attorney.) Piet Ntuli, KwaNdebele Minister of the Interior, declared that there was no need for a popular vote because self-government implied independence.²³ At the same time, KwaNdebele demanded more land as the price of independence: the nine Nebo farms east of Groblersdal (expropriated from Lebowa in 1979), Moutse, and Moretele in Bophuthatswana. The government, for its part, wanted to extend KwaNdebele southwards to connect with proposed industrial development.²⁴

Simon Skosana apparently pursued the incorporation of Moutse by agitating among its residents because W M [Maredi] Chueu wrote to John Dugard, Director of the Centre for Applied Legal Studies, seeking legal advice about how to stop such activity. Dugard replied on 27 October 1982 that courts would not grant an interdict. He suggested that the Moutse chiefs and the Lebowa Government ask the Department of Co-operation and Development to stop Skosana. He also advised that an Appellate Divison judgment the previous month did not give Moutse standing to challenge its excision from Lebowa, although the Lebowa government might be able to do so. That decision invalidated a plan by the government to excise Ingwavuma from KwaZulu, disestablish KaNgwane, and transfer both to Swaziland. Swazis in both territories

strongly resisted the act.²⁵ Finally, he referred Chueu to Raymond Tucker, a Johannesburg attorney.

Instead, Chueu took his case to the media.²⁶ He told the *Rand Daily Mail* that the 300,000 [sic] people of Moutse would never consent to incorporation. The Sotho-speaking Bantoane had settled Moutse long before the Ndebele newcomers. Chueu explained:

According to African custom, they [the Ndebele] were assigned land by the Bantoane—and by virtue of that, they owe allegiance to the Bantoane. That makes it difficult for the Bantoane to recognise the (adjacent) state of KwaNdebele, let alone the fact that they will be incorporated into KwaNdebele.

Dr Koornhof has been informed that nothing short of bloodshed will subdue the Bantoane and make them subjects of KwaNdebele.

Godfrey Mathebe joined Chueu in opposing independence. The article indicated that Moutse people viewed KwaNdebele as "crude" and uneducated. Moutse people were not accustomed to accepting beatings by the *kgotla* (a tribal court). They did not want to be governed by a Chief Minister who had left school at standard six. They also resented Skosana's blatant attempts to generate support for incorporation through public meetings in Moutse. Dr Phatudi telexed Koornhof to protest about one of these: "The meeting was tactlessly handled and had the effect of annoying and irritating the Lebowa people in the extreme. . . . Unless Chief Minister of KwaNdebele stops visiting Moutse . . . he will be met with physical violence." Phatudi urged Koornhof to return to Moutse and hear the people's views. Koornhof replied that "at present, as a result of commitments, I am unable to hold such a meeting. I will at the opportune time arrange a meeting with the Magosi and tribal and community authorities." Chief Mathebe asked the Commissioner General for Lebowa to arrange a meeting with Koornhof, but he also failed.

On 19 February 1983 the van der Walt commission announced further plans for consolidating KwaNdebele as a preliminary to independence. These included the nine Nebo farms, Moutse, part of Ekandustria and Ekgangala, and 150,000 hectares in Moloto-Verena.²⁷ Z D Nguni, KwaNdebele Minister of Agriculture, greeted the proposals warmly. He denied that a majority of Moutse people opposed incorporation, alleging that they had been turned against KwaNdebele by Maredi Chueu and Godfrey Mathebe. He admitted, however, that Simon Skosana had been rebuffed at one meeting in Moutse. Dr Phatudi, by contrast, denounced the proposals and promised to challenge the incorporation of both Moutse and the Nebo farms.²⁸ In April Lebowa sent a 100-man delegation, including all the Moutse leaders, to tell Koornhof of their opposition. He agreed not to act without further discussion. At Dennilton the following month Dr Phatudi and Chief Mathebe addressed a meeting of thousands, who affirmed their opposition to incorporation.

At the end of June Koornhof explained to Parliament clauses 16-19 of the Laws on Co-Operation and Development Amendment Bill, which would strip Moutse of representation in the Lebowa Legislative Assembly.

The Moutse district is contiguous with kwaNdebele, and such an incorporation would naturally be conducive to more effective overall planning in future and would also result in a more effective expenditure of development capital. . . . [If Immerpan/Saliesloot and not Moutse was added to KwaNdebele] major border problems would be created between Lebowa and kwaNdebele.

The Ndebele possess great national awareness and national pride, to such an extent that it is possible to speak, in the case of kwaNdebele, of a national migration of its people to their own territory, where they can be governed by their own people in the first place. Are the Black peoples of Southern Africa generally, and the South Ndebele in particular, to be denied the fulfilment of their national aspirations merely because there are enemies of the Republic of South Africa who loudly proclaim that a policy which seeks to unite those who belong together is wrong? . . .

[The continued representation of Moutse in the Lebowa Legislative Assembly] gave rise to considerable uncertainty in law. . . . By dealing at the same time with all these aspects of excision, termination of representation and the district having ceased to be a constituency, and by evaluating the [sic] in the light of the consolidaton proposals made earlier this year, legal certainty is being created and the attainment of independence by kwaNdebele is being promoted.²⁹

Lebowa considered a legal challenge, and Phatudi instructed his lawyers to initiate such a challenge in July 1983. He explained to the press:

When the department excised Moutse from Lebowa by proclamation in 1980 they attempted to take over the administration, but I refused to allow this. I was assured by Dr Koornhof, and so were the people of Moutse, that the excision was for administrative reasons and that there was no intention of incorporating Moutse into KwaNdebele. We have had numerous meetings with Dr Koornhof and each time we were fobbed off with excuses and prevarications. As recently as April this year Dr Koornhof agreed to "freeze" the land deal pending further talks. But within weeks—at the end of May—I was informed that the South African Cabinet had decided to carry on with the handover of Moutse. I was informed that Lebowa citizens would be removed to the Immerpan area on the northern Springbok Flats near Zebediela where "compensatory" land had been purchased from white farmers. I am not interested in compensatory land in exchange for Moutse, although I will always welcome additional land for Lebowa.³⁰

Chief Tlokwe Gibson Mathebe was equally adamant.

We sent two members to the legislative assembly and both were returned unopposed in the general election in November last year. If there were ever any intention to ask for "independence," other candidates would have stood for the election to challenge the status quo. The people of Moutse do not forget easily and they remember that a previous Minister, Mr M C Botha, said in July 1977 that it would be wasteful to establish a KwaNdebele government and that they must consider affiliating with Lebowa. . . .

This would never have happened if it had not been for the benevolence of my grandfather towards the Ndebele people. In 1925 Chief Mapoch of the KwaNdebele asked my grandfather if he could live in Moutse with his people. My grandfather agreed and we have always regarded the KwaNdebele in Moutse as our subjects.

We know nothing of Immerpan. This is our home and we shall stay here, even if the court case goes against us.

At a 2 August meeting Prime Minister Botha again promised not to incorporate Moutse into KwaNdebele without further talks, and Phatudi postponed legal action.

When Parliament resumed debate on the bill on 8 August PFP spokesperson on black affairs Helen Suzman dismissed Koornhof's claim that "the southern Ndebele [were] being denied the fulfilment [sic] of their national aspirations because there were enemies of the Republic of South Africa who loudly proclaimed that a policy which sought to unite those who belonged together was wrong."

SUZMAN: What nonsense that is!

KOORNHOF: It is not nonsense.

SUZMAN: These people are not Ndebele. They consider themselves as belonging in Lebowa and that is where they want to stay.

KOORNHOF: Of peoples you understand sweet Fanny Adams.

SUZMAN: . . . These people do not want to go to kwaNdebele not only because they do not believe they belong there, but also because kwaNdebele has opted for independence and they do not want to belong to an independent kwaNdebele. My information is that it has the sort of chief the unfortunate Ciskei has. He also wants a casino and in no time he will be buying himself a jet aeroplane costing R2 million while his people are starving.³¹

A Nationalist backbencher replied that if Suzman "has met certain deputations over the past three years, then the hon. the Minister of Co-operation and Development has probably met ten times that number of deputations."³² The Conservative Party promptly interpreted Koornhof's words as a recommitment to grand apartheid. H D K van der Merwe declared: "I cannot fault a single word, a single comma, or a single period in that passage." "We believe that a people, like the Ndebele, has the right to

gather together in their own fatherland." Suzman interrupted to ask: "if the Moutse do not want to join them, are you then going to force them to do so?" In reply, van der Merwe surprisingly appeared to acknowledge her objection: "I have no confidence in the way in which the hon. the Minister is causing negotiations to take place between one Black people and another. To substantiate this I can refer to Ingwavuma and Kangwane, and what happened there." Nevertheless, "in respect of nationalism" the Ndebele "not only set an example to quite a number of other Black people but also to the hon. the Minister of Law and Order. The history of kwaNdebele is, in my opinion, a wonderful history. . . . the nationalism among the Ndebele was in fact the result of the standpoint adopted by the late Dr. Verwoerd."³³

The New Republic Party also asked whether "the two parties in fact agreed or, singularly, has Lebowa agreed to the excision of the area concerned?"³⁴ Deputy Minister of Development and Land Affairs B H Wilkens conceded that "the South Sotho in Moutse are not prepared to agree to Moutse being added to kwaNdebele" but berated Suzman for not hearing the viewpoints of kwaNdebele. She was ignoring "the rights of a certain important ethnic group . . . merely because it suits her argument to criticize the Government." "The Government's standpoint is that by means of the consultation that is taking place, and the power of conviction that is in evidence, the parties can be convinced of what is in the interests of all the groups, seen within the overall context of consolidation." Wilkens also agreed "with the broad principle of what Dr. Verwoerd said."³⁵

Prof N J J Olivier returned to the attack for the PFP: "we do not approve of the ideological creation of independent territories." He demanded that Koornhof say whether the people of Moutse were consulted, "explain to us exactly how that consultation took place," and state whether they consented. Wilkens promptly interrupted that "everyone know [sic] that they object." Referring to the earlier judgment invalidating the excision of Ingwavuma from kwaZulu, Olivier warned that "we are now using the sovereignty of Parliament to circumvent those decisions." The bill declared that it "shall be deemed a proclamation" required under the National States Constitution Act 1971 to excise Moutse from Lebowa. "Is this not disgraceful" A L Boraine added, "to circumvent the courts?" And Helen Suzman concluded: "is the hon. the Minister not ashamed of himself?"³⁶ A Nationalist backbencher replied, however: "It does not matter what the decision is going to be; there is going to be tension." "If one cannot reach consensus on a matter of this kind eventually the responsibility for taking the decision lies with the Government."³⁷

The Conservative Party returned to Koornhof's embrace of Ndebele nationalism. "These are wonderful things the hon. the Minister said. . . . The CP supports the efforts of this small people that wants to be free." But that project was inconsistent with the government's construction of Khayelitsha, "a permanent home for at least 300 000 Black People" "in the traditional residential area of Coloureds and Whites on the Cape Flats."³⁸

Koornhof assailed the PFP. "I hope this House and the country will take careful note of this. For the umpteenth time it has become apparent that they attach little or no value to the unique separate cultures and identities of communities. . . . what their political approach amounts to is that the Republic of South Africa should, internally and externally, be seen as one conglomerate, and in all respects as cohesive populations with no differences of any kind in identity, as brought about by the Creator and history." With respect to consultation with Lebowa "this is a difficult matter. It is an extremely sensitive matter. It is a matter which was before this House long before I had anything to do with it." "[T]alks were held with them on various occasions." Moutse "had to be excised from the Lebowa area in terms of the consolidation proposals of 1975." "The pros and cons were exhaustively debated." He conceded that "the Cabinet of Lebowa voiced a strong protest" but insisted that "this decision was therefore preceded by consultation." On 2 August P W Botha promised to visit Moutse after Parliament recessed and conduct "an in-depth investigation into the consolidation." Dr Phatudi, in return, accepted that the bill "will be continued with in order to confirm the *status quo*" and promised not to pursue its lawsuit. He concluded: "it must surely be clear that we are doing everything in our power to find a peaceful solution to a difficult problem. If nothing is done to embarrass us and if this matter is not turned into a political issue unnecessarily, it will be possible for us to do so. . . ." Suzman interjected: "consultation is not consent." Koornhof replied: "we are still in consultation with the interested parties." Suzman asked: "Why do you pass this now?" Koornhof answered: "Because it is necessary." The bill passed the second reading 119-28.³⁹

When debate resumed at the Committee stage the next day, PFP MP N J J Olivier reiterated that Moutse was firmly opposed to incorporation, which was motivated solely by the government's effort to persuade KwaNdebele to accept independence. The government was "trying to circumvent the provisions of the constitution of a national State, as well as the judgment in the Ingwavuma case."⁴⁰ An NRP MP asked Koornhof to state with "absolute clarity whether it is the case that the hon. the Prime Minister and the Chief Minister of Lebowa had agreed that the Bill should be proceeded with and that amendments would be made afterwards."⁴¹ After Koornhof repeated that this was the case the House voted the Bill out of Committee 12-24. Koornhof explained that "kwaNdebele would like to further the emergence of its people as a nation. . . . kwaNdebele has gone even further and asked for independence; it has even set a date for independence. . . . the important thing to do now, is, as far as possible, to bring about stability, certainty and assurance. . . . Then we can see whether we cannot reach a package agreement for the consolidation of Lebowa, the creation of an infrastructure for Lebowa, and other aspects in respect of Lebowa, so as to satisfy Lebowa in that way and, at the same time, also satisfy kwaNdebele's aspirations."⁴²

At the third reading the following day Olivier remarked that "if we had not extracted the information from the hon. the Minister, like trying to milk a dry cow, as to what the facts of the matter were, we would not have been told the facts." "One was initially tempted to think that the hon. the Minister lacked integrity."

OLIVIER: [W]e are not in favour of the creation of independent Black States. The hon. the Minister can become as lyrical as he likes about the Ndebele, their national aspirations and so on, but the creation of an independent kwaNdebele is not going to solve anything, in the same way that the creation of the other independent States did not solve anything.

VAN ZYL SLABBERT: Just look how happy they are in the Ciskei and the Transkei.

OLIVIER: Yes, very happy! They have no problems!

SIVE: They are shooting at each other.

OLIVIER: Venda, Ciskei, Transkei—they are all wonderful! . . .

The second principle I want to make clear is that we on this side of the House will not under any circumstances approve the enforced movement of people. . . .

The third principle I want to state is that we shall not under any circumstances defend or approve of people being placed against their will under the authority of a Government they do not want to be under.⁴³

A Nationalist backbencher defended Koornhof. The National States Constitution Act allowed the State President to act "after consultation." "Here we are going much further than that. . . . This provision is actually a striking example of this Government's desire . . . for a fine, fair and adequate solution to the problem." Moutse 2 was totally surrounded by kwaNdebele. "[O]n the basis of this fact alone there is no way in which we can allow that portion to go to Lebowa." "A further problem is that in regard to services Moutse 1, 2 and 3 link up with kwaNdebele. Here I am thinking of water supplies, the road network and so on." "It is proof of the seriousness with which the Government regards this situation when even the Prime Minister involves himself in it. I therefore believe that we shall arrive at a viable solution, and as long as we view the situation realistically I believe that we shall be able to bring peace and prosperity to those people."⁴⁴

The Conservative Party replied to Olivier because "within two or three years, debates will be conducted in this House only between those two parties that really have a right of existence in South Africa, namely the CP and the PFP." Would the PFP "grant independence to the Ndebele people if they requested it?" Did they approve of the British grant of independence to Swaziland, Lesotho and Botswana? If the PFP opposed placing Moutse "under the political control of another group of people against their will . . . why then does the hon. member refuse to accommodate the Whites in South Africa who do not want this?" Olivier immediately reassured him: "We do not believe in Black majority rule either."⁴⁵

Koornhof concluded the debate by declaring that "all the NP has done during the period of its existence, since 1912, has been simply to recognize the God-given truth that there are different peoples and that it is normal and right to recognize the existence of different peoples before God and man." kwaNdebele "have now formally requested

to have their independence granted to them in December 1984. . . . the Government has simply recognized the fact of multinationalism and that this has led to the independence of the TBVC countries and to this request from the kwaNdebele people which we have before us at the moment. And this will certainly not be the last people in South Africa to ask for independence." The bill "has brought greater certainty and stability." It passed a third reading 111-37.⁴⁶

On 18 November Skosana sent a memo to the government seeking independence, although he later admitted that he did not understand the meaning of that step.

How can my people know what independence is all about when I don't even know myself. But we're learning. . . . maybe I am stupid, but independence for me became a logical step when I accepted territorial authority. It's either you agree or you don't. There is no middle ground and people who don't agree with this system should be with Mandela or Sobukwe.⁴⁷

The same day Botha met a 45-person Moutse delegation, including the Lebowa Cabinet. He told Lebowa it would have to resolve its differences with KwaNdebele directly because the government was only a "third party" but offered to appoint a chairman to facilitate these discussions. He rejected the request for a referendum on incorporation. In December he appointed Dr P Rautenbach, who called the first meeting. There were further meetings in February and March 1984 between the cabinets of the two homelands and sometimes between Phatudi and Skosana. But Moutse was excluded from the discussions. In April the Department of Co-operation and Development drafted a proposal to resolve the controversy; Dr Rautenbach discussed it with the two chief ministers on 17 and 24 May. Phatudi again challenged the government to call a referendum on the issue, claiming that KwaNdebele opposed the idea for fear it would lose.⁴⁸ In October Gerrit Viljoen, the new Minister of Co-operation and Development, announced consolidation proposals incorporating Moutse into KwaNdebele and Immerpan/Salieslout into Lebowa.⁴⁹

On 24 April the government introduced another Laws on Co-operation and Development Amendment bill.⁵⁰ Deputy Minister of Co-operation George de Villiers Morrison explained that clauses 1 and 12 responded to the Appellate Division invalidation of Botha's attempted excision of Ingwavuma from kwaZulu because the Prime Minister had failed to consult the homeland. "After careful consideration, the Government decided not to introduce legislation which would nullify the court decision." Instead it "merely intended to create certainty in law by confirming the validity of proclamations issued by the State President in terms of the Black Administration Act, 1927, and the National States Constitution Act, 1971," before the Ingwavuma proclamations of 1982. He added elliptically that "the proclamations confirmed by clause 12 are proclamations which give effect to consolidation proposals as approved by Parliament and which were also promulgated before 18 June 1982."⁵¹ The PFP promptly attacked this as "totally obnoxious and bad in principle." R A F Swart rehearsed the Government's "reckless and ham-handed handling of the whole

affair." "We are asked in this Bill to provide in law that any proclamation issued in terms of Act 21 of 1971 and which according to the requirements of that or any other Act had to be preceded by consultation, shall now be deemed to have been preceded by consultation." This was a "totally vague and cynical provision." "In principle it means that Parliament is being asked to legislate for a lie because we are being asked to say that there was consultation when there was not." "If there have been irregularities in regard to proclamations in the past, these must at least be identified and then, if necessary, Parliament must consider in what manner these irregularities can be rectified." H E J van Rensburg interjected that it was "legalized fraud."⁵² An NRP MP also sought reassurance that "there are no other proclamations or skeletons floating around in odd cupboards that will be conveniently included."⁵³

A Nationalist backbencher made another attempt to explain the legislation. "The Government abides by that court finding [in the Ingwavuma case]. . . . without introducing legislation to nullify or tamper with the finding of the court, the hon the Deputy Minister is merely attempting, by way of clauses 1 and 12, to establish security of justice with regard to all proclamations made before the court case. What is important is that at the moment there is no outstanding court case." (The reason, of course, was that Botha had persuaded Phatudi to delay his application.) "Moreover, no rights of anyone affected by the proclamations are being encroached upon. Therefore this is merely a confirmation of actions that have already been successfully finalized." "[W]e cannot allow court cases to occur afresh with respect to every second proclamation over such a broad front. For the sake of orderly and stable government this measure is imperative. . . ." ⁵⁴ Another Nationalist explained that the Government "could have gone back and renegotiated all those proclamations," but "this would quite obviously be ridiculous, because by definition one cannot hold consultations *ex post facto*. . . ." Although "one does not like laws with retroactive force . . . light was only cast on the matter in 1982 and resulted in our being able to judge, retrospectively, that those proclamations could possibly be invalid, too, and for that reason it was inevitable that whatever remedy was applied would have to have retroactive force." "There are rights established by proclamations promulgated a decade ago and if those rights were to be placed under suspicion now, this would affect the rights of thousands of people." It would be "ridiculous" to consult those affected by the present legislation "because all this Bill involves is a technical rectification of the law."⁵⁵

The PFP retorted that "the essential untruth lies in the fact that it is being said that negotiations are deemed to have taken place. This is the untruth, because there were not negotiations." There was nothing "ridiculous" in holding negotiations with National States now.⁵⁶ The Conservative Party also was critical but for other reasons. "It is now being provided . . . that consultation is 'deemed' to have taken place. Perhaps consultation did take place, or perhaps it did not. However, to provide now that we must pretend that consultation had taken place, is the wrong procedure. Parliament is sovereign and if that proclamation has to be validated, then it should simply be done—and no two ways about it."⁵⁷

Deputy Minister Morrison castigated the PFP motion to delete clause 12 as "the most cynical and frivolous amendment I have ever come across." Although he was "not a jurist," he maintained that "the merits of the Ingwavuma case have absolutely no bearing on what we are busy with here this afternoon." He could not find "a ready-made definition of 'consultation' in any dictionary." "I would suggest that in its broadest sense, 'consultation' cannot be defined in absolute terms." Therefore "we have no norm with which to assess legally whether" proclamations made between 1971 and 1982 "comply with the requirements the judge linked to 'consultation.'" "The department has no doubt that talks and consultation did in fact take place with the governments concerned before the proclamations were issued." "We are not sure whether a court could rule against us again, since anyone could invoke the courts for the purposes of a court case and claim that there was insufficient consultation. We are then in danger of losing the case again." In asserting that the Government was "legislating for a lie," Prof Olivier was engaging in "a purely academic way of thinking. He is not a politician. . . . I really do not have anything against academics, but I sometimes wonder about some of them." The Government has "taken the initiative in obtaining certainty in law in this matter. It must also be emphasized that it is not foreseen that any steps will be taken against the governments with regard to these proclamations." Of the 82 proclamations issued between 1971 and 1982, the Government was confident that there had been consultation in 35 but could not be confident about the other 47.⁵⁸ The bill passed its second reading 87-32.⁵⁹

At the Committee stage the PFP MP R A F Swart attempted to move an amendment that any proclamation "shall not be deemed to have been validated" if, within three months of the Act's passage, any national state legislative assembly passed a resolution asking for its repeal. Despite his strenuous argument, the Chairman refused to accept it because it conflicted with the principle of the Bill.⁶⁰ PFP MP N J J Olivier reluctantly accepted this ruling but maintained that "instead of creating certainty in law . . . we are actually running the risk of creating uncertainty in law because in my honest opinion this clears the way for a national state's legislative assembly to dispute the validity of this measure."⁶¹ Nevertheless, clause 1 passed 103-22.⁶² In light of the Chairman's ruling on clause 1, Swart did not bother to move his amendment to clause 12 but reiterated his opposition in principle to "deeming consultation to have taken place in respect of unspecified proclamations concerning which consultation has in fact not taken place."⁶³ A Nationalist reassured him that the bill's object was "to obtain the complete legal certainty that obtained prior to the specific court judgment. That is the only aim. It is not as if there were some or other sinister aim involved in this."⁶⁴ Deputy Minister Morrison gave members "the assurance that no single proclamation was issued without prior consultation, although possibly not in accordance with what the judge considered consultation to be. We concede that the consultation was perhaps subject to certain deficiencies. There certainly was consultation, however, in our opinion efficient and sufficient consultation." The clause passed 98-18.⁶⁵ The following day the bill passed its third reading 90-34.⁶⁶ On 28 June the State President signed it into law.⁶⁷

The government remained cautious about KwaNdebele independence. In January 1984 Louis Nel, Deputy Minister of Foreign Affairs, addressed the opening session of the KwaNdebele Legislative Assembly. South Africa could "not afford to let any of the people it was leading on the road to independence fail," for this would affect the other "independent" states "like a rotten fruit."⁶⁸ And in May P W Botha added that independence could only be granted to homelands that had shown the ability to run their affairs smoothly. On 2 May Koornhof told the standing committee: "the Prime Minister put it very clearly to the government of KwaNdebele—and we operate in accordance with this—that we must take these people by the hand and try to train them, so that when eventually they take that step the necessary spadework will have been done—to enable them to govern KwaNdebele competently."⁶⁹ A Nationalist MP (and subsequently chairman of the House) celebrated prematurely:

I want to refer hon members to the announcement they heard today that KwaNdebele is in the process of becoming independent. This is a success story and that is not to mention all the others. Every now and then I went to speak to the leaders—including the leaders of the Ciskei—and those leaders have a positive attitude. They do not believe in the policy of the PFP. . . .⁷⁰

Nevertheless, plans for independence in December were shelved.⁷¹

KwaNdebele chose its second Legislative Assembly in November 1984: 48 members nominated by tribal chiefs and 8 by Skosana, and 16 elected by men (only 600 voted). Skosana explained that "women have first to be taught by their husbands how to vote."⁷² During the opening session of the new KwaNdebele Legislative Assembly on 24 April 1985, Skosana said he expected independence by the end of 1986.⁷³ On 19 April 1985 Gerrit Viljoen gave him reason to hope: "I confirm anew that the government actively pursues independence for national states. The enthusiastic and positive attitude of the government of KwaNdebele in regard to independence is, therefore, sincerely welcomed."⁷⁴

On 9 February 1985, Viljoen announced the incorporation of all of Ekangala into KwaNdebele, despite the fact that the government had said when the township was established that only the Ndebele portion would be incorporated.⁷⁵ Nkosana Maseko, secretary of the Ekangala Civic Association, accused the government of breaking its promise.⁷⁶ Soon afterwards residents burned down the East Rand Development Board (Eradebo) office and assaulted a KwaNdebele government official.⁷⁷ Only in May did the government offer justifications for incorporation. Residents had not been consulted because it was decided "before the planning of the town and, therefore, before there were any residents." It was "necessary for good management to have the town administered by only one authority."⁷⁸

Toward the end of February the Ekangala Action Committee (formed the previous May) organized a rent boycott.⁷⁹ In response to an 8 March Eradebo memo

confirming the incorporation, residents threatened to return to the East Rand townships from which they had come.⁸⁰ Many feared loss of §10 rights and South African citizenship, despite governmental reassurances.⁸¹ On 23 March the police opened fire on a peaceful demonstration of 4500 people, killing 19-year-old Kenneth Letlala.⁸² The government responded by prohibiting the EAC from holding any more public meetings. At the same time it appointed a community council dominated by KwaNdebele representatives, including Cabinet Minister F K Mahlangu, P Sibiya, and Isaac Mziza. Vigilantes attacked all those opposed to incorporation. On 30 March they beat Mrs Bettie Bembi [Bhembe] and her daughter for allegedly holding EAC meetings in her house. The same night a group of vigilantes including F K Mahlangu attacked Mphothotho Enoch Dumakude and warned him that Ekangala was "not a place for dogs from the East Rand."⁸³

Peter Mtutuzeli Kose, EAC vice-chair, was the target of repeated attacks. His house was damaged on 30 March. P Sibiya attempted to abduct him in April, but he escaped while his captors went to get F K Mahlangu to interrogate him.⁸⁴ On the night of 15-16 June he fled when a car with KwaNdebele license plates approached his house. When he returned his wife told him that men had searched the house before leaving to look for him. She took their children to a friend while Kose hid with Johannes Khumalo, a neighbor. The vigilantes found him and abducted both to Ekangala High School. Many men (including F K Mahlangu) beat them. The vigilantes kept him for two days, repeatedly torturing him.⁸⁵ He was abducted again on 27 July and assaulted at the home of F K Mahlangu. When the SAP were informed they arrested Kose and charged him with assault. Kose claimed that two of his assailants were members of the KwaNdebele Legislative Assembly. As a result of a complaint to the Transvaal Attorney General the charge was dropped and P Sibiya was charged but apparently never prosecuted.⁸⁶ In the latter half of the year people began leaving Ekangala; finally the EAC decided to support a collective move back to the East Rand.⁸⁷

In September the EAC submitted a petition against incorporation signed by almost 1000 people—70 percent of householders—who strongly objected to F K Mahlangu's autocratic rule.

We are location people . . . used to location law where each man is equal according to his property. There is a Mr Mahlangu at Ekangala who acts as a chief. He has set up a tribal "court". This "court" fines people and gives sentences of corporal punishment. We are not a tribe and we do not accept the system of being fined, asked for money and controlled by chiefs. This is the homeland system . . . which we as location people long ago left behind. . . .

We think that non-Ndebeles would have problems with pensions, jobs and houses under Kwandebele. . . . Already representatives of the Kwandebele government are telling us to leave Ekangala. . . .

Ever since the incorporation issue came up we have been assaulted by Kwandebele government supporters. If they behave like this while Ekangala is still under the [East Rand Development Board] we fear that

they will become much more violent when Ehangala is incorporated into Kwandebele, or Kwandebele becomes independent.⁸⁸

But they got no reply. Six months later Heunis acknowledged that he had received the petition and objections from the Ehangala Action Committee on October 9 but refused to recognize the EAC because it was not formally elected. Instead he dealt with residents through the Ehangala Coordinating Committee—31 of whose 33 members were white. "The Committee was already established in 1980 at the inception of the projects, when there were no inhabitants and thereafter from time to time representation was increased according to the need. Residents are represented by the Executive Committee"—consisting of one of the two blacks.⁸⁹

In May the Government tabled another Laws on Co-operation and Development Amendment Bill, which was referred to Standing Committee and reported out in June.⁹⁰ During the second reading debate on 12 June Viljoen said obscurely that "provision is also made in this legislation for the interpretation of the Lebowa Constitution Proclamation No R225 of 1972, in terms of which the area of the Lebowa Legislative Assembly is defined in order to put the generally accepted construction of the proclamation beyond all doubt."⁹¹ The Government appeared to have been motivated by the fear that its last amendment still failed to immunize it against legal challenge. What the bill actually did was to redefine Lebowa as though it had *never* contained Moutse. The PFP was

not satisfied that sufficient consultation has taken place with the Lebowa Government. Although the explanatory memorandum says that there has been consultation, our own contact with the Lebowa Government indicates that while they might have been made aware of the provision they are in fact opposed to it. It is unfortunate that the standing committee was not able to receive direct evidence from the Lebowa Government. . . . There is fear, we know, in the ranks of the Lebowa Government that it may adversely affect the situation in the Mutsi [sic] area which, in terms of the Government's consolidation proposals, is proposed for excision from the area of Lebowa.⁹²

Viljoen responded that "the clause in question is merely a confirmation of the generally accepted legal position in respect of the definition of the territory of the national state of Lebowa." Viljoen had "kept the chief minister of Lebowa fully informed about this matter in writing," and he "made no negative reaction to this information." "If any doubt should exist as to the definition of the area of the jurisdiction of Lebowa, it could of course place the effective implementation of Lebowa's state authority on uncertain grounds."⁹³ Since the PFP decided to support the bill in light of its other clauses, it passed with only ten negative votes and became effective 3 July.⁹⁴

The PFP constantly pestered the Government with embarrassing Parliamentary questions about Moutse. On 11 March Viljoen acknowledged that the consolidation

proposals for Lebowa published 12 October 1984 added Moutse to KwaNdebele; both governments had been informed, and further discussions were being held.⁹⁵ The next month he explained that Moutse had not been consulted because this was not required by the National States Constitution Act.⁹⁶ He fended off three further inquiries the month after.⁹⁷

A high-level two-hour meeting about the future of Moutse took place on 14 August 1985. P W Botha, Heunis, Viljoen, Wilkens, Pretorius, Tempel, van de Walt, and de Waal represented the government. Dr Phatudi and seven others represented Lebowa; there were 16 others from the homeland, including representatives of Moutse. Botha and Phatudi began with the usual pleasantries. Then Gibson Tlokwe Mathebe said that Moutse "stood firm, that they were Lebowan people and that they wanted to remain Lebowan people." Maredi Chueu made two arguments: a referendum would demonstrate that most people favored amalgamation with Lebowa, and government policy sought to unite those with similar ethnological and cultural backgrounds. That was why they had originally been placed within Lebowa. The uncertainty about their future was very distressing.

Botha said he had been personally involved with the problem for more than six years. He did not know why the parties could not settle it among themselves. He had visited Moutse. He had appointed a chairman. Nothing worked. A referendum was impractical; if it were held in Moutse it would have to be held every time there were changes in the boundaries of the "national states," which would require 20 or 30 referenda.

State President said he was not going to be dishonest. Everybody present knew that this was not his way of doing things. If it was expected of him to declare that Moutse was to form part of Lebowa, he had to disappoint them. He could not do so. Moutse could not be dealt with alone. It forms part of a greater plan. He was going to discuss this plan with the Lebowa Cabinet.

L C Mathebe asked whether Botha and the Government were prepared to accept responsibility for the repercussions of their decision. Botha replied that the parties had been unable to solve their problem. Now they had placed the burden on him but were also "pointing the pistol to his head." Chief Mathebe insisted on knowing whether they were being handed over to KwaNdebele. Botha reiterated that the parties had been given an opportunity to solve the problem and failed. Now the ball was back in his court. There was no alternative but incorporation. However, he would give Lebowa and KwaNdebele two more weeks to reach a solution. He himself had had to make unpalatable decisions to transfer land "of his own people" (i.e., whites) to "other people" (i.e., blacks). "If a person was not prepared to co-operate he was not serving the interests of Southern Africa."

M N Ramodike noted that KwaNdebele was not claiming land from Lebowa and proposed that the two homelands amalgamate. But Botha said that "Southern Africa's

problems could not be solved in this spirit." Dr Phatudi confirmed that Lebowa was in favor of amalgamation. KwaNdebele wanted land from South Africa, but South Africa proposed instead to give it land from Lebowa.

[H]e did not want to threaten the State President because threats are not solutions to problems. He, however, knows his people. They would not put a foot in KwaNdebele. Everything would be beyond control. The Moutse people want to remain where they are. If they were forced there would be trouble.

Botha continued to ignore the suggested amalgamation. He asked Dr Viljoen to brief the Lebowa Cabinet on the government's consolidation proposals but stressed that these were secret. "If anything should leak out, he would never be prepared to interview a delegation of this nature again."

Viljoen also prefaced his review by stressing the importance and sensitivity of land matters.

This matter was viewed seriously by the Government and decisions were not taken lightly. In the case of Lebowa, many people gave evidence to the Commission for Co-operation and Development. Many affidavits were filed. Consolidation was not to be seen piecemeal. It had to be seen as a package with sweet and sour ingredients. He asked Chief Minister Phatudi and his Cabinet to view the package as a whole.

After hearing the proposals, Dr Phatudi asked about the 25,000-hectare Nebo farms, which he wanted for Lebowa. Although Botha would not promise them, he made it clear that insistence on the return of Moutse would eliminate any chance for the farms. Phatudi said that some of the proposals were "very good news indeed." He was particularly delighted by the planned railway line to Kewakgomo: "generations to come would put that to the credit of the State President." Botha had assured the Lebowa representatives at the beginning of the meeting that he would show how Moutse fit into the entire package.

Lebowa Government could now judge Moutse question better. He has helped them. Block 24 and Zebediela for instance are vast additions of developed land. He was fair to Lebowa. He appealed to Lebowa Government to be fair to him on the Moutse issue.

Phatudi said he did not want bloodshed and would see what he could do. Botha replied that he did not like to be threatened with bloodshed. Any bloodshed would not be on his head. "Lebowa is well treated by the consolidation proposals. The people should therefore stand together and make a success of their future. *He would give his decision on Moutse on 1 September 1985. He could not wait any longer as the consolidation proposals have to be made known.* Phatudi promised to reply in two weeks. Botha

"thanked everybody for their presence and wished them a safe journey home." Phatudi thanked Botha "for the amicable spirit in which the discussions took place."

It is unclear whether the government succeeded in buying Lebowa's consent with these enticements or simply ignored its continuing objections. Maredi Chueu accused Phatudi of accepting the land as a bribe.⁹⁸ In any case, Heunis announced the final consolidation scheme on 25 September. Wheeling and dealing with tens of thousands of hectares of land and hundreds of thousands of people, he gave some land originally scheduled for KwaNdebele to both Bophuthatswana and Lebowa but incorporated Moutse and other land into KwaNdebele.⁹⁹ Some 6000 people protested the incorporation at a meeting in Moutse later that month. They also started contributing to a legal fund, which had collected R42,000 by November.¹⁰⁰ On 1 October government officials visited Chief Mathebe to tell him about the forthcoming incorporation and ask how the people would respond. He told them the people rejected it and the consequences would be disastrous. A mass meeting of about 6000 unanimously rejected incorporation on 12 October.

The residents of Leandra, 80 km east of Johannesburg, also had been faced with removal to KwaNdebele. In June 1984 the Department of Co-operation and Development promised the 116 families that they would not have to move. Three months later the East Rand Administrative Board began evictions, only to grant another reprieve. Then in 1985 the residents were told to leave by 13 November or see their houses destroyed. Early in the morning of 19 November Nelly Masedela, a school teacher and mother of three, was shot to death by the white owner of a local cafe while getting water from the communal tap. Residents responded angrily. The police killed three boys who were trying to burn the beerhall. Three councillors' homes were burnt in reprisal. Chief Mayisa, who sought to pacify the situation, declared that no residents would move "until they brought these dead people back to life."¹⁰¹

On 11 November Chief Mathebe and community councillors met two deputy ministers of Co-operation and Development in Pretoria, who told them incorporation was not negotiable and asked them to facilitate the transfer. On 18 November a 19-man delegation led by Maredi Chueu again asked Heunis to return Moutse to Lebowa and hold a referendum. Heunis refused, saying that the decision had been taken "in the best interests of all concerned." Chueu held a press conference to denounce the government action. "We feel like John the Baptist's head being served up on a platter." He reiterated that it was "unthinkable" that the Pedi hosts should be made subject to the Ndebele guests.¹⁰²

Some residents resorted to self-help. Hundreds marched to the home of a Moutse man violating the boycott by operating a shop in KwaNdebele, but he was warned in time to flee. Although all the chiefs opposed incorporation, a headman and a community council chairman now favored it. Prince M K Mahlangu, KwaNdebele Minister of Health, was eagerly awaiting the takeover of the 360-bed Philadelphia Hospital in Moutse, since KwaNdebele had no hospital.¹⁰³ KwaNdebele anticipated the actual incorporation by starting to supervise the Moutse police, sending income tax forms to

Moutse taxi drivers, and requiring Moutse businessmen to obtain loans in KwaNdebele.¹⁰⁴ A 24 November youth meeting to protest incorporation was broken up by police. The delegation that had met Heunis planned two meetings to report back to the community on 30 November. The morning meeting in Moutse 1 was banned; the police used tear gas to disperse the afternoon meeting in Moutse 3.¹⁰⁵ The magistrate allowed a meeting at Uitspanning on 3 December but, on the recommendation of the SAP, ordered that "no action or counter-action regarding the incorporation of Moutse into KwaNdebele shall be discussed . . . [and] no speaker shall be allowed to incite, instigate, intimidate or by any other means influence any person to oppose the incorporation of Moutse into KwaNdebele."¹⁰⁶

On 28 November all Moutse teachers were summoned to one of four meetings and told to register with the KwaNdebele Department of Education or request transfer elsewhere. Expecting this, the teachers had sent a protest to the Moutse Circuit Inspector on 21 November. The Chairman of the Moutse Principals' Council wrote again on 3 December, transmitting an elaborate resolution.¹⁰⁷

[N]oting:

(1) That the whole transfer of schools in the moutse Circuit is part and parcel of a transfer of administration in the whole Moutse Districts to the Kwandebele Government.

(2) and noting further that there are divisions between the powers that be and the Communities in moutse on this issue; which have engendered certain campaigns against incorporation into Kwandebele.

(3) and noting further that the incorporation of schools from Moutse into Kwandebele has been singled out in this campaigns. . .

AND WHEREAS

(1) as teachers and Educators, our professional ethics, and the law requires of us to be apolitical and

(2) whereas the requirement that all teachers should state their wish to either remain or move out of our present schools is tantamount to an indication of allegiances and thus politicising the whole profession . . .

HEREBY RESOLVE:

(1) that we do not accept these form in their present format.

(2) that as a matter of urgency request the Department of Education and Training to reverse; and withdraw its instruction that teachers sign those documents "requesting" transfers.

(3) and that the methods of transfer be negotiated between the authorities and the communities involved in Moutse; before teachers can be approached to make a decision.

Needless to say, this elicited no response.

On 5 December the government issued a press release reaffirming its decision.¹⁰⁸

The government has decided to end the consolidation tug of war between two homelands over the Moutse district, north-east of Pretoria, and it will [be] transferred to KwaNdebele from the beginning of next year.

...
In recent years the homelands' respective claims to the district led to regular talks between KwaNdebele, Lebowa and the South African Government in an attempt to find a solution. . . .

[Heunis said that Moutse had been incorporated into KwaNdebele] "for the purposes of meaningful consolidation and orderly government, as well as in the interests of the inhabitants of the further development of the Moutse district."

[Heunis] and his two deputy ministers had twice met the leaders of Moutse, where "Divergent opinions" on the inclusion of Moutse had been expressed.

"Further discussions were held with the KwaNdebele Cabinet and it expressed its willingness to listen to the leaders and inhabitants of Moutse with regard to fears some of them had in light of the proposed inclusion, such as the language medium in schools, the granting of trading licenses, and the position of chiefs in Moutse and their representation in the Legislative Assembly of KwaNdebele," Mr Heunis said.

"For those inhabitants of Moutse who do not desire to stay on under the KwaNdebele Government, and who are prepared to move voluntarily, provision has been made in the Saliesloot/Immerpan area, near Roedtan." The area, part of Lebowa, is south of Potgietersrus and less than 100km away from the Moutse district.

"No forced relocations will take place," Mr Heunis said. "Families who wish to move voluntarily, will receive compensation for their property and will be transported together with their personal effects free of charge to the area. The necessary infrastructure, schools and clinics will be provided there. Moutse will be transferred to KwaNdebele with effect from January 1, 1986, and the inhabitants of Moutse are requested to accept the South African Government's decision as it is in the interest of the prosperity and development of the area," Mr Heunis said.¹⁰⁹

Mrs Ethel Walt, Black Sash vice-president, dismissed the justification.

This move is certainly not, as Mr Heunis says, in the interests of the inhabitants of Moutse. The only way to determine the wishes of the people is to have an open and free referendum—which the government has rejected.

The people of Moutse have stated openly that they do not wish to be moved.¹¹⁰

Trac and the National Committee Against Removals warned that the government would have to "take full responsibility for the violence and terrible suffering that will result

if it does not reconsider its decision." The incorporation was a return to "kragdadigheid" and "an ominous indication of what can be expected from the new Department of Constitutional Development and Planning."¹¹¹ Several papers published critical editorials. *The Cape Times* declared:

Grand apartheid is alive and well. . . .

The wishes of the people involved are irrelevant, as are the "consultations" we have been assured have taken place over the years. Moutse is part of the additions which will nearly double the size of tiny KwaNdebele before it takes independence sometime next year. That is all that matters to a government determined to take unilateral decisions in order to further an ethnic partition opposed by most South Africans.¹¹²

The *Sowetan* asked rhetorically:

One wonders what the Government's reaction would be if they tried to do the same thing to a white community and they objected in exactly the same way. Would they have been forced to become part of a homeland or an "independent" state? . . .

There was no way whites would give up their land and move to other parts so that they could remain "in South Africa." . . . [T]he difference between those whites and the people of Moutse, is that they are white and the Moutse people black. The whites have the vote—a very crucial platteland vote—whereas the blacks do not have any vote.

Indeed, as far as the Government is concerned, they do not even have a say in the matter. . . .

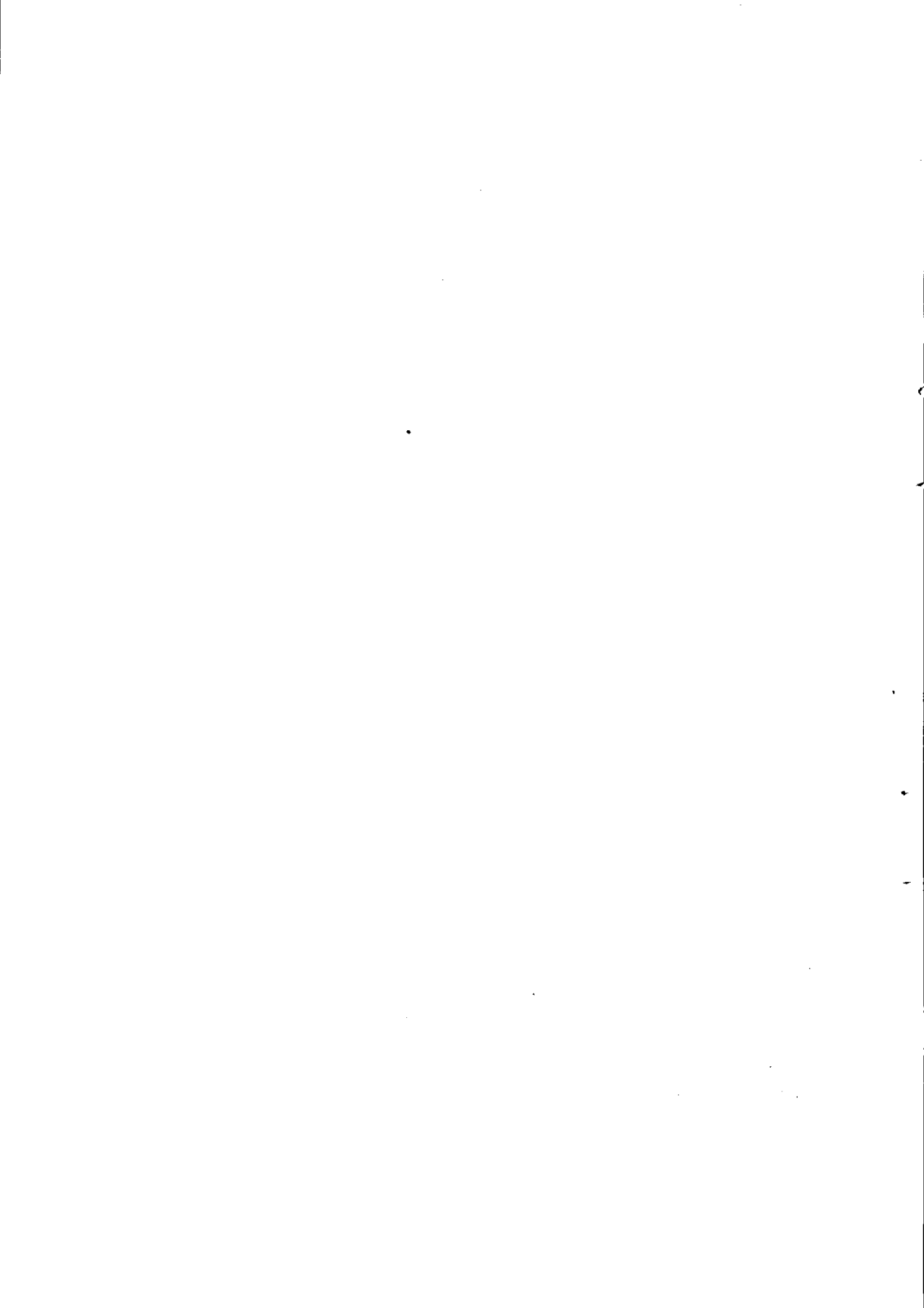
The Government must stop these senseless, insensitive, forced removals of people. The Government must stop pursuing its homeland policy, because even they have realised that this is not a viable option in trying to find a solution to the problems of this troubled land of ours.

Leave the people of Moutse—and all others—in peace. Now.¹¹³

The Argus called for "Hands off Moutse." "In order to convince black and white South Africans—as well as the rest of the doubting world—that reform is more than a mere word, the Government would do well to scrap these incorporation plans."¹¹⁴ Peter Soal, PFP MP for Johannesburg North, criticized the government for "brushing aside" the wishes of the people.¹¹⁵ John Dugard, director of the Centre for Applied Legal Studies, said the incorporation "will create an ethnic minority a third of the size of the population of KwaNdebele."¹¹⁶

Chief Tlokwe Gibson Mathebe applied to the Dennilton Magistrate for permission to hold a meeting on 8 December to report to Moutse residents on the 18 November meeting. Because the permit only allowed him to report Heunis's message without criticism or questions he refused to proceed. Unconditional permission was granted for a meeting at the royal kraal in Moutse 1 on 15 December. More than 1000

people attended, protesting incorporation. Following the rally youths burned the shops of two suspected KwaNdebele supporters and stoned a bus. The SADF eventually was summoned and 14 youths arrested.¹¹⁷ The police also used the Internal Security Act to detain two South African television journalists covering the violence in Moutse for World-Wide Television News in London—which, in turn, was reported by the American press.¹¹⁸ The British Embassy sent two representatives to investigate.¹¹⁹ John Kane-Berman, director of the Institute of Race Relations, deplored the violence. "For the Government to act in this manner would be cause for concern at the best of times. For it to do so in the current climate is highly irresponsible."¹²⁰ Youths held another meeting at Chief Mathebe's kraal on 17 December. The police arrived, ordered them to disperse in three minutes, and fired teargas, arresting many, beating some, and torturing those taken to the station. Vigilantes attacked members of the Dennilton Youth Congress returning from an 18 December meeting.¹²¹ Police dispersed another demonstration on 22 December, killing one man and arresting eight. Vigilantes attacked the village of Kgobokoane.¹²² But the government ignored all these events, as well as a letter of protest to the South African Ambassador in Washington from 21 U.S. Senators and five Representatives.¹²³



II. INCORPORATION

Proclamations R227 and 228 published on 31 December 1985 and 1 January 1986 effected the incorporation of Moutse into KwaNdebele on New Year's Day.¹²⁴ In anticipation, Chief Tlokwe Gibson Mathebe and Godfrey Mathebe had sought police protection from Major Malan of the Dennilton Police Station. At first he was reluctant, insisting that his only responsibility was to protect the police station and magistrate's court. He wanted to know why they had not sought his help earlier on behalf of KwaNdebele businessmen attacked by youths.

Their fears were tragically prescient. Early on New Year's Day there were three attacks on Moutse. A car with KwaNdebele license plates drove to Chief Mathebe's kraal. The five armed men inside said Moutse was theirs and they had come to take over the kraal. They allegedly planned to kidnap the chief. In the fighting, four of the attackers were killed and the fifth severely injured and hospitalized. Men in trucks with white crosses on their foreheads (to distinguish themselves from locals), armed with pangas and axes and shouting "Mbokotho [millstone]," attacked the Moutse villages of Moteti and Kgobokoane, next to KwaNdebele. They abducted more than 380 men, taking them to the Siyabuswa community hall in KwaNdebele. The vigilantes stripped their victims, filled the floor with soapy water, and sjamboked and beat them, keeping them awake for 24 hours and forcing them to chant Ndebele slogans. Simon Skosana and Piet Ntuli oversaw and participated in the assaults. One victim described the scene.

Mr Skhosana was standing next to a strongman at the door of the hall. Skhosana had a whip in his hand and as we were marched in he asked us where we were from. Those from Johannesburg—whom he considered to be outsiders and troublemakers—he flogged heavily. After we were all in the hall, the door was shut and Skhosana addressed us. He said he was not fighting us, provided we accepted his rule. He said we must fight the whites, not each other. After he left we were asked to strip naked, a hosepipe was put through the window and soap powder sprinkled on the floor. Then Skhosana put his head through the window and said we must put underpants on in case the children see us naked. We were made to lie down in the water while the vigilantes flogged and kicked us so that we slipped around the floor, unable to hold onto anything. We were made to do physical jerks while the vigilantes hurled insults at us. When we were released, we were given petrol bombs and told to use them against our chiefs and leaders.¹²⁵

The next day many were taken to Philadelphia Hospital, where more than 50 were treated for sjambok wounds. Jimmy Tijane, 18, died from his injuries. Interviewed about this incident, Skosana said "that is a secret of the government" and hung up on the reporter. A total of 17 vigilantes were killed in the clashes. Vigilantes stole property. Women and children fled to the bush. Cars of suspected vigilantes were burned.¹²⁶

Although 100 riot police had been seen at Denmilton police station on New Year's Day, they did nothing. Maredi Chueu's accusation that the police "have taken a very indifferent attitude towards our situation" elicited the usual response.¹²⁷

From our daily statements it should be evident that the police are striving to contain the unrest and lawlessness in the area. . . . Our comment on alleged vigilantes is that should any person be of the opinion that there is legal cause of complaint, such allegations can be made available to the police in the form of affidavits.¹²⁸

Complaints were laid against Skosana, Ntuli and two other cabinet ministers, but they were never prosecuted.¹²⁹

Meetings to protest incorporation were held in three Moutse 1 villages on New Year's Day: Keerom, Klopper, and Uitvlucht. Two black police driving a vehicle with KwaNdebele license plates allegedly tried to break up the first meeting, taunting residents and shooting without provocation, killing one person. The officers then fled toward Klopper and were caught and killed. Their "mutilated" bodies were found the next day. The police responded with five days of house-to-house searches, beating and torturing people, breaking doors and windows, and stealing property. On 5 January, when people had to leave the bush for lack of food, the police paraded them in front of hidden informers, who identified those present at the New Year's Day meetings; 89 were arrested; 13 were ultimately charged with the murder of the two police and the others eventually released.

Maredi Chueu warned that Moutse people would withdraw their children from school and refuse to accept KwaNdebele services and pensions. "Since January 1 we have seen what amounts to an invading army. We feel this is only the beginning if incorporation goes through." He threatened legal actions to challenge incorporation and enjoin violence. Although the government said this was not a removal "it was like telling people sitting in a truck that you are not taking them anywhere, but are only driving the truck to its destination."¹³⁰ On 3 January police teargassed some 7000 mourners at the funeral of Mpho Monageng, killed by the police during the 22 December meeting. That same day an SAP brigadier visited Chief Mathebe and Godfrey Mathebe by helicopter. He promised more protection, and in return Chief Mathebe asked the crowd to cease fighting.¹³¹ In response to the violence Chris Heunis reiterated that the incorporation was in the "interests of all concerned" and the government had shown the "greatest understanding and compassion." Black Sash president Sheena Duncan called this "astounding and ludicrous."¹³²

Several editorials agreed with her. *The Star* urged the government to "re-think Moutse."¹³³ *The Cape Times* urged the government to cancel the incorporation and reassess "the disastrous homelands policy."¹³⁴ Although the *Eastern Province Herald* accepted "Government stewardship of less advanced peoples . . . it was the very antithesis of stewardship to force incorporation on the unwilling people of Moutse." It

accused the government of provoking "the re-emergence of an age-old enmity." "This is a mass removal in another guise. . . . Why now this folly and inhumanity to usher in 1986?"¹³⁵ *The Argus* criticized Heunis for failing "to explain why such a step was necessary at all at a time when the whole Verwoerdian fantasy of homelands and partition is widely discredited and when constitutional options such as federation are being debated."¹³⁶ *The Evening Post* attacked "the Government's enduring obsession with racial division and ethnic control. Whatever it says about reform, it is still wedded to apartheid as the basis of government. We despair about the future when the Nationalists, while showing no inclination to tackle the huge problems of the nation at large, continue to enforce their archaic policies on defenceless people."¹³⁷ *The Natal Mercury* asked:

Why is our Government hellbent on looking for trouble?
 Why does it go out of its way to outrage the few friends it has in a hostile world?

Why does it create the impression that its solemn promises are made just so they can be broken?

. . .
 Why, Mr. Heunis?

To make your map look tidier? To give your grey gurus, who produce constitutions like rabbits out of a hat, another chance to exercise their expertise?

Or are you just showing the world that 'moving away from apartheid' has some other subtle meaning which none but you are capable of understanding?¹³⁸

The *Pretoria News* declared:

Moutse is a name that will be etched into South African history as deeply as Magopa and kwaNgema—more knots in the rope to finally hang apartheid. It is classic evidence that in spite of vehement and repeated protestations that it has reformed, that it is holier, the government is doing exactly what it said it has stopped. . . .

As Mrs Helen Suzman said: the government makes great play of ethnicity, when it is convenient. In this case it has deliberately and cold-bloodedly ignored its favourite segregationist tenet and thrown together people of unsophisticated level and known tribal enmity, the North Sotho of Moutse and the Ndebele of KwaNdebele. . . .

Ethnicity can never be a justification for apartheid at either local level or in some grand federal plan but it is a fact of life which cannot be realistically ignored. However, if this is the manner in which the secretive Mr Chris Heunis is planning our constitutional future, then God help us.¹³⁹

PFM MP Helen Suzman toured Moutse the following weekend, meeting with Chief Mathebe, and called the the government's actions "scandalous." Murphy Morobe, acting publicity secretary of UDF, denounced "another atrocious act by the SA Government. It is treasonous and hypocritical for a government to raise such an outcry because landmines have been found on the borders, yet they continue to forcibly remove settled communities."¹⁴⁰

The Black Sash collected affidavits from 80 of those injured in the New Year's Day abduction and sent them to the Transvaal Attorney General. Lenaka Ditshego said he was told to burn the shops of those opposed to incorporation and promised money. "Otherwise they would come back and kill us, and . . . after we had finished burning the shops they would take us to the chief's kraal where we must help them to attack Chief T G Mathebe." John Sakukhuna was hit on the head with an axe and on the back with a sjambok and beaten with assegais during his 28 hours in captivity. He was hospitalized for two weeks. Joel Seema Nkadimeng was taken to Skosana's house first, where the chief minister told the vigilantes to beat him. A victim who returned home to find his possessions smashed and R400 stolen said "I did not report this to the police because when I saw the vigilantes attacking the houses, the police were also there firing teargas into the area." Police disrupted a girls' initiation ceremony, teargassed villagers locked in a van, and shot a Keerom man to death.¹⁴¹

Mbokotho ruled KwaNdebele itself with terror, beating children for not attending school and forcing adult men to be circumcised whether or not they were Ndebele. The previous year the Kwaggafontein magistrate had to flee his post when it was learned that he was uncircumcised. He went to a private physician to avoid having the operation performed in the bush.¹⁴² In February the East Rand Development Board appointed an "Authorised Representative Committee" for Ekangala, including five of the most active vigilantes: KwaNdebele Information Minister F K Mahlangu, Isaac Msiza, Isaac Ndaba, Samuel Mtshweni, and P J Sibiyi. On 26 February the Deputy Minister of Information and Development told Parliament that the government was not planning to incorporate Ekangala into KwaNdebele soon. But a few days later Gerrit Viljoen told foreign journalists that the decision had already been taken.¹⁴³ In March vigilantes threw a hand grenade into the home of Robert Mdala, secretary of the Ekangala Action Committee, which was opposing incorporation.¹⁴⁴

Mbokotho had extensive experience repressing dissent within KwaNdebele. Chief Makhosana Klaas Mahlangu, MP for Sontjongweni, Minister of Health, and a member of the royal family, was popular with the youth because he was well educated and fought corruption. He had long opposed the Lebowa government and broken away to seek a separate homeland for the Ndebele. However, he also clashed with Simon Skosana and was ousted in 1975 for opposing the homeland constitution proposed by South Africa. He was seriously wounded in an attack by Skosana supporters and spent seven years in exile in Nongoma, kwaZulu. The South African and Lebowa police arrested him in 1979 and sent him to a "rebellious chiefs camp" 48 km north of Potgietersrus. In 1984 his cousin Cornelius Mahlangu asked him to return to

KwaNdebele, where he won election to Legislative Assembly in Kwaggafontein 1985.¹⁴⁵ But on 19 December 1985 he and his mother and wife were dragged from their kraal by 100 armed men, allegedly Skosana supporters, and taken to Mbokotho headquarters in Siyabuswa. A youth had summoned the police, who were reluctant to intervene "because the Mbokotho are dangerous people and therefore they could not open a docket." However, they helped the chief to escape to KwaZulu (his wife was the sister of King Goodwill Zwelithini). He returned to KwaNdebele in January but resigned from the Legislative Assembly in March to protest Mbokotho, incorporation, and impending independence. On 16 March a gunman shot him. He recognized the suspects and identified three Mbokotho members, who were arrested. In April, his wife was moved from GaRankuwa Hospital after seven alleged vigilantes tried to force their way into the ward to assault her.¹⁴⁶

The events in Moutse attracted international attention. *The Times* (London) quoted the police blaming the deaths on "faction fighting."¹⁴⁷ In a front-page article, *The New York Times* characterized the violence as "tribal fighting," lumping it together with a clash between Zulu and Pondo near Durban.¹⁴⁸ Alan Cowell placed some of the responsibility on apartheid but misunderstood the government's motives, attributing the excision of Moutse from Lebowa to the interests of white farmers who coveted the land and the minerals it contained. He also saw the incorporation into KwaNdebele as intended "to give it the appearance of a legitimate nation." The *Washington Post* focused on the real issue: Moutse resistance to incorporation.¹⁴⁹ It contrasted Chris Heunis's lame justifications with Maredi Chueu's warning that 1000 KwaNdebele vigilantes were gathered on the border. "The government decision not to reconsider will be recorded by history as one of those fateful and fatal moves that causes a war because that is what is now beginning—a full-scale war." Three days later the paper reported the mass abduction and torture.¹⁵⁰

Even Herman Nickel, American Ambassador to South Africa and a staunch Reaganite, asked aloud (in a speech critical of Congressionally-imposed sanctions) why "the decision to force 120 000 Sotho-speaking Moutse people to become part of kwaNdebele before that homeland gains a dubious independence is allowed to put the South African Government's commitment to reform in doubt."¹⁵¹

On 6 January Skosana declared that 80 percent of Moutse favored incorporation. "The impression being created, among others by the Black Sash, that Ndebeles are instigators, is devoid of all truth and can rather be subscribed [sic] to revolutionary elements who represent only a small minority in Moutse." He denied participating in the mass abduction and promised that "the needs, wishes and aspirations of all people will be taken into consideration." He blamed the burning of shops and damage to vehicles on "prominent leaders" directing youths.¹⁵² Placid Kunutu, KwaNdebele Minister of Education, held a press conference to reassert the homeland's determination to retain Moutse—and incorporate Ekangala and Rust de Winter as well. He admitted that people had been captured from Zoetmelkfontein in Moutse, where KwaNdebele taxis had been seized. Although initially denying that those kidnapped had been assaulted, he later conceded that "traditional Ndebele ways of information extraction

might have been used."¹⁵³ Victims had testified that Kunutu participated in the mass abduction and assaults. Skosana also issued a press release on 9 January, reassuring Moutse residents that they would not have to take KwaNdebele citizenship after independence, their property would be respected, there would be no discrimination in issuing trade licenses, their language would continue to be used in their schools, and their representatives would serve as chiefs and in the Legislative Assembly. "To discriminate in any way against the people of Moutse will only mean that the government will boycott itself in its economic development."¹⁵⁴

None of this allayed fears in Moutse. Teachers were among the most anxious about being subordinated to KwaNdebele authorities. During the week of 5-9 January the Department of Education and Training reasserted the transfer.¹⁵⁵ On Friday their lawyer, Nicholas Haysom, telexed Deputy Minister Sam de Beer, seeking a meeting on behalf of M L Shaku (chairman of the Moutse School Principals' Council), Chief Mathebe, and Maredi Chueu. He urged that the transfer of the 700 Moutse teachers be postponed "until the status of Moutse has been finalised." His clients planned to ask Parliament to set aside the incorporation. Lebowa also sought negotiations with the South African government. "For these and other reasons including [the fact that] the legal validity of the proclamation the status of Moutse is unclear the status quo with regard to education should be preserved for the moment." He warned that transfer of the teachers might result in school boycotts, physical threats to the teachers, their flight, and "rapid deterioration in the already inflammable situation." His clients offered to go to Cape Town for the meeting. On 15 January M L Shaku wrote the Moutse Circuit Inspector.

We view with deep concern the media announcement allegedly made by some Kwa-Ndebele Government officials about Moutse teachers and schools, that the majority of teachers in Moutse have accepted to serve under the Department of Education and Culture Kwa-Ndebele. This puts our teachers in serious danger in that the community is made to believe that the teachers betrayed them.

We wish to condemn this malicious propaganda aimed at arousing confusion and confrontation among teachers and residents of Moutse.

We further wish to re-state our stand-point in no uncertain terms about the Moutse-Kwandebele issue, namely, that the politicians should settle the Moutse-Kwandebele dispute with the Moutse Communities first, before coming to use teachers as statistics to achieve their aims.

We challenge the validity and the source of the information used in the Radio and TV announcements of 14 Jan 1986, namely, that the majority of teachers in Moutse have accepted to serve under Kwa-Ndebele Government, since it has been reliably established that the acceptance forms for this purpose are still in the hands of the teachers in Moutse-East, and still in the post with regard to teachers in Moutse-West.

De Beer replied curtly to Haysom on 22 January.

[T]he constitutional status of the Moutse District is a fait accompli [sic] . . . Arising from this fact the DET no longer has any jurisdiction over schools in Moutse and is obliged to leave teachers the choice of entering the service of the KwaNdebele Government or to remain in the employ of this department and be transferred to schools under its jurisdiction. I wish to emphasise that no coercion has been applied in any way on teachers in exercising [sic] their free choice.

In view of the legal situation, I am of the opinion that the proposed meeting with your clients can serve no useful purpose.

On 10 January, Chief T G Mathebe and Lebowa MP Godfrey Mathebe met with Dr Phatudi in Lebowa. The police detained Godfrey Mathebe on his return to Moutse and held him for 14 days under the Internal Security Act, instantly transforming him from "collaborator" into hero in the eyes of youths. The police subsequently fired teargas into his bar lounge.¹⁵⁶ Allister Sparks commented that "Pretoria has gratuitously created a new trouble spot in a previously placid area." Several years earlier the community had handed two ANC insurgents over to the police. "Today if more insurgents were to turn up there, the chances are they would be given the warmest of welcomes—such is the level of fury which the Government's action has generated among these easy-going folk. . . ." ¹⁵⁷

On 16 January the Lebowa Legislative Assembly held a special session on Moutse, defying Chris Heunis's request that they discuss this privately between governments because public debate "could conceivably cause more harm than good." The gallery was packed with 18 busloads of Moutse people singing freedom songs and dancing. Dr Phatudi declared: "The Pretoria government is making a big mistake by treating Lebowans as children or slaves who are ordered about at the bidding of the master." The Assembly unanimously rejected the incorporation, reaffirmed assembly seats for Moutse representatives Godfrey Mathebe and Mardi Chueu, and resolved to demand the withdrawal of Pretoria's Commissioner General for Lebowa (P J V E Pretorius) until Moutse was returned to Lebowa, all its public services were placed under Lebowa, taxes were paid to Lebowa, Godfrey Mathebe was released or tried, and Skosana was reprimanded for claiming that 80 percent of Moutse people favored incorporation. Mardi Chueu observed: "For five years we have asked for a referendum to establish whether the people of Moutse favoured excision and kwaNdebele has consistently refused this. Where do they now get their 80 percent?"¹⁵⁸ The united front against incorporation concealed deep internal divisions, however. Ephraim Mohale (a Moutse youth leader who had been the first president of Cosas and served time on Robben Island) and Mardi Chueu both accused Dr Phatudi of having colluded with Pretoria.¹⁵⁹ He denied it vehemently: "As far as we are concerned Pretoria created the tiger and they will have to sort out the mess."¹⁶⁰

Moutse residents took what steps they could to protest incorporation. Businessmen boycotted goods from KwaNdebele. Some residents refused to allow the

KwaNdebele seal to be placed on documents and reference books and removed KwaNdebele license plates from cars. Many teachers refused to accept employment with the KwaNdebele Department of Education.¹⁶¹

But the South African Government also retaliated. The police were blamed for a number of deaths: Simon Mohadima [Mogadima?], 76, shot while sitting under the elders' meeting tree in Toitskraal; Johannes Mariba, a schoolboy shot during an informal meeting concerning removals; and Jacob Malaka, 28, shot by police in Toitskraal (his companion, Tjemeng Ramontsha [Jacob Maronga?], was critically wounded).¹⁶² During the week of 20 January police detained headmen Jim Mathebe and Sikai (Sky, Skwayi) Boroko.¹⁶³

On the weekend of January 25 Simon Skosana officially launched Mbokotho at a meeting of 400 people in Kwaggafontein, plying them with food and liquor. Two weeks earlier his cabinet had appointed him president of the organization; he then made Piet Ntuli vice president and named 24 other men to the executive council, including businessmen, a traffic officer, the mayor of Siyabuswa, and Solly Mahlangu (speaker of the Legislative Assembly). Ntuli had an unsavory reputation. In 1984 his own son had asked for court protection when giving evidence in a murder case against his father (Ntuli was acquitted).¹⁶⁴ He was also prosecuted that year for directing four men (including his nephew, Moses Skosana) in the murder of Andries Mahlangu, a member of the Lebowa Legislative Assembly; but he was acquitted after a short trial.¹⁶⁵ Skosana explained that the functions of Mbokotho were:

Protecting the interests of the community;
Dealing with people who enforce boycotts in KwaNdebele;
Solving problems between a preacher and his congregation;
Looking into problems affecting family life;
Dealing with any trouble-maker who may be arrested. They can fetch such a person from the police and hit him.¹⁶⁶

Skosana further elaborated his objectives.

I have been told some people say they will see to Mbokotho's downfall. I will keep this position for a year or two to see who will bring about the organisation's downfall. . . .
We started this homeland with only R16.40 in our coffers and only 240 Ndebele people with one school to our credit.
We are now able to count our money in millions. I cycled all over getting our people together. Now that we have built expensive schools people want to burn them.
Mbokotho will deal with such people.

By the end of May Skosana claimed that the organization contained 800-900 people, who operated like "ordinary tribal police." He said "I am satisfied with Mbokotho.

They have nothing to do with political matters. . . . They just keep the peace." They were armed with sjamboks and did not have to file reports when they used them.¹⁶⁷

A matric scholar at a KwaNdebele high school described how Mbokotho recruited members.

I left my school because I was beaten for refusing to join Mbokodo. . . . The president of Mbokodo is Mr Ntuli. . . . He said the South African government has given us this place (Moutse) and we can't leave it to the Pedis living there. . . . On February 14th, 1986 they came to me again and asked me to join and when I refused they beat me with sjamboks all over my back, my arms and my legs. The next morning I packed my things and left Siyabuswa. I was admitted to Baragwanath Hospital overnight. My body is still full of wounds and scars from the lashes.¹⁶⁸

In mid-February Skosana promised independence on 4 December; a committee had been appointed to plan the capital at KwaMhlanga. Construction also was proceeding in Siyabuswa on the R5 million "independence" stadium, R2.9 million Supreme Court, and R1.46 million broadcasting center.¹⁶⁹ This was confirmed by the South African Commissioner-General for KwaNdebele, Gerrie van der Merwe. However, incorporation of Ekangala was postponed from 1 April.¹⁷⁰ *The Cape Times* editorialized against "partition again" just after the State President had pledged an undivided nation and the restoration of citizenship to all who wanted it.¹⁷¹ *The Argus* also called attention to the contradiction, which "simply doesn't make sense."¹⁷² In the last week of February the British government again protested against the incorporation.¹⁷³

Violence and disorder had their inevitable—and intended—effects. Ndebele living in Moutse began moving to KwaNdebele on 8 January. On the weekend of 18-19 January government trucks escorted by police moved 600 Ndebele families from Kwarilaagte to temporary accommodation in KwaNdebele.¹⁷⁴ Further removals occurred on 6 February—allegedly at gunpoint. The following day 22 Moutse families moved from Uitvlugt [Uitvlucht] to Saliesloot (the compensatory land outside KwaNdebele). Villagers claimed that when three unpopular residents asked to be moved the government required them to produce at least 20 names. They apparently persuaded elderly men and women caring for the houses of labor migrants to sign forms requesting valuation, which were then treated as consents to the removal. As happened elsewhere, the caretakers were told they would be moved in any case and those refusing to sign would receive no compensation. Another 140 households were moved over the following days. Their homes were demolished immediately after their departure and they were housed in tents. Trac reported that people were intimidated by the large police force, which prohibited any meetings.¹⁷⁵ D Ditshego of Dennilton wrote to the editor of the *Sowetan* on 10 February, addressing Skosana: "Don't be fooled by people who may have given you the land. . . . We the people of Moutse are prepared to die, be apprehended, be detained, shot or anything OF THAT nature. But not to move or be ruled by coercion or to be under any homeland rule."¹⁷⁶ Maredi Chueu said "This

is a Pretoria exercise intended to pressurise those who resist incorporation to move out of Moutse.¹⁷⁷ Viljoen reported that 42 families had moved by 5 March.¹⁷⁸ On 8 April ten more families moved, guarded by a large police force. Chris Heunis stated in Parliament that 60,000 had been "assisted" to move since the moratorium on forced removals more than a year earlier.¹⁷⁹ The *Sowetan* once again denounced "this farcical thing."¹⁸⁰ Other Moutse families continued to move, swelling to total to 300 families by September.¹⁸¹

Viljoen issued a press release about the removals on 7 February, which was widely reported.¹⁸²

[T]he present moving of about 107 families from Moutse to Immerpan/Saliesloot is taking place at the voluntarily [sic] request and insistence [sic] of the residents concerned and with the assistance of the Department of Development Aid. The Buildings and other improvements of the families requesting to move are being appraised with a view to the payment of compensation.

About 107 families from the Uityvlucht area in Moutse have thus far applied for assistance to move. The Government is in duty bound to provide the necessary assistance to people asking for help and in particular also to provide them with protection against intimidation by persons who wish to prevent them from moving. The South African Police are present in the whole Moutse area in order to maintain law and order.

I wish to give the assurance that the Government is not exercising any pressure on any resident in the Moutse area to move elsewhere. The whole operation is a completely voluntary one. Consequently it is not dependent upon a possible Parliamentary debate on the Proclamation incorporating Moutse into KwaNdebele.

Viljoen's last comment referred to a petition that Helen Suzman presented to the House of Assembly on 5 February on behalf of Chief T G Mathebe and Maredi Chueu, who asked to address the House in the hope of persuading it to disapprove the resolution of incorporation. Only three times in South African history had petitioners asked to be heard at the Bar of the House. Later that day Suzman used the no confidence debate to attack the Government's actions.

At Moutse near Groblersdal appeals to the police to protect people who had been kidnapped and assaulted by vigilantes sent by Skhosana, who appears to run his own Mafia gangs from kwaNdebele, fell on deaf ears. . . . At Ekangala also, kwaNdebele vigilantes have violently attacked residents opposing integration. . . .

I want to say a few words about the Moutse affair and the utterly reprehensible and incomprehensible decision of the Government to incorporate Moutse into kwaNdebele which is about to become an

independent Black state, and to transfer the jurisdiction from Lebowa to kwanDebele. Is it not amazing how easily the Government discards the sacred principle of ethnicity and group identity when it suits them to do so, and hangs on to it desperately when it does not? . . .

Emperor Heunis . . . told me that the decision was irreversible. This is of course pure nonsense. . . . Parliament merely has to disapprove of the Proclamation. . . .

HEUNIS: Now you have your day for insults.

SUZMAN: Yes, it is an excellent day for insults.

The incorporation of the Moutse people into kwanDebele does not fall into the category of a physical forced removal which the Government has undertaken to suspend, but in every other respect it is a forced removal. This, I want to tell the Government, is the sort of callous action which totally disregards the views of the people concerned and which earns Pretoria the condemnation of the whole world. The world knows about Moutse, and the Government would do well to reverse this decision. It has turned a peace-loving community into a bloody, strife-ridden area. I see nothing but ongoing trouble and violence there if the Government proceeds with its plans. I put this affair in the category of those provocative actions which lead to punitive steps against South Africa. What is happening at Moutse will bring the threat of sanctions ever nearer.¹⁸³

On 13 February Phatudi saw Heunis and Viljoen. The meeting accomplished nothing, and Phatudi carried out the resolution of the Lebowa Legislative Assembly by asking that Commissioner-General Pretorius be withdrawn. He also repeated his call for a referendum.¹⁸⁴ The *Pretoria News* said "the situation really is a tragicomic farce; as is the whole grand apartheid illusion. Who is Minister Phatudi really putting under pressure by his 'Mouse-that-roared' approach?"¹⁸⁵ Heunis telexed his response to the speaker of the Lebowa Assembly the next day.

The problem of Moutse was a difficult matter and has caused the South African Government great anxiety. In finally carrying out its conviction that these areas can best be served by their incorporation into KwanDebele the South African Government was acutely aware that it asked for a sacrifice by Lebowa. It resolved in consequence that, as far as is humanly possible, Lebowa should be adequately compensated for the loss of Moutse.

He reminded Lebowa that it stood to gain Saliesloot-Immerpan and the Zebediela citrus estate. Other "very valuable land" had been purchased from white farmers for incorporation into Lebowa "in the face of fierce objection by the farming community." And the Nebo farms were to go to Lebowa despite the "very strong historical and emotional claims" of KwanDebele. He threatened that if the issue of Moutse were reopened "the rest of the package will also have to be reconsidered." He again rejected the request for a referendum.

In view of the fact that the Government's decision announced by me on 25th September 1985 was preceded by a 10 year period of consultation and investigation by the Commission for Co-operation and Development and by virtue of the report of Dr P S Rautenbach DMS, the Government was fully aware of the views of the residents of Moutse regarding incorporation into KwaNdebele.

He noted that Ndebele living in Lebowa had requested incorporation into KwaNdebele and sought a referendum, which the Government had rejected.

He deplored the recall of the Commissioner-General, noting that the official "usually identifies strongly with the wishes and ambitions and general well-being of the people of the self-governing states and seeks to make the South African Government aware of this." He warned that the removal would have "serious repercussions" for the smooth operation of the state and the well-being of its citizens. "The Lebowa Government must take full responsibility for all disruption arising from [sic] its action."

He rejected the resolution that Lebowa deliver the services that KwaNdebele presently provided to Moutse. South Africa remained responsible for policing. He noted that Godfrey Mathebe, Induna [headman] Jim Mathebe and youth leader Sky Boroko had already been released from detention.¹⁸⁶

On 17 February the Moutse petition was submitted to the (Indian) House of Delegates and ("Coloured") House of Representatives. The majority parties in each (National People's Party and Labour Party) also introduced resolutions opposing incorporation and calling for the release of Godfrey Mathebe—the first time since the creation of the tricameral Parliament in 1983 that those two Houses had jointly challenged grand apartheid. Somaroo Pachai, chairman of the House of Delegates Select Committee for Education and Development, said: "It is a white initiative and we didn't come to Parliament to support relics of the past. We are not playing games. This is serious business."¹⁸⁷ Both Houses agreed to hear the petitioners on 6 March, potentially causing the government serious embarrassment—although their action might be legally meaningless.¹⁸⁸ At the same time Desmond Lockey, LP MP in the House of Representatives, tabled a motion calling for repeal of "all legislation which determines the reservation of public premises for the exclusive use of certain persons."¹⁸⁹ As an editorial in *The Star* noted: "The minor Houses are playing shrewd politics. How the Government responds will say much about its own view of its own institution: the tricameral Parliament."¹⁹⁰ An editorial in *The Daily News* condemned "the Government's senseless pursuit of ethnic policies [which] has created yet another unnecessary trouble spot."¹⁹¹

The government, however, created a legal loophole. Helen Suzman had tabled two motions for 3 and 6 March, to allow Lebowa's petition to be heard and to disapprove the incorporation. On 4 March Johann Greeff, Speaker of the (white) House of Assembly, stated that he had been notified that the Lebowa Government had applied

to the Supreme Court to void the incorporation of Moutse on the ground that its 1980 excision from Lebowa was invalid. "I accordingly rule that as [the proclamation] is now going to be adjudicated upon by a court of law, the matter is *sub judice* and the honourable member for Houghton's Notices of Motion . . . cannot be considered by Parliament before the court has pronounced judgment." He refused to entertain a question by PFP MP Dave Dalling.¹⁹² The other two Houses followed suit. Although Lebowa's lawyers vehemently denied that the purpose was to torpedo Moutse's petitions, it seems likely that they wished to regain the initiative.

Although the opposition parties could not mobilize Parliament to take action, the PFP did use that forum to continue asking embarrassing questions. On 18 February, Deputy Development Minister Ben Wilkens told PFP MP Peter Soal that Lebowa had requested a referendum on Moutse on 18 November 1985 and again on 13 February 1986. Wilkens commented "the hon member is not correct in saying that people are being forcibly removed from that area. That is not true. . . . It is not always possible to test the general view of the communities by way of a referendum. For that reason it is done by way of extensive consultation." In reply to Helen Suzman he added:

The impression that we gained [from a 11 November 1985 meeting] was that all of the Chiefs present were not prepared to move out of Moutse. They also indicated that they were not in agreement with the idea of Moutse being incorporated in KwaNdebele. . . . After the meeting, however, some indicated that they were prepared to move and were prepared to be incorporated into Moutse. There is a difference of opinion among the inhabitants of that area.

When she asked why there had been no referendum, he answered: "the Government is not convinced that with all the intimidation going on the correct testing and [sic] opinion would necessarily be achieved. A total package is involved, and the Government has studied all the aspects. On account of that it has taken the best decision with the total package in mind."¹⁹³ A week later Soal elicited from Heunis the reassurance that "incorporation [of Ekangala into KwaNdebele] in the near future is not under consideration."¹⁹⁴

The liberal press also continued to condemn the government. A *Pretoria News* editorial declared that the incorporation "rivals the bulldozing of squatter camps."¹⁹⁵ *The Cape Times* reiterated: "The homeland policy is grand apartheid, which is far from outdated as yet another non-viable statelet opts for 'independence' and a casino economy. . . . A government which talks hollowly about negotiation and power-sharing is still riding roughshod over the wishes of a large section of the population to try to implement a failed ideology."¹⁹⁶ The *Pretoria News* followed up with a long history of the conflict and another editorial denounced the "dishonest farce." "Moutse has become a test case of the honesty of our State President and his government."¹⁹⁷

Lebowa filed its action at the beginning of March.¹⁹⁸ The grounds were legalistic. The South African Government had failed to consult with Lebowa prior to

the excision, as required by law. Any meetings that had been held omitted the Lebowa Cabinet and Chief Minister. In any case, the State President had made up his mind in advance. The allegedly operative resolutions and acts amended the wrong laws. The attempt to cure those errors retrospectively failed.

Chief Mathebe, Godfrey Mathebe, Maredi Chueu, and their legal representatives (John Dugard and Dolly Mokgatle) visited Cape Town (where Parliament was sitting) on 5 and 6 March to meet members of all three houses and representatives of the United States, Britain, and West Germany. At a press conference, the elderly Chief Mathebe said through an interpreter: "We will fight to the very end. We are not prepared to be part of KwaNdebele and we will not move. Moutse is our home, we don't know any other." Chueu opposed incorporation because KwaNdebele might flog Moutse men and women in public, which violated North Sotho customs; it denied women the vote; and it might interfere with property and language rights. John Dugard added that incorporation would violate the "old Verwoerdian dream" of an ethnic state.¹⁹⁹ Believing they had been betrayed by Lebowa, the delegation declared their preference for direct rule by South Africa.²⁰⁰ Although the 1 April date for incorporation of Ekangala into KwaNdebele passed, Eradebo area director Zaaiman declared it would occur soon. Ekangala Action Committee chairman Peter Kose sought a meeting with Heunis.²⁰¹ At about the same time, the Commonwealth Eminent Persons Group visited Moutse and condemned the "violence used to intimidate residents whose only request was for a plebiscite on their future."²⁰²

During the debate on the Appropriation Bill on 9 April Helen Suzman pleaded with the Government to "reverse the incomprehensible decision to incorporate the unwilling Moutse people into kwaNdebele." When the State President addressed the House of Assembly during the committee stage of that bill the following week he rose to the bait.

The hon member for Houghton displayed her usual cynicism regarding the security situation in the country. . . . She is very obstinate. . . . Sometimes she contemplates actions that are somewhat incomprehensible to anyone who tries to understand the ways of women.

SUZMAN: Let's leave sex out of it, shall we?

. . . .
BOTH: King Solomon said that one of the things in life he could not understand was the way of a woman with a man. I do not think, however, that King Solomon knew the hon member for Houghton. . . . Otherwise he would have said that he did not know the way of a woman with her country. . . . The Government is continually addressing the socio-economic upliftment of the less privileged. . . . The hon member also raised the question of Moutse. There is a court case in progress at present . . . so I cannot go into the merits of Moutse . . . but I am going to deal with one aspect of it, namely that I went out of my way personally to arrive at a peaceful solution in connection with Moutse.

. . . I immediately invited the main leaders concerned to go with me by helicopter to the area for personal inspection. When we arrived back in Pretoria I made a proposal to the leaders concerned that they should come to terms with each other and that whatever they recommended to me I would accept. . . . After weeks or months they came back and said they could not agree.

SUZMAN: Mr Chairman, may I ask the State President whether he is referring to the leaders of Lebowa and kwaNdebele?

BOTHA: Yes.

SUZMAN: But not the Moutse men?

BOTHA: The hon member must wait a minute. I told them they could consult with all the leaders concerned and whatever they recommended to me I would accept. . . . I also told them that I was usually accused of wanting to prescribe to others so that was an opportunity for them to show that they could deal with their own problems. They then reported back to me that they could not agree. I told them if they could not agree I would provide them with an independent chairman and that they had to try again to reach agreement. . . . He tried for a year . . . I know that he went out of his way to find a solution. Then after a year he came back and he said: "No Go."

We then had another discussion with the leaders separately because it did not help any longer to bring them together. . . .

Eventually I had to make a decision and the Government had to take a stand because we cannot simply let things go. That is when I am accused of not acting. Whatever we do is wrong.

SUZMAN: Why don't you just leave them where they are?

BOTHA: One cannot simply leave people in the air.

SUZMAN: They were not in the air!

BOTHA: They were. From a planning point of view it was quite wrong to leave them where they were.

HULLEY: Why?

BOTHA: See how the hon member carries on again. I now want to put two questions to the hon member.

SUZMAN: May I answer them, Mr Chairman?

BOTHA: No, I want to put the questions now and the hon member must listen very carefully. Firstly, did the Black Sash interfere?

SUZMAN: No, I was asked to go and see them myself.

BOTHA: Very well. Did the hon member see the Black Sash in this connection?

SUZMAN: Certainly.

BOTHA: Yes. I want to put a second question to the hon member: Did she also get in touch with the British Foreign Ministry in this connection?

SUZMAN: Yes, when I was overseas last year.

BOTHA: I want to ask the hon member if she impressed on them that they must pressurise us on Moutse?

SUZMAN: Yes, indeed. I will do it again!

BOTHA: I now leave it to the house to judge. The hon member is a busybody and she is creating trouble throughout the country.²⁰³

By early April it was estimated that 23 people had died in Moutse and about 1000 had been arrested.²⁰⁴

At the official opening of the KwaNdebele Legislative Assembly on 4 April 1986, Hendrik Schoeman, South African Minister of Transport Affairs, reaffirmed his government's commitment to independence on 4 December. A joint South Africa-KwaNdebele committee was engaged in planning, and the government had promised almost R37m for expenses. The State President reiterated this on 7 May.²⁰⁵

On 19 May Chief Mathebe sued South Africa, KwaNdebele, and Lebowa to invalidate the incorporation.²⁰⁶ His founding affidavit stressed Moutse's long settlement, prosperity, and ethnic composition. The Northern Sotho were much more closely related to Sotho than Ndebele, who required male circumcision, flogged adults in public, and denied votes to women. John Dugard, his advocate, recalled being criticized for invoking apartheid ideology, but Trac fieldworker Joanne Yawitch said the few leaders who understood the argument did not care, so desperate were they to leave KwaNdebele.²⁰⁷ Moutse feared Ndebele would replace their language, they would lose South African citizenship when the homeland took independence, and businessmen would be denied licenses. Incorporation and impending independence had increased violence. Because the only reason for incorporation was to reward KwaNdebele for accepting independence, the State President had been guided by an ulterior purpose.

The applicant submitted several supporting affidavits. A Wits regional planning lecturer described the ethnic composition of Moutse. The chairman of the Principals' Council asserted that 99 percent of the 770 Moutse teachers refused to accept transfer to KwaNdebele. The author of the definitive history of the Pedi documented the absence of any Ndebele claim to Moutse.²⁰⁸ Joanne Yawitch listed 42 violent incidents over the previous six months involving more than 1150 people, at least 27 of whom had died. R F Magolego, a Moutse attorney, described the dramatic increase in criminal prosecutions for political activity. The last affidavit detailed a shooting directed by Skosana and Ntuli.

Initiation of the lawsuit had no effect on the violence. On the weekend of 24-25 May youths burned the homes and shops of several KwaNdebele cabinet ministers and MPs, including Piet Ntuli.²⁰⁹ On 28 May, 120 Moutse residents travelled to Pretoria to hear Lebowa's case argued before Justice H van Dyk (although only a few were admitted to court). A dozen men conducted a silent protest in Church Square, holding placards opposing the incorporation of Moutse into "any part of the homeland system"; the police quickly dispersed them, arresting two.²¹⁰ Justice van Dyk (who had rejected the Magopa challenge to removal three years earlier—see that monograph) dismissed the application on 27 June, ruling that Moutse had been properly excised in 1980 and the

excision had been retroactively validated in 1983 (rendering the second retroactive validation in 1985 superfluous).

III. THE STRUGGLE OVER INDEPENDENCE (1986)

The KwaNdebele Youth Congress (Kwayco), called a work stayaway for 2-4 June to oppose independence and protest the presence of security forces. Clashes between youths and the security forces on the night before the stayaway caused many injuries and perhaps some deaths; Mbokotho also kidnapped some youths. Partly because youths stopped buses on 3 June, the stayaway was very effective, including all 2000 civil servants. The funeral of July Shidi, 16, allegedly killed by troops, was planned for 4 June. Although it was dispersed by teargas, many of the participants joined a protest march to the Ndzundza tribal office at Weltevrede. At least five people were killed during this period. Shop owners Jan Buda and Piet Ngoma were necklaced at Kameelrivier for allegedly hiring "comtsotsis" to burn the shops of anti-independence rivals. At least one person died during the vigil for Shidi. And Stanley Nhlapo, 18, was allegedly kidnapped and killed by security forces. Yet Simon Skosana still insisted that "The Ndebele people will be celebrating their independence."²¹¹

On 11 June youths attacked security guards at Vlaklaagte 1 shops, killing three; one youth was seriously wounded. Piet Ntuli led a retaliatory Mbokotho attack on Tweefontein the next day, in which 7-16 people died. Ntuli himself was seen shooting them.²¹² On 12 June the government reimposed the Emergency (which had been lifted in March); Brigadier C M van Niekerk, KwaNdebele Commissioner of Police, further tightened its restrictions on 26 June. More than 300 people were detained under these regulations.²¹³ At the end of the month two newspapers reiterated their condemnation of independence. *City Press* called KwaNdebele "a state devoid of all legitimacy in the eyes of its citizens," warning that recent events "make it more and more difficult to convince people of the government's claim that it seriously intends to dismantle apartheid."²¹⁴ *The Cape Times* also deplored that "the people of KwaNdebele have not been consulted about their independence" and urged the government to "spare us, and the people of KwaNdebele, from TBVC."²¹⁵ On 8 July a KwaNdebele Cabinet Minister, an MP, and a group of Mbokotho abducted seven people accused of burning shops and held them at Siyabuswa for two days.²¹⁶

On 15 July police searching a Vlaklaagte house found the bodies of nine young men, 15-26 years old, who had been pupils at J Kekana Senior Secondary School in Mamelodi. Two others who survived the attack described what had happened. They were approached by someone identifying himself as "boss of the ANC," who offered to help them cross the border to join the ANC. He left them at a "safe house," promising to return early the next morning. The two who escaped left the house on an errand that night and saw two armed men in balaclavas approach the house. They shot into the house and then set it on fire. The survivors recognized one of the assailants as the "boss of the ANC." Virtually the entire civil service went on strike that day in protest against independence. Security forces in three casspirs raided the royal kraal at 10pm, scaling a security fence and interrogating King Mapoch and his son, Prince James Mahlangu, about independence.²¹⁷

On 17 July, at the request of Skosana, the South African government withdrew its Commissioner General, Gerrie van der Merwe, because of a "breakdown" in his relations with the KwaNdebele administration. Skosana apparently objected to van der Merwe's discussions with Prince James Mahlangu in an attempt to make peace with the royal family.²¹⁸ On 26 July Prince James organized a meeting at the royal kraal with youth leaders and headmen, which decided that the stayaway of civil servants and primary school pupils should end on 28 July. He also filed suit in the Pretoria Supreme Court to bar Piet Ntuli from the KwaNdebele Legislative Assembly.²¹⁹ By the end of July neighboring white farmers were sufficiently upset that the Elands River Farmers Association approached the government about the level of violence in KwaNdebele (which presumably was disrupting its black labor force). Other influential whites had addressed the issue. On 21 July a delegation of religious leaders opposed to independence met with Heunis. The Progressive Federal Party called for a commission of enquiry.²²⁰ The majority parties in the Houses of Delegates and Representatives planned to block legislation granting independence.

A local priest kept a diary of 160 deaths in the homeland between 12 May and 25 July, which he attributed in equal parts to security forces, Mbokotho, and the comrades.²²¹ It was estimated that 70 percent of KwaNdebele businesses had been destroyed by arson.²²² The Bureau of Information reported that 18 people were killed in KwaNdebele in the first four weeks of the Emergency.²²³ Dave Venter, deputy director of the Bureau's research unit, blamed this on "radical elements" from the Witwatersrand motivated by "no purpose other, apparently, than to stimulate unrest."²²⁴ Yet at the end of July a white reporter found that "feelings had calmed down to a great extent" and local residents were friendly and helpful.²²⁵ And the Commissioner General was still promising independence on schedule in December and characterizing the situation in KwaNdebele as a "purely domestic power struggle."²²⁶ There were rumors, however, that changes in influx laws making citizens of independent homelands aliens in South Africa might prompt KwaNdebele to delay its decision.²²⁷

The tide turned significantly in the wake of a daring and successful act of violence. Piet Ntuli was murdered by a car bomb as he drove away from Skosana's residence on the night of 20 July. Allister Sparks vividly described the reaction.

For four heady days cattle have been slaughtered for huge barbecue feasts. People have danced in the streets with slogans pinned to their clothing saying things such as, "Liberty, freedom, equality—the tyrant is dead." Bus drivers have taken groups of singing, chanting youths on free rides around the territory.²²⁸

The day after the assassination 200 youths marched on Ntuli's Bar Lounge; his relatives fired on them, killing Simon Mlotshwa, 23, and wounding 16 others. People also burned a government vehicle in an incident in which 10 were injured. There was much debate about who was responsible for the bombing. In August the ANC claimed credit for Umkhonto we Sizwe. (At a later trial MK members charged with murdering a

Soweto policeman took responsibility for assassinating Ntuli.) Some attributed it to the KwaNdebele Cabinet or the Pretoria government, both of which now found Ntuli an embarrassment. He was facing murder and assault charges; during a recent arrest the police had found 50 stolen cars and many weapons at his house. This view was consistent with the fact that the Transvaal Attorney-General, Dan Brunette, dropped a murder charge and three assault charges against Ntuli on 11 August. The police completed an investigation of his death on 11 September but never charged anyone.²²⁹ Ntuli was buried secretly at a farm outside Siyabuswa on 1 August.²³⁰

The assassination was sufficiently noteworthy to attract attention in the American press.²³¹ Soon thereafter *The Guardian* condemned South Africa.

Nothing, not even the state of emergency and what it was imposed to conceal, makes quite such a mockery of Mr. Botha's continuing promises of reform as a scrap of land with the invented name of KwaNdebele. . . . The imminent, induced delivery of KwaNdebele at this highly sensitive stage in South African history thus proves that the ruling Afrikaner Nationalists are lying in their teeth when they claim apartheid is on its way out. . . . This cynical piece of hypocrisy is an insurmountable challenge to those who still insist against all reason on believing in Mr. Botha's goodwill.²³²

On 21 July Allister Sparks visited KwaNdebele during a brief hiatus between a Supreme Court decision invalidating some of the Emergency Laws and their reimposition by Botha the next day. Vusi Sibiya, leader of an anti-independence group, said:

A year ago 90 percent of the people here were ready to go along with independence. They were simple, apolitical folk, and they didn't know what it meant. But Ntuli politicized them, and now they're 100 percent opposed.

Prince Cornelius Mahlangu agreed: "I have changed my mind. I can see now that the people are totally opposed to it. I don't know how the other ministers feel, but I know that Piet Ntuli's death has shaken them." Simon Skosana's more than 20 sons and daughters (by his five wives) all strongly opposed independence. Peter, 19, leader of the "comrades," said Mbokotho had beaten him for eight hours without the intervention of his father, whom he had not seen for months. Ntuli had dominated his father. "Now that Ntuli is dead I think my father will back away from independence."²³³ The *Sowetan* asked once again "why it is so desperately imperative to grant independence to the ridiculously tiny KwaNdebele? . . . Ironically, elsewhere people die to gain independence, while in KwaNdebele people die while fighting against independence."²³⁴ A *Sunday Times* editorial warned that "the area is destabilised, divided and increasingly lawless. Worse, it is in danger of offering a first base for revolutionaries intent on rural insurgency."²³⁵ The majority parties in the Houses of Representatives and Delegates again vowed to reject independence. Although the

government had used the President's Council to overrule them and pass new security legislation in June, Labour Party constitutional spokesman Desmond Lockey said: "I don't think they can afford to make that a convention rather than an exception." His party also would oppose Proclamation 227 of 1985, incorporating Moutse.²³⁶

The KwaNdebele Cabinet met with tribal chiefs on 1 August. Although it made no public statement, Skosana was now more cautious: "If possible, we will go for independence on 11 December, but we are now trying to get a second mandate from the people."²³⁷ Minister of Citizen Liaison and Information Fanie Mahlangu denied they had discussed postponement or cancellation. "Obviously, the meeting yesterday centred on the independence issue, but the feeling was not one of rejection but of the need to inform the people of the issues." He conceded, however, that if the information campaign did not work "then we will rethink."²³⁸

Helen Suzman, announcing that she and PFP leader Colin Eglin had been invited to meet with the Ndzundza royal family, said independence "was a rotten idea to begin with but now it has caused a lot of bloodshed."²³⁹ *The Argus* called it "a divisive and self-defeating exercise which South Africa can ill afford."²⁴⁰ *The Daily News* deplored "Pretoria's creation" of "one more unnecessary flashpoint."²⁴¹ The United Democratic Front declared that the "sham independence scheme" was "totally unacceptable."²⁴² Local white farmers sought an end to the violence, according to Abraham Viljoen, Pretoria District chairman of the Agricultural Union (and twin brother of General Constant Viljoen, former Army Chief of Staff).²⁴³

The Legislative Assembly met on 7 August and decided to disband Mbokotho.²⁴⁴ Indeed, Information Minister F K Mahlangu claimed it had already been disbanded and conceded that some government members now opposed independence "because of pressure." "If the independence issue is the cause of the unrest—and that is debatable—I personally would agree to the postponement of independence if it meant saving souls."²⁴⁵

Chief Mapoch reiterated his strong opposition to independence; his royal house controlled 21 of the 42 nominated members in the 72-man Legislative Assembly.²⁴⁶ He declared:

There can be no independence without seeing a constitution first. . . . [The Ministers] should have consulted the people first and not forced them to take what they don't want. . . . The only condition for a return to normality will be the complete outlawing of the Imbokotho and scrapping the idea of independence. If they do not listen to my counselling, they are declaring war on my people. To me it looks as if they are fighting me through my people for refusing independence.

A source said the royal kraal rejected support from the UDF: "this was an internal matter and we would solve it in our own way."²⁴⁷ On 8 August Prince James Mahlangu convened a meeting of 120 headmen and youth and community leaders; although their ostensible purpose was to persuade pupils to return to secondary school, the group quickly turned to strategies against independence. In an interview he expressed anger at being ignored.

The royalty is more respected by the people than the KwaNdebele or the South African governments.

Because of this factor we expected to be fully consulted by both these authorities on the issue of independence, but we were not.

Instead we are expected to willy nilly support moves that our people are opposed to.²⁴⁸

Three days later 200 opponents of independence were released from detention, more than half of whom had been incarcerated for at least a month.²⁴⁹

On 12 August the KwaNdebele Legislative Assembly met under the gaze of a gallery vocally opposed to independence. The official agenda listed the violence, a police bill, and raises for civil servants. During the discussion of unrest Prince James Mahlangu proclaimed: "The people have sent me to tell the meeting that they were not consulted and would not accept independence, which they do not want." Some MPs tried to block discussion on the ground that independence was not on the agenda, and the Minister of Works, K Mtsweni, moved postponement. But the audience would not tolerate this, and Paradise Mahlangu, who had replaced Piet Ntuli as Minister of the Interior, urged discussion. Every speaker said his constituency had told him to oppose independence. J Ntuli said: "The cause of the deaths and the murders is the Mbokotho. Some of us don't sleep at home—we have no more homes; we have no children and no fathers. They are all dead." Kwaggafontein K had minced no words with their MP: "We will be sending you to a meeting of the legislative assembly. You must not say a lot of things that beat around the bush. Talk straight. We do not want Mbokotho and we do not want independence."

Having seen how the wind was blowing, all the ministers and MPs disclaimed responsibility for independence and started blaming each other. Simon Skosana sat silently until the end of the meeting, with his head in his hands. "I am a messenger of this house. I ran as instructed and executed all duties I had to perform. Today I am damned to be a criminal. Today even young children point their fingers at me. If nobody wants it, I can't force it on them." Solly Mahlangu, speaker of the assembly, ended the debate.

Not one of you said independence was all right and should go ahead. Independence is being uprooted and eradicated with all its roots and thrown into the deep ocean. I am of the opinion that the house is quite unanimous with regard to independence. It can now be reported to Pretoria that the KwaNdebele legislative assembly has indicated that the

KwaNdebele people do not agree with independence and will not opt for it.

The speaker outlawed Mbokotho on the ground that it lacked a constitution and the approval of King Mapoch.

Its membership of 300 continued to diminish with time and the community saw it as a group of thugs that assaulted people. It operated like the mafia. I do not want to hear anything about this organisation anymore because I am disbanding it and I am not going to allow anybody to say anything about Mbokotho in this assembly.

The Assembly instructed Justice Minister A Mahlangu to draft a law making it a criminal offence to mention the word Mbokotho.²⁵⁰

Although the Department of Constitutional Development and Planning liaison officer refused to comment until he received formal word from Skosana, and Heunis himself expressed doubt that the decision was final, the South African government appeared to respond to the changed climate by intensifying its investigation of Mbokotho for acts of violence.²⁵¹ A broad spectrum of political opinion rejoiced. Helen Suzman said: "The wisest thing for the Government to do is to drop the whole absurd project."²⁵² HNP leader Jaap Marais agreed that it would be wrong to force independence on reluctant people.²⁵³ Chief Mangosuthu Buthelezi said he had always opposed the homeland policy.²⁵⁴ The UDF called the decision "a resounding victory against Pretoria's scheme of tearing our country apart," while Azapo deputy president Nkosi Molala said it "underscored the fact that black people are one."²⁵⁵ The *Pretoria News* welcomed the decision.²⁵⁶ The *Cape Times* hoped "this will end the Verwoerdian dream of independent homelands surrounding a white South Africa" and would lead to a reversal of the decision to incorporate Moutse.²⁵⁷ The *Sowetan* was "sure that KwaNdebele has set a precedent that will be joyously followed by other homeland people."²⁵⁸ The *Natal Witness* expressed relief that "sanity has prevailed" and hoped "that the Government will now relinquish, once and for all, any other schemes for homeland independence."²⁵⁹ The *Argus* said that Kwandebele had "suffered enough from the burden of Nationalist ideological traumas."²⁶⁰ The *New Nation* called it "a resounding victory for the people" and "a watershed in the fight against apartheid in all its forms."²⁶¹ The *Sunday Star* noted that "on the day President Botha was preaching the virtues of mini-states such as Liechtenstein and Andorra, South Africa's newest bantustan administered some timely cold water to the further fragmentation of the country."²⁶² *City Press* was categorical: "Apartheid is a lie. And no lie lives forever."²⁶³ The *Daily News* saw it instead as an "opportunity" to redraw the map on "confederal" lines that recognized "historic ethnic divisions."²⁶⁴

But the course of history is never linear. F K Mahlangu, now acting Chief Minister because of Skosana's worsening health (from diabetes), said the next day that independence had been rejected because the people opposed it. "When opting for

independence one should see to it that the majority of the people are with you, and if they are not you have to ask yourself why . . . good leaders listen to their people." He was pleased, however, that the homeland would retain the R6-8 million grant from South Africa for independence celebrations and development. Mbokotho was no longer in existence. At the same time, he denied that the "unwarranted actions" of that "privately owned" group were attributable to the government (although he had directed and engaged in vigilante activity in Ekangala). Mbokotho remained active, if less visible. A 65-year-old Kwaggafontein woman was necklaced and one of her assailants shot to death by police. Many people remained in detention.²⁶⁵

Others were missing. For instance, Thomas Mnyakeni, 18, of Tweefontein, disappeared on 12 June, the day the Emergency was declared. Lucky Mtsheni said he and Thomas became separated while running away from Mbokotho. Lucky later saw Thomas in obvious pain, bleeding heavily, being lifted into an ambulance. A month later Petros Jabulani Zulu, 16, spoke to a neighbor in the KwaNdebele prison, who identified himself as Thomas. On 29 October Steve Kahanovitz, a Legal Resources Centre lawyer for Thomas's father Jacob, sued the KwaNdebele Ministers of Law and Order, Justice, and Health, Welfare and Pensions and the Administrator of the Transvaal, seeking an order that they produce Thomas. Jacob had searched in vain through Kalfong, Philadelphia, and Witbank Hospitals, Cullinan, Bronkhorstpruit, Verena, and Kwaggafontein police stations, the Ndzundza tribal office, and the Bronkhorstpruit mortuary. The SAP Commissioner and the KwaNdebele police said he was not detained; the KwaNdebele Department of Health, Welfare and Pensions said it had not treated him.²⁶⁶ Other missing people included Petrus Vusi Mahlangu, last seen on a Putco bus on 14 May en route to the meeting at King Mapoch's kraal, George Shabangu, alleged to have escaped from the Siyabuswa Police Station on 6 February, and Jim Msebenzi Mahlangu.²⁶⁷

Immediately after the 12 August decision more than 200 people detained for opposing independence were released from custody. At the same time, Simon Skosana had Brigadier C M van Niekerk transferred to KwaZulu and replaced him as Police Commissioner with Brigadier Hertzog Lerm—both because Skosana blamed the security forces for Ntuli's murder and because van Niekerk apparently displayed qualms about arresting members of the royal family. Lerm's style was immediately apparent.

One of my first aims is to get the entire area in order, foil lawlessness and make the homeland governable again. . . . I want to issue a firm warning to the elements of troubleshooters. No intimidation, incitement, dissoluteness, hooliganism and thuggery will be tolerated. I am prepared to listen to residents' problems and grievances, but will root out violence with all the power and machinery at my disposal.²⁶⁸

To suppress opposition, he issued orders prohibiting: non-residents from entering KwaNdebele; those of school age from being in KwaNdebele unless their parents were residents or they were enrolled; anyone being outdoors between 9pm and 5am; ownership of tires and fuel; travel on public transport without payment; the delivery of

any goods to the homeland without permission; any person to "play, loiter or aimlessly remain on any public road; funerals of unrest victims during weekends or holidays or out of doors; anyone other than an ordained minister from speaking; any political speeches, flags, banners, placards, pamphlets, or posters; the use of a public address system; commemoration of more than one deceased; attendance of more than 200 mourners (50 at the vigil the preceding night); duration of more than four hours; and all meetings without permission, other than church services and government meetings.²⁶⁹ Those united against independence now threatened to split into traditional leaders, who might challenge Skosana for control of the homeland, and youths adamantly opposed to any homeland rule.²⁷⁰

On 8 September F K Mahlangu reaffirmed that KwaNdebele had abandoned independence "in accordance with the wishes of its people." "The whole situation also demonstrated to us that people are very good judges of their own needs. It is only in a democratic society that a government can heed the wishes of its people. What happened here proves that Kwandebele is such a society."²⁷¹ The same week, however, at a meeting where the KwaNdebele National Development Corporation sought investment in Ekandustria, Justice, Law and Order Minister Frank Mlwayedwa Mahlangu, Education and Culture Minister Placid Kunutu and Agriculture and Forestry Minister Masama Mabena said there had been no final decision about independence because it had not been put to a vote. Skosana was seeking legal advice about this interpretation. Mahlangu and Mabena claimed that a majority of the cabinet agreed. Furthermore, they felt, the violence in KwaNdebele simply reflected the unrest throughout South Africa; independence was not responsible.²⁷²

In the first week of September South Africa passed the Borders of Particular States Extension Amendment Act, incorporating Leeuwfontein and Braklaagte into Bophuthatswana. Braklaagte had been resisting removal since 1936 and had successfully fought a lawsuit from 1957 to 1965. More than 90 percent of its 11,000 people had applied to regain South African citizenship. Bophuthatswana also planned to incorporate Machakaneng, Geweerfontein, and Bloedfontein—a total of 50,000 people.²⁷³

Unlike his predecessor, Brigadier Lerm, clearly had no qualms about arresting members of the royal family. In the first week of October the police raided the royal kraal, arresting Prince Makhosana Klaas Mahlangu and Tim Skosana, one of the Chief Minister's sons.²⁷⁴ A month earlier M K Mahlangu, who had resigned his parliamentary seat, had called on Cornelius to do the same.²⁷⁵ Speaker Solly Mahlangu rebuffed popular demands to dissolve the Legislative Assembly.²⁷⁶ Later in October Chris Heunis failed in an attempt to reconcile Simon Skosana and King David Mapoch because Skosana refused to talk to Cornelius and James.²⁷⁷ The following month the police detained Princes James and Andries Mahlangu and nine others and subsequently detained Simon Ngidi, secretary general of the Ndzundza tribal authority, seizing six years of its records. This was the beginning of a campaign to dethrone the Ndzundza as the royal Ndebele family, replacing them with the smaller

Manala tribe. Although the Pretoria Supreme Court ordered return of the papers a year later, some were never recovered.²⁷⁸

In response to Chris Heunis's request at a 17 September meeting, Simon Skosana sent an undated ten-page memorandum enumerating the Cabinet's complaints against the Ndzundza royal house. He claimed responsibility for reestablishing the "totally depleted" Ndzundza tribe. Chief Mapoch was a "man of advanced age," whose sons James and Cornelius were "taking advantage of this situation." Cornelius left school after Standard Six and joined a gang of car thieves. He even assaulted his father. Cornelius formed an alliance with Piet Ntuli against Makosana Klaas Mahlangu but later sought the latter's support against Ntuli. James developed "strong radical tendencies" at Turfloop and Ingoya Universities and was "spiritual leader of the Comrades." Cornelius sought to establish a kingdom, even though Ndzundza was only one of six chieftainships and junior to Manala. In 1986 he helped draft an independence constitution recognizing such a kingdom.

Skosana attributed the lack of political agitation in KwaNdebele through the first quarter of 1986 to vigilante groups, which were necessary to maintain "strict discipline" in the absence of a homeland police force. The unrest that had since emerged had nothing to do with independence or the Imbokodo but was rather attributable to "UDF, ANC and other radical movements," which "plan to substitute the National State Government structure with 'People's rule, People's courts, People's education and Village Committees.'" The comrades held mass meetings under the protection of Chief Mapoch. "Cabinet attempts to ban these meetings were unsuccessful because of the intervention by the Commissioner General Mr van der Merwe and the Commissioner of Police, Brigadier van Niekerk, who were supporting the meetings." This was why the Cabinet requested the removal of van der Merwe and later of Brigadier H Moller and Mr H Meyburg. The Cabinet "is strongly opposed to being prescribed to in conducting politics."

On 11 November the police detained six people opposed to independence, including the homeland's deputy sheriff.²⁷⁹ The *Sowetan* expressed alarm, warning that "any plan to re-introduce the independence issue will undoubtedly lead to even more strife in the homeland."²⁸⁰ Responding to PFP charges that the detentions are an "ominous sign" of the continuing commitment to independence, Skosana declared: "Should this be the case I would be misleading the people of kwaNdebele and nothing is further from the truth."²⁸¹ On 17 November the civil service launched its third major strike to protest the detentions. The same day Simon Skosana died of diabetes. Klaas Mtsweni, Minister of Works and independence advocate, was appointed acting chief minister. The security force outnumbered mourners at the state funeral.²⁸² Ten days after Skosana's death the KwaNdebele Legislative Assembly elected Majosi George Mahlangu as the new Chief Minister. He received 41 votes to 25 for Prince James Mahlangu, who had been released from detention only two days before the vote (after his lawyers petitioned Louis Le Grange, the South African Minister of Law and Order). James accepted the result as an expression of the will of the Assembly but not necessarily that of the people. George Mahlangu, a 35-year-old businessman, with a law

diploma from the University of Zululand, had been associated with Mbokotho. He refused to disclose his views about independence and said he "had no attitude" toward Mbokotho, which "was banned . . . and no longer exists."²⁸³

IV. THE JUDICIAL CHALLENGE TO INCORPORATION

In July 1986 the Department of Foreign Affairs produced 20,000 copies of a 24-page glossy pamphlet on "The Moutse Issue," at a cost of more than R12,000, to correct "the distortion of the facts and misrepresentation."²⁸⁴ It emphasized the lengthy consultations between South Africa and Lebowa, KwaNdebele, and Moutse. The 1986 decision was of "at least ten years' standing." The government had acted because the parties "had failed to reach agreement after negotiations stretching back for many years. Finality had become urgently necessary for stability and sound regional government." Every phrase echoed the grand apartheid scheme. Lebowa and KwaNdebele were two of "South Africa's many minority communities." Like other Black peoples they had "migrated several centuries ago into what is today South Africa. . . ." It acknowledged the differences of culture, tradition, and language between the Sotho-Tswana peoples and the Nguni peoples. Their dispersion and intermixing "prompted the South African government to suggest political cohesion or amalgamation in one form or another in the interests of effective local and regional government. The Ndebele would have none of it, however." In other words, apartheid reflected the demands of blacks.

Moutse was adjacent to KwaNdebele but separated from Lebowa by a 30km corridor of farms "owned and cultivated by Whites for generations." (Long residence conferred rights on whites, but longer residence conferred none on blacks.) The 120,000 Moutse people recorded by the 1980 census were 56 percent North Sotho and 39 percent Ndebele. When Lebowa obtained self-government in 1971 "it became necessary to decide on the future of the region's various districts." The Ndebele had chosen to have their own homeland "on much the same pattern as the other Black people and their national states."

During this period negotiations between the South African government and leaders of all the emergent national states were proceeding on land allocations and exchanges in an attempt to consolidate these historically fragmented territories into geopolitically cohesive units as far as possible.

There were numerous discussions with Lebowa and Moutse and direct negotiations between Lebowa and KwaNdebele. "The negotiations having reached what seemed final deadlock, the South African government in October 1984 resolved that the original consolidation package for Lebowa would stand and be implemented." "[C]ompensatory land—Immerpan and Saliesloot—of roughly the same area (61,000 ha) [as Moutse], would be added to Lebowa for settlement by those North Sothos who wished to move from Moutse rather than stay on under the KwaNdebele administration. Those who chose to move would be compensated for their property in Moutse." Elsewhere the pamphlet described this as "lush new land." Lebowa also received Zebediela, "the largest citrus estate in the world." As late as August 1985 the State President granted a reprieve of two weeks for further negotiations, but these also ended in deadlock.

The government then held talks with both KwaNdebele and Moutse "to allay any fears they might have about their rights in the new dispensation, and to avoid any unnecessary disruption of national life in the territory during and after the transfer." It assured Moutse people that they would retain South African citizenship, be able to use Pedi or North Sotho in the schools "where appropriate," suffer no discrimination in the issuance of trading licenses, and enjoy greater representation in the KwaNdebele parliament than they had in Lebowa. The government also developed Immerpan and Saliesloot: surveying stands, sinking boreholes, and establishing a clinic and temporary school. "By February 1985 [sic—1986] 200 North Sotho families had either voluntarily moved there from Moutse or signified their intention to move."

The pamphlet concluded by justifying the move in terms of "several cogent reasons—all related to sound and effective regional government, which is the South African government's major concern in the issue." By virtue of geography Moutse depended on the infrastructure of KwaNdebele. Because of its proximity "administration from Siyabuswa would be more direct and therefore more practical." The government recognized "that in all of Black Africa land is a highly emotional issue." Lebowa believed that all Black communities have too little land. It objected to the lack of consultation about the original excision, but the Supreme Court had rejected this argument. The government also acknowledged the "tribal and ethnic loyalties and cultural differentials which are very potent forces in all of sub-Saharan Africa." Although Lebowa had sought a referendum in Moutse, it rejected a similar referendum in those parts of its own territory where Ndebele were the majority. In the end, both Lebowa and KwaNdebele were being unduly rigid. "The South African government's position is that new circumstances call for a fresh and open-minded review of problems such as the Moutse issue, and that the very concept of negotiation implies give and take and adjustment from time to time."

In September the Moutse Civic Association declared its intent to tell Chris Heunis of their desire to be administered by the central government rather than either KwaNdebele or Lebowa.²⁸⁵ Godfrey Mathebe's challenge to KwaNdebele's incorporation of Moutse was argued before Justice T T Spoelstra toward the end of November. Disagreements between the parties were highlighted by the plaintiff's 43-page reply affidavit, filed 13 October. Although the KwaNdebele Legislative Assembly had backed away from independence, it could always reverse that decision. In any case, all the other arguments against incorporation remained.

Mathebe emphasized the failure to consult Moutse. On 20 December 1983 P W Botha had met Dr Phatudi but no Moutse representatives. The two of them "visited" Moutse by flying over it in a helicopter. Dr Rautenbach also excluded Moutse representatives from his discussions with Lebowa and KwaNdebele. The Temple Commission of Enquiry, which formulated the final consolidation plan, never consulted Moutse. The period of grace following the 14 August 1985 meeting was intended solely to allow Lebowa to seek additional land as compensation for Moutse.

The government could not justify its action. "If the State President wishes to rely on 'geographic contiguity' for the decisive justification of the incorporation, a good deal of the rest of its homelands policy, particularly in the Transvaal, the Orange Free State and Natal makes no sense whatsoever." The guidelines for consolidation referred to ethnic units (volke), "a concept to which the incorporation of Moutse into KwaNdebele does violence. The same applies to the concept of ethnology (volkekunde) . . . [which stresses] that ethnic unity is the first priority in territorial consolidation." The government's "sanguine view of the possibility of diverse groups peacefully existing in a unitary state is difficult to reconcile with the first respondent's continued policies and legislation in RSA." Since incorporation, some North Sotho people in KwaNdebele had been denied trading licenses; Moutse people feared the same fate. They denied the government's assertions that Ndebele had experienced discrimination in Philadelphia Hospital.

Prior to incorporation, Moutse had been one of the most peaceful parts of the Republic. Peter Felstead, who had submitted an affidavit for the government,

visited Moutse in or about 10.84 in order to be present at the opening of two new schools in the Moutse area. In his speech at the Ntota Primary School (at which Mr Shaku was present) he emphasized that, of all the areas he had visited, Moutse was the most peaceful, there being no "klippgooiers" in Moutse. Felstead therefore stated that he was happier when visiting Moutse than any other black area.

The situation had changed radically since incorporation. Only 4.7 percent of Moutse teachers signed the KwaNdebele transfer forms. The Department of Education and Training therefore had had to retain control over Moutse schools. Nevertheless, there has been widespread unrest and absenteeism; during the two weeks before Easter vacation few pupils attended.

Violence was new to Moutse and entirely attributable to incorporation. The South African Police had largely restricted its protection to Ndebele. Contrary to the government's claim, violence persisted long after January.

The land at Immerpan and Saliesloot was wholly unacceptable. Those who moved there were either businessmen who hoped to use compensation money to expand or South Ndebeles.

John Dugard addressed the court on 25 November. Moutse chiefs, elders, and youths and Lebowa MPs were in the spectators' gallery of the Pretoria Supreme Court. He again stressed that the government was motivated by geographic considerations, whereas the National States Constitution Act made ethnicity paramount.²⁸⁶ The following day I W B de Villiers defended the government. "One of the inevitable consequences of the consolidation of the homelands was the violation of certain basic rights," including suffrage and citizenship. Moutse had been consulted many times in the course of the decision. KwaNdebele had never been exclusively Ndebele in

composition. The boundaries of national states took account of factors other than ethnicity, such as tribes, communities, and territorial authorities.²⁸⁷

Justice T T Spoelstra gave judgment for the government on 3 December, awarding costs against Mathebe.²⁸⁸ Tribal custom was relevant but not determinative in recognizing tribal or community political authorities. Ethnicity, language and custom did not govern the composition of self-governing areas. He rejected Moutse's argument that the State President acted beyond his powers, unreasonably, or discriminatorily.

What is important for the purposes of the matter in question is the fact that the excising of Moutse from the jurisdiction of the Lebowa Government took place by statute (Art 16, Act 102 of 1983). Similarly, the elimination of Moutse residents' representation in the Lebowa Legislative Assembly took place by statute (Articles 17 and 18, Act 102 of 1983). The loss of rights associated therewith, consequently, is not caused by Proclamation R227 and the incorporation into KwaNdebele, but by Parliament. Insofar as unreasonableness is the issue, it therefore drops out of consideration. It is not for me to pass judgment about whether that decision was good or bad, desirable or undesirable, wise or unwise.

The National States Constitutions Act acknowledged the possibility that ethnically different groups would be subjected to a single Legislative Assembly. "It seems to me that the legislature realized that in certain instances it would be necessary for the State President to sacrifice the principle of ethnicity to the requirements of suitability and effective administration. Any rights the Moutse people lost were taken from them by legislation. "The dissatisfaction of the North Sotho population in Moutse is understandable. I do, however, agree with Mr. de Villiers that in any case where one ethnic group is placed under the authority of another majority group, who differ from them ethnically, it could lead to dissatisfaction. It is apparent that one is forced to come to the conclusion that the legislature should have taken those facts into consideration when it placed Article 1(2) in the law books and that the legislature, in spite of this real possibility, granted the State President very wide powers." Recognizing the importance of the case, however, Judge Spoelstra immediately granted leave to appeal.²⁸⁹

To emphasize that they were not defeated, the Moutse Civic Association, the Moutse Youth Congress, and the KwaNdebele Youth Congress held a press conference in Johannesburg after the judgment. They wanted to be part of South Africa and rejected the policy of separate development. Morgan Mathebe, a spokesman, said "If the government finally goes ahead with its plans we are determined to show active resistance." One of their attorneys denounced as "cynical" the government's claim that ethnicity was not a dominant issue in the definition of homelands.²⁹⁰

V. THE STRUGGLE OVER INDEPENDENCE (1987)

The struggle continued much as before. The KwaNdebele government launched new attacks on those opposed to independence. In January 1987 it expelled St Oliver's Catholic Mission. On 23 January George Mahlangu ordered his secretary, Mr B Nieuwenhuizen, and a Mr Lombard to seize the documents and vehicles of the Ndzundza Tribal Authority and close the offices at Weltevrede and elsewhere. The Chief Minister then assigned the NTA's functions to a magistrate. James Mahlangu immediately brought a spoliation action in the Supreme Court, seeking return of the articles seized. On 17 February Justice Goldstein granted the order with costs, holding that the Chief Minister had no authority to seize the property, close the NTA offices, or assign its functions to a magistrate. As the victorious Prince James left the courthouse, however, KwaNdebele police arrested him for holding an illegal gathering.²⁹¹

By March the attack had intensified. At the trial of Prince James the police detained Prince Cornelius (who had been dismissed as Minister of Health, Pensions and Social Welfare), and another 25 tribal authority leaders and MPs. It also dismissed Assembly Speaker Solly Mahlangu, who had ruled the independence issue dead without a vote. And it announced another vote on independence.²⁹² In April Nicholas de Villiers of the Pretoria Legal Resources Centre was detained while seeking bail for these detainees. Andries Kuhn, divisional commissioner of police, accused him of entering the homeland with a view to bringing about the violent overthrow of its government and that of South Africa. After three days in detention and an LRC application for an interdict, he was released by agreement.²⁹³

At the end of April the KwaNdebele Legislative Assembly (supported by a majority of the Ndzundza members) dismissed Prince James Mahlangu and Solly Mahlangu from their positions in the Ndzundza tribal authority because their behavior had become an "embarrassment" to the administration; this automatically expelled them from parliament. They had already been in detention for six weeks. Prince Andries was in hiding to avoid detention (for the third time). On 4 May the Assembly unanimously dismissed Prince Cornelius for refusing to answer questions about his letter warning the South African government that independence would breed further violence. Cornelius declared that the purpose of these dismissals was "to ensure there is no opposition to independence plans which are being revived. We are seen as the only obstacles in the assembly."²⁹⁴

And, indeed, the Legislative Assembly voted unanimously for independence two days later. It rescinded the (equally unanimous) repudiation of independence on 12 August 1986 on the ground that Solly Mahlangu had acted unconstitutionally, since the issue had not been on the agenda that day and there had been no formal vote! Chief Minister George Mahlangu prepared to enter discussions with the government and hoped to backdate independence to the original target, 11 December 1986. Neither Pretoria nor the homeland leaders had ever abandoned independence. Chris Heunis had reiterated to

P G Soal on 23 February: "The option for independence of a self-governing territory is the prerogative of the government of the territory concerned. The RSA government will consider a request for independence by the KwaNdebele government should they so request."²⁹⁵ Construction of a capital at KwaMhlanga and a R3.75m "independence" stadium at Siyabuswa had continued. Ekangala had finally been incorporated into KwaNdebele in April 1987. And Viljoen talked of giving the homeland new powers.²⁹⁶ In June Heunis announced that it had appointed P J K Kriel Commissioner-General of KwaNdebele from the first of the month.²⁹⁷

UDF acting publicity secretary Murphy Morobe called the vote a declaration of war on the people of South Africa.²⁹⁸ The South African Institute of Race Relations termed it "sheer madness . . . the height of political irresponsibility . . . dangerous nonsense."²⁹⁹ *Business Day* said "the entire homelands policy has been a farce from the start—and a birth of such illegitimacy holds no promise of prosperity."³⁰⁰ But Chris Heunis reaffirmed that "the government is prepared to consider the wishes of the people of the territories" and would initiate negotiations.³⁰¹

On 11 May KwaNdebele Minister of Information Fanie Koos Mahlangu, a former Soweto councillor and Ekangala strongman, said that people had been asked to speak against independence but no one had done so. This was a time for "rejoicing" since residents who had been "scattered for years striving for their own country" now would take their "rightful place in the row of nations." "Let me assure all who have any interest in the right of nations to decide for themselves, that this decision in the Legislative Assembly followed weeks of consultation with the people themselves, by means of public meetings held throughout kwaNdebele." "The threat of unrest and agitation against kwaNdebele's proposed independence came not from Ndebeles, but from outsiders." The Black Sash was one of the ringleaders. "The Black Sash lives in Parktown yet they want to speak for the citizens of kwaNdebele."³⁰²

Chief Minister George Mahlangu, the likeliest candidate for president of an independent KwaNdebele, had an unsavory affiliation with Mbokotho. Don Brunette, Transvaal Attorney General, had opened three dockets concerning him. One accused Mahlangu and Piet Ntuli of the mass abduction and assault in January 1986. Another alleged that he had shot a youth to death, but the evidence was weak. And the third charged Mahlangu and Ntuli with killing eight youths by shooting from their car. Brunette had prosecuted 18 of 38 dockets arising out of the KwaNdebele violence.³⁰³

Violence escalated following the new declaration of independence. Pupils boycotted schools, three of which were burned, together with the Weltevrede school circuit offices. Vigilantes responded by raiding Matshiding, Peterskraal, Waterval, Weltevrede, and Kwaggafontein and beating any school-age child they found. Victims identified Information Minister F K Mahlangu and MPs Simon Ngenda Mahlangu and Philip Ngoma among the attackers. The government warned teachers and school inspectors against encouraging the boycott and broadcast a false announcement that they

backed independence. Civil servants were on strike. Vigilantes destroyed the Gugulethu Bar Lounge, belonging to anti-independence activist Abraham Skosana.

On 12 May a contingent of more than 20 South African and 15 KwaNdebele Police in 11 cars attacked the royal kraal. James, Andries, and Klaas Makhosana Mahlangu were already in detention. Siphila Dlamini, daughter of the Swazi King and wife of Cornelius, was arrested with others. She saw police beat Dini Masiso, James's brother-in-law, and arrest and beat Collins Mahlangu, younger brother of Andries. Threatened by police, the king fled the homeland. A 19 May application for an interdict to restrain violence was withdrawn two months later.³⁰⁴

By 12 May, 2000 people had been detained. *Sunday Star* reporter Jon Qwelane, photographer Herbert Mabuza and driver Sam Mathe were detained with them at Kwaggafontein police station for three and a half days beginning 13 May and filed affidavits about the brutality they witnessed.³⁰⁵ There was a general stayaway on 14 May. The Chief Minister warned against "bush meetings," and the Police Commissioner issued a 9pm-5am curfew. The international press again picked up the story, although a ban on non-residents made it difficult to obtain information. But on 26 May George Mahlangu reaffirmed the territory's declaration of independence retroactive to 11 December 1986. The people demanded "independence, self-respect and self-realisation." "We see ourselves as an independent nation and all that remains to be done is to celebrate our independence." He anticipated South Africa's approval and dismissed Heunis's refusal to make the recognition retroactive.³⁰⁶

Two weeks after the KwaNdebele Legislative Assembly re-embraced independence, P W Botha said in his opening address to Parliament:

Over the past decades, four self-governing territories have requested independence and received it in a peaceful, constitutional manner. The legitimate leaders and representatives of a fifth territory have now requested independence as well. The Government will not stand in the way of communities that seek greater autonomy or even independence.³⁰⁷

This was followed by a lengthy debate on a motion of censure by the Conservative Party (now the official opposition) because the Government "has failed to spell out clearly the mandate sought by it, with special reference to the protection of peoples or minority groups and the prevention of a Black majority government for South Africa."³⁰⁸ Helen Suzman took the opportunity to

ask the State President and the hon the Minister of Education and Development Aid whether a referendum has been held in kwaNdebele to determine whether the people want independence, because all indications are that they do not. Last August, amidst great rejoicing, independence was set aside by the then legislative assembly. . . . why the urge to push kwaNdebele into independence? Does somebody want a casino? . . .

There are "kitskonstabels" acting there, burning down properties, beating young kids and arresting children. . . . The Press are arrested the minute they set foot inside that territory. . . . Moutse, which was in such a state of uproar and settled down only after independence was quashed, is once again in a state of turmoil.³⁰⁹

Two other contemporaneous incorporations into homelands raised awkward parallels with Moutse. Lebowa, which protested that incorporation (if somewhat inconstantly), had itself incorporated land belonging to the Seleke clan near the town of Beauty in the Northern Transvaal district of Valwater. Justice Ackermann rejected a challenge by the residents, who complained that they had never been consulted. Ackermann held that the State President had to consult only the territorial authority of which the tribe was a part—in this instance, the Republic of South Africa (i.e., himself).³¹⁰ At about the same time, a rumor surfaced that QwaQwa was to incorporate Botshabelo, whose 500,000 inhabitants constituted the second largest black township in South Africa (after Soweto). This also generated violence, and the government had begun to recruit unemployed men as kitskonstabels (instant police) to repress it.³¹¹

At the end of May, Prince Cornelius Mahlangu told a press conference that he sought a meeting with the State President on the mandate of his father. Josias Skosana, son of the late Chief Minister, said that he and his brothers Peter and Dan were in hiding and Sam was in detention. On 28 May Cornelius and his brother Andries, who (like their father) had gone into hiding to escape arrest, were detained by South African Police outside the British Consulate in Johannesburg, where they had just briefed western diplomats about KwaNdebele. The SAP apparently handed them over to the KwaNdebele police. Britain filed a formal protest. At about the same time, violence flared on the main road between Pretoria and KwaNdebele. Anti-independence militants had erected a roadblock at the border. They fled when confronted by KwaNdebele police, who ordered the buses full of commuters to proceed. The drivers refused, fearing they would be recognized; three were seized by the police, and the others went on strike.³¹²

In his opening address to Parliament, P W Botha had referred to George Mahlangu and his cabinet as the "legitimate leaders and representatives of KwaNdebele." But he subsequently backed away from that position, perhaps embarrassed by articles in the *Weekly Mail* and *The Sunday Star* implicating Mahlangu and the KwaNdebele police in violence. Chris Heunis apparently acknowledged that King Mapoch did not support independence, but he rejected the PFP call for a referendum on the issue. When Botha met Chief Minister George Mahlangu on 9 June the State President insisted that "the government of KwaNdebele must consider some or other acceptable method of demonstrating that it has the support of the broad population in its striving for independence." *The Cape Times* welcomed this condition, deploring the "tragedy" that it had not been required in the other four "independent" homelands. Helen Suzman called for a "free and fair referendum including women,"

angering F K Mahlangu, who told her to "concern herself with her White voters and not with the affairs of KwaNdebele." "She was against us when we wanted a homeland and now she is against us when we seek independence. Does she want us to be slaves forever?" Several Labour Party MPs supported a motion opposing independence.³¹³

On 19 June KwaNdebele Police Commissioner Lerm prohibited James and Cornelius Mahlangu from participating "in any campaign, project or action aimed at disrupting or delaying the contemplated independence of KwaNdebele" or attending any "gathering organised, convened or held to resist or oppose any action or proposed action of any member of the Cabinet or the Government of KwaNdebele." Faced with a Supreme Court action, Lerm withdrew the regulations.³¹⁴ Cornelius accused Lerm of trying to frighten him and his brother James into supporting independence. The KwaNdebele Police had returned Cornelius to the South African Police, who were holding him at Bronkhorstpruit. By the end of June, KwaNdebele had released all but 27 detainees—though only after requiring them to sign a statement.

I, . . . being of sound mind and body, hereby undertake, voluntary [sic] and without being subjected to any compulsion, not to:

- (a) participate in any campaign, project or action aimed at disrupting or delaying the contemplated independence of KwaNdebele through intimidation or/and violent means.
- (b) attend any gathering . . . held to resist or oppose any action or proposed action of any member of the Cabinet or the Government of KwaNdebele where any intimidation or violent means are contemplated.
- (c) be a part of, be responsible or contributing in any manner whatsoever in any action that is prohibited.³¹⁵

Cornelius and James Mahlangu had appeared in court (though they were not charged), but their lawyer, Nano Matlala, was not allowed to consult with them outside the hearing of the police and refused to do so in their presence.³¹⁶ Early in July Cornelius and James were finally charged under Internal Security Act §54 for speeches they allegedly made at the royal kraal. Although they were released on R2500 bail, Cornelius was redetained within hours for allegedly attending an unlawful meeting. In the first ten days of July eight people were detained at the royal kraal, including Cornelius's wife Cabiseli, although she and another were soon released.³¹⁷ On 21 July, Justice Roux ordered KwaNdebele to release Cornelius. He noted that Cornelius had been detained 6-13 March, several days in April, 27 May-19 June, 22 June-8 July, and redetained by officer Kloppers hours after his release on 8 July.

The allegations certainly indicate a prima facie case which requires an answer by the respondents because of their somewhat erratic behaviour towards the detainee in the past of having arrested him and released him and rearrested him and then released him as I have mentioned. It certainly creates a suspicion in my mind as to whether there was any real reason for their behaviour. [Kloppers claimed that new information reached him during the hour or two between Cornelius's release and

redetention.] That strikes me as being such an improbability as I must reject it. . . . I am faced with bald allegations that Mr Kloppers had reasons for the arrest but he has not seen fit to give instances and dates which would enable the applicant to dispute them. . . . I feel that if a discretion is exercised on no facts which justify it, it is a decision which is subject to attack on review.³¹⁸

Thomas Ngwenya, a Zulu living in KwaMhlanga, applied for an interdict to prevent the police (and kitskonstabels) from threatening him and his family.³¹⁹

Later that month—after 18 months of delay—Transvaal Attorney General Don Brunette finally charged George Mahlangu and two other senior cabinet officials with assault for their involvement in the January 1986 abduction and torture of some 380 Moutse residents. But the trivial charge allowed them to avoid trial by paying R50 admission of guilt fines. Fourteen of the 26 allegedly involved in the incident were charged with the more serious offense of assault with intent to do grievous bodily harm.³²⁰

In the third week of July Information Minister F K Mahlangu allegedly said KwaNdebele could not conduct a referendum on independence because of "widespread intimidation."³²¹ George Mahlangu pursued his attack on the Ndzundza royal family by ordering the tribal authority to nominate nine men to the Legislative Assembly to replace those dismissed for anti-independence activities. The Chief Minister had detained many opposed to independence, who might otherwise be nominated, including Lucas Mthunye (former chairman of the Public Service Commission), Elias Masanga (former schools inspector), Abraham Skosana (businessman), and J M Mahlangu (former magistrate). However, King Mapoch refused to convene the tribal authority until he could hold a general meeting, which was impossible because its chairman, Prince James, was barred from attending any meeting at which the KwaNdebele government was criticized. Don Brunette, who had returned the docket against Cornelius to the police for more detail, finally dismissed the charges against him.³²² The nine remaining Ndzundza members of the Legislative Assembly, having failed to persuade King Mapoch to convene the tribal authority, held their own meeting, which they claimed was an official NTA event. They nominated K S Mahlangu to replace James as chair and appointed nine more members to ensure a quorum. The reconstituted tribal authority then nominated nine pro-independence members to the Legislative Assembly. Andries Mahlangu briefed lawyers to challenge this action in court.³²³ Mtungwa Solly Mahlangu, now in exile, sued Ntambo Ntuli, Simon Gulwako, Theta Masombuka, George Mahlangu and Klaas Mtsweni, seeking to reverse his removal as speaker of the house and expulsion from the Legislative Assembly on the legalistic ground that the Assembly was in committee stage, not general session, when he was removed from office.³²⁴

KwaNdebele was discussed in the debate on the Appropriation Bill at the end of July. The Conservative Party hoped "that this Government will not, in its ineptitude,

jeopardise [the homeland's independence] again, as happened on the previous occasion."³²⁵ PFP MP Peter Soal urged Heunis to read Colleen McCaul's pamphlet "Satellite in Revolt—KwaNdebele: An Economic and Political Profile," just published by the SAIRR.

We all know that KwaNdebele is nothing more than a clutch of farms to the east of Pretoria designed to provide a reservoir of labour for Pretoria and the East Rand. . . . I was amazed at the construction work that has taken place in [Ekangala and Ekandustria]. Rows upon rows of empty houses and empty factories clutter up the countryside and an extensive network of tarred roads crisscrosses both townships. When one takes account of the situation in the Black townships around our cities, I wonder how one can justify spending vast amounts of money in providing these extensive facilities in what is nothing more than a ghost town. . . . I saw with my own eyes many buses travelling back to KwaNdebele late at night along the motorway to the north, laden with migratory workers returning to what can only be termed the South African Siberia.

People were moved to Ekangala some years ago under false pretences as this area has now been incorporated into KwaNdebele. The spectre of independence hangs over their heads, and could mean the loss of their South African citizenship. . . .

The KwaNdebele homeland is in a state of virtual civil war. . . . one gentleman I spoke to described [George Mahlangu] as an Idi Amin.

It has been reported that the Mhbokoto [sic] has been disbanded but I discovered considerable evidence during my visit that there appears to be a reign of terror by this organisation throughout KwaNdebele. . . .

George Mahlangu has been holding a series of meetings following which he will no doubt convey to the South African Government the message that the people of KwaNdebele are in favour of independence. . . . the Chief Minister addresses those present, and because taxi drivers do not wish to lose their taxi licenses, businessmen do not wish to lose their trading licenses and teachers and civil servants do not wish to lose their jobs, when he asks whether anyone is opposed to independence, it is obvious that not one single person responds in the affirmative. . . . Prince James Mahlangu has been restricted from holding any meetings or from criticising the concept of independence. . . . Brigadier Lerm recommended to [Prince James] that they should accept independence. . . . How is it that a civil servant of Brig Lerm's standing can become embroiled in a sensitive political matter of this nature?

How is it possible that the KwaNdebele police are able to arrest Mr Cornelius Mahlangu outside the offices of the British Consulate in Johannesburg?

How is it possible that the KwaNdebele Government has dismissed the Secretary for Justice, Mr Buys; has had the former Commissioner-General, Mr Gerrie van der Merwe, removed from office; arranged for

Brigadier Van Niekerk, the former Commissioner of Police, to be removed from KwaNdebele; arranged for Brigadier Moller, who was apparently responsible for the security situation to the State President himself, and for former Commissioner-General Mr Mills, to be removed from their positions?³²⁶

The Nationalist MP who spoke next denounced Soal for calling George Mahlangu an Idi Amin. "I think that is really irresponsible. . . . I do not think that it is in the interests of good relations in South Africa or in the interests of good government in the self-governing areas to come into the highest body of authority and to make accusations which I do not believe he can substantiate."³²⁷ Another PFP member described Ekandustria as a "ghost town" and noted the "recently opened shopping centre [in Ekangala] with virtually nobody using it." He also pleaded with the Government to postpone independence.³²⁸

Minister of Education and Development Aid Gerrit Viljoen declared that Peter Soal's remarks were

deplorable, irresponsible and in many ways mean. To call that place a South African Siberia, I think is unfair. It is offensive. To speak of almost a civil war existing there, is highly irresponsible.

SOAL: It is true.

VILJOEN: To refer to the Chief Minister as an Idi Amin, I think is insulting. It just shows the kind of mentality the hon members of that party really harbour with regard to Black leaders of the status of a man like Chief Minister Mahlangu. The Chief Minister of KwaNdebele is a well-educated, responsible person who has impressed us in the negotiations that we have had with him in the very short period that he has been in this office.

He could not comment on Ekandustria because it was part of KwaNdebele. He was "convinced that the moment Ekangala is incorporated into KwaNdebele—as is the declared policy of the Government—there will be an influx of people into that area." Soal's final riposte was: "There speaks Dr Verwoerd!"³²⁹

Early in August the police shot to death anti-independence activist Japhta Mabena in kwaMahlanga.³³⁰ Showing how well the homelands imitated their creators, the Chief Minister signed the KwaNdebele Public Safety Act, No. 5 of 1987 on 10 August, authorizing himself (as Minister of Law and Order) to "order the removal of any tribe," "restrict the presence of any person to a particular place," and "prohibit any organization or membership of such an organization; the furtherance in any manner, of the objects of such an organization; and the publication or dissemination [sic] of the contents of any speech, utterance, writing or statement."³³¹ On 3 September Mary Tshabalala filed an urgent application seeking the release of her daughter Matlakala

Miriam Tshabalala, detained on 29 August. On 7 September the government agreed to allow her access to a lawyer and improve the conditions of detention.³³²

At the end of August Gibson Tlokwe Mathebe, chief of the Bantoane tribe, filed an action challenging the KwaNdebele emergency regulations. Among his many complaints was the refusal of permission to hold a 19 April meeting to report on the progress of the Appellate Division hearing on his lawsuit against incorporation. The other applicants were Isaac Ditshego, who worked and lived in Johannesburg during the week but returned to Moutse on weekends, and free-lance reporter Patrick Laurence.³³³

In early September James and Cornelius Mahlangu were in court in Siyabuswa on a charge of intimidation and public violence. Immediately after the hearing their lawyer, Nano Matlala, was also charged with intimidation and served with an order prohibiting him from participating in any activity opposing independence. Matlala's lawyer, Norman Moabi, said: "We intend bringing an urgent court application against the order restricting our client . . . [which] technically bars Mr Matlala from performing his professional duties in KwaNdebele."³³⁴ Threatened with a pending application for an interdict, the homeland agreed on 21 September to stop enforcing the Police Commissioner's emergency regulations.³³⁵

Soal and Heunis clashed in Parliament on 11 September during further debates on the budget. Soal reiterated that "the majority of the [KwaNdebele] people are not being given a fair opportunity to express their opinion" about independence. Prince James was "prevented by a police order from attending meetings or speaking against independence." He urged that the issue be shelved "until some truly democratic form of determining the views of those people can be formulated." Heunis responded: "The Government believes that states have the right to opt for independence. KwaNdebele expressed such a wish. The Government accepted it. . . . Internal clashes and disputes took place in KwaNdebele, not primarily about the question of independence, but about the nature of the constitutional system after independence . . . whether there would be a president who would be a nominal head of state or whether there would be a president with executive authority." Heunis expressed skepticism about "how many people [Soal] could have met in two days with a view to forming an overall impression of what the people of KwaNdebele want."³³⁶

At the end of the month the Chief Minister cultivated the South African press by inviting them to lunch at the Carlton (in Johannesburg) and asking them to report fairly. He acknowledged that his administration restricted pensions, residential sites, and trading licenses to KwaNdebele citizens. There would be no popular vote on independence. The AmaNdebele had shown their desire for independence when the Legislative Assembly accepted it in principle in 1982 and when the people voted in 1984. "The opposition to independence was perpetrated by only a few individuals. We look at the attitude of the people who are for independence." "As far as we are now concerned, everything is now done. We are only waiting for the South African Government; the ball is in their court."³³⁷ In response to the press, however, Botha's

office reiterated its earlier requirement.³³⁸ Heunis restated these in October: "The requirements compromise [sic] the following:—The outonomy [sic] or independence must be obtained in an orderly fashion and on the basis of the broad support of the population of KwaNdebele. . . ."³³⁹

The day after the press conference Mahlangu appeared on television to advocate independence. The next day, however, his opponents announced the launch of *Contralesa* (Congress of Traditional Leaders of South Africa), affiliated with the UDF. The founders were mostly KwaNdebele and Moutse chiefs opposed to independence, including Prince Makhosana Klaas Mahlangu (a cousin of James, who was still in detention), Cornelius, and Andries; the interim chairman was Morgan Mathebe, son of the Moutse paramount chief. Peter Mokaba, president of Sayco (South African Youth Congress), assisted in organizing the group.³⁴⁰ Information Minister F K Mahlangu replied that M K Mahlangu represented nobody, having fled from Lebowa after failing to overthrow his brother as village chief. "His refuge with Chief David Mapoch in kwaNdebele did not last long as he fell into disgrace after forcing people to disregard the chief's orders, and over irregularities concerning school funds." He then fled KwaNdebele, taking refuge in kwaZulu in 1976. Furthermore, six KwaNdebele chiefs supported the government.³⁴¹ Police Commissioner Lerm continued to expand the KwaNdebele police force by enlisting members of Mbokotho.³⁴²

VI. LEBOWA'S CHALLENGE TO THE EXCISION OF MOUTSE: THE APPELLATE DIVISION

On 7 September the Appellate Division heard Lebowa's appeal against the excision of Moutse. David Gordon, SC, argued that the National States Constitution Act of 1971 did not empower the State President to modify the area of a self-governing territory without prior consultation. If he had the power, his efforts to do so were fatally flawed. Proclamation R210 of 1980 (which purported to excise Moutse) amended the wrong Proclamation (R156 of 1971 instead of R225 of 1972). Although Parliament had the power to excise Moutse, its 1983 legislation, which purported to do this, addressed the same incorrect proclamation. When it sought to correct this error in 1985 by legislating the correct interpretation of the original proclamation, it referred to a proclamation that the 1983 Act had repealed. Lebowa insisted that "Even if the Court is of the view that the Legislature's intention in Act 91 of 1985 was to bring about the excision of Moutse, such intention emerges not from the language of the statute but from other and irrelevant matter and involves a departure from the language used to give it a meaning which it is not capable of bearing." I W B de Villiers, SC, and S J Mynhardt, SC, asserted that R156 of 1971 was properly amended in the first place.³⁴³

On 29 September Justice Grosskopf (joined by Chief Justice Rabie and Justices Joubert, Hefer and Vivier) rejected the appeal.³⁴⁴ The Appellate Division would have none of the applicant's legalism. When Lebowa complained that the Prime Minister had not consulted it about the original excision by proclamation (as required by sec. 1(2) of the National States Constitution Act 21 of 1971), Parliament passed sec. 16 of the Laws on Co-operation and Development Act 102 of 1983; legislation itself clearly required no consultation. When Lebowa challenged this for amending the wrong proclamation, Parliament passed the Laws on Co-operation and Development Amendment Act 91 of 1985, whose long title explicitly stated its purpose: "to remove any possible doubt concerning the area of the self-governing territory of Lebowa." Justice Grosskopf found that the legislation had the desired effect. He rejected Lebowa's argument, which turned on the punctuation in the 1985 statute.

Mr Gordon quoted no authority for the proposition that words in parenthesis were to be differently interpreted depending on whether the parenthesis was indicated by brackets rather than by commas or semi-colons. The lack of authority for this proposition is not surprising since punctuation is a matter to which little or no regard is had in the interpretation of statutes. In *Duke of Devonshire* Lord Esher MR said . . . "To my mind . . . it is perfectly clear that in an Act of Parliament there are no such things as brackets any more than there are such things as stops." This passage has been approved in South Africa. . . . [A]n interpretation supported only by the use of a particular punctuation mark must inevitably yield to one based on the intention of the Legislature as it appears from the meaning of the words used read in their context. . . . It seems quite inconceivable that the Legislature would have set out a list

of the amendments to the substituted schedule but would have intended to ordain, merely by using brackets instead of commas or semi-colons, that one of the amendments which appears in the list should be disregarded. Assuming that in linguistic theory brackets can have such an effect on the meaning of words, I can do no better than to quote the following *dictum* by Fry LJ in *Duke of Devonshire*: "Now, whether brackets can or cannot be looked at if they appear on the Parliament Roll, I express no opinion; but . . . in the present case. . . . I must read through them and pay no attention to them, for the sense is too strong for me to pause at these miserable brackets."

Justice Grosskopf found that the 1983 legislation had been equally effective to excise Moutse from Lebowa. He dismissed the appeal with costs. The defeat attracted little media attention.³⁴⁵

VII. THE KWANDEBELE WOMEN'S VOTE CASE

This left Gibson Mathebe's appeal as the only remaining legal challenge to incorporation.³⁴⁶ But less than a month later another lawsuit began that would have a significant impact on the future of both KwaNdebele and Moutse. On 26 October Paulina Machika and five other KwaNdebele women filed an action in the Supreme Court, Transvaal Provincial Division, challenging their inability to vote or stand for the Legislative Assembly.³⁴⁷ In addition to equalizing suffrage, the applicants hoped that women would oppose independence, and their participation in the electorate would end that threat. The relief sought included invalidation of the 1984 election of the Legislative Assembly, an interdict against any future actions, and, by implication, the invalidation of all past acts, including the unanimous request for independence. The defendants were the State President, Majozi George Mahlangu as Chief Minister of KwaNdebele, and 15 other members of the KwaNdebele Legislative Assembly (the 16 elected members).

Geoffrey Budlender, their attorney at the Legal Resources Centre in Johannesburg, described how the case originated.³⁴⁸ The violence in KwaNdebele sent many clients to the Pretoria LRC office, one of whose attorneys had been detained three times. (Although the disenfranchisement of women was one argument in the challenge to Moutse's incorporation, and Budlender had discussed that case with its lawyers, no one thought of challenging the sex discrimination at the time.) Budlender believed that the disenfranchisement of women was unlawful in the absence of specific statutory authority. The Pretoria office asked its clients if they also opposed the exclusion of women. Lawyers met with Ndebele political leaders on a white farm outside the homeland to secure their support and then with some 15-20 women, from whom they chose plaintiffs who played an active role in local governance. Budlender told them about the risks and was greatly impressed by their courage. "They said, well . . . our sons are being arrested. Our husbands are being arrested . . . we have to do this." Shots were fired at their houses. The original goal was a new election, in which anti-independence forces would gain control of the Legislative Assembly. Because there were no decided cases on sex discrimination, he relied on cases about race discrimination. Although Budlender asked the court to invalidate its prior acts, he did not think this a likely remedy. Paulina Machika was a 50-year-old housewife from Kameelrivier B, who was "assisted in bringing this application" by her husband Petrus, a bricklayer. Her 25-page founding affidavit outlined the structure of the KwaNdebele government. The South African government's Proclamation 205 of 1979 created the KwaNdebele Legislative Assembly, composed of 46 nominated members: the four tribal authorities' chiefs and 42 of their members. The Ndzundza tribal authority constituted just half the total. Proclamation 114 of 1984 reconstituted the KwaNdebele Legislative Assembly. It increased the number of nominated members to 56, chosen by tribal authorities, community authorities, chiefs, urban boards, and the Chief Minister (while reducing Ndzundza control to 23/56); and it added 16 elected members.

The first and only election was held 15-17 November 1984. As an active participant in her community, Paulina Machika had expected to vote. The parents of pupils at the Morwe Lower Primary School had elected her to the School Committee for four years. She regularly attended tribal meetings. Consequently, she was very surprised when she heard on the radio that only men could vote.

I could not understand why I was not permitted to vote. As set out above, I have always taken an active and responsible role in community affairs, yet I was not allowed to vote. I nevertheless went along to the polling station at the tribal office on the day of the election. I saw that young men, who on any basis were junior to me in responsibility and status, were nevertheless allowed to vote.

The proclamations denying women the right to vote for or be elected to the Legislative Assembly were *ultra vires* on a variety of grounds. Section 2 of the National States Constitution Act 21 of 1971 did not empower the State President to discriminate against women. The definition of "voter" was unreasonable because it was partial and unequal; "it involves such oppressive or gratuitous interference with the rights of those subjected to them as could find no justification in minds of reasonable men [sic]." The purpose of adding elected members—to extend democracy—was defeated by excluding half the population from voting. And gender was an irrelevant consideration.

She noted that women could vote and be elected to office in *all* the other national states and the four "independent" states; indeed, a woman had recently been elected Prime Minister of Transkei. Women could also vote for and serve in all local governments in South Africa. The interests of women and men diverged. Because so many men were migrant workers, women had more intimate knowledge of such important matters as education, pensions, business licenses, and policing.

The 1984 election had retrospectively acquired greater significance because the KwaNdebele Legislative Assembly had declared for independence. Ms Machika had attended the meeting of some 20,000 people at the royal kraal on 12 May 1986 in response to the State President's announcement five days earlier that independence would be granted in December. The people opposed independence and called for the resignation of the Legislative Assembly and Cabinet, which had endorsed it, and the disbanding of Mbokotho. She also attended the 14 May meeting, at which members of the royal clan were to report back about the response to these demands. It was even larger than the previous meeting but was disrupted by security forces firing teargas and rubber bullets from armored vehicles and a helicopter, injuring many people. This set off three months of violence, culminating in the 12 August meeting of the Legislative Assembly, which repudiated independence. The result was a dramatic decrease in violence. The reversal of this decision on 6 May 1987 reignited the violence. Partly in response, the State President met members of the KwaNdebele government on 9 June and told them he would have to be satisfied that the people wanted independence before he could grant it. George Mahlangu responded at a 21 September press conference,

invoking the 1984 election as a mandate for independence. (Patrick Laurence, who attended, confirmed this in his affidavit.) But that was no mandate because women were denied the vote.

Paulina Machika was strongly opposed to independence, which would deprive her and her children of South African citizenship, relegating them to "the small impoverished state of KwaNdebele."

In the light of the history of KwaNdebele, I believe that I will be subject to an arbitrary government which does not tolerate any opposition. South Africa is the country in which I was born, and to which I owe allegiance. I do not want to lose my association with my homeland, South Africa, and my claim to the benefits which it can offer me.

She wanted to participate in any decision about independence, whether by vote or referendum. She also wished to establish her right to vote in the next mandatory election (September 1989). Indeed, "in light of what has happened, I have decided to become a candidate for election to the Legislative Assembly, when the next election is held."⁴⁹

The other five applicants filed similar but much shorter affidavits. Alzina Ndala, a 43-year-old housewife whose application was supported by her husband, Andries, had been elected to the school committee at Simuyembiwa Higher Primary school by parents in 1983. She also regularly attended meetings of the tribal authority. She tried to participate in the 1984 election

because I could not understand that there was any valid reason why women should be excluded. On the first or second voting day (I cannot remember which), I therefore went to the polling station at the tribal office to attempt to cast my vote in the election. The official there refused to permit me to vote, saying that only men were allowed to vote.

Christine Mabena, a 43-year-old widow with a 22-year-old son, had been a member of the Mapoch Higher Primary School committee from 1974 to 1982. She managed her late husband's shop. "Unless women are allowed to vote in the next election, the result will be that while I cannot vote, my son will be able to do so." Paulina Msiza, a 50-year-old housewife whose husband was unemployed, had been a member of the Morwe Lower Primary School committee for six years and regularly attended tribal authority meetings. Deborah Ndala, a 43-year-old housewife, was chairwoman of the Masimbambaneni Women's club and regularly attended tribal meetings. Sylvia Nomatshoka Ndala, a 23-year-old unmarried woman, had been too young to vote in 1984 but wanted to do so next time.

Attorneys P W van Niekerk and C J van Vuuren made two basic points in the defendants' answering affidavits: women had always been excluded from political

power, particularly at the tribal level; and the Legislative Assembly explicitly asked that this exclusion be written into the constitutional proclamation.

Paulina Machika replied to the respondents' answering affidavits on 30 January 1988. Before 1984 the Legislative Assembly denied the vote not just to women but also to all men except the handful who were members of tribal authorities. It was these nominated members of the Legislative Assembly who opposed elections, not the people of KwaNdebele. Indeed, the Constitutional Committee had proposed in 1981 that both women and men be entitled to vote. The State President himself had indicated that the Legislative Assembly could not claim to represent the people's views on the issue of independence. There were no differences between KwaNdebele and other national states that would justify its disenfranchisement of women. The states did not differ in their attitude toward women. Because the interests of women and men diverged, women were not adequately served by an all-male Legislative Assembly.

The applicants filed additional reply affidavits at the end of January. Two respondents changed sides. Andries Mbangwa Mahlangu said he had always believed there was no justification for excluding women from the franchise or the Legislative Assembly. Klaas Makhosana Mahlangu seconded this, adding that he had resigned from the Assembly at the beginning of 1986.

Mtungwa Solly Mahlangu had been a nominated member and speaker of the Legislative Assembly (although ousted from both), a member of the Ndzundza tribal authority since 1973, and its councillor for education. He argued that the franchise for the Legislative Assembly had never been consistent with Ndebele customs. When a boy was initiated at about 16 he became an adult, with all the attendant rights, including marriage and children. He should therefore be entitled to vote then, not at 21. Women, who also were initiated and became adults, should be allowed to vote as well. True, women were excluded from traditional decisionmaking about initiation schools, lobola, interfamilial disputes, and burial rites, as well as from tribal councils. When these became the basis for territorial authorities, the latter also excluded women.

Compared to male labor migrants, however, women were more involved in local decisions about non-customary matters, which usually were ratified by tribal authorities. Schools, for instance, were governed by committees, which appointed teachers, collected and managed school funds, liaised with parents, and asked the tribal authority for additional classrooms. Pupils' parents often elected a majority of women to these committees. The tribal authority disregarded the committees at its peril. When the Ndzundza Tribal Authority built the Madoda Junior Secondary School at Watervaal A in 1985, pupils boycotted it for six months because the NTA had not consulted the school committee, which wanted it located at Klipplaatdrift. Only after the Tribal Authority apologized and promised to build another school there did the committee allow pupils to attend. Women also participated in decisions about water. When the tribal authority proposed to build a dam at Watervaal, women were fully involved in discussions about how much money each family would contribute. Women belonged to

and formed agricultural cooperatives to cultivate land both collectively and individually. They allocated the private land; on collective land they chose the crops, negotiated with the Department of Agriculture about irrigation and fencing, hired tractors, sold the produce, and managed finances. Women also participated in decisions about clinics, tribal levies, and roads.

Women were even more essential to decisions about major political issues. They participated fully in the two huge meetings at the royal kraal on 12 and 14 May 1986 to discuss independence and the Mbokotho. The decisions taken there by consensus involved women and men equally. Because the modern franchise was an innovation, the customary exclusion of women from tribal authorities was irrelevant. Women were initially excluded from the Legislative Assembly because it was composed of those who belonged to and were nominated by the all-male tribal authorities. These nominated members strongly resisted popular election, fearing it would undermine their legitimacy. The exclusion of women was one attempt to limit popular elections. The nominated members also were strongly traditionalist, making them reluctant to disagree publicly with someone senior. The 15-member Constitutional Committee actually recommended that women should vote. In the Legislative Assembly, however, Chief Minister Skosana strongly opposed this. The minutes reveal that no one disagreed with him, not even the 15 Committee members who had favored a universal adult franchise.

From my experience as Speaker, I can state that this reluctance to contradict a senior ranking person was not unique or unusual. Debate has been very rare in the Legislative Assembly. Once the senior ranking person has expressed a view, that has generally settled the matter. I wish to add that I was personally opposed to this discrimination against women. However, my position as Speaker prevented me from expressing a view on the matter before the House.

Professor William David Hammond-Tooke of the Department of Social Anthropology at the University of the Witwatersrand also submitted a lengthy affidavit. He conceded that all Bantu-speaking tribes in South Africa treated women as inferior in customary matters and excluded them from tribal councils. "It follows from this that if traditional tribal custom and government were to be adopted as the criterion for the franchise, one would expect to find women excluded from the franchise for the Legislative Assemblies of every one of the 'National States.'" But no society was static. Van Vuuren, the government "expert," admitted that South Ndebele culture had undergone radical change.

In any case, traditional tribal government was not and could not be the basis of contemporary Legislative Assemblies. Tribal government was small scale—an average of 2-3,000 families. There was little specialization. Dispute resolution was far more important than administration, which was limited to allocating land, coordinating planting and harvesting, ceremonies, and the military. The administrative functions of the chiefs' and headmen's councils declined under the direct rule of the Department of Native Affairs and the Native Commissioners and later the Department of Bantu

Education. The Bantu Authorities Act of 1951 sought to revive traditional institutions under the rubric of tribal authorities and superimposed regional and territorial authorities (for which there was no traditional precedent).

The "homelands" or "National States," a fortiori, were entirely novel and alien institutions. One index was their ethnic diversity: a 1980 study found that only 57 percent of the KwaNdebele population was Ndebele. Another was the massive relocation of people. The very name of the largest town in KwaNdebele—Siyabuswa ("we are ruled")—reflected the imposition of Ndzundza rule on the people of Doornkop when they were moved to Valschfontein. The homeland governments were entrusted with administrative responsibilities entirely foreign to traditional tribal councils: schools, pensions, development corporations, markets, labor, police, road traffic, and constitutional issues. The central government had devolved ever more authority to the legislative assemblies, which had created administrative departments and a civil service. They also were empowered to enact statutes (and repeal South African law). The traditional leadership, based on inheritance, had been unequal to these tasks.

This problem has led to two developments: first, the involvement *in practice* in decision-making, of many people who have no part in the statutory decision-making processes; and secondly, the creation of elected positions in the legislative assemblies.

In probably all the homelands, today, it is the women who tend to be the best educated and to participate most actively in the management of schools, welfare work, community problems, etc. With large numbers of men away on migrant labour stints, the maintenance of rural life depends largely on them. The widespread practice has thus developed that although the women do not have formal decision-making power, in practice they play a very active and even dominant role in determining what will happen at the local level.

The election of political leaders was a third rupture with tradition. Consequently, traditional political authority could not be the model for Legislative Assemblies. Furthermore, they have jurisdiction over everyone related by ethnic group or language to the ethnic base of the national state, many of whom live in cities and are no longer governed by customary law. "It is highly anomalous for people in this position to be excluded from participation in the only form of regional or national government to which they can aspire, on the grounds of traditional customs which no longer apply to them." Non-Ndebele women in KwaNdebele (more than a quarter of the total population) were disenfranchised by the geographic accident of inclusion in this homeland rather than the one to which they belonged ethnically. Conversely, Ndebele women in other homelands enjoyed a franchise that their sisters in KwaNdebele were denied.

Professor Belinda Bozzoli of the Department of Sociology at the University of the Witwatersrand submitted an affidavit on the history of women's suffrage. She noted

that though women were excluded from the franchise almost everywhere until the end of the nineteenth century, they were included almost everywhere shortly after World War Two. The 1952 United Nations Convention on the Political Rights of Women declared that "women shall be entitled to vote in all elections on equal terms with men, without any discrimination." By 1978, only four countries excluded women from the electorate and legislature: Jordan, Kuwait, Saudi Arabia, and Yemen.

VIII. THE STRUGGLE OVER INCORPORATION AND INDEPENDENCE (1987-88)

Outside the courtroom the struggle continued much as before. Cornelius Mahlangu was rearrested on 16 October and charged with intimidating people to prevent them from attending the agricultural show at KwaMhlanga on 16-18 October. On 5 November Justice Myburgh refused to release him. The police had formed a

genuine opinion about the desirability of the arrest of the detainee. . . . The detainee makes no suggestion as to why this police officer would be acting mala fide against him, and he cannot say that the information at his disposal was not sufficient for him to form an opinion genuinely. Then, I have noted that he fails to give any reasons for his alleged absence after the dramatic events from KwaNdebele from 7-27 May 1987 when he was arrested. And he really in substance makes no suggestion why the people would be making false affidavits against him disclosing his involvement in these disturbances.³⁵⁰

In early November there were reports of increased violence by Mbokotho, which had never disbanded but merely gone underground or joined the KwaNdebele police. At least ten Moutse residents were injured, and many more fled. Mbokotho and the police were carrying out joint door-to-door raids in Kwarrielaagte and Uitvlucht townships. The Federation of Moutse Youth Congresses said that most Uitvlucht youths had been arrested, and more than 100 remained in detention. Charles Mathebe narrated a month of assault and torture in detention.³⁵¹ His lawyers described constant government interference with their efforts to consult and represent him.³⁵² Parents were assaulted for refusing to disclose the whereabouts of their children. Makhosana Klaas Mahlangu, Contralesa secretary, said the injured were being transported to distant hospitals for fear of being abducted from KwaNdebele hospitals.³⁵³ On 3 December Paledi Mathebe applied for an interdict to stop the torture of his son Charles, detained on 6 November, and allow him access to a lawyer and doctor.³⁵⁴

Opposition to incorporation suffered further blows when Ekangala was incorporated into KwaNdebele and Botshabelo into QwaQwa on 2 December.³⁵⁵ The former decision had been impending since February 1985, and most of the resistance had fled Ekangala after vigilante attacks in 1986. Botshabelo was another matter. Although the Qwa Qwa Legislative Assembly had urged incorporation in 1981, as recently as 3 February 1987 Chris Heunis, Gerrit Viljoen, and QwaQwa Chief Minister T K Mopeli issued a press statement denying "recent rumours in the Botshabelo area" that it was going to be incorporated on 18 February. Yet on 2 September the Department of Education and Training reassured all Botshabelo teachers that they could transfer to Qwa Qwa when Botshabelo was incorporated. A week later Heunis defended the proposed incorporation.

Botshabelo owes its existence to a joint agreement, on 7 February 1977, between the governments of the Republic, Qwaqwa and Bophuthatswana. . . . In 1983 Mr Mopeli said the following at a festival of thanksgiving: ". . . it requested the central Government that the area should be placed under direct control of Qwaqwa." On 6 September 1985 . . . the State President gave the Chief Minister the assurance that the incorporation would be finalised before 1990. . . . a meeting [was] held with the inhabitants of Botshabelo at Botshabelo on 19 July 1987. One thousand inhabitants attended the meeting and enthusiastically supported the incorporation.³⁵⁶

The township was at least as large as the homeland to which it was being subordinated and probably larger (perhaps 600,000 to 500,000, although another 800,000 QwaQwa "citizens" lived outside the homeland).³⁵⁷ It also was 330km away, which undermined the argument for geographic contiguity invoked with respect to Moutse. And it was ethnically dissimilar: although the majority were South Sotho, 15 percent were Xhosa, 3 percent Ndebele, 2 percent Tswana, and 1 percent Zulu. A survey by the sociology department of the University of the Orange Free State found 74 percent of the residents opposed to incorporation (although only 27 percent of "elite" residents and 11 percent of others said they would move as a result of incorporation).³⁵⁸

Botshabelo lost no time in challenging the incorporation. Within the month Gauta Lawrence Lefuo, a teacher, had applied to the Supreme Court for an order invalidating it as beyond the State President's authority.³⁵⁹ He argued that the power to "amend" the area within the jurisdiction of the QwaQwa legislature did not contemplate the doubling of its population. Lefuo knew both areas: he had studied at a teacher's training college in QwaQwa for four years and subsequently lived in Botshabelo for two. QwaQwa lacked the resources to administer Botshabelo. The threat of incorporation in February, May, and August of 1987 had stimulated school boycotts of up to three weeks. Botha had not consulted Botshabelo residents. QwaQwa had its own historical identity; 80 percent of its residents were North Sotho speaking, and the others shared the "same ethnic sentiments." Botshabelo, by contrast, was a new community, created only in 1979. About 70 percent of its residents were under 30 and far less traditional than QwaQwa. South Sotho speakers feared discrimination in QwaQwa. Dr Abel Petrus Erasmus, a former employee of the Department of Co-operation and Development and now a senior lecturer in the department of ethnology of the University of the Orange Free State, supported the application, which was heard at the end of January.³⁶⁰

Early in December Judge G Leveson granted Solly Mahlangu's application for reinstatement as Speaker of the KwaNdebele Legislative Assembly, on the legalistic grounds that he was not given proper notice, the decision was taken by a committee, and there was no evidence that a majority of the Assembly supported it. Mahlangu claimed that actions taken during his illegal suspension were invalid—including the vote for independence. He intended to tell the State President that "the people of KwaNdebele are very much against independence."³⁶¹

In an incident that mocked the entire foundation of grand apartheid and "national states," four armed white members of the KwaNdebele police entered Dawson's Hotel in Johannesburg early in the morning of 18 November, demanded the keys to two rooms booked under the name of Maleka, unplugged the hotel telephone, kidnapped Fawcett Mathebe (Sayco executive member), Joe Nkuna (religious coordinator), and Andy Sefohlelo (cultural coordinator), and left in a car with a YBB registration. Two weeks later an application was brought in the Pretoria Supreme Court for their release from detention in KwaNdebele. Justice T T Spoelstra (who had rejected Moutse's challenge to incorporation) held that the KwaNdebele police had no powers of arrest beyond their borders and ordered them to release the men and pay costs.³⁶²

Another kidnapping was exposed about the same time. Michael Ncube, a Pretoria Council of Churches fieldworker, arrived at Jan Smuts airport at 2:45 am on 27 November from Cape Town.

A white man approached . . . he later introduced himself as Constable Bothma and told me I was under arrest. On arrival at KwaMhlanga, the vehicles drove to a private house where there were a number of policemen. I was questioned at length. I was handcuffed to a window by a certain black policeman by the name of "Zakes." A short while later, three plainclothes white policemen arrived at the premises, one a certain Sergeant Loots. . . . [I]t transpired he was the investigating officer. He questioned me . . . I was then ordered to take off my clothes. I was taken to another room whereupon the contents of my luggage was examined. . . . I was ordered to lie down on the floor and Sergeant Loots put a rubber tube over my face, causing me virtually to suffocate. All the three policemen started kicking me whilst I was on the floor. I was then taken to another empty room where they again placed the tube over my face and I was punched and kicked viciously. Someone was sent to buy some drinks and a drinking session started. Loots took a pick handle and hit me with full force across the chest. . . . Captain Klopper returned and went through the documents. . . . He then ordered the three policemen to use the tube again. Klopper said I should be detained under the Emergency regulations. I was forced to sign a statement but I have no idea what was written.

His parents visited him in Kwaggafontein police station on 8 December. Michael told them he was suspected of accompanying McDee and Chimane on the day they allegedly murdered Fourie, a policeman. Sgt Loots and two others beat him with a pick handle and deprived him of sleep. On 15 December his father Peter applied to court for his release, access to an attorney, and protection against torture.³⁶³

The police were even more abusive within the homeland. At 2 pm on 13 January 1988 at Bundu Inn in Kwaggafontein 12 businessmen held a shareholders' meeting of the Siyabuswa Bakery. Most of them opposed independence. Some 50 armed men disrupted the meeting, seizing documents and arresting Johannes Shabangu (the hotel

owner), Sam Skosana (son of the late Chief Minister), and Prince James Mahlangu and detaining them under Emergency regulations.³⁶⁴ On 12 January Ramotlogedi Johannes Makitla, who had been detained in November 1987, filed an urgent application for an interdict stopping police torture and ordering improvement in detention conditions. The respondents agreed to comply without admitting the allegations.³⁶⁵ On 19 January Frans Nkopodi Phatlane sought a similar interdict; he had been detained on 20 October. Without admitting the allegations, the respondents agreed not to commit unlawful acts.³⁶⁶

In February KwaNdebele police seized several prominent independence opponents. Senior Magistrate M J Mahlangu was abducted from Nebo in Northern Transvaal and charged with supporting people's courts. Less than a day after he was released through the efforts of the Pretoria attorneys firm of Matlala, Mahlangu and Partners, he was redetained under the Emergency regulations. The police also detained Elias Seaphi Matjiu, a former school circuit inspector accused of "non-participation in the homeland's independence," and Charlie Skosana, a former member of the Legislative Assembly. All three detentions were challenged in the Pretoria Supreme Court.³⁶⁷ KwaNdebele officials were demanding that chiefs "tax" their subjects to raise R500,000 by July to pay for damage to government property and schools. The government detained four chiefs who opposed independence and belonged to Contralesa: Bengwagwa Mahlangu (Watervaal), Msindo Mahlangu (Bokenhouhoek), Jim Mahlangu (Tweefontein), and Jim Mahlangu (Valsfontein).

On 5 February Police Commissioner Lerm served a banning order on the paramount chief, preventing him and members of the royal family from leaving the homeland, talking to a reporter, or preparing any material for publication. On 16 February the paramount chief applied to the Supreme Court to set it aside. Mapoch explained that he had planned a traditional feast on 19 December at an ancestral shrine at a cave in Roossenekal. The Middleburg Magistrate had given permission. He planned to use the occasion to address the 60 headmen living outside KwaNdebele. He wanted to dissociate himself from Contralesa, "which my nephew, Prince Makhosana Mahlangu without my authority and consent, associated with the Ndzundza tribal authority." The police prohibited the meeting. The order now prevented him from communicating with headmen outside KwaNdebele, with the South African government in Pretoria, and with Ndebele through Radio KN from Pretoria. He could not call the people together at the royal kraal to celebrate the mielie crop or address the headman about the ingoma (traditional circumcision school), which had been delayed. On 18 February Justice Coetzee set aside the order.³⁶⁸ Another 15 chiefs fled the homeland after being threatened with loss of office for opposing independence. KwaNdebele was building two new prisons to supplement the Central Prison at Kwaggafontein.³⁶⁹

Discontent with "homeland consolidation" emerged from another constituency, more difficult to ignore. The 63 white farmers in Rust der Winter were angered when government valuers appeared without warning in early December 1987 to assess their farms prior to purchase for incorporation into KwaNdebele. The Deputy Director of

Land Affairs rejected a protest by the Transvaal Agricultural Union, although its spokesperson was Abraham Viljoen, twin brother of Army Chief of Staff General Constant Viljoen.³⁷⁰ Parliament nevertheless decreed the incorporation in February 1988. In one of the many strange conjunctions of politics, Peter Soal became the champion of white Transvaal Afrikaner farmers—hardly the usual PFP constituency—while insisting that his reasons were not "the racist opinions which some have expressed, such as that such good land should not be given to Black people or that they would not be able to handle an irrigation scheme properly . . . [but] because we believe it to be part of the juggling with land and people in terms of the Government's ideological desire to settle people into tidy pockets or cubbyholes. It is also part of the whole sordid deal aimed at creating a viable homeland for KwaNdebele. . . ." ³⁷¹ (As early as May 1986 Soal had spoken on behalf of the Waterberg and Warmbaths District Agricultural Union and the Pretoria District Agricultural Union, which claimed that 60-70 percent of the affected farmers wished to remain. In September 1986 Helen Suzman had championed "the White farmers of Rust der Winter, who have not been consulted [and] are dead against giving up their farms.")³⁷² "[T]he state of internal matters in KwaNdebele is as shocking as ever. . . . an order issued by Brigadier Lerm . . . just ten days ago . . . restricts the entire royal family from moving outside the boundaries of the self governing state of KwaNdebele, from taking part in any interview with any journalist, or contributing, preparing or compiling, in any manner whatsoever, any matter for publication in any publication as defined in the Internal Security Act." "Now what kind of policy is this when the rights of Lebowa are violated . . . the rights of the people of Ekangala are violated, the rights of farmers are not respected and the plight of the Moutse people falls on deaf ears? . . . The ethnic make-up of the area does not lend itself to the establishment of an ethnically controlled homeland. . . . Many of the farmworkers in Rust der Winter are not Ndebeles and they have no desire to live in a homeland controlled by Ndebeles." ³⁷³

The Conservative Party also condemned the Nationalists for "giving South Africa away progressively." ³⁷⁴ In 1983 Piet Koornhof had promised the farmers that "there were going to be no border changes." Invoking the biblical story of Naboth's vineyard, the local CP MP deplored the Government's failure to consult the Agricultural Union, which showed it "has no sympathy whatsoever for the farmers." He declared "democracy utterly destroyed, I could almost say violated." There was "an easy solution to the problem in connection with KwaNdebele. Leave Rust der Winter in the hands of the Whites, and let Moutse, which was taken from Lebowa, where the Bapedi live, and given to KwaNdebele, and where more than one body has been buried during the past year owing to murder and manslaughter, remain part of Lebowa. . . . Then we are all happy. Why force the issue? Why order people about?" ³⁷⁵

Gerrit Viljoen replied that "the agricultural population of South Africa had to make considerable sacrifices and often cope with painful experiences in order to contribute to the implementation of the consolidation policy. . . ." He could not believe that the white farmers "are the kind of people who represent the PFP's standpoint . . . that the Government of this country does not, in actual fact, have any legitimacy because it is a so-called 'minority White Government.'" They had never been given an

"explicit guarantee" against incorporation and had been consulted as early as 1983. "Anyone who works with the hon the State President knows that he is someone who consults more extensively than any head of government has ever done before in the entire history of South Africa." In April 1986, 70 percent of the landowners accepted expropriation; the district agricultural union was unrepresentative. "It has been the policy for decades now—a policy which hon members on the other side of the House have frequently supported—to incorporate valuable land in such areas for the sake of efficient geopolitical organisation of the self-governing areas. . . ." "If, according to the CP's partition policy, Black people from the existing metropolitan areas have to be resettled in Black areas, surely it must be possible for them to subsist there." The bill passed 81-30.³⁷⁶

The ideological battle lines became even more confused in the other two Houses. J A Rabie, leader of the United Democratic Party (the official opposition) in the House of Representatives, decried as "scandalous" the ruling Labour Party's support for incorporation of Rust der Winter into KwaNdebele. "[W]ith this gesture they have indicated that they support the violence, oppression and detention without trial that prevail in KwaNdebele."³⁷⁷ In justification, Labour Party MP D Lockey quoted the Freedom Charter, which the UDP embraced as their "constitution." "All land shall be redivided amongst those who work it to banish famine and land hunger." He repudiated as "racism" the argument that "the land could not be given to the Blacks, because it was agricultural land of too high a grade." The incorporation of Rust der Winter "would make the regional government, KwaNdebele, economically more viable."³⁷⁸

The UDP leaped on this explanation, which "negated the previous decisions of [the Labour Party] because now [it] believes in an ethnic regional government."

LOCKEY: [F]rom the very outset we have said that we do not support geo-ethnic units.

RABIE: But here you are supporting it.

LOCKEY: We are not. There must be a difference between ideologies on the one hand and needs on the other. . . .

L C ABRAHAMS (LP): We believe in regional development, because we believe that it will ultimately fit into our model of a federal geographic structure.³⁷⁹

Viljoen "found it an experience to listen to the hon the Leader of the Official Opposition in his role as champion of the interests of White land-owners." He then waxed poetic. "Almost like the Jews, the Ndebele have lived as a widely dispersed people, and when a national state was created for them, they 'came home', as it were, in large numbers to an area which had previously been the historic KwaNdebele area. . . . [P]eople are moving there voluntarily in their tens of thousands. The towns in KwaNdebele are proliferating over the koppies. One can virtually see them spreading as the people settle there."³⁸⁰ Another UDP MP insisted on replying.

P A S MOPP: I want to brush aside all the nice flowing words that have been sounded in this Chamber today and analyse the basic politic [sic] decision we are about to make here and now. . . . What they are supporting here today is the creation of another homeland. . . .

L T LANDERS (Deputy Minister of Population Development): In terms of the Freedom Charter, yes.

MOPP: Do not quote the Freedom Charter to us, we know it. Secondly they are supporting the Group Areas Act.

LANDERS: Oh, come on!

MOPP: . . . I want to tell the hon the Deputy Minister that the whole thing is based on skin colour, the thing that he objects to so vehemently. . . . Hon members are by implication also supporting the independent states, which they have denied up to now. . . .

P A C HENDRICKSE (Chairman of the Council and Minister of Education and Culture): I do not have double standards!

The bill passed with only the six UDP members voting against it.³⁸¹ It passed unanimously in the House of Delegates, after the minority Peoples Party of South Africa indulged in ritualistic denunciations of Black disenfranchisement, the injustice to white farmers, and the Group Areas Act. But even the PPSA agreed that "if [KwaNdebele] is going to be an independent country, it must be viable and this annexation will bring about that viability."³⁸²

IX. MOUTSE'S CHALLENGE TO INCORPORATION: THE APPELLATE DIVISION

In anticipation of the appellate judgment in Chief Mathebe's challenge to Moutse's incorporation into KwaNdebele, the *Weekly Mail* reviewed the recent history. Moutse teachers had been compelled to accept checks from the KwaNdebele government beginning in 1987. In July 1986 Moutse businessmen, taxi drivers, and car owners had been ordered to obtain licenses from KwaNdebele. Businessmen resisted by obtaining letters from their lawyers asserting that licenses were not required until the appeal was decided. Pensioners were told they had to obtain KwaNdebele citizenship. But Chief Mathebe refused to endorse the citizenship forms and sent pensioners to the magistrate with a letter declaring that citizenship was not required. Chief Mathebe and the secretary of the Moutse Civic Association sought a Supreme Court interdict against KwaNdebele emergency regulations; the case was settled by their withdrawal. In August 1987 Chief Mathebe and other leaders were invited to the opening of the KwaNdebele police station in Dennilton. When they refused to go kitskonstabels retaliated by commandeering buses and forcing their passengers to attend. Anonymous pamphlets calling for stayaways and boycotts led to door-to-door raids by kitskonstabels. The senior KwaNdebele policeman, Lt Fourie, and his son were assassinated near Dennilton, and the police station attacked. Many people were detained and some tortured. The article narrated abductions in addition to those mentioned above: three members of Contralesa and two executive members of the Moutse Civic Association from Alexandra. All sought Supreme Court interdicts, complaining of torture, but the court refused to intervene. In Johannesburg in January 1988 KwaNdebele police abducted Peter Xaba, secretary of the Unemployed Workers' Union, and Dudu Mathebe; they were released only under threat of court action. Chief Mathebe's sons were accused of shootings; members of his family were assaulted and detained. The police visited him regularly and warned him not to leave home. In February the Moutse magistrate banned all indoor and outdoor meetings until the end of March.³⁸³ Lawyers not only lacked immunity from state repression but often became principal targets. A Legal Resources Centre lawyer was arrested three times in KwaNdebele and prevented from interviewing detainees; two others were prohibited from entering the homeland until an interdict was threatened.³⁸⁴ Pretoria attorney Nano Matlala, who represented James and Cornelius Mahlangu, was detained and then released under a restriction order banning him from attending any gathering held to delay independence.³⁸⁵

The Appellate Division scheduled oral argument for 9 March.³⁸⁶ Many Moutse residents planned to attend. Fearing interference, Gibson Tlokwe Mathebe had asked his attorney, James Sutherland, to seek an assurance from the KwaNdebele Police. Sutherland wrote on 26 February; receiving no reply he telephoned the state attorney on 29 February and was told to deal with SAP Col Stopforth, who demanded a list of all those planning to attend the hearing. When Sutherland learned that four buses, not just one, would be needed he told Denny du Preez in the state attorney's office. Du Preez "queried why persons other than myself should attend the appeal because I was not the person bringing the appeal and the people would not, in any event, understand

the proceedings." Du Preez also denied that Stopforth could have given permission "as there might, for example, be riots."

On 4 March Sutherland learned that the KwaNdebele Police would allow only one bus containing chiefs, headmen, and councillors. Sutherland filed an urgent application on Saturday morning, 5 March, which was heard at four that afternoon. Justice de Klerk ordered the KwaNdebele Police to allow Sutherland to enter Moutse, allow four busloads of residents to leave, and not demand their names.³⁸⁷ Sutherland and another attorney, Stephen Langbridge, then drove from Pretoria to the KwaMhlanga headquarters of the KwaNdebele Police to serve the order and then drove Chief Mathebe and others home to Kwarrielaagte. When they reached the chief's house about 7pm they learned that the Police Commissioner had served another order about 11 that morning. They asked a policeman manning a roadblock to contact the Police Commissioner but were told they had to return to KwaMhlanga. They arrived at 10:30pm and were told by Lt Jones to contact Col. Stopforth. He had heard the court order but doubted its effect given the new police order. Stopforth said that the Police Commissioner refused to allow anyone other Chief Mathebe and ten other members of the Moutse Regional Authority to leave Moutse.

Sutherland telephoned Denis Kuny, SC, who had argued the first application and arranged to meet at his home later that night. He also telephoned Supreme Court Registrar H H Strauss to arrange for a judge to hear a second application Sunday morning. Langbridge phoned Stopforth from Kuny's home at 1:35am to warn him of the hearing at 8am. The papers were handwritten. On Sunday Justice de Klerk invalidated the second police order.³⁸⁸ Before argument began in Bloemfontein the papers in both applications were lodged with the Appellate Division.³⁸⁹ Because there were only 40 places in the public gallery, the 200 spectators rotated during the day-long argument. Those outside had to do without toilet facilities. Dugard remembered that they all wore traditional dress. Even young comrades who had nothing but contempt for tradition made do with synthetic leopard skins (and nothing else).³⁹⁰

John Dugard reiterated many of the earlier contentions. The National States Constitution Act 21 of 1971 did not authorize the incorporation of a substantial territory occupied by members of one "national unit" ("volksseenheid") into that of another, since its purpose was to foster separate development and self-determination. Proclamation R227 was also invalid because it seriously interfered with such fundamental rights as language, voting, citizenship and self-determination. Finally, it was so inequitable and unreasonable that it could not have been authorized by the Act.

The State President had to follow the constraints inherent in the concept of a "national state." A state, nation, or people were defined by common descent, language, culture, and historical tradition. Dugard quoted the preamble to the Promotion of Black Self-Government Act 46 of 1959.

[T]he Black peoples of the Union of South Africa do not constitute a homogeneous people, but form separate national units on the basis of language and culture . . . it is desirable for the welfare and progress of the said people to afford recognition to the various national units and to provide for their gradual development within their own areas to self-governing units on the basis of Black systems of government.

The centrality of ethnicity was reiterated by the role of chiefs and tribal authorities within the national states. The 1955 report of the Tomlinson Commission laid the basis for the Promotion of Black Self-Government Act.³⁹¹ For social, economic, and political reasons it feared "the creation of a single large bantustan." Instead it sought "the development of a national home for at least each of the bigger ethnic groups . . . in geographically complete units with the least possible transgression of ethnic bonds." It is these factors, and not territorial convenience and consolidation, that must determine the boundaries of national states. Yet the State President acknowledged that Proclamation R227 disregarded ethnic considerations in favor of "geographical contiguity" and "cohabitation" or "co-existence."

The Appellate Division accepted this reasoning in its 29 March decision.³⁹² Justice Grosskopf (with Viljoen, Hefer, Vivier and Boshoff) found that the State President had acted for administrative reasons rather than for the "development of black nations to self-government and independence." "It is not for the reasons of effective administration that national states are created; the purpose is completely different, namely the political development of national units." Moutse's population and area were more than a third as large as those of KwaNdebele. Only 12.75 percent of its people were South Ndebele, and more than 60 percent were North Sotho. KwaNdebele had no historical claim to Moutse, which initially had been included in the North Sotho homeland of Lebowa. The vast majority of Moutse people opposed incorporation.

He accepted the statement by B H Wilkens, Deputy Minister of Development and Land Affairs and a member of the Commission for Co-operation and Development, concerning the government's motives for incorporation. One major consideration was geography: Moutse was far from Lebowa but adjacent to KwaNdebele. Another was infrastructure: Moutse connected with KwaNdebele roads; its hospital served KwaNdebele residents; KwaNdebele water could service Moutse. The government had disregarded mixed occupation by different population groups, expecting dissatisfied Moutse residents to move to Immerpan/Saliesloot.

There is absolutely no indication that the State President was motivated by a desire to add the South Ndebele of Moutse to their brothers in KwaNdebele. In view of the small percentage of South Ndebele in Moutse it would have been completely unreasonable to add Moutse to KwaNdebele for their sake. . . . The population composition of Moutse was considered as a purely negative factor. . . . In short: the decision was taken not with the aim of promoting the political development of the population of Moutse within the context of their own people, but rather

with a view to facilitating administration, which would necessarily entail most of them being subject to a foreign people. . . . It is not for the purposes of effective administration that self-governing territories are created—the aim is completely different, namely the political development of the various peoples. If administrative considerations make it impracticable to establish or expand a self-governing territory in a particular area, there is nothing in the Act which obliges the State President to proceed none the less. . . . The area concerned can then continue to be administered as before by the South African government in its various forms.

Chief Mathebe greeted the decision as "too wonderful to be true."³⁹³ His nephew John said: "We were about to be swallowed by KwaNdebele. The court took us from its very throat." Godfrey Mathebe said "the people will have to decide" about reincorporation into Lebowa. Sheep and goats were slaughtered to celebrate the event. The people resolved to show their gratutyde to John Dugard in the traditional way and give him a wife. He politely declined, being married already.³⁹⁴ The *Sowetan* published a cartoon showing a wigged and gowned white judge protecting the women and children of Moutse from a bearded George Mahlangu representing the KwaNdebele government.³⁹⁵ The *Evening Post* lauded the courts while castigating the South African government.

Once again it has taken the Supreme Court to point out to the Government the error of its ways. . . .

[T]his is a typical example of how the Government goes about its work. Once it has decided its course, no amount of protest—however justified—will deflect it. . . .

The country can be truly grateful for the Supreme Court. However much its authority has been whittled down by Government statutes, it stands as a beacon of truth and justice.³⁹⁶

John Dugard, who had argued the successful appeal, wrote the State President urging him to respect the court's judgment. He replied that Dugard, a lifelong critic of the courts, was the last person to insist that their judgments be followed.³⁹⁷

X. THE TEMPTATIONS OF PARLIAMENTARY SUPREMACY

Although a serious reversal, the decision was not yet a mortal blow to the government's plans. Just prior to the judgment Viljoen told Peter Soal that the R10 million for the development of KwaMhlanga was "confined to amenities which are reasonable and necessary, without any consideration of the question of possible independence," such as infrastructure and serviced sites, the Legislative Assembly hall, government offices, a high school, and upgrading the Philadelphia Hospital.³⁹⁸ Opening the new session of the KwaNdebele Legislative Assembly on 8 April, however, Chris Heunis assured members that the State President was "well-disposed" to grant independence because he sympathized with the national aspirations of minorities. "[I]ndependence can unite the people so that the country can be developed to the benefit of all."³⁹⁹ But KwaNdebele first would have to "create a favourable climate" among its peoples, "cultivate the right disposition," and demonstrate "orderly government, an effective and purposeful civil service and the maintenance of law and order."⁴⁰⁰ The *Sunday Tribune* called Heunis "the great dreamer" for promising that independence would give KwaNdebele "the status equivalent to that of any other country in the world."⁴⁰¹ To meet Heunis's conditions, the KwaNdebele government hired former Atteridgeville mayor and Pretoria businessman Joe Tshabalala as a consultant for ten months for R343,000 to motivate the people to "joyous anticipation of independence." He had performed similar functions in Venda and Transkei.⁴⁰² But Botha continued to give mixed messages. On 3 May he told the House of Representatives: "We have moved away from the policy of independent states. . . . In the most recent instance of a community asking to become independent, I warned them to be careful and to make sure that before they accepted independence they had the sense of responsibility and the ability to be independent."⁴⁰³

Confusing the political situation further, M N Ramodike, the new Chief Minister of Lebowa, asked Heunis to consider amalgamating it with KwaNdebele. Heunis denied he had suggested this, as Ramodike told the Lebowa Legislative Assembly, but offered to mediate between the two homelands. Observers thought this might facilitate independence for the united entity.⁴⁰⁴ On 10 May Heunis told a Conservative MP that Lebowa continued explore a merger with KwaNdebele, though the latter seemed uninterested.⁴⁰⁵ During the week of 23 May the State President met the Lebowa Chief Minister and Cabinet and gave them 14 days to start negotiations to merge with KwaNdebele, failing which he would introduce legislation to incorporate Moutse into KwaNdebele. M N Ramodike remarked that there no longer was a legitimate KwaNdebele government with which to negotiate, adding: "We find it unfair that [the State President] should try to dodge the court decision by passing a new law."⁴⁰⁶ A month later KwaNdebele Information Minister F K Mahlangu condemned Ramodike for supporting Peter Soal, "who cares very little about the life and health of the people of Moutse." Mahlangu also appeared to reject Lebowa's proposal to merge the two homelands.⁴⁰⁷

On 15 April, two weeks after the AD decision, Parliament debated the Excision of Released Areas Bill, which would preclude the incorporation of Soshanguve and Lethlabile into Bophuthatswana. A Conservative MP attacked the Government's "argument that since these Black towns are inter-ethnic, they cannot be incorporated into a Black self-governing territory or an independent state and therefore have to be incorporated into South Africa. We say this is an illogical and retrogressive step. It is a revocation of the NP policy that has existed thus far."⁴⁰⁸ A Nationalist replied that "examples of multi-ethnic cities in South Africa are legion. . . . This is therefore a striking example of that 50% of South Africa's Black communities which are going to be accommodated outside the borders of the national states, in that area which we know as the so-called White area of South Africa. . . ."⁴⁰⁹ The PFP supported the bill because it was "an acceptance of the reality of part of the South African situation."⁴¹⁰ Another Conservative emphasized

the about-face which has taken place in the National Party over the past few years in respect of its constitutional policy. . . . How ironic! Of all the political parties in South Africa, the NP bases the incorporation or non-incorporation of these two towns in an independent state on ethnicity. The Republic of South Africa, the Whites of this country, including the Afrikaner, have to be willing to accept all and sundry as citizens of this country, with all the political implications that this entails. However, when it comes to a country like Bophuthatswana, such a town must consist only of a Tswana population in order to qualify to be incorporated in that state. What kind of logic is that?⁴¹¹

Viljoen tried to extricate himself.

[W]hile the CP professed that its policy was that of a "volkstaat", it came into conflict here with the principle of a "volkstaat" by wanting to include a multi-ethnic, non-national conglomerate in a "volkstaat". . . . The point is precisely that we cannot deal with the complexity of our situation in South Africa merely with theoretical logic. We also have to deal with realities, which sometimes make theoretical logic inapplicable and require policy to be adopted. When the Government in this case excludes multi-ethnic released areas because it no longer intends including them in a self-governing or independent state, it does not wish to imply that it now intends including only pure uni-ethnic communities in the self-governing areas or the national states. There are many examples of multi-ethnicity working well in practice in a predominantly Tswana, Pedi or Swazi area. . . . [L]arge numbers of Ndebele, especially North Ndebele, live in Lebowa. . . . In western Lebowa there is even a whole area in which chiefly Tswanas live. . . . In the same way there is a large number of people in KwaNdebele, with Pedi-speaking ethnic ties, whom one could call Lebowans and who live peacefully under the rule of the KwaNdebele government.⁴¹²

Imitating its South African mentor, the KwaNdebele Legislative Assembly passed the KwaNdebele Indemnity Act on 29 April, indemnifying against civil or criminal proceedings the Cabinet members, police and "any person acting under the authority or by the direction or with the approval of any member (of the Cabinet, police or public service)." Peter Soal noted in Parliament that the law "has been condemned by various lawyers as a violation of human rights. The bill is retrospective to December 1985 and is apparently an admission that the KwaNdebele Government has acted unlawfully, both criminally and civilly, over these past three years."⁴¹³

Two weeks after it abandoned "logic" for "policy," the Government announced its intent to introduce new legislation to effect the incorporation of Moutse into KwaNdebele. Heunis refused to reveal the content of the proposed law to avoid judicial challenge. When the State President was asked by Peter Soal "whether he, in his capacity as Supreme Chief of all Blacks in the Republic . . . will meet a delegation from the residents of Moutse," he rehearsed his efforts to persuade the two homelands to agree and concluded "I do not think it would serve any purpose now to receive another delegation."⁴¹⁴ The next week a Nationalist MP used the budget debate to attack the PFP and especially Soal for failing to accept an invitation to visit KwaNdebele, which had "achieved things in the space of ten years which I have not seen a developing community achieve anywhere else in the world." He denounced "those left-wing elements in South African politics who call themselves the 'Progressive Federal Party'. . . . PFP probably stands for 'Pack for Perth', 'Preach for Preservation', or 'Puff For Puff For Puff'."⁴¹⁵ Three weeks later Soal asked "why, against everyone's better judgement and the violence and mayhem that has surrounded the issue, the Government wants to push through with Moutse's inclusion."⁴¹⁶

Trac denounced the move as a "flagrant disregard for the decision of the highest court of the land." The new Lebowa Chief Minister, M N Ramodike, labelled this a "mockery of justice." His homeland had invited Moutse to rejoin it.⁴¹⁷ The *Sowetan* called the government's decision "cynical," an "insult . . . to the courts and the people of Moutse."

All that the courts can do now is give judgments on the technicalities of writing laws—nothing more. And immediately the courts point out that a law is badly written, the Government simply goes back to its drawing board to rewrite it, following the court's prescriptions.⁴¹⁸

A cartoon showed Heunis and two white gravediggers disinterring a casket labelled "Moutse incorporation into KwaNdebele."⁴¹⁹

The Labour Party, which had just supported the Government on the incorporation of Rust der Winter into KwaNdebele, declared its opposition to the proposal.⁴²⁰ A month later a Labour Party MP called the Moutse incident "a great embarrassment to the Government," recalled the "approximately 150 people [who] lost their lives in the cruelest way imaginable," and expressed "the hope that this Appeal Court decision will be obeyed."⁴²¹ In the House of Delegates the Deputy Minister of

Environment Affairs asked: "Was it necessary for [the 845 families who moved from Moutse to Immerpan] to leave a settled community and start afresh in an alien [sic] environment?"⁴²² Gerrit Viljoen replied that "the people of Moutse have not been displaced. In so far as some of them preferred to settle at Immerpan, that was their own choice, albeit as a result of a certain amount of unrest that arose in the area where they were living." Indeed, this "unrest" showed the wisdom of apartheid; it was "further evidence of the antipathy existing amongst different ethnic groups. . . . It is a part of reality just as a lightning stroke is a part of reality."⁴²³ Several weeks later a PFP MP in the House of Delegates asked Heunis whether: "he wish[es] to ride roughshod over the wishes, not only of the people of Moutse, but also over a decision of the Appeal Court? In this regard one can also cynically say that the Government, to which the hon the Minister belongs, has had a history of riding roughshod over the decisions of appeal courts. One merely has to look at the constitutional crisis of the fifties regarding the Coloured people and other such issues."⁴²⁴

The next day the NDM used the House of Assembly budget debate to renew the attack on Heunis for seeking "to overthrow the Appeal Court judgement and therefore to proceed with the planned objectives." That judgment had revealed that "the so-called moral basis . . . [of apartheid], of people becoming independent, appeared to fall by the wayside." Incorporation "constitutes a new form of forced removal. People are no longer being taken to other areas and placed under another authority; the authority is now being brought to them. . . ." Wynand Malan feared that the "considerable authority" enjoyed by the courts among rural Blacks would be lost.⁴²⁵ Helen Suzman was even more emphatic:

I want to warn the hon the Minister that if he goes ahead with the announced plan of introducing legislation . . . in order to reverse the effect of the favourable court decision which the Moutse people obtained against their incorporation into KwaNdebele, he will deliver a real death blow to any hope of true negotiation on his National Council Bill.

The Government has said on many occasions that people who do not agree with their policy have recourse to the courts of law. The Moutse people took the hon the Minister at his word and took the State to court. They won their case and there was much rejoicing, but this did not last very long in view of the hon the Minister's subsequent statement. . . .

I want to point out that Moutse is a very high-profile case. . . . I think he accused me of taking information to the British Prime Minister, and that is true. I did so because I was disgusted at what was

HEUNIS: You assisted in making it a high-profile case.

SUZMAN: Of course! That is the way to stop such actions. I will do so on every possible occasion when I feel it is justified. . . .⁴²⁶

In defense, Heunis (incorrectly) claimed that Moutse was *sub judice* (it was the women's vote case that was being appealed). Warning of "instability," he sought to

trump the PFP's invocation of judicial independence by asserting the "responsibility" accruing from Parliamentary supremacy.

No one . . . disputes the sovereignty of the legislative authority. No one disputes, not only the right, but also the responsibility, of Parliament to take the necessary remedial steps to put matters right when courts interpret parliamentary legislation in ways which Parliament does not regard as being in accordance with its own objectives. . . .

If the Appellate Division upheld the women's franchise in KwaNdebele, "Parliament would have to take steps to validate the actions of that government over a period stretching from 1984 up to that judgment." The State President had offered his assistance if Lebowa and KwaNdebele wanted to negotiate amalgamation or the future of Moutse. He then returned to Suzman.

One of the arguments advanced by the hon member for Houghton was that the Black people had confidence in the courts.

SUZMAN: You told them to go to court!

HEUNIS: No, I never told them so. They are entitled, however, to go there. . . . Mr Speaker, the hon member for Houghton has some verbal disease.

S S VAN DER MERWE: She caught it from you.

HEUNIS: . . . The hon member for Houghton . . . wants to incorporate all the communities . . . in one federation with a system of one man, one vote.

Just one further remark about the hon member for Houghton, Sir, and then I have done with her. . . . She says she discussed the Moutse case with the head of government of Great Britain. She said she would make use of every method possible, including diplomatic means, to exert pressure on South Africa.

SUZMAN: Sometimes, yes!

HEUNIS: Mr Speaker, I therefore want to know from the hon member what is to become of her party's opposition to foreign interference in the domestic affairs of South Africa? . . . Quite probably she spoke about that in Moscow too. I am sure she also spoke about it in Red China, when she was there. I put it to the hon member that my definition of loyalty to one's country is different to hers.

SUZMAN: Mine is for the good of the country; yours is for the good of the NP.⁴²⁷

Peter Soal then took up the cudgels. Among the Government's "many disgraceful and cynical actions towards people of colour . . . surely the most staggering must be the sordid history surrounding the establishment of and subsequent actions in KwaNdebele." It had disregarded "the fundamental theory of separate development, namely the necessity of ethnicity as a base on which to build." It incorporated Ekangala into KwaNdebele "without any consultation or a referendum." The incorporation of

Moutse "in spite of the vigorous opposition of the Moutse people . . . was accompanied by beatings, incredible stories of violence and even murder." He warned Heunis not to destroy the people's faith in the courts by reversing their judgments through legislation. He urged that Moutse remain within South Africa. He denounced the meetings being held about independence in KwaNdebele as "completely rigged." He asked rhetorically who was responsible for: "the R218 million which is to be lavished on this impoverished homeland in the current financial year," "the Mbogoto [sic]," and "the detention of Prince James and Prince Cornelius Mahlangu"? "Who will stop the harassment of newspaper reporters in KwaNdebele?"⁴²⁸

The Labour Party used the budget debate in the House of Representatives three days later to continue the attack. Addressing Heunis, Desmond Lockey referred to "the Appeal Court judgement in March this year that the hon the State President had exceeded his authority in incorporating Moutse in KwaNdebele." This was "anomalous and ironic . . . because the Government's own policy is based on cultural and minority groups." "Already 50 people have died in the Moutse area in the most gruesome way conceivable." He hoped "the Minister and the Government will not proceed with further steps to incorporate Moutse in KwaNdebele. The LP's National Executive has expressed itself most strongly on this matter."⁴²⁹

Heunis acknowledged "that there was an anomaly." He accepted

the finding of the court and therefore also the right of the court to interpret laws of Parliament. If any court gives an interpretation of a law, however, other than that contemplated by the legislature, it is the legislature's duty to rectify that law so that its intention is clear. . . . The legislative authority in this country is sovereign. . . . It would be a matter of personal regret to me if this were no longer the case because we would then no longer be able to leave democracy in the hands of the people who sent us here. We would then be placing it in the hands of appointed people and this would be fatal.

He noted that Moutse was ethnically heterogeneous (but failed to draw any conclusion from this). He could not hold a referendum in Moutse "because then we shall have to hold a referendum in both countries."⁴³⁰

XI. THE IMPERATIVE OF GENDER EQUALITY IN A RACIST POLITY

The Government soon suffered another judicial rebuff. The women's suffrage case was argued on 28 April. On behalf of the South African government, I W B de Villiers, SC, argued that women's suffrage was only attained in the Western world after it reached the pinnacle of development. Quoting Aristotle, the Bible, and feminist writing, he maintained that women remained second-class citizens even in the West. It would be wrong to impose Western ideas at the expense of traditional beliefs. R S Welsh, QC, replied that the court was not being asked to consider religion or philosophy but only whether the State President had validly exercised delegated power. Welsh, South Africa's leading commercial advocate, was persuaded to take the case by Edwin Cameron of the Centre for Applied Legal Studies. The styles of the two advocates were entirely different: de Villiers was florid, theatrical, long-winded; Welsh was brief, direct, and very soft-spoken, almost whispering, "no fuss and bother . . . cut down to the bare bones." The women who attended were very dissatisfied with the courtroom ritual because their advocate had not made a showing. They wanted to speak for themselves.⁴³¹

On 20 May Justice C F Eloff upheld the right of KwaNdebele women to vote and serve in the Legislative Assembly and invalidated the 1984 KwaNdebele election.⁴³² He invoked a 1950 Appeal Court decision in which Justice Centlivres (citing an 1898 British case) stated that "regulations may be declared to be invalid on the ground of unreasonableness . . . if they are found to be partial and unequal in their operation as between different classes, unless of course the enabling Act specifically authorises such partiality and inequality." But he also acknowledged a 1934 Appeal Court decision that "a discrimination which is not accompanied by inequality of rights, duties, privileges or treatment, is not *per se* unreasonable merely because it is made on grounds of race or colour."

In the present case the government argued that the National States Constitution Act No. 21 of 1971 authorized enfranchising only men. On 21 August 1981 the KwaNdebele Legislative Assembly passed a resolution seeking independence and created a committee to draft a constitution. Over KwaNdebele resistance, South Africa insisted that such a constitution provide for elections. The committee recommended that only a minority of the Legislative Assembly be elected and that the franchise be restricted to men over 23. Justice Eloff noted the anomaly that in Ndebele tradition boys became men when they were initiated at about 16. The constitutional committee's final report on 18 November 1981 recommended that women be able to vote. But when this was discussed in the Legislative Assembly, Chief Minister Simon Skosana said:

I feel we shall not go astray if we follow the path of our ancestors, which is known to us, and I do not know what we shall be applying if we give equal rights to men and women. According to our tradition the husband is above the wife and in that respect I believe that even God is on our side.

No one dissented, although Speaker Solly Mahlangu later explained: "Once the senior ranking person has expressed a view, that has generally settled the matter." After two further meetings of the Legislative Assembly in January and May 1984 a constitution was approved allowing only men over 20 to vote and hold elective office. South Africa argued that responsibility for disenfranchising women lay with the KwaNdebele Legislative Assembly.

Justice Eloff distinguished the Bantu Authorities Act, No 68 of 1951, which authorized the State President to respect black rights and traditions, from the 1971 Act, which contained no such language. The former applied to the governance of black tribes and communities at relatively low levels; the latter established new and larger units. He noted that the ethnological experts on both sides agreed that voting and voting rights have no traditional basis.

I do not think there is a traditional model of a political system for a national state like KwaNdebele when it comes to the question of voting rights. The fact that women have a subordinate status compared with men and in the community is not of real consequence when it comes to stipulating voting rights in public life, which is alien to the whole tribe. I also do not think there is room for a sort of cosmetic mixture of the old views and the new dispensation.

The State President's obligation to consult with the Chief Minister "does not absolve him from his responsibility to make a decision on the way in which the Legislative Assembly should view the situation." Perhaps progress toward democracy must follow a "gradual evolutionary outgrowing of third world government forms," but this can only explain the relative proportions of elected and nominated members of the Legislative Assembly. "Such an evolutionary process must take place without discrimination between men and women."

Having concluded that "the 1971 Act neither expressly nor by implication empowers unequal and unreasonable discrimination," Eloff considered whether the discrimination was unreasonable. The respondents had not argued that KwaNdebele women were less capable than men of voting or holding office. They had not challenged the assertion that women's interests were not identical to those of men and would not be adequately represented in a male-dominated election. He noted that women were more knowledgeable about local affairs because so many men were labor migrants. Although women were subordinated in traditional Ndebele society, they had been subordinated everywhere in the world until recently and won formal equality only over considerable resistance. Aside from four Muslim countries in the Persian Gulf, female suffrage now was recognized everywhere. Other black communities in South Africa granted women equal voting rights, and a woman was briefly Chief Minister of the Transkei.

For a long time, it has been reasonably accepted in South Africa that women are no less eligible than men to express themselves politically. There also is no reason why women are less eligible than men to hold elective office. I believe that the inequality created by Proclamation R114 of 1984 is unfair and therefore not authorized by the 1971 Act.

Some 50 women in traditional dress heard the judgment read and then adjourned to Church Square, where Lawrence Nowosenetz of the Legal Resources Centre explained to their cheers that the 1984 election had been invalidated. The state promptly applied for leave to appeal.⁴³³ At an Idasa news conference on 25 May former KwaNdebele Legislative Assembly Speaker Solly Mahlangu said he had asked the State President to dissolve the KwaNdebele government and call an election "to test the feelings of the people for independence." Andries Mahlangu said that "people detained by the KwaNdebele police were being held unlawfully," including Prince Cornelius Mahlangu, chief magistrate Johannes Mdaweni Mahlangu, MP Charlie Skosana, and at least eight others. But Prince James Mahlangu said the government had held a meeting "at which the people were advised that everything was normal and that they should ignore press statements on the matter." Ms. Alzina Ndala, one of the plaintiffs, said her husband and two sons had been detained and men had parked outside her house at night to threaten her. She and the other plaintiffs challenged Elize Botha, the State President's wife, to "stay in the kitchen with other women and not go to the polls during elections."⁴³⁴

XII. THE PRICE OF REFORM

Despite two devastating judicial defeats the government did not abandon its program. At the beginning of June the State President appointed Justice F L H Rumpff to conduct a commission of inquiry into the "constitutional and political future of Moutse and into the appropriate method to determine and amend the boundaries of the self-governing territories." Rumpff had earlier chaired the commission that recommended against the incorporation of KaNgwane into Swaziland. Chris Heunis explained that "Moutse is a many-faceted problem having so many men, so many minds."⁴³⁵ The PFP and NDM warned that no further action should be taken without consulting the people themselves.⁴³⁶ Heunis continued to encourage negotiations to merge KwaNdebele and Lebowa and warned that the government would retroactively validate KwaNdebele legislation if the Appellate Division upheld the women's challenge to male suffrage.⁴³⁷ Peter Soal disclosed that detainees were only being released after endorsing independence.⁴³⁸ The South African government was under attack from the right as well. In response to a question by a Conservative MP it acknowledged that it had spent R2.2 million resettling 928 Moutse families who resisted incorporation into KwaNdebele.⁴³⁹ Also in June five people sued the KwaNdebele and South African governments for a total of R635,000 for illegal assaults, arrests, and detention.⁴⁴⁰

Debate in the House of Assembly on the Borders of Particular States Extension Amendment Bill offered the PFP another opportunity to attack grand apartheid, even though it did not affect KwaNdebele. Peter Soal criticized "the juggling of land within South Africa because we believe that South Africa is one country and that it is to no one's benefit to fiddle around with pieces of land here and there."⁴⁴¹

On 23 June Heunis introduced the Constitutional Laws Second Amendment Bill to validate retroactively the actions of the KwaNdebele Legislative Assembly, ensure early elections, and extend the franchise to women.⁴⁴² Insisting that it had nothing to do with independence, he warned: "the rights of 1.7 million people will be threatened if the legislation is not accepted."⁴⁴³ The next day the government tabled the Moutse (Validation of Actions) Bill to legalize retroactively any action taken by KwaNdebele in Moutse.⁴⁴⁴

The Conservative Party supported the first bill because otherwise "KwaNdebele would be without a government." It warned, however, that the "Coloureds" were "boycotting this legislation. If this case does not serve as a specific illustration of how dangerous the Government's power-sharing experiment is . . . nothing will. . . ."⁴⁴⁵ The PFP also took the opportunity to criticize the Government.

One cannot divorce this legislation from the history of KwaNdebele over the past four years [which] . . . has been a shambles ever since the hon the State President issued Proclamation R114 setting up the new constitution. . . . We are not prepared to accept responsibility for the

maladministration of KwaNdebele or for the failure of the Government to get its proclamation correct in the first instance.⁴⁴⁶

Peter Soal added: "Of all the disgraceful and cynical acts towards the people of colour by this Government, the most disgraceful, surely, is the establishment of the homeland of KwaNdebele." He demanded to know: "who is responsible for the actions of the Mbogoto [sic], the secret army in that territory? . . . Who is responsible for the detention of Prince James and Prince Cornelius Mahlangu and for the ridiculous order restricting them from speaking against independence for that territory? . . . Who will stop the harassment and the arrest of journalists in KwaNdebele?"⁴⁴⁷ Roelf Meyer, Deputy Minister of Constitutional Development and Planning, explained that the legislation was necessary "so as to have certainty." The bill passed 124-16.⁴⁴⁸

The Labour Party vowed to defeat it in the House of Representatives, however. Public relations officer Peter Hendrickse said: "It is not our responsibility to undo the wrong done by an illegal election. If the courts made a decision to invalidate the actions of the Kwandebele Government we do not feel we can disagree with them. It would be immoral and illegal."⁴⁴⁹ Anticipating this, Chris Heunis introduced the debate there the same day by asserting that the bill "has nothing whatsoever to do with the independence or non-independence of KwaNdebele." The Government was merely seeking "to maintain legal certainty with regard to the rights of those citizens." It was "possible for *bona fide* court actions and rulings to be declared null and void by Parliament. . . ." This prompted H J Hendrickse, Chairman of the Ministers' Council, to protest: "You cannot overrule the Supreme Court." Heunis claimed: "This legislation is . . . also intended to give effect to the Supreme Court ruling. . . ." When he asked the House "to stabilize the political rights of the Black people who live there," an MP from the majority Labour Party interjected: "Are they entitled to vote for Parliament?" Heunis insisted that failure to pass the law would create "an impossible situation."⁴⁵⁰

A United Democratic Party MP complained: "the NP Government finds itself in a pickle. . . . [T]hey want us to pass this Bill at breakneck speed without giving us a chance to hear the other side of the story. . . . it is intended to do . . . a cover up job in order to legitimise something that has been declared illegal by a court of law." He wanted to know "the number of cases—both criminal and civil—that have been and are being instituted against this legislative assembly to date." He proceeded to read an article about "The Struggle Against Independence" until stopped by the chairman. "The UDP was never party to the concept and/or formation of the national self-governing states. We are totally opposed to the entire exercise of partitioning South Africa. . . ."⁴⁵¹ The Deputy Minister of Population Development also declared the Labour Party's opposition to "ethnic homelands." "Were we to approve of this legislation we would in effect be condoning, for example, the detention of the speaker of that legislative assembly . . . [and] pre-empting the rights of the seven people who have made claims from both the South African Government and the KwaNdebele Government. . . ." He urged that when an irreconcilable difference arose between the NP and LP "negotiation must take place. This has not happened, however." He asked

the Minister to "initiate an indaba for the KwaNdebele-Moutse-Lebowa region. . . ." ⁴⁵² Another Labour Party MP refused "to validate . . . the actions which were taken by a legislative assembly which was not a democratically elected one. . . . We will not taint the image of the party." "We remember Brig Hertzog Lerm . . . [and] Piet Mthuli [sic]." "We know that building construction is taking place on the Mhlango Palace." ⁴⁵³

Heunis lost his patience. "To stand up in this House and say that illegal acts are condoned by this legislation is untrue. I shall say outside Parliament that any person who says that is a liar." "We are not dealing with a political issue in this Bill, but with a legal issue." He admitted that "we are talking about ethnic governments," but he did "not want to enter into a debate." Indeed, he now proclaimed that "the population [of KwaNdebele] is not ethnically homogeneous." But his efforts at persuasion failed, and the bill was defeated. ⁴⁵⁴

When the bill was debated in the House of Delegates the same day the majority National Peoples Party accepted the Government's claim that its object was simply "to give a *de facto* situation legal validity." Surprisingly, the speaker took this opportunity to declare that the "judiciary have been shown to act independently of executive authority." ⁴⁵⁵ The Deputy Minister of Environmental Affairs referred to "rumours of disrespect for human rights in this area." But "however one views the Government's homeland policy, we are faced with a problem. . . . When there is no law there is lawlessness and when there is no order there is disorder." ⁴⁵⁶ The Solidarity Party (the official opposition) supported the bill. The Progressive Federal Party objected to the voting age (21 instead of 18) and the number of elected MLAs (16 instead of 32), but the bill passed over its opposition. ⁴⁵⁷

When the bill went to the President's Council in August (because of its defeat in the House of Representatives), Dr A J G Oosthuizen, chairman of the Council's committee for constitutional affairs, insisted its purpose was to avoid the chaos of reopening all governmental actions of the previous four years while ensuring that women participated in elections as soon as possible. NP Council member Adrienne Koch supported suffrage for KwaNdebele women, while CP Council member Jan Hoon opposed it as violating Ndebele tradition. ⁴⁵⁸ The Council passed the bill on 10 August over opposition by PFP, NDM, and LP members. ⁴⁵⁹ Geoffrey Budlender, who had brought the original case, was advised by constitutional lawyers that the acts of an invalid legislature cannot be retroactively validated; but that challenge was never brought. ⁴⁶⁰

Viljoen introduced debate on the second bill on 23 August by characterizing it as a technical measure necessary to validate "all pension payments, vehicle licenses, including third-party coverage, trade licenses and marriages." Failure to do so could have "far-reaching consequences for . . . the residents of Moutse, and even innocent people outside Moutse." "The Bill is most definitely not aimed at covering up any illegalities." ⁴⁶¹ The Conservatives supported the bill, while warning that "the two other groups ["Coloureds" and Indians] have said they were not in favour of the

preservation of the tricameral system."⁴⁶² The PFP opposed it. The bill was "not just legalising a few contracts. It refers to any regulation, any notice, any declaration, any direction, any approval, any authority. . . ." "If the Government wants to break down fences it must repair its own fences." "There is a Jewish word, 'chutzpah', that is what they have got. There is no apology, no explanation. . . ." ⁴⁶³ Peter Soal recounted a few of the atrocities committed in KwaNdebele, noting that after incorporation was invalidated the Government "announced that legislation would be introduced to reincorporate Moutse into the Northern Transvaal homeland. That is one of the most cynical statements ever made by a cynical Government."⁴⁶⁴ Viljoen hedged his response: "as far as this Bill is concerned, the Government proceeds from the point of view of the acceptance of the Appeal Court decision." But he took comfort in the fact that "the Supreme Court, which dealt with this case in the first instance, rejected the objection and regarded the incorporation as being valid. . . . There was consequently nothing obviously invalid or illegal in the situation. . . ." "There was a clear arguing of the Government's case. It was not as if the Government acted in a blindfolded way without any justification." He found it "amusing . . . that the members who normally would have nothing to do with ethnicity, language difficulties and group context are here becoming filled with excitement and indignation because the Government did not adhere strictly to the concept of ethnicity in dealing with Moutse." He denounced Colin Eglin's claim of a coverup as "wilful." The bill passed with only the 15 PFP members voting against.⁴⁶⁵

The following week Viljoen encountered much greater opposition in the House of Representatives. The same UDP member who had opposed the first bill referred to this one as "closing the door after the horse has bolted." The majority Labour Party reiterated its firm belief in a "non-racial geographic federation." Because the LP had "consistently opposed the incorporation of Moutse into KwaNdebele" it could not "now make an about-face and support this type of validation. . . ." Although Viljoen protested that the bill "does nothing to promote the system of self-governing territories or the interests of the KwaNdebele government," it went down to defeat.⁴⁶⁶ A week later a PFP MP in the House of Delegates reminded the Government that "the trouble in which they find themselves is . . . entirely of their own making." He praised "the independence of the judiciary," which "upset the—I am not going to say maligned machinations—but rather the unwise, ill-advised and inhuman machinations of the Government." "One might consider a rescue mission, but there has been no contrition. There has been no remorse. . . . How dare they, therefore, come to us and ask us for forgiveness? They must repent first."⁴⁶⁷ The majority National Peoples Party also opposed the bill. The Deputy Minister of Local Government, Housing and Agriculture detailed Moutse's opposition to incorporation and also opposed the bill.⁴⁶⁸ Roelf Meyer, Deputy Minister of Constitutional Development and Planning, displayed precisely the chutzpah of which Colin Eglin accused the Government by claiming: "if we do not pass this Bill . . . we will not be abiding by the court ruling." P T Poovalingam kept interrupting and demanding that he say he was sorry. When Viljoen failed to do so, the bill failed.⁴⁶⁹ The government did not take it to the President's Council.

Shortly after his appointment to the Moutse commission, Justice Rumpff wrote M N Ramodike, the new Chief Minister of Lebowa, (among others) to invite written submissions to the commission by 25 August. In early September the Moutse Anti-Reincorporation Committee convened a secret meeting of 200 people, who denounced the inquiry, refused to participate, and threatened to return to court.⁴⁷⁰ However, Chief Mathebe and the Moutse Civic Association submitted a 53-page single-spaced memorandum.⁴⁷¹ It began by referring to the record and judgment in its recent judicial victory and reviewing the history of Moutse. It described the system of governance, which "for the most part operated in a democratic way and allowed for ordinary residents to feel that they had avenues through which their needs, aspirations and problems could be raised." This was effectively destroyed by the threat of incorporation. The police banned all outdoor meetings and required permission for those indoors. In western Moutse they granted this permission only if no more than two people spoke. The memo described police attacks on meetings at Keerom, Toitskraal, Sondagfontein and Kwarrilaagte, at which many people were injured or arrested.

KwaNdebele authorities made citizenship a prerequisite for business and taxi licenses and pensions and required that cars bear KwaNdebele registration plates. The KwaNdebele Agricultural Company, formed in 1987, severely disrupted Moutse agriculture. Following the Appellate Division judgment it left Moutse, taking seven of eight tractors and four of five bakkies, as well as ploughs and other equipment. In parts of Moutse KwaNdebele appointed its own headmen, who allocated residential and agricultural land and imposed monetary levies. The KwaNdebele police had detained and tortured many Moutse people. The memo urged the Commission to hear oral testimony from chiefs and other community leaders and hold a referendum. It rejected the argument from geographic proximity. It welcomed the idea of sharing such facilities as water, roads, and hospitals without political subordination. It invoked the right of Moutse people to speak their own language, North Sotho. It raised the spectre of KwaNdebele independence with concomitant loss of South African citizenship. Noting that Moutse was no smaller than several independent nations (Antigua and Barbuda, Dominica, Grenada, Liechtenstein, and Monaco), it invoked the preamble to the South African Constitution, one of whose goals was "to respect, to further and to protect the self-determination of population groups and peoples."

XIII. BOTSHABELO: ANOTHER MOUTSE

While the judicial challenge to the incorporation of Botshabelo into QwaQwa was awaiting judgment, the PFP continued to criticize the Government. During the May budget debate N J J Olivier acknowledged that the matter was *sub judice* but insisted the action "makes no sense."⁴⁷² Peter Soal described the miserable conditions.⁴⁷³ In the House of Representatives a Labour Party MP declared that following the incorporation of Botshabelo "against the will of those inhabitants" there had been no development. People were living in "slum conditions" and "robbery and theft are an everyday occurrence."⁴⁷⁴ Viljoen replied that incorporation "was made known, and everyone who went to settle there in due course was aware of this. Even if some of them were not eager to be incorporated, this was a reality, that they should have accepted when they settled there. It would not have been appropriate for the South African Government to go back on the word it had given the Qwaqwa government.

...⁴⁷⁵

On 26 August a full bench of the Supreme Court for the Orange Free State Provincial Division (Justice Malherbe, with Justices Hattingh and Findlay) invalidated Proclamation R169 incorporating Botshabelo into QwaQwa.⁴⁷⁶ The State President had the power under §1 of the National States Constitution Act 21 of 1971 to "amend" a self-governing territory after consultation with its Cabinet (which he had done). Although not required to consult the people being incorporated, his failure to do so was relevant in determining whether he was pursuing the purposes of the 1971 Act. QwaQwa had developed tribal, regional, and territorial authorities, whereas Botshabelo was "an artificial town . . . which came into existence less than a decade ago as a catchment area particularly for urbanized surplus Blacks." The two areas differed in ethnicity, lifestyle and culture. QwaQwa lacked any historical claim to Botshabelo. The court found his action *ultra vires* because he was not seeking to promote the political development of Botshabelo in terms of national association.⁴⁷⁷

Justice Findlay's concurrence offered more explicit criticism of the government. Although he did not

express any view on [the] underlying policy [of grand apartheid], the fundamental and far reaching consequences flowing therefrom call for the exercise by this Court of the utmost vigilance and careful scrutiny. Since no other effective legitimate avenue may be available to safeguard the rights of those so affected, this Court would be failing in its duty if it did not do so. Recognition of this obligation is to be found in those canons which require a strict construction of language used in such enactments where existing rights may be affected (*a fortiori* where the nature of the power exercised will have a drastic and far reaching effect on the inhabitants of Botshabelo).

The applicant had offered detailed arguments against incorporation, to which the respondent made virtually no response. Findlay invoked Justice Grosskopf's interpretation of the same section, particularly the word "amend," in the Moutse appeal.

As I read the judgment of Grosskopf J A it is permissible to examine the nature of the area to be incorporated in order to determine its character vis-a-vis the inhabitants therein and their similarity to or dissimilarity from the inhabitants of the Black area for which the relevant Legislative Assembly has been created.

The state indicated its intention to appeal.⁴⁷⁸ The following April Viljoen declared that "although the Supreme Court has given a ruling that its incorporation into QwaQwa is invalid, the fact that an appeal has been launched has stabilised the *status quo*."⁴⁷⁹ On 8 October 1989, more than 50,000 people demonstrated in Bloemfontein against the incorporation. Residents of Hartebeesfontein, Machakaneng, Vleisfontein, Peelton, Thornhill, Moutse, Leeuwfontein, and Braklaagte also filed petitions against incorporation.⁴⁸⁰ The Appellate Division dismissed the appeal on 2 March 1990.⁴⁸¹

The Rumpff commission completed its work in January 1989.⁴⁸² In October the government published the Black Authorities Bill, which would place all villages outside homelands directly under the central government, eliminating the authority of chiefs. The Moutse Civic Association complained that South Africa had neglected the territory since the 1987 Supreme Court decision and feared the bill would enable the government to incorporate individual villages into KwaNdebele.⁴⁸³ At the end of 1990 the government accepted the Rumpff Commission recommendations that Moutse 1 and 3 remain under central government control for ten years but Moutse 2 be incorporated into KwaNdebele.⁴⁸⁴ John Dugard wrote the relevant Minister that such action would be in contempt of the Appellate Division. In any case, the recommendation was obsolete even as it was uttered.

XIV. KWANDEBELE WOMEN VOTE DOWN INDEPENDENCE

The struggle around independence continued in KwaNdebele. In February 1988 the KwaNdebele government had demanded that headmen raise R500,000 by July to pay for damage to schools and government buildings. The following July hundreds of women received letters finding them "guilty of the offence of contravening Section 10 of KwaNdebele Levying of Taxes by Traditional Authorities Act No 5 of 1984, read with Government Gazette No 153 proclaimed on April 17 1984" and ordering them to pay R257 by 1 August. After police threatened to assault them with pick handles they fled at night to Pretoria to seek legal representation. Asked why the amount demanded was R257 when the 1984 act required only R20 per year, Ndzundza Tribal Authority chairman Simon Mahlangu said it was an estimate, because some people had lived in the area since 1920 and not paid the tax. "We do not arrest or assault people and the people will be given enough time to settle the arrears." Police also assaulted youths they accused of being comrades.⁴⁸⁵ Yet by June the government had explained that Brigadier Lerm had been transferred out of KwaNdebele "to fill a vacancy which arose elsewhere and because his duties were required there, in the interests of the force."⁴⁸⁶

In September Prince James Mahlangu held mass meetings in Vosloorus and Mamelodi, and a mass meeting in Moutse was attended by all chiefs, representatives of community authorities, and about 1000 people.⁴⁸⁷ On 15 September South Africa decreed that the Legislative Assembly would be dissolved on 7 December and an election begin the next day.⁴⁸⁸ In anticipation of the election Police Commissioner Miro Jerry Ihubane issued an order on 11 November prohibiting

- the taking part or the debating of the following issues at meetings . . .
- (a) identifying and the associating of election candidates with the 'Mbokoto' and 'Comrades' organisations;
 - (b) the defamation of the public image of the KwaNdebele Police;
 - (c) justifies, defends or commends any campaigns, projects, programmes, actions or policy of violence or resistance against, or subversion of the authority of the Government or any tribal authorities or of violence against, or intimidation of any person or persons belong to any particular category of persons.⁴⁸⁹

By mid-November, 53 candidates had declared for the 16 seats. Pamphlets supporting George Mahlangu declared "We do not need a Sotho-speaking person under the guise of the UDF to tell us not to exercise our democratic right. . . . We do not want the sons of chiefs who hold no elected positions to govern us." Pamphlets supporting Solly Mahlangu warned that "the present government knows it wants to opt for independence" but was concealing that.⁴⁹⁰

The election took place from 8am to 10pm, Friday-Sunday, 8-10 December, by which time 73 of the 93 members of the new Legislative Assembly had already been appointed (the new Chief Minister would appoint the other four). Between 15 September

and 2 December, 31,000 people had registered to vote, and others could do so until the close of the election. KwaNdebele citizens and Ndebele living outside the homeland were eligible and could vote in their urban residences. Contralesa campaigned strongly against the incumbents. After the first day of the election a newspaper reported that women constituted 90 percent of those voting. Matthews Siphohle Mahlangu, a foreman and Ekangala headman, trounced former Chief Minister Majozi George Mahlangu 6130 to 1938 in kwaMhlanga; many civil servants abstained rather than vote for the Chief Minister as ordered. All 16 elected seats went to members of the anti-independence group, including Prince James.⁴⁹¹

Although rejected by the voters, Majozi George Mahlangu engineered his retroactive nomination by the Sokhulumu Tribal Authority. There was fear that he would retain power by persuading the 72 other nominated members to elect him as Chief Minister (as Patrick Mphahlele had done in Venda in 1973). A Supreme Court application was still pending to invalidate the replacement of the 21 nominated members of the Ndzundza Tribal Authority by his supporters. The Mbokotho reappeared, driving underground the victorious anti-independence MLAs.

The pro-independence group declared its intention to challenge the election in court on the ground of balloting irregularities.⁴⁹² On 11 January 1989 several hundred KwaNdebele women set out for Pretoria to complain to P W Botha or Chris Heunis about harassment of the Paramount Chief and his subjects and demand the immediate dismissal of the former Chief Minister from the Legislative Assembly. About half were intercepted by KwaNdebele police and detained. Paulina Machika, the lead plaintiff in the women's vote case, said they asked for "alternative land before the election of a Chief Minister on January 20 if Mr Mahlangu is to participate, because he has threatened to chase us out of kwaNdebele if he wins."⁴⁹³ On 14 January thousands of anti-independence demonstrators met in Moutse.⁴⁹⁴ At the beginning of February Jonas Mabena defeated James Mahlangu to become Chief Minister, angering the crowd waiting outside the Legislative Assembly.⁴⁹⁵

XV. THE LIMITS OF JUDICIAL CHALLENGES TO INCORPORATION: BRAKLAAGTE AND LEEUWFONTEIN

Encouraged by the success of the Moutse and Botshabelo legal challenges to incorporation, Braklaagte sued at the end of 1988 to interdict its incorporation into Bophuthatswana.⁴⁹⁶ The Bahurutshe Ba Sebogodi had purchased Braklaagte in 1907 and adjacent Welverdiend in 1927 (which was incorporated into Bophuthatswana in the 1980s). The original chief, Malebelele Sebogodi, died in 1925. Regent George Mosekaphafu Moilwa ruled until 1949 and was succeeded by Lekolwane John Sebogodi. South Africa declared its intention to incorporate Braklaagte into Bophuthatswana in press releases on 5 June 1983 and 15 October 1984. On 20 July 1983 it published a notice in the Government Gazette that the Commission for Cooperation and Development would hear evidence about the proposal in Zeerust on 29-30 August and in Rooigrond on 8-9 September.⁴⁹⁷

The Braklaagte community claimed that they made their opposition clear when they first learned about the incorporation from Bam, the district commissioner, and his superior van Niekerk in July 1986. Some 3000 adults (out of a total population of 9000) signed a petition opposing incorporation. They retained an attorney, who sent the petition to Bam on 12 July.

In September 1986 South Africa amended the Borders of Particular States Extension Act, No 2 of 1980, to authorize the incorporations. PFP MP R A F Swart, a member of the standing committee, expressed his concern at the number of people who would lose South African citizenship. This "would be exactly equivalent to the forced removal against which we have fought for so long." "[P]articularly at this time in South Africa's history one should be extremely sensitive to questions of this kind involving the status of people and the jurisdiction under which they find themselves." He feared there had been inadequate consultation. Deputy Minister of Development and Land Affairs B H Wilkens defended the government.

An open invitation is addressed to everyone who has an interest in the proposals to appear before the commission and put their case there. . . . [They] were given every opportunity—and they still have it, as the process continues—to state their standpoint before the commission. What is more, they have the opportunity to state their standpoint to the commission confidentially. . . . If an open invitation is addressed to someone and he has the opportunity to appear before the commission and he does not make use of that opportunity . . . the honourable member for Berea cannot now complain, after the process has been completed, that the people were not consulted. It is totally impractical to consult every single person who is going to be involved. . . . In those cases where consultation did not take place, the interested party in any case had every opportunity fully to put his case to a body or a commission. . . . The department, through its officials and the old commissioners, had constant

contact with all Black people who could possibly have resided there. . . . There is a third channel which was also used in this case in the past, and which is still being used, namely the recognised authority of the relevant Black people. In the case of the example I mentioned, it was the government of Bophuthatswana. . . . Consequently I am telling the honourable member for Berea that the standpoints he has adopted here—he did so in the standing committee too, cannot hold water. They also merely reflect the political attitude of that honourable member and his party, namely that they have serious objections to what they call so-called 'grand' apartheid. . . . We cannot simply abandon the process of turning the national states into viable territories—a home for their own peoples.⁴⁹⁸

He justified the bill on three grounds: "agreements concluded by the South African Government with the governments of the relevant national states," earlier decisions by Parliament, and the fact that "those states need the land for their own development."⁴⁹⁹

The Conservative Party opposed the bill "but this is not because we are opposed to consolidation." The Government had acted "completely incorrectly" by its "crass violation of the solemn agreement . . . with the agricultural unions and the farmers to consult with them."⁵⁰⁰

Helen Suzman was "absolutely amaze[d] . . . that we are still dealing with Bills of this nature when the Government has assured us ad nauseam that the old-time, Verwoerdian concept of territorial apartheid has gone." She maintained that the first the 15,000 people affected by the incorporation heard of it was in *The Star* in September 1985.⁵⁰¹ Wilkens concluded the debate by rebuking Suzman for "project[ing] abroad an impression that it is a case of forced removals. Then the outside world reacts to that! . . . ther [sic] is no question of forced removals here. The people went voluntarily. . . . I again received a telex . . . from abroad and from other institutions. I receive these telexes on the basis of incorrect information given by the hon member for Houghton in the House—information which, to the detriment of South Africa, projects an image of South Africa which is not correct, and which leads to further unrest in South Africa, for which the hon member has to accept responsibility." The bill passed 2-1 over the opposition of the PFP and CP.⁵⁰²

John Sebogodi and others wrote the State President in September.

We cannot believe that you would make us foreigners in the land of our birth, without speaking to us first. We feel sure that if you knew our feelings about the matter you would stop this terrible event that is sure to endanger our survival. We have lived and farmed at Braklaagte since 1906. We have developed our land, built schools, windmills and wish to remain on it. We and our children consider ourselves part of South

Africa, and our entire village has applied for our South African citizenship to be restored as you promised. . . . We will be punished by President Mangope for resisting incorporation and applying for South African Citizenship, because he rejects dual citizenship. He has already tried to depose our chief who has ruled us since 1949. . . . At a time of unrest in our country, we feel it is criminal for the government to create more problems, as we have never had any quarrel with it, except when it has tried to take our land, which we purchased legally.

Botha's private secretary acknowledged receipt on 25 September but referred the writers to Gerrit Viljoen. On 28 November Wilkens wrote: "I regret to inform you that the relative [sic] amendment to the Borders of Particular States Extension Act, 1980 (Act 2/1980), cannot be withdrawn. Your viewpoints and reservations regarding the ultimate inclusion of Braklaagte into Bophuthatswana territory have, however, been brought to the notice of the Government of Bophuthatswana for discussion on bilateral level prior to the incorporation of the said property into Bophuthatswana." The community's attorneys wrote again on 20 May 1987 objecting that they had never been consulted and asking for an opportunity to present their views. The Parliamentary Standing Select Committee on Foreign Affairs and Development Aid debated the incorporation in July and August 1987. But on 17 August Viljoen replied:

[O]n a previous occasion your clients were informed that it is not possible for the Republic of South Africa government to deviate from the agreement entered into with the Bophuthatswana government. [He invoked decisions taken in 1966 to expropriate and remove the people.] During 1983 the Commission for Cooperation and Development, however, recommended to the Government that the farms Leeuwfontein and Braklaagte be consolidated for addition to Bophuthatswana and that the resettlement decision be rescinded. These proposals were then announced on 5 June 1983 as a basis for further negotiations and the Commission then invited all interested parties to lodge their objections or give evidence before the Commission. The people still occupying these two farms raised no objection to the proposals. The final decision of the Government was then announced in a press statement on 15 October 1984 and again confirmed, after discussions between the State President of the Republic of South Africa and the President of Bophuthatswana on 30 August 1985, in a press statement on 11 October 1985.

He indicated, however, that he was prepared to grant an interview.

The PFP supported the Parliamentary committee report, tabled 19 August, because it excluded Braklaagte and Leeuwfontein. Peter Soal had been told by the chairman that "it was a technical matter and not of a contentious nature." But the Johannesburg attorneys firm (Bell Dewar & Hall), which represented the community, informed him that "almost 14 000 people were living on the farms and that they were

vigorously opposing the incorporation of those areas into Bophuthatswana." He quoted "a very heartrending appeal that they made to the hon the State President in 1986." Soal asked why the committee "was misled into believing that this matter was non-contentious."⁵⁰³ A Nationalist MP replied that the two farms were included by mistake; Parliamentary action was unnecessary because the land was already owned by the state. The Government had changed its policy

because we realised that the forced removal of such large numbers of people was simply not viable. . . . Apart from their unwillingness to move, one must also take the cost factor into account. To move one family costs at least R10 000 these days, and it would cost us many millions of rand to move 15 000 people. When we do have people removed, it is merely to improve their living conditions, or only where squatting takes place. . . . As far as their inclusion in Bophuthatswana is concerned, I think the hon member is making a mistake. There are 15 000 people living there. Then one single person writes a letter to an hon member of the CP [sic], or to that hon member's party, stating his dissatisfaction. Meanwhile the people living there are . . . from a linguistic point of view, compatriots of the Tswana-speaking people in that area. . . . one cannot, after all, obtain complete unanimity among 15 000 people. The feelings of the people will be conveyed to the Government in an orderly fashion and the Government will determine the best course of action under the circumstances.⁵⁰⁴

Minister of Education and Development Aid Gerrit Viljoen concluded the debate by reiterating that the report "does not deal with the incorporation of land" because that had been legislated the previous year. But he wanted to

give the assurance that although there was ample opportunity for everyone concerned to address the Commission for Co-operation and Development and to address Parliament at that time when proper notice was given, there was no reaction whatsoever from the residents of those two areas.

Nevertheless, I have indicated my willingness to discuss with them any problems which they might have . . . especially in conjunction and with the co-operation of President Mangope. We are not going to ride roughshod over the objections of these people, but we are also aware that there are various views and various groups there. Apparently those who have the support of the Black Sash and similar organisations and access to certain legal organisations are always immediately ready, when a decision has been taken by this Government, to see whether they cannot upset it by organising opposition or a divergent movement not going along with the decision of the majority.

The House of Assembly approved the report.⁵⁰⁵

In early 1988 Bophuthatswana headman Edwin Moilwa persecuted the inhabitants of Welverdiend, which had already been incorporated, expelling children from school, taking the property of residents, and imposing fines.

In May 1988 the Minister of Constitutional Development and Planning removed John Sebogodi after an inquiry. The community elected his son, Pupsey Ntsanyana Sebogodi, at a meeting on 30 July. On 30 September Pupsey Sebogodi's attorneys (Cheadle, Thompson & Haysom) wrote the Director General of Constitutional Development Services, informing him of the election and asking how to arrange the appointment. The Director General replied on 18 November that "by Tswana custom the appointment of a headman is the function of the chief of the tribe." South Africa had appointed Joseph Godfrey Moilwa, a Bophuthatswana citizen and resident, as chief of Braklaagte and Leeuwfontein, and he appointed a relative, Edwin Moilwa, as headman of Braklaagte.⁵⁰⁶ On 3 October the community's attorneys sought a meeting with government officials, who replied only two months later. Pupsey Sebogodi headed a delegation that met with Gerrit Viljoen and other officials on 15 December to express their opposition to incorporation. They sent him a memorandum in advance, narrating their history, invoking the examples of other reprieved communities—Driefontein, KwaNgema, Mathopestad, and Motlatla—and concluding: "The community's opposition is not based on stubbornness or bloody-mindedness: it has assessed the situation and concluded that incorporation carries with it only disadvantages and hardship." Hendrik Schalk Pienaar's minutes of the meeting record: "The Minister said that as he has previously promised to their representatives and also said in Parliament he has now listened to them so that he understands what is in their hearts and minds and also that the Government knows about it when it has to take further decisions. He explained to them the difficulty of the Government to change decisions which it has taken in the past."

But on 27 December Viljoen sent their attorney a hand-delivered letter.

[T]he Government finds itself in an extremely difficult position, because its decision on the incorporation of the farms Braklaagte and Leeuwfontein had been taken after due public notice had been given of the proposal and hearings of evidence and objections by the Commission for Cooperation and Development had taken place. . . .

The Braklaagte community raised objections only after the official public announcements of 1984 and 1985 had been made and the legislation of 1986 had been passed by Parliament.

In view of this development the government is unable to rescind or renegotiate its decision. In order to remove the cloud of uncertainty to which delegates from Braklaagte referred, the Government has decided to finalise the position as a matter of urgency. [The incorporation would be effective 31 December.] . . .

I trust that the fears and concerns expressed by your clients will be fairly taken care of after incorporation.

Braklaagte's attorney, Clive Plasket, telegraphed Viljoen and Botha seeking a postponement, but when no reply was received the action was filed on 29 December to anticipate the Government Gazette appearing the next day.⁵⁰⁷ Justice Spoelstra granted a rule nisi on 30 December.

The applicant argued that the State President should have considered the people's fears and concerns, as he had promised. The agreement with Bophuthatswana was unenforceable, since it had been concluded before the State President had power to excise Braklaagte. Therefore, he had failed to exercise his discretion.

Clearly stung by the application, Lucas Mangope filed an affidavit opposing it on 3 February. His government had built schools in Braklaagte and welcomed its children to Bophuthatswana schools. South African citizens worked in the Bophuthatswana government, and Bophuthatswana citizens worked in South Africa. Although dual citizenship was impossible, the homeland would not discriminate against non-citizens. Other services and benefits were equal or superior to those in South Africa.

I deny that the Applicant is making this application for the reasons stated by him. . . . I have good reason to believe that he is motivated in his objection against incorporation by the fact that he is not recognized as the Headman of the people at Braklaagte.

Mangope portrayed himself as the man who had saved the people of Braklaagte and Leeuwfontein from removal by convincing the South African government to incorporate the land into Bophuthatswana.

[T]he Applicant's father, who was acting Headman of the Braklaagte community, was consulted by me concerning the incorporation. The Applicant was present on most of the occasions when the incorporation was discussed with his father. At all times prior to the stage when the agreement between myself and the State President of South Africa was reached on 30 August 1985, both the Applicant and his father were in favour of incorporation. . . . The Applicant's father and I were good friends for many years. . . . In fact a street in Mmabatho was named after the Applicant's father.

Mangope sought to characterize the controversy as a power struggle. Pupsey Sebogodi's father, John, was actually a regent for Edwin Moliwa, who had been too young to assume the headmanship in 1948. The "election" of Pupsey in 1988 was irrelevant because "it is foreign to the tradition of this tribe to elect leaders." "It is only after I refused to appoint the Applicant as Headman at Braklaagte that he and his father became opposed to incorporation. . . ." He concluded with a reassurance: "I, as a personal friend of the Applicant's father, and the Applicant himself, assure the Applicant that I

will not turn against them and there will be absolutely no discrimination against them because of the stance they have taken."

In reply, Pupsey Sebogodi reasserted his claim to the headmanship, based on an elaborate genealogical reconstruction. "It is clear that the authorities are merely attempting to suppress opposition to incorporation into Bophuthatswana . . . by favouring members of the Moilwa family who are supportive of the Bophuthatswana government. . . ." He denied knowing of the 1983 and 1984 notices until 1986. South Africa justified incorporation on the ground that the Bahurutshe were a single tribe, which had to be united within a single country, but they actually were three tribes, and "there can be no such turning back of the clock." He warned that the peace and stability of the region would be destroyed by incorporation. Mangope's denial of discrimination against non-citizens was controverted by his own letter to *The Star* on 15 April 1987.

[W]e have attained these successes [during independence] without any help from those "Tswana", that is South African Batswana, who are opposed to our existence. We have never thought of them as anything but South Africans. . . . [W]e insist upon knowing exactly who is throwing in their lot with us and who is not.

Lekolwane John Sebogodi, 88 years old, supported his son Pupsey Ntsanyana.

Bophuthatswana did not await the trial to assert control over Braklaagte.⁵⁰⁸ South Africa began transferring telephone service in January 1989. By the end of the month homeland police were patrolling the village, arresting residents and charging them in homeland courts. The South African Police refused to accept complaints. The high school in Zeerust excluded Braklaagte pupils. The Department of Agricultural Economics and Marketing refused to give residents permits to sell cattle. The Department of Home Affairs refused to admit a mentally ill patient to hospital. The community's attorney telexed Botha and Viljoen, asking them to maintain the status quo and noting that Justice Spoelstra expected this and had threatened to award damages. The State Attorney responded on 2 February that the court had granted no interim relief and incorporation had become final on 31 December.

Justice van der Merwe gave judgment on 10 March, two days after oral argument. After a historical summary taken primarily from the respondents' affidavits, he quoted the statutory language giving the State President unlimited discretion but noted that "he may not fetter his discretion by following a rigid and fixed policy."

[T]he process of excising a piece of land from one country and incorporating it into the land of another is an involved process affecting many people and involving vast amounts of money. . . . [H]aving taken such a decision . . . it cannot be lightly tampered with or ignored. Very correctly, in my opinion, that was also the respondents [sic] attitude in this case. In spite of such an attitude the second respondent [Viljoen] was prepared to have further discussions and consultations with aggrieved

people. . . . I am not convinced that he closed his eyes to what was conveyed to him by the applicant . . . [or] that the respondent's discretion was fettered by the history of the matter.

He dismissed the application with costs. Sebogodi applied for leave to appeal on 8 May, which was granted on 27 July.⁵⁰⁹

Immediately after the judgment, Bophuthatswana security police set up a permanent post in Braklaagte.⁵¹⁰ On 22 March they stopped a bus carrying pupils home from Zeerust and beat them for attending a South African school. The next day (Thursday) heavily armed police fired tear gas at random and assaulted residents. That night, as labor migrants returned for the Easter weekend, the homes of four pro-incorporation residents were attacked. Homeland police began assaulting and arresting residents early the next morning and continued through Sunday. Pupsey Sebogodi was detained on Friday. When Clive Plasket, Braklaagte's attorney, visited the village on Sunday, police repeatedly interfered with his consultations. Major Baloyi, district commander at the Motswedi Police, refused to accept complaints about police abuse or allow medical care to detainees. From then until 3 April the police continued to obstruct lawyers and doctors seeking access to detainees. Of the 106 arrested and six cases prosecuted, only six were convicted.

During a public committee debate in April Peter Soal asked about "the Government's current practice of forced removals" in connection with the 9 000 inhabitants of Braklaagte. In 1938 the government deposed a Braklaagte headman and removed him and 40 families; only the intervention of World War II prevented it from moving the rest. In the late 1950s it threatened to remove Pupsey Sebogodi's father in an attempt to break the opposition of women to carrying passes.⁵¹¹ It replaced the popular chief, Adam Moolwa, with Lucas Mangope, provoking a violent response. Soal maintained that the community first learned about the incorporation only in July 1986. The Government "claim to have abandoned their policy of forced removals. This is untrue as they now have a policy of forced boundary changes."⁵¹² A Labour Party member of the House of Representatives warned that "the goings-on in the Border Corridor have been the subject of communications to foreign embassies. South Africa, for so long the polecat of the world, faces further condemnation and scorn and, if the situation gets totally out of hand, further sanctions." He tried to describe the response to incorporation into Ciskei by "a community of hundreds of surplus people" from Potsdam, who, "in an act of human desperation rather than one of defiance or confrontation, voluntarily vacated their homes and walked into South Africa. . . ." But the chairman ruled the matter *sub judice*.⁵¹³ Viljoen responded, as usual, that

on four occasions public notice was given of the fact that the Government had decided to incorporate Braklaagte. . . . It was only . . . after certain politicians in this Parliament had acquainted themselves with the matter, that suddenly a wave of opposition to incorporation arose at Braklaagte. . . . [T]he Supreme Court found in favour of the

incorporation and confirmed it. . . . [T]he President of Bophuthatswana gave assurances in connection with the goodwill of his government in relation to the residents of the Braklaagte area. . . . [A] large part of the dissatisfaction revolves around the question of who should be the chief there.⁵¹⁴

Frustrated by the courts, the government looked to its political monopoly and the supremacy of Parliament to override judicial resistance. On 14 April—a year after the Appellate Division had invalidated the incorporation of Moutse and half a year after the Supreme Court invalidated the incorporation of Botshabelo—it tabled the Alteration of Boundaries of Self-Governing Territories Bill.⁵¹⁵ During the May debate on this bill, Deputy Minister of Constitutional Development and Planning Roelf Meyer explained that it was "necessary to give stability in law to the incorporation of the Botshabelo area, which is to be added to QwaQwa. . . . The Government of the RSA would be breaking its word if it did not now give effect to this solemn undertaking. . . ." The Bill would validate Proclamation R 227 of 1985.⁵¹⁶ It was essential to avoid a repetition of the Moutse debacle.

The divergent court judgements that were given create legal uncertainty when specific areas and the people living in them are included for short periods in a self-governing territory and are then in turn, with retrospective effect by way of court judgements, added to the RSA. It is therefore essential for Parliament, by means of legislation, to create legal certainty. . . .

In various court cases various criteria have been elevated to become the decisive consideration. In this way, for example, ethnicity was elevated to become the decisive criterion in the well-known Moutse court case. In the court case on Botshabelo it was ruled that the various development steps . . . are the decisive norm. . . .

[T]he Government cannot continue with the finalisation of the consolidation proposals . . . without a clear criterion. . . . It is with this object in mind that clause 2 of the Bill provides that any Black area may be included in the area of a self-governing territory when the State President deems it expedient, and after the necessary consultations have taken place. . . .

Clause 2(3) of the Bill provides that no court of law shall be competent to inquire into or pronounce upon the validity of any proclamation issued under clause 2(1). Numerous representations were placed before the joint committee for this subsection to be deleted. After careful consideration of all the legal and political implications, an amendment was placed on the Order Paper to omit the subsection. . . .

With a view to legal certainty clause 3(1) of the Bill provides that all proclamations issued or purporting to have been issued under any law for the alteration of the area for which a legislative assembly has been established, is in point of fact valid. Clause 3(1) brings about absolute legal certainty. . . .⁵¹⁷

The Conservative Party, unsurprisingly, declared itself "in favour of the national states being consolidated to the greatest extent possible."⁵¹⁸ By contrast, the Labour Party, which controlled the House of Representatives, reiterated its belief "in a non-racial geographic federation of states which must be determined by the people." Although it previously supported geographic consolidation, it had given notice to the Government that it was "no longer prepared to support any further consolidations until we sat down and determined exactly where we were going. This piecemeal fire-brigade approach is totally unacceptable. . . ." The Bill could "only be described as immoral."

We have had a court decision which ruled that the incorporation of Botshabelo into QwaQwa was invalid. All hon members in this House of all political parties and people outside this House have expressed their admiration for the independence of our judiciary. The judiciary also enjoys this respect outside the borders of this country and I believe that it is important that we build on that respect. . . . recently, the hon the Minister of Justice spoke about . . . the need to build up the independence of our courts and the role that the courts will play when having to enforce a bill of rights in a future South Africa. . . . What type of an example are we setting for those who must follow us when we are prepared to override court decisions by means of legislation? . . . Despite the Government's being aware of our opposition to this Bill, they are determined to carry on with it, even if that involves having to bulldoze it through the President's Council. . . . Everyone is referring to the new face of the hon leader of the NP, Mr F W de Klerk. One must however ask whether it is merely the modernisation and continuation of Verwoerdian policy.⁵¹⁹

The National Peoples Party (second largest in the House of Delegates) declared its opposition because the bill "infringes on the sovereignty of Parliament."⁵²⁰ The Solidarity Party (which controlled the House of Delegates) also refused to support the bill because "it would be the height of impertinence . . . to act as a spokesman or agent on behalf of the Black mass of South Africa."⁵²¹ But the official opposition in the House of Representatives backed the Bill because "12 members of the Qwaqwa legislative assembly made an earnest appeal to the three Houses of Parliament" and it was supported by the ruling Dikwankwentla Party, which had received 99.3 percent of the vote (in a 1985 poll of 64,000).⁵²²

A Nationalist explained that the Supreme Court had "made its decision . . . bound by old Acts based on the argument that ethnicity was the sole determinant." The Government was trying to "bring in other factors like a geographic area which could be administered in a neat and proper way." He feared that the forthcoming Appellate Division judgment "could create a large degree of legal uncertainty."⁵²³ The PFP opposed the bill because it sought "to make it easier for the Government to incorporate land . . . to reverse court decisions which had prevented previous incorporations . . . [and] to prevent further court challenges to proposed incorporations." "[I]f one talks

about administrative chaos and legal chaos in an area the real culprit is not what the courts have done . . . [but] the incorporation itself." It deplored the fact that "no guidelines are laid down as to the circumstances in which the State President will exercise the power which is given to him. . . ." ⁵²⁴

J T Delpont, a Nationalist backbencher, explained that the legislation was necessary because "at present there are no provisos that the State President has to take into account. If this is not defined in an Act, a court cannot judge merely on the basis of some or other vague feeling of what is just or fair." Peter Gastrow interjected that he was hypocritical. Delpont complained that the DP "always oppose" such bills. He acknowledged forthrightly that "the legislation says the decision that has to be taken is a political one . . . [and] we cannot expect the courts to become involved in political decisions. . . ." This provoked Gastrow again: "Hypocrites! To hell with the courts! That is exactly what you are saying." He was ordered to withdraw the statement. ⁵²⁵ Another Nationalist added that the homelands into which territory would be incorporated had accepted the bill, which sought "to make the self-governing states more administrable." ⁵²⁶

A DP member of the House of Delegates wondered "what on earth has happened to our White Afrikaners. They used to be a God-fearing, law-abiding people. Now they want to be as indecent as Henry VIII was." When the Pope refused him an annulment he "changed the law. He took his country away from the jurisdiction of the church. Here we have the indecency and immorality of the NP who want to subvert a Supreme Court judgment. That is utterly and thoroughly disgusting. . . . That is subversion of the law." He invoked Lord Acton's phrase about power corrupting, adding "let us never forget that Hitler was elected chancellor of Germany." ⁵²⁷ A Labour Party MP reiterated: "we do not believe in the concept of consolidation at all . . . [which] is simply directed towards preparing homelands or self-governing territories for independence." "Why are places like Bloemfontein, East London, King William's Town and even Durban itself not even considered when it comes to the consolidation of homelands?" ⁵²⁸

Peter Gastrow declared "the real reason behind" the bill, "namely to enable the hon State President to do what he wants without having the irritation of the courts to deal with." The bill "is responsible for deliberately undermining the standing of our courts. . . . It is a vote of no confidence in our courts." That was why he had used the word "skynheilig" (hypocritical). Adding Botshabelo to QwaQwa 270 km away "makes absolute nonsense of the concept of consolidation." Whatever the vote for the ruling party of QwaQwa, the 600 000 people of Botshabelo had not been consulted. "Why has there not been a referendum?" "The hon the State President now has the power to do what he likes. We can shunt those Blacks around as much as we like. We ignore and circumvent the court." A 1985 HSRC survey found that the legitimacy of the judiciary was in crisis. "The status of our judges is not the same as it was 10, 20 or 30 years ago." "By those who are relocated our judiciary is considered to be an arm of the apartheid state." ⁵²⁹

Deputy Minister of Constitutional Development and Planning Roelf Meyer castigated Gastrow for "the poorest [behaviour] I have seen for a long time in this Chamber, and even in public." The bill was necessary because of the "conflicting judgments": the Moutse court had made ethnicity the decisive factor, while the Botshabelo court had emphasized "the normal course of development." This showed that "the court finds itself in an uncomfortable situation." He said this "with all due respect to the court . . . this legislation [the National States Constitution Act] is apparently inadequate as far as its capacity for interpretation is concerned." The primary purpose of the Bill was to "create legal certainty" so that "if ever this matter should . . . come before the court, there will at least be a clearly demonstrated basis on which the court will be able to pass judgment." He deplored the "undertone of disrespect with regard to the self-governing territories" and their "right . . . to take decisions for themselves in respect of matters such as these." He denied that the Bill "was based on contempt of the courts" and insisted there had been no "real upheaval in Botshabelo" following incorporation.⁵³⁰

The only PFP amendment accepted by the committee was the deletion of the clause ousting courts from passing on the validity of incorporation proclamations. "This followed an outcry from within and without South Africa against the courts losing their competence to inquire. . . . certain embassies made representations to the Government on this issue. Within South Africa there were lawyers, pressure groups from commerce and industry and many others. . . ."⁵³¹ The House of Assembly passed the Bill 113-20. But the House of Delegates defeated it, and the House of Representatives refused to act.⁵³² The Government did not take it to the President's Council.

In August the police charged Pupsey Sebogodi with murder. South African Police arrested and handed over dissidents to homeland police. Threatened with an application for an urgent interdict, both police forces agreed to respect the right of detainees to remain silent, allow them access to lawyers, and not extradict or assault villagers.

A week after de Klerk's February 1990 speech legalizing the ANC and other organizations and promising imminent release of Mandela, Peter Soal reminded Parliament of the plight of those forcibly removed or incorporated: Moutse, Mathopestad, Magopa, Driefontein, Braklaagte, Leeuwfontein, Botshabelo and Peelton. He planned to present the State President with a petition containing 70,000 signatures.⁵³³ Three months later Deputy Minister of Education and Development Aid P G Marais announced plans to purchase additional farms to continue the process of consolidation. Labour Party MP J Douw found this "astounding" and asked if the white farmers in Rust der Winter might be allowed to buy back their land. Peter Soal welcomed van der Merwe's promise that land would not be incorporated into the homelands without agreement by the communities but reminded him of the pending cases concerning Braklaagte and Leeuwfontein.⁵³⁴ Van der Merwe replied to Douw:

Purchasing land and handing it over to Black people is, in fact, not only part of a political process of consolidation, but also part of a process in terms of which more means of production are being made available to Black people and more living space is being created for them. . . . [It] is different to the incorporation of that land into the area of jurisdiction of one of the Black territories. The one will therefore not necessarily lead to the other.⁵³⁵

Repression increased in Braklaagte after November 1990. Although Bophuthatswana had never banned the ANC, its police detained and assaulted ANC organizers. A vigilante group calling itself Inkatha also kidnapped, assaulted, and destroyed property. In January 1991 arrests and assaults increased and several were killed, forcing thousands to flee. By the end of the month 5-6000 of the original 9000 residents had taken refuge in Ikagaleng township, Zeerust.⁵³⁶ Although Edwin Mokitlane was shot and wounded, they planned to return in July 1991.⁵³⁷

The appeal was argued on 2 May 1991 on much the same grounds as the original case: the State President abused or exceeded his discretion by reaching a fixed decision in 1984 or 1985, before he had legislative authority to do so, and failed to exercise discretion once he was granted that authority in 1986. The Appellate Division dismissed the appeal three weeks later. Bophuthatswana was created and expanded by legislation. In 1980 the Borders of Particular States Extension Act authorized the State President to transfer land to homelands, but Bophuthatswana was omitted from the schedule. The 1986 amendment added Braklaagte and Leeuwfontein to the schedule. The applicant's objections to incorporation were "manifestly unsound," based on a "fallacy," and "devoid of real substance."

In principle nothing precluded the Government from abandoning or altering its 'final decision'. Moreover, there was no nexus between the Government's 'final decision' and the statutory discretion which vested in the State President on 30 April 1987. There is nothing on record to indicate that the State President considered his statutory discretion to have been fettered by the Government's 'final decision' on 15 October 1984.

All the earlier acts—expropriation of the white farms, the "inter-State" agreement with Bophuthatswana—were essential preparations. "The factual position is that the incorporation . . . was preceded by the exercise of the State President's statutory discretion between the meeting of 15 December 1988 and the signing by him of the Proclamation on 20 December 1988." The court affirmed its belief in "the bona fides of Minister Viljoen."

[I]t is abundantly clear . . . that the State President and Minister Viljoen did not blindly adhere to any previous decisions taken by the Government. . . . the very fact that the meeting of 15 December 1988 was held to enable representations to be made on behalf of the Braklaagte

community . . . and the careful consideration thereafter given to the Memorandum and arguments advanced at the meeting as stated by Minister Viljoen, belie the submission that the State President had failed to apply his mind to the relevant issue.

Despite the Supreme Court rejection of Braklaagte's application in March 1989, Leeuwfontein also challenged its incorporation (effective 1 January) in August of that year.⁵³⁸ The applicant was Nkgokoloane Dadelik Majafa, the senior elder, who claimed to be de facto chief of the 15,000-member Bahurutshe ba ga Moilwa. Chief Moswana David Moilwa, his half-brother, was 74 years old, sick, and unable to bring the application himself and therefore had deputized Majafa at meetings of elders and the entire tribe in January and May. (Genealogy was rhetorically central to this case. In 1957 the government had deposed Abram Moilwa as chief of the Bafurutshe in Dinokana village for failure to make women carry passes. When the Bantu Authority was established two years later, Lucas Mangope was put in charge. He told the Minister of Bantu Affairs: "lead us and we shall try to crawl.")⁵³⁹

The tribe had bought the farm in 1906 and developed a strong infrastructure of schools, churches, shops, and a clinic. When the government threatened to remove them to Driefontein in the late 1950s they secured a temporary respite through a court application. The farm was expropriated in 1965. In 1975 Parliament approved another plan to remove them to Bergvliet, though it was never executed. When the Commission for Cooperation and Development took evidence in Zeerust in August 1983 white farmers were personally invited to appear and the Bophuthatswana government was informed, but tribal leaders were not notified. Although the Commission recommended in 1984 that both Leeuwfontein and Braklaagte remain within South Africa, the Director General ignored the advice in his summary for Viljoen in August 1987. After the decision for incorporation had been made, South Africa sought to generate support for it through its "embassy" in Mmabatho in September 1988, but of the 12 people who endorsed incorporation, 11 had no connection with the tribe and the last lived in Bophuthatswana.

The community subtly sought to distance itself from Braklaagte, arguing that the government had never consulted Leeuwfontein, which did not participate in or even know about the meeting of 15 December 1988. Majafa detailed disputes over chieftainship dating back to 1906 as the basis for the tribe's rejection of the chief imposed by Bophuthatswana. "The tribe has a long history of roots within South Africa. It perpetuates its traditions, its laws and its values from generation to generation, and it deeply cherishes its ancestral roots in this country and its duty to bequeath these to future generations."

In addition to the usual arguments against incorporation, he narrated recent acts of oppression. In March Bophuthatswana police had confronted a group of children, ordered them to choose between the homeland and South Africa, and beat those who expressed loyalty to the latter. On 19 April nearly 4000 residents fled police violence,

taking refuge at Kleinfontein, an adjacent white farm, and returning home three days later only after a pledge of police restraint. On 5 May the South African Ambassador to Bophuthatswana, Dr Kotze, lectured them for ten minutes, reminding them that they were now "children of Bophuthatswana." Their attorneys complained to the Ministry of Foreign Affairs about Kotze's "patronizing attitude." The community then decided to oppose incorporation. Following another confrontation with the police on 15 May, youths again fled to Kleinfontein. This time the South African Police handed them over to the homeland police, who teargassed them in vans and arrested 131. Their attorneys were denied access for three days; eventually 125 were released without charge.

On 19 May President Mangope addressed a meeting, which security forces made 150 residents attend. He warned them not to retain attorneys, whom he had not invited to the meeting. (However, a black attorney sitting in the front row secretly recorded the speech.)

Beware that Bophuthatswana is like a prickly pear. . . . Bophuthatswana is very tasty, but it is also dangerous. I warn you strongly not to abuse me. I am not your dustbin. Do not play games on me. If you do I will prick you and pierce you like a prickly pear. . . . [A]lthough Bophuthatswana is a very peaceful and interesting country, we do have laws in Bophuthatswana. I shall start by informing you that I have heard that you do not want to see my police force in this place. Know that I actually love them. I love them for carrying out my instructions. They are the ones who see to it that all people of Bophuthatswana obey the laws to the letter. I am going to order them to come to this place. They will see to it that there is order in this place. . . . Even if you engage the services of attorneys you will not accomplish your wishes. I am not afraid of Johannesburg attorneys or any attorneys.⁵⁴⁰

On Saturday, 1 July, members of both communities opposed to incorporation met at the Braklaagte football grounds. An eye witness reported:

Suddenly a Hippo and two police vans arrived. The police approached our leaders and said the meeting was illegal. The atmosphere was tense but people remained calm . . . but the hippo drove through the crowds, firing teargas and shots. The people retaliated and threw stones at the hippo and its tyres were slashed. A petrol bomb was hurled at it. From there we all ran in different directions but from far I only saw black smoke as the Hippo was slowly driving out the football grounds.

The five police inside the hippo burned to death, and four others were hacked to death. Two civilians died at the time, and police later killed Moretsela Mafora, 65, when they stopped a bus at a roadblock and beat all the occupants. The police charged 22 people with murder. They conducted house-to-house searches in both villages, beating people indiscriminately and arresting 34 on 6 July. Lydia Kompé, a Trac fieldworker, was detained with them.

We were taken in vans and beaten with rifle butts and kicked all over our bodies. We were driven to the Mmabatho Police Station where police from neighbouring stations and soldiers came to beat us almost the whole night. We were not given food till the next day. Even old people were beaten up. Some of the people were vomiting blood, while some had to be taken to hospital immediately upon release.

The nine police were buried in Mmabatho in the largest state funeral ever held. The bodies of Anthony Mathe and Mphake Mosimane, the two civilians killed by police, were withheld from their families. The police claimed they needed to conduct a post-mortem, but the real reason was to prevent a mass funeral in Leeuwfontein scheduled for 15 July. Threatened with an interdict application, the police promised to return the bodies. The families planned a mass funeral and invited diplomats and trade union leaders. The police then broke their promise and threatened to bury the bodies secretly, forcing the families to agree to a private funeral. Bophuthatswana banned the Black Sash and Trac.⁵⁴¹

The respondents claimed to have consulted the community, offering a number of affidavits, the most critical of which was by Chief Moswana David Moilwa (on whose behalf the applicant claimed to act). He insisted that he still performed his functions and had not appointed any substitute. When the government first threatened removal, he and the diKgosana (council of 14 elders) sought the help of Mangope, who offered incorporation into Bophuthatswana. "We were very happy to hear this." Since 1976, at the chief's request, the homeland had operated its schools and clinics. "It was public knowledge that our farm was actually under the control of the Bophuthatswana Government." He contested the genealogical pretensions of the applicant. Although his mother once lived with the chief's father, they never married. The applicant's father was her husband Piet Masebi, who was not even Tswana. The applicant lived outside Leeuwfontein for many years and presently was in Johannesburg. The chief accused the applicant and his supporters of intimidating people, forcing them to oppose incorporation or flee. The chief himself was attacked on 23 March and 29 June for supporting incorporation. Three elders offered corroborating affidavits.

Majafa filed a 151-page reply affidavit, claiming that intimidation by the Bophuthatswana police forced him to flee Leeuwfontein in July 1989. His mother had a customary marriage to Moswana David Moilwa's father (although she later bore two daughters to Masibi). The community's opposition to incorporation was attested by affidavits by the chairman and other members of the lekgotla, including seven diKgosana and four other senior representatives of kgoros in the lekgotla; they all denied that the lekgotla was ever informed about or consented to incorporation. One kgosana who supported Moilwa's affidavit had since left with his kgoro for Hartebeeslaagte. Two other affiants were not members of the lekgotla. If Moilwa met with Mangope he never reported this to the lekgotla. Majafa reasserted that he was the senior tribal elder, Morongwa Kgosi (Chief Messenger of the Chief).

The nine-page government press release on 6 June 1983 referred to scores of farms—80 in the Marico corridor alone. It called the proposals the basis for "further consultation and negotiation with organised agriculture, interested landowners [all white], and the Government of Bophuthatswana." It was directed to the Transvaal and North-Western Cape Agricultural Unions for dissemination to their affiliates and never mentioned the Commission hearings. The only newspaper reports of the press release were brief notes in *The Citizen* on 4 June and the *Rand Daily Mail* on 6 June. "It is perfectly well-known to the Respondents and officialdom who often communicate with the community in Tswana that wishes genuinely to reach us. These press reports were not meant for us. They were meant for the White farmers who were being affected by the proposals." Leeuwfontein itself was not named in newspaper reports of the August 1985 discussion between South Africa and Bophuthatswana or the subsequent Parliamentary debates then or in July 1987. Mangope could not have been representing the interests of Leeuwfontein in discussions with South Africa since he "has an obvious interest in the matter and . . . in a sense is an adversary in the situation."

Majafa insisted that the community's chief was Moswana David Moilwa not Godfrey Moilwa, whom the government claimed to have appointed on 27 August 1985, three days before Botha and Mangope met to agree on incorporation. Godfrey lived in Dinokana (Bophuthatswana), where he was chief, and never consulted the Leeuwfontein community, as a chief must.

Majafa said that after nearly 4000 people fled Leeuwfontein for Paul Stephanus van der Merwe's farm on 19 April 1989, the South African Ambassador to Bophuthatswana, Dr Kotze, visited them on 22 April. They said they feared the homeland police and asked to be policed by South Africa. Kotze said they were no longer part of South Africa. Majafa replied "a man cannot sleep with a woman if he has not proposed to her." Asked what this meant, he said they had not learned of the incorporation before 31 December. Kotze asked the District Commissioner, Bam, if this was so, and Bam replied that his office had not told them. Promised that the homeland police would cease harassment, the people returned to Leeuwfontein that day.

Majafa's reply affidavit was supported by Kanasi Kutswa, who claimed to be the most senior kgosana after Moilwa and therefore chairman of the lekgotla. He confirmed that Majafa and Moilwa were half-brothers. When the community first learned of incorporation in January 1989, Moilwa declared at a meeting of the tribe and lekgotla that he had not known of the threat and opposed it. Moilwa's house was attacked by youths in March, perhaps because they had been harassed by homeland police and believed Moilwa was complaisant or even complicit. "The extent of the tribe's opposition to incorporation is illustrated by the fact that our schools have been boycotted for many months while virtually all the pensioners have refused to accept pensions. . . ." Ten other kgosana filed supporting affidavits.

Paul Stephanus van der Merwe, whose farm bordered both Leeuwfontein and Bophuthatswana, agreed that the overwhelming majority of the community opposed incorporation, which had produced absenteeism by the community members he

employed. On 19 April some 3600 residents fled to his farm because homeland police were shooting. The next day SAP Capt Smith told him to charge the refugees with trespass, but he refused. He corroborated Majafa's account of the 22 April meeting with Dr Kotze. Despite the assurances of the Bophuthatswana police, they shot at residents again on 15 May, causing 500 to flee to his farm. This happened a third time on 1 July, when Bophuthatswana military helicopters fired on people.

Michael Wilhelm Prinsloo, professor of indigenous law at the Rand Afrikaans University, testified that Leeuwfontein and Braklaagte were independent from the tribe based at Dinokana. The Leeuwfontein chief was Moswana David Moilwa, not Godfrey Moilwa. But the grundnorm of Tswana politics was: "a chief is a chief through his tribe and a tribe is a tribe through its chief"; the chief must have the concurrence of the whole tribe with respect to major issues. The case was scheduled for oral evidence in August 1991. Grand apartheid unravelled before it could be heard.

XVI. THE IRONIES OF TRANSITION

The people of Moutse had been united by the threat of incorporation into KwaNdebele. Once this faded, serious internal divisions emerged. Godfrey Mathebe, a businessman and former Lebowa MP, sought reincorporation into Lebowa. At a meeting of more than 3000 people at Simpupuru showgrounds in April 1989, Chief Gibson Tlokwe Mathebe, plaintiff in the successful lawsuit, supported this view. But the Moutse Civic Association and the Federation of Moutse Youth Congresses opposed it. Isaac Ditshego of MCA mistrusted any homeland: KwaNdebele had its Mbokotho vigilantes, Lebowa had the Thari Ea Sechaba.⁵⁴² Gibson Mathebe died in July 1990, but this was concealed from 29-year-old Piet Mathebe, president of the Moutse branch of the South African Youth Congress. Although he was the hereditary chief of the Bantoane, his uncle R S Mathebe had acted as regent until 1975 and Gibson Mathebe from then until his death.⁵⁴³

In September the Parsons Commission of Inquiry began an investigation into KwaNdebele violence, although only the *Weekly Mail* and *The Star* reported its proceedings. Jabulani Mahlangu, a KwaNdebele businessman and Legislative Assembly member, testified that in July 1985 he and other businessmen were told by Mbokotho to conduct house-to-house searches in Kwaggafontein and seize boycotting pupils, who were taken to Emagezini "where they were put into a hall, stripped naked and made to run on a floor covered with wet powder-soap. In the interim they were assaulted with knobkierries and sjamboks." He was detained for alleged membership in the UDF and ANC and fled the homeland in 1988.⁵⁴⁴ Col Daniel Malan, former KwaNdebele deputy commissioner of police, described trying to stop Simon Skosana, Piet Ntuli and Majozi George Mahlangu from leading an attack on Moutse in December 1986 in which 13 Ndebele were killed (he must have meant the 1986 New Year's attack). On another occasion in 1986 he found Majozi Mahlangu armed with a 9mm pistol leading heavily armed Mbokotho in an attack on "comrades" in Tweefontein. Malan disarmed Mahlangu and reported the matter to police commissioner Col van Niekerk, who told him to return the pistol. "Later in the day six bodies of youths were found." PFP member Thomas Christian Gifillan observed the SAP disrupt the 14 May 1986 mass meeting to oppose independence.⁵⁴⁵

Former chief magistrate Ndaweni Johannes Mahlangu said that Mbokotho had "assumed all government functions in KwaNdebele. Judicial officers could no longer exercise their duties without fear of being either dismissed, or abducted and assaulted by the vigilantes." When victims of Mbokotho violence complained "the cases they reported to the police were either withdrawn or neglected as a result of the influence from Cabinet Ministers who were either involved in the torture or had observed such assaults." On 28 April 1986 police vans transported Mbokotho to Vlakraagte No 1, where they kidnapped pupils and residents and tortured them in Kwaggafontein Electrical Centre. Jacob Skosana died as a result.⁵⁴⁶ David Masango, principal of Sindawonye Secondary School, said he and his wife were kidnapped by Mbokotho on 6 December 1985 and questioned by Piet Ntuli in Emagezini about anti-government

pamphlets. He was also stripped, forced to run on a floor made slippery with water and soap powder, and beaten with knobkierries and sjamboks. The police refused to accept a complaint "because they had been instructed not to take any torture cases laid against the Cabinet." Legislative Assembly member Humphrey "Shower" Mabena told of being detained and threatened with death.⁵⁴⁷ Another KLA member, Abram Skosana, said that Piet Ntuli threatened to take away his trading license and have him beaten if he did not join Mbokotho. When he refused his shop was burned down and he was detained for nine months.

KwaNdebele Police Capt Alfred Sutton testified that Brigadier Lerm was too involved in politics and ordered that all cases involving Mbokotho be referred to senior officers, who frustrated investigation and prosecution.⁵⁴⁸ Brigadier Jakobus Johannes de Swart, of the SAP Riot Squad in Pretoria, testified that Brigadier Lerm prevented a joint SAP-KwaNdebele police force from raiding a camp of vigilantes suspected of possessing unlicensed guns. Brigadier Swart had been in a helicopter that sprayed teargas on the anti-independence demonstration on 15 May 1986, without giving prior warning. Ronnie Mahlangu, a younger brother of the paramount chief, was detained and threatened with death. When his house was firebombed he identified Brigadier Lerm among the attackers. Ms Meriam Mzizi testified about being abducted by vigilantes on April 28, 1986, stripped naked, and beaten until her arm was broken.⁵⁴⁹

In November 1989 Majosi George Mahlangu and 13 Mbokotho were charged with murder, attempted murder, arson, and assault in an attack on Waterval B on 1 June 1986. The former chief minister, now leader of the opposition Sindawonye maNdebele Party, was accused of killing Jaft Mahlangu and attempting to kill Johannes Mahlangu and Piet Manamela.⁵⁵⁰ Klaas Makhosana Mahlangu told the Parson Commission that he and his family were abducted on 19 December 1985 and later rescued by the Kwaggafontein police. When the station commander, Mr Mapane, told KwaNdebele police commissioner Brigadier van Niekerk about the incident, the latter replied "If it is Makhosana, then throw him out so that Mbokotho can deal with him." He was shot in March 1986 and taken to Philadelphia Hospital; the superintendent transferred him to Ga-Rankuwa after learning that vigilantes were waiting outside to "finish him off." He was later detained for a year.⁵⁵¹

An anonymous witness testified that Brigadier Lerm wrote speeches for Chief Minister Majosi George Mahlangu. Most Mbokotho joined the KwaNdebele police as kitskonstabels after the organization was "outlawed." Johan Daniel Visser, an advocate in the Transvaal Attorney-General's office in Pretoria, testified that false testimony had been used to ground charges against James and Cornelius Mahlangu; the witnesses later withdrew their statements, which had been coerced.⁵⁵² Sgt A J van Schalkwyk, seconded by the SAP to the KwaNdebele police as head of the Murder and Robbery Unit from September 1986 to March 1987, testified that Brigadier Lerm used the police to arrest anyone who opposed the government and the Mbokotho. Lerm ordered him to shoot anyone throwing stones at police cars and instructed his deputy, Col Kuhn, to make sure this happened.⁵⁵³ Capt. Johannes Petrus de Jager, former commander of

the Siyabuswa police, testified he had been directed by Brigadier Lerm to pursue complaints by vigilantes against comrades but not vice versa.⁵⁵⁴ Lt Cornelius Jakobus Jones, former head of riot control for the KwaNdebele police, testified that he was told by Brigadier Lerm to recruit Mbokotho as special constables. By mid-1986 that force was larger than the regular police. Kitskonstabels were armed with pump-action shotguns and R1 rifles. Majozi George Mahlangu used to accompany Lerm on police raids.⁵⁵⁵

In May 1989 the Pretoria Legal Resources Centre submitted nine volumes of written representations, documenting police support for the Mbokotho.⁵⁵⁶ The Centre supplemented this with affidavits about police violence and conditions in detention: CIS shacks without windows or running water; bucket toilets; inadequate medical attention, bedding, soap, and food; and solitary confinement.⁵⁵⁷ Much of the evidence was taken from the numerous lawsuits the Centre brought against the KwaNdebele police (for torture,⁵⁵⁸ malicious prosecution,⁵⁵⁹ failure to provide medical care to detainees,⁵⁶⁰ and interference with lawyers⁵⁶¹), against South Africa for cell conditions in police stations,⁵⁶² on behalf of members of the royal family against the KwaNdebele government,⁵⁶³ against the KwaNdebele police under Brigadier Lerm for harassing the royal family and anti-independence forces,⁵⁶⁴ and against Mbokotho⁵⁶⁵ and kitskonstabels.⁵⁶⁶

The new dispensation initiated by de Klerk's 2 February 1990 speech legalizing the ANC (and other anti-apartheid organizations) and promising the quick release of Mandela had an effect on homeland policy. The appeal from the Supreme Court's invalidation of the incorporation of Botshabelo into QwaQwa was argued on 15 February. The very day Mandela was released de Klerk signed an affidavit urging the court to consider new evidence and expressing support for the homeland system. During argument the judges suggested that the government withdraw the proclamation and issue a new one under different legislative authority. Counsel for the state offered a legalistic response: the Supreme Court had invalidated the proclamation. (What he really meant was that de Klerk would not issue another one.) On 27 February the State President acknowledged having received the "Stop Incorporation Campaign" petition two weeks earlier, signed by 43,000 people, but declared: "We cannot chop and change on issues such as this."⁵⁶⁷ On 1 March the Appellate Division dismissed the appeal. It found that the State President's intention, although unknowable, could not have been for national development and self-governance, as mandated by the National States Constitution Act. The two regions differed in ethnicity, culture, cohesion, and political development.⁵⁶⁸ Less than two weeks later Foreign Affairs Minister Roelof "Pik" Botha continued to equivocate: "It is not up to the SA Government to take steps to make possible the re-incorporation of the TBVC states in the RSA." Nevertheless, "this Government has made it clear . . . that their return to the sovereignty of the RSA is an option."⁵⁶⁹

At the beginning of March Brig Oupa Gqozo overthrew Lennox Sebe, president of Ciskei; South Africa refused Sebe's request for help. The riots that followed caused 27 deaths and 550 injuries.⁵⁷⁰ A few days later 20-50,000 people marched in Ga-

Rankuwa, demanding that Lucas Mangope resign as State President of Bophuthatswana and the homeland be reincorporated in South Africa. They set fire to government offices, cars and shops, built barricades of burning tires, and threw stones at security forces. The latter responded with gunfire, leaving at least seven dead and 450 injured. Mangope declared a state of emergency and asked South Africa for assistance.⁵⁷¹ When President de Klerk invited the leaders of the six nonindependent homelands to meet with him prior to negotiations with the ANC he persuaded only Cedric Mopedi of QwaQwa and Mangosuthu Buthelezi (ostensibly as head of Inkatha, not Chief Minister of KwaZulu). Venda President Frank Ravele declared his intent to begin discussions about rejoining South Africa; at the beginning of April he was overthrown by Col Gabriel Ramushwana, deputy chief of the Venda Defense Force, who affirmed his intention to seek reincorporation into South Africa.⁵⁷²

In his maiden speech in May 1990, Minister of Education and Development Aid C J "Stoffel" van der Merwe reiterated the Government's determination "to maintain Government structures in the self-governing territories." He also claimed that "the basic law for these areas, the National States Constitution Act . . . is geographically based and not ethnically, despite its title." Labour Party MP J Douw found this "astounding" in light of the decision by five of the six "self-governing" homelands to have the ANC represent them in negotiations with the government.⁵⁷³ The Conservative Party attacked the Government for having "effectively thwarted the independence of KwaNdebele . . . because the hon the Minister conspicuously allowed the 'comrades' to ruin independence."⁵⁷⁴

Van der Merwe replied by quoting from his speech: "The Government accepts . . . that independence is no longer considered a worthwhile option by these communities. It is therefore no longer the aim of the Central Government." He offered a revisionist history of KwaNdebele. Its first government "did in fact ask for their independence." South Africa "did not stand in their way." "It then began to emerge, however, that there was a great uneasiness amongst members of that population and there was credibility in the allegations that that was not in fact what the people wanted." Consequently, South Africa required "convincing proof that that was in fact the direction in which the KwaNdebele population wanted to move," just as South Africa itself had "consulted the voters" before declaring the Republic. "The consultation was delayed for some while." "Immediately after another government came to power [following the December 1988 election], a much more tranquil atmosphere prevailed, because that government said that it was not endeavouring to achieve independence." "Recently . . . we had another change of government, precisely in accordance with the constitutionally democratic procedures in the legislative assembly of KwaNdebele, and the new KwaNdebele government is not interested in independence either."

Having rejected "independence," however, van der Merwe insisted that "it is quite clear that in any country like South Africa, with so many different peoples, groups, languages and cultures, it would be sensible to decentralise and then probably give the various groups and regions some or other form of local self-government in

some or other federal structure." "The basic principle we are dealing with here is that as far as possible we must create specific units with homogeneous interests, because that would probably allow one to have the best and most orderly system of government in those regions." These would have to be defined in terms of "geographic proximity, the economic interests of a region or language and culture, because it is quite clear that language and culture—culture in particular—play a major role."⁵⁷⁵

At the beginning of May the KwaNdebele Legislative Assembly replaced the government of Chief Minister Jonas Mabena with that of the royal family: Chief Minister James Mahlangu, Minister of Works and Water Affairs Cornelius Mahlangu, Minister of Interior and Manpower Mntungwa Solly Mahlangu, Minister of Agriculture and Environmental Affairs Joseph Shifty Mabena, Minister of Education and Culture Elias Sihaphi Masango, Minister of Justice Johannes Ndaweni Mahlangu, Minister of Health, Welfare and Pensions Humphrey Maphanga Mabena, and Minister of Finance Spoedwel Veli Mahlangu. The new Chief Minister promptly declared: "We rejected independence and will strive for a new SA. We see ourselves not as part of SA but as South African."⁵⁷⁶ Yet in July J B Sibanyoni was detained a day after consulting with two clients seeking to sue the KwaNdebele police.⁵⁷⁷ In August 1990 James Mahlangu told 2,500 residents of Ekangala that KwaNdebele was working with Lebowa, kaNgwane, Gazankulu and QwaQwa and the ANC to end the homelands.⁵⁷⁸ In November KwaNdebele paid R205,000 to settle claims for wrongful arrest and torture by four Moutse men unlawfully detained and tortured in 1987.⁵⁷⁹

In February 1991, following two attempted coups, Ciskei (one of the four "independent" homelands) agreed that South Africa would appoint four of its cabinet ministers (finance and state administration; transport, public works and agriculture; justice; economics affairs) as the first step toward reincorporation.⁵⁸⁰ But though the 1991 White Paper on Land Reform declared an end to the incorporation of land into the homelands, the South African government had quietly transferred another three million hectares in March 1992.⁵⁸¹ The following November the government announced plans to transfer 52,000 ha to QwaQwa and 500,000 ha to KwaZulu.⁵⁸² While negotiations at the World Trade Centre were moving toward a democratic election, the Government tabled two bills in June 1993. The Regulation of Joint Executive Action Regarding Certain Land Bill would have transferred a million hectares from the South African Development Trust to the homelands (primarily KwaZulu); and the blandly un-descriptive Joint Administration of Certain Matters Bill would ensure that homeland administration could not be disbanded or integrated "without the concurrence of the government of the self-governing territory concerned."⁵⁸³ In September South Africa took over Lebowa's financial affairs, personnel matters, security, administration, pensions, and tender board, although Nelson Ramodike claimed he still governed.⁵⁸⁴ And just before the April 1994 election de Klerk secretly approved the kwaZulu Ingonyama Trust Act, passed by the kwaZulu Legislative Assembly, transferring three million hectares of land to King Goodwill Zwelithini, thereby removing virtually all state property in the homeland from control by the central government (and thus availability for redistribution by the anticipated ANC regime). It was rumored that this was the price of Inkatha Freedom Party participation in the election.⁵⁸⁵

As the white government and black homelands converged in rejecting grand apartheid, right-wing whites embraced it, seeking a "volkstaat" for themselves.⁵⁸⁶ Some 2000 sought to stop the State President from speaking in Ventersdorp on 9 August 1991. Police and demonstrators exchanged gunfire for three hours, leaving seven police wounded, three seriously. Conservative Party leader Andries Treurnicht accused de Klerk of "extreme provocation" in coming to a town containing the AWB headquarters despite "all the warnings that you were not welcome."⁵⁸⁷ In May 1993 the government tabled the Revocation and Assignment of Powers of Self-Governing Territories Bill, which would transfer to the state president all the authority of the non-independent homelands.⁵⁸⁸

As the first democratic election approached, Bophuthatswana remained the only homeland resisting reincorporation. In March 1994 it was roiled by strikes, stayaways and demonstrations. On 10 March Mangope fled Mmabatho by helicopter as Bop police (his only remaining supporters) joined the rest of the civil service in walking out. In one of the many ironies of "transition," several thousand armed right-wing whites from the Afrikaner Volksfront led by former Army Chief of Staff Gen. Constand Viljoen invaded the homeland to defend its "independence." (Constand's brother Abraham had led the Rust der Winter farmers opposing KwaNdebele "consolidation.") When Mangope finally agreed to participate in the election, South Africa despatched troops to put down the white vigilantes. They were greeted as liberators by homeland residents. At least 24 people were killed (including three white vigilantes) and more than 140 wounded. The right wing was seriously discredited in the subsequent national election.⁵⁸⁹ Ten days later Ciskei police overthrew Brig Oupa Gqozo and invited in South Africa troops.⁵⁹⁰

The election rendered Cornelius Mahlangu, now King Mayisha II, jobless as a result of the elimination of KwaNdebele. "We think a royal budget from the central Government would be appropriate," he said.⁵⁹¹ By contrast, Peter Skosana, rebellious son of the former chief minister Simon Skosana, was now Minister of Arts and Culture in the Pretoria-Witwatersrand-Vereeniging provincial government.⁵⁹²

XVII. ANALYSIS

The ultimate goal of grand apartheid was to divide South Africa into a white nation dominating ten subordinate black statelets, which would provide labor and care for those unable to work. The government began by physically removing blacks from land (so-called "black spots"), which they had owned and occupied for generations—Mogopa is a prime example (see that monograph). But in 1983, acknowledging the growing political cost of such confrontations, the government declared an end to "forced removals." (There also incurred a material cost estimated at R10 000 a family in 1987.) Government next turned to the strategy of disestablishment, denying Oukasie residents basic services in order to make them move from Brits to Lethlabile, next to Bophuthatswana (see that monograph). But this, too, failed. Incorporation seemed the ideal solution: no one moved; services were not terminated—indeed, they might be expanded. There was nothing for reporters to describe or television cameras to record. By the stroke of a pen Blacks lost their South African citizenship and became subjects of a homeland. The black victims of such legalism had to expose its inherent violence by suffering the abuses of homeland tyranny. (Because incorporation was easier to effect than physical removal, however, it also was easier to reverse.)

South Africa had a second goal as well: persuading the six "self-governing homelands" to accept "independence." None had been willing to do so since Ciskei became "independent" in 1981. KwaNdebele seemed the only possible candidate. Aware of the leverage it enjoyed, that homeland kept upping the ante: not just the usual army, independence stadium, casino, and perquisites for its corrupt rulers but also Moutse—a prosperous neighbor with excellent infrastructure. Thus, the interests of South Africa and the KwaNdebele leadership seemed to converge in the incorporation of Moutse.

South Africa used the homelands for another purpose: to perform its dirty work—a classic instance of what Everett Hughes called the moral division of labor.⁵⁹³ Autocratic, often vicious homeland leaders controlled their black masses, while South Africa proclaimed its own fidelity to the rule of law.⁵⁹⁴ South Africa not only kept its hands clean (at least in its own eyes) but also could point to lawlessness in the homelands as further evidence that Blacks were unprepared for democracy or political responsibility. Just as South Africa never tired of denouncing the political and economic abuses elsewhere in sub-Saharan Africa (one-party and military rule, an unfree press, inefficient state enterprises, and corruption), so now it could point a finger at equally egregious examples closer to home. (Necklacing and people's courts in the townships performed the same function of discrediting the political demands of urban Blacks—see the monograph on the Alexandra treason trial.) The white minority could not be expected to submit to black majority rule if this was the form it took. Homelands engaged in economic exploitation as well as surrogate political domination, as their leaders and supporters traded fealty to South Africa for lucrative business monopolies, such as liquor and other retail licenses and taxi concessions. Some of those leaders sought to distance themselves from political violence by privatizing it, through the

institution of vigilantes. The South African and KwaNdebele Police clearly tolerated Mbokotho, many of whose members became kitskonstabels; they protected Mbokotho against retaliation and may even have participated in raids; they certainly refused to investigate complaints brought against Mbokotho and sometimes arrested complainants. South Africa covertly supported vigilantism in every homeland—most notably Inkatha in KwaZulu. It even tried to create a Xhosa parallel in Ciskei.⁵⁹⁵

But this strategy of delegation carried considerable risks. For it to be credible, the homeland governments had to appear autonomous. Appearance might become reality, however (just as the "Coloured" and Indian Houses of Parliament could refuse to rubber stamp the white government's actions). Half the homelands refused even to contemplate independence. For all of his sins, Buthelezi was adamant that kwaZulu—by far the largest homeland—remain part of South Africa. Lebowa objected to the excision of Moutse, even suing South Africa and expelling its Commissioner General. As Chief Minister of KwaNdebele, Simon Skosana sometimes showed discomfiting signs of real independence, also expelling the South African Commissioner General and dismissing Police Commissioner van Niekerk (who had been seconded from the SAP). When South Africa sought to reassert control over van Niekerk's successor Lerm, he simply threatened to resign from the SAP, thereby removing himself from central government authority.

Delegation created another problem. Since homeland leaders have constant contact with their South African bosses, they are supposed to avoid direct involvement with illegality, which can contaminate the hand manipulating the puppet strings. (Just as whites used black puppets, so the latter employed white thugs like Lerm.) Peter Soal demanded to know "who is responsible for the actions of the Mbogoto . . . for the detention of Prince James and Prince Cornelius Mahlangu. . . ?" KwaNdebele's rulers failed to preserve enough distance. Chief Minister Simon Skosana, Interior Minister Piet Ntuli, Culture and Information Minister and Ekangala strongman F K Mahlangu, and Skosana's successor Majozi George Mahlangu were directly and deeply involved in violence against their own people and especially against Moutse residents. They founded and directed Mbokotho. Hundreds of eye-witnesses corroborated their participation in the January 1986 mass kidnapping and torture. Skosana even boasted about Mbokotho violence. Yet the Transvaal Attorney-General did not prosecute them—and could not for fear they would implicate his own government. These men may have displayed such crudity because they lacked education, traditional warrants of authority, and charisma and were dependent on South African security forces. Whatever the reasons, the result was indiscriminate violence and lawlessness. What should have been an argument against giving Blacks national political power became an argument against giving KwaNdebele independence.

The South African government advanced a number of justifications for incorporation and independence. The first was consent. Like all propaganda, this contained a core of truth. The South African government was able to corrupt leaders like Simon Skosana and George Mahlangu into accepting independence. It bought off Lebowa's opposition to incorporation (at least temporarily) by offering additional land

and development aid. Lebowa could not demand a referendum in Moutse without drawing attention to its own refusal to hold a referendum in territories it had incorporated over the opposition of residents. Because South Africa had created the homeland governments to express black political aspirations it refused to look behind those governments to ascertain the wishes of their citizens. Bophuthatswana represented all Tswana, even those outside the homeland. The KwaNdebele Legislative Assembly represented all residents—although more than three-fourths of its members had been appointed and the rest elected by just 600 male voters. Furthermore, acquiescence by the Legislative Assembly in the decisions of the Chief Minister may have represented deference to a superior rather than consensus. Even Botha eventually acknowledged that the Legislative Assembly could not speak for the homeland and had to produce further evidence of popular support.

Divisions within both Moutse and KwaNdebele fed the charade of consent. Some Ndebele living in Moutse undoubtedly favored incorporation, hoping for preferential treatment in the grant of land, licenses, schooling, pensions, etc. Some KwaNdebele residents favored independence, attracted by bread and circuses (development aid, the sports stadium) as well as the illusion of autonomy. A Nationalist explained that "one cannot, after all, obtain complete unanimity among [the] 15 000 people" of Braklaagte and Leeuwfontein. Yet opponents were able to turn the government's divide and conquer strategy against it. Consent was imperfect because of divisions between Moutse and KwaNdebele, Lebowa and KwaNdebele, and especially within KwaNdebele—between the royal family and the homeland government and Mbokotho. Neither South Africa nor the homeland governments saw anything wrong with using coercion to produce "consent." Indeed, both South Africa and Bophuthatswana portrayed themselves as merciful and solicitous for choosing to incorporate Braklaagte and Leeuwfontein into the homeland rather than forcibly remove the residents.

Consent also was equated with "choice." Moutse teachers could "choose" to work in KwaNdebele or accept transfers elsewhere at the whim of the Department of Education and Training. Moutse residents unhappy about incorporation could move to Immerpan/Saliesloot; indeed, security forces protected from "intimidation" those who "chose" to move. The government also forced them to sign forms saying they agreed to move! No matter that their choice was "a result of a certain amount of unrest that arose in the area where they were living." Since the South African government had declared the end of "forced removals," this removal, by definition, was voluntary. Finally, those who would not "consent" to incorporation or independence were simply being stubborn and uncooperative, fractious children who did not know what was good for them. (Perhaps that was the real meaning of the Orwellian title of the "Department of Co-operation and Development," which regulated blacks: you co-operate and we develop.) Opponents of incorporation and independence had to suffer to expose government coercion. Only in South Africa did oppressed people die in the struggle *against* independence.

When its claim of consent became untenable the government's fallback position was "consultation," which somehow became an equivalent. The government could not

elicit consent from its black subjects when they were unreasonable or irresponsible. Indeed, Ben Wilkens conceded that everyone knew the Moutse people objected to incorporation. But the government performed its paternalistic duty to consult them. Because the Deputy Minister of Co-operation and Development could find no "ready-made definition of 'consultation' in any dictionary" he asserted that it "cannot be defined in absolute terms." "If an open invitation is addressed to someone and he has the opportunity to appear before the commission and he does not make use of that opportunity . . . [he] cannot complain, after the process has been completed, that the people were not consulted." "Anyone who works with the hon the State President knows that he is someone who consults more extensively than any head of government has ever done before in the entire history of South Africa."

Of course, Government controlled the timing and agenda and promised further consultation to stave off resistance or threats of legal action, allowing it time to act secretly. Consultation certainly did not obligate the government to modify its plans. Indeed, it sometimes announced its determination to proceed *before* consulting. And if it had failed to consult, it retroactively passed legislation mandating that any necessary consultation be deemed to have occurred.

A third set of arguments took the form of ipse dixits or bureaucratic excuses. Confronted with a child who persists in asking "why must I do this," an impatient parent often responds: "because I say so." Begged to reconsider his decision to incorporate Moutse into KwaNdebele, P W Botha replied: I'm a hard man, I stick to my guns. You should know better than to ask *me* to change my mind. The government reified its own deliberative process and then claimed to be constrained by its own actions. Having created homelands, installed puppets, and foisted "treaties" on them, South Africa pretended to be bound by international law (although no other country recognized the existence of its progeny). As in Mogopa in 1983, a decision once made could not be reconsidered. The government justified its inflexibility by invoking the length of time it had invested in "consulting" with blacks and seeking their "consent." The older the decision the better it was and hence the more irreversible. This argument shaded into bureaucratic excuses and buck passing. If the decision was old, earlier administrations were responsible. Ministers (and, a fortiori, civil servants) blamed the Cabinet, while the executive blamed the legislature.

Finally, the government sought to portray the conflict as a power struggle among blacks rather than a liberation struggle against whites. Black-on-black violence was rife: necklacing in the townships, fights in mining compounds, arson and intimidation in rural areas. Sometimes it was tribal. Sometimes it was political competition among the ANC, Inkatha, the PAC, and Azapo. And sometimes it was a non-ideological struggle for power. The government characterized Mogopa as a conflict between "brothers" over the headmanship. Lucas Mangope portrayed the controversy over Braklaagte as a power struggle between Pupsey Sebogodi and Edwin Moiloa. South Africa dismissed the resistance of Leeuwfontein as a challenge by Nkgokoloane Dadelik Majafa to the chieftainship of Moswana David Moilwa. Moutse was the unfortunate object of a

squabble between Lebowa and KwaNdebele (children fighting over a toy, or dogs over a bone).

Again, there was some truth in this—enough, apparently, to convince reporters on the *Eastern Province Herald*, *The Times* (London), and *The New York Times*. Each homeland had some claim to the district. Lebowa was the North Sotho homeland, to which Moutse (half North Sotho) had previously belonged. KwaNdebele was adjacent and had ties to the Ndebele minority. Similarly, the fight over KwaNdebele independence did pit the Ndzundza royal house against Simon Skosana, his Cabinet, and the Legislative Assembly. Urban blacks with more formal education and involvement in wage labor often were contemptuous of rural, less educated, more traditional blacks.

This characterization served several purposes. It shifted responsibility for conflict from the white South African government to the black homeland governments, further demonstrating their political immaturity. And the failure of black governments to resolve the issue between them "compelled" the white government to act unilaterally. What South Africa sought to conceal (with considerable success) was its pivotal role in constructing, exacerbating and manipulating the very tribalism that fueled this conflict: breaking up heterogeneous communities containing blacks from different regions, cultures, and languages living together peacefully; intensifying—even constructing—ethnicity through the creation of homelands; and fostering ethnic competition for government benefits (land, licenses, transfer payments, education).

The South African government monopolized political power. It tolerated but ignored the tiny Parliamentary opposition and the mildly disapproving English press. Therefore, those resisting its policies had no alternative but to appeal to the judiciary. In doing so they tested South Africa's claim to respect the rule of law. That boast was not entirely empty. Executive power, though extraordinarily broad, was not unlimited; it derived from and was defined by legislation. Although it was difficult to challenge either in the name of a grundnorm (natural law or written constitution—South Africa rewrote the latter as casually as other countries legislate), courts could review executive action under conventional administrative law doctrines—as *ultra vires*, unreasonable, discriminatory, etc. In a landmark case the judiciary invalidated the excision of Ingwavuma from KwaZulu (in preparation for its incorporation into Swaziland). This offered some reason to hope it would do the same in response to Lebowa's challenge to the excision of Moutse and its incorporation into KwaNdebele.

Since administrative law placed no restraints on Parliamentary supremacy, however, the rule of law remained a purely formal doctrine. Frustrated by the limited discretion conferred by the National States Constitution Act, which led to invalidation of the incorporations of Moutse and QwaQwa, the government relied instead on the Borders of Particular States Extension Act, which imposed no annoying requirement that it justify its decision—and was rewarded by the Appellate Division's May 1991 decision confirming the incorporation of Braklaagte into Bophuthatswana. Even had it lost, the State President could have "deliberated" for a day and reissued the proclamation effecting incorporation. Parliament could enact any law, retroactively remedy errors or

inadequacies, and even tell the courts how to interpret legislation. Like Humpty Dumpty, when Parliament used a word it meant just what Parliament chose it to mean—neither more nor less. If a court, like Alice, asked "whether you *can* make words mean so many different things," Parliament echoed Humpty Dumpty: "The question is, which is to be master—that's all."⁵⁶ If the consultation with Lebowa necessary to excise Moutse had been neglected, Parliament could legislate that the excision be "deemed to have been preceded by consultation." If Moutse still was part of Lebowa despite the excision, Parliament could legislate that it had *never* been part. South African legislators, like Soviet historians and Big Brother in George Orwell's "1984," blithely rewrote the past. Apartheid politics resembled a murder mystery in which everyone but the victim's loyal friend insists that the victim never existed. South Africa seemed to have committed the perfect crime.

Legal formalism was a two-edged sword, which could be invoked *by* the state as well as *against* it. I noted above that lack of formal political power usually compelled the black opposition to prefer the judicial arena to Parliament. Moutse, however, decided to appeal to the recently created tricameral legislature, where it hoped to embarrass the government and win support in the "Coloured" and Indian houses. The government stymied this attempt to enter the political arena by invoking the opposition's usual hope, "judicial autonomy." Lebowa's lawsuit rendered the matter "sub *judice*." Such deference was more than a little hypocritical, given the government's readiness to overturn judicial decisions through retroactive legislation. Heads I win, tails you lose. Yet the "Coloured" and Indian Houses followed the white in accepting the legalistic argument.

Legal formalism was an uncertain ally in other respects as well. The KwaNdebele Legislative Assembly initially refused to discuss independence in August 1986—although the issue obsessed the homeland—because it was not on the agenda. A year later that same body disregarded the unanimous August 1986 decision against independence on the same ground and because no formal vote had been taken. By contrast, a court invalidated the dismissal of Solly Mahlangu as Legislative Assembly Speaker on the ground of lack of notice—potentially invalidating the August 1987 declaration in favor of independence. Yet courts found it just as easy to reject legalistic arguments as to accept them: both the Supreme Court and the Appellate Division summarily dismissed Lebowa's challenge to the excision of Moutse, disparaging an argument based on the use of brackets rather than commas or semi-colons: "Punctuation is a matter to which little regard is had in the interpretation of statutes." Legal form did not seriously bind governmental power—witness the detentions under the Internal Security Act or Emergency regulations. And some of the legal system's most important decisions were virtually unconstrained by law. The Transvaal Attorney General long refused to prosecute KwaNdebele leaders like Simon Skosana, Piet Ntuli, or George Mahlangu for notorious kidnappings, murders, and torture. When he finally did so, he charged only common assault, allowing them to pay derisory R50 admission of guilt fines and avoid judicial exposure. Most of the time courts failed to check executive illegality: expulsions from the KwaNdebele Legislative Assembly, interference with the

Ndzundza Tribal Authority, violations of personal freedom under the Emergency regulations, access of detainees to lawyers and doctors. When KwaNdebele prosecuted Princes James and Cornelius Mahlangu, Nano Matlatla defended them. When the homeland detained and restricted him, his lawyer threatened legal action. Did this display inextinguishable faith in law, or desperation?

When courts did review executive action, the results were highly unpredictable. Moutse lost its challenge to incorporation in the Supreme Court but won (on the same grounds) in the Appellate Division. Judge Spoelstra approved Moutse's incorporation but released anti-independence activists kidnapped by the SAP in Johannesburg and delivered to KwaNdebele, angrily condemning government illegality. The Appellate Division upheld Moutse's excision from Lebowa but invalidated its incorporation into KwaNdebele. The Supreme Court of the Orange Free State, a region notorious for its conservatism, followed the Appellate Division in invalidating the incorporation of Botshabelo into QwaQwa. Braklaagte lost its challenge to incorporation when judges found that South Africa had engaged in consultation and Viljoen had acted in good faith. James Mahlangu won a spoliation order against the KwaNdebele Chief Minister for return of the Ndzundza tribal records. Perhaps most striking, KwaNdebele women won the right to vote, relying primarily on natural law arguments (although in oral argument the women's advocate focused on a technical administrative law issue—exceeding delegated authority—while the government's counsel ranged widely across the Bible, philosophy, and feminism).

If legal formalism offered little protection from arbitrary government power, what about the coherence of ideology? The South African government usually offered reasons for its actions. Indeed, it had developed a highly elaborate rationale for apartheid. Could this be turned against it? In each of the three major confrontations—incorporation, women's suffrage, and independence—the government encountered contradictions within its ideology or between ideology and material conditions.

The government could not justify the incorporation of Moutse as a means of uniting the Ndebele minority with its homeland, KwaNdebele, without violating the right of the North Sotho majority to remain outside KwaNdebele or join its homeland, Lebowa. Ethnic self-determination inevitably deteriorated into ethnic oppression: of non-Tswana in Bophuthatswana, non-Ndebele in KwaNdebele (foreshadowing "ethnic cleansing" in what used to be Yugoslavia). Yet South Africa could not abandon the rationale of ethnic homogeneity in favor of geographic contiguity or administrative convenience without utterly betraying grand apartheid. It had justified reversing the planned incorporation of Soshanguve and Lethlabile into Bophuthatswana on the ground that both townships were multi-ethnic. (Conservatives promptly complained that "the Whites of this country . . . have to be willing to accept all and sundry.") Most other homelands were composed of non-contiguous elements, which were very inconvenient to administer. (Bophuthatswana contained multiple fragments; Botshabelo was 270 km from QwaQwa.) Apartheid's central purpose, after all, had been to divide blacks so that they no longer were a majority. Government contrasted its solicitude for "the unique

separate cultures and identities of communities" with the indifference, even contempt, of the PFP, for all its protestations of concern for blacks. Viljoen castigated Soal for referring to George Mahlangu as Idi Amin. "It just shows the kind of mentality the hon members of that party really harbour with regard to Black leaders. . . ." In the House of Representatives, the opposition UDP condemned the ruling LP for voting for the incorporation of Rust der Winter into KwaNdebele, thereby exposing its support for "geo-ethnic units." The LP lashed back that UDP opposition revealed "racism" because it was based on the belief that the land was "too high a grade" for Blacks. The UDP replied that "the whole thing is based on skin colour."

Confronted with the government's ideological flip-flops, Viljoen replied: "we cannot deal with the complexity of our situation in South Africa merely with theoretical logic. We also have to deal with realities. . . ." Although the government had decided to exclude "multi-ethnic released areas" from the homelands "it does not wish to imply that it now intends including only pure uni-ethnic communities in the self-governing areas." As late as May 1990 the Government was still promoting a federal polity whose units were based on "geographic proximity, the economic interests of a region or language and culture, because it is quite clear that language and culture—culture in particular—play a major role."

The government presented grand apartheid as a means of fostering black self-determination but refused to hold a referendum in Moutse about incorporation or compel KwaNdebele to hold one about independence. It also disregarded the wishes of one homeland (Lebowa) in favor of another (KwaNdebele). The government long had argued that ethnic heterogeneity engendered violence; the proposed incorporation certainly had that effect. Indeed, the very unrest within Moutse was "further evidence of the antipathy existing amongst different ethnic groups . . . which is a part of reality just as a lightning stroke is a part of reality." The government deplored the disruption of education by violence; yet Moutse, which had been untouched by the 1984 Vaal uprising and the 1985 Emergency, lost months of schooling following incorporation. Incorporation violated tradition; how could the North Sotho hosts who had graciously given land to their Ndebele guests now be subordinated to the latter? Government arguments for incorporation clashed with those against women voting. The latter relied on the uniqueness of Ndebele culture; but that uniqueness was an argument against uniting the North Sotho of Moutse with the South Sotho of KwaNdebele. Moutse was lucky that the Appellate Division invalidated incorporation before the Supreme Court gave women the vote; the latter decision eliminated an important (though not essential) argument.

Although many criticized the 1983 constitutional "reforms" as mere window-dressing (these were the stimulus for founding UDF, which urged blacks to boycott elections for the Houses of Representatives and Delegates), those institutional changes significantly tied the government's hands. Indeed, the Conservative Party pointed to obstructionism in the other two Houses as "a specific illustration of how dangerous the Government's power-sharing experiment is." The government created the tricameral

legislature to reconcile apartheid with "democracy" for the "Coloured" and Indian minorities (if not for the Black majority). But the Houses of Delegates and Representatives publicly opposed apartheid. There was a real danger they would criticize and vote against incorporation and independence—embarrassments the government could avoid only through transparent legalism or an appeal to the President's Council (which would expose the reforms as sham). The political cost of the latter course was high—as it had been after the Appellate Division invalidated the removal from Mogopa. The Council overrode the House of Representatives to validate KwaNdebele legislation retroactively after the government lost the women's vote case; but the government chose not to resort to the Council after both Houses rejected the bill validating KwaNdebele legislation in Moutse following the nullification of incorporation. Nor did it do so when the Houses of Delegates and Representatives failed retroactively to validate the incorporation of Botshabelo into QwaQwa.

In the women's vote case, it was the plaintiffs who initially confronted problems of ideological coherence. In the only country in the world that inscribed racial inequality in the law, how could they argue (as in Brenda Bozzolli's affidavit) that natural justice demanded sexual equality? White women in South Africa only obtained the vote in 1930; even after that date black and "coloured" women in the Cape did not share the vote with men.⁵⁹⁷ Justice Eloff acknowledged case law holding that racial discrimination was not per se unreasonable. The argument had to be that though the legislature could, and did, discriminate, government officials could not do so without explicit authority. The plaintiffs also could not mobilize a strong indigenous women's movement. Ironically, the married women plaintiffs acknowledged the patriarchal nature of black society by beginning their affidavits with a statement of their husbands' support. Yet the women were able to take advantage of the tension between tradition and modernity.

Although the first justification for homelands was self-expression by ethnically homogeneous cultures, the second was fostering a gradual evolution toward democracy. It was South Africa that overruled KwaNdebele opposition to require that 16 out of 72 members of the Legislative Assembly be elected. Ironically, the homeland successfully sought as a quid pro quo that women be excluded from voting or holding office. How could KwaNdebele pursue democracy while disenfranchising black women? If modernity does not guarantee democracy, it contains strong democratic tendencies. Local school committees played a central role in creating an educated workforce. Anomalously, Ndebele women enjoyed more democratic participation in "traditional" tribal councils than in the "modern" Legislative Assembly. The right of women to vote everywhere else in South Africa created its own contradictions: Ndebele women living in other homelands could vote there; non-Ndebele women living in KwaNdebele were denied the vote.

If South Africa reverted (inconsistently) to the goal of preserving ethnic traditions, this engendered other problems. First, the homeland government was an alien, novel institution, which could claim no traditional warrant. Second, the franchise violated KwaNdebele custom in two ways. Boys became men with full privileges when

circumcised at about 16, but they could not vote until 21. And tradition strongly respected age; it was outrageous that 21-year-old youths could vote while their mothers could not. Third, the material conditions of apartheid had seriously undermined the traditional patriarchy of the Ndebele (and other black groups). Because the white economy relied on the labor of black men but forbade them to bring their families to the cities and mines, they were absent from the homeland much of the time as labor migrants or long-distance commuters. Women, consequently, had come to play a larger, even a dominant, role in local politics. Fourth, modern urban Ndebele women were denied an important form of political participation. Finally, it was not traditional Ndebele leaders who wished to disenfranchise women but rather Simon Skosana—a discredited upstart, corrupt, violent, and dead by the time of the case. Indeed, two prominent members of the Ndzundza royal house, named as defendants by the women, turned around and championed their cause. Both sides used the rhetoric of tradition and modernity opportunistically. In challenging incorporation, Moutse invoked tradition: prior occupation of the land, seniority, cultural differences. In challenging disenfranchisement, Ndebele women invoked modernity: democracy, participation, gender equality.

Independence itself was never challenged in court because there were no legal grounds for doing so. But judicial rejection of both incorporation and the disenfranchisement of women on grounds of ideological incoherence seriously undermined the government case for independence. If the purpose was to foster black self-determination, then the government had to heed the wishes of KwaNdebele residents, who were strongly opposed to independence. South Africa could not listen to the KwaNdebele Cabinet and Legislative Assembly while disregarding all other voices. By Pretoria's own criteria, the homeland government was undemocratic and unrepresentative. It denied women the right to vote. Most members were appointed. Paradoxically, it was traditional institutions, like the Ndzundza Tribal Authority and royal house, that truly represented the people. And illegal mass meetings expressed the popular will better than the legal but illegitimate homeland government. Finally, those opposed to independence could play the strong suit of patriotism. They loved their true homeland—South Africa—and would accept no other.

The South African government was significantly constrained by its own ideology. The Appellate Division (though not the Supreme Court) felt that the logic of apartheid precluded the incorporation of Moutse into KwaNdebele. The Supreme Court could find no justification for South Africa's disenfranchisement of KwaNdebele women. Denied the carrot of Moutse and confronted by the opposition of women voters, support for independence eroded. Yet ideology, by itself, did not produce these results. The conflicts were inherently political, reflecting the changing constellation of forces in both the black communities and the white power structures.

Conflict within the black communities was unusually complex. The government sought to portray it as simple tribalism—conveniently suppressing its own role in heightening those tensions and then invoking them as a reason for excluding blacks from

national political power. As always, the lie contained a kernel of truth. The rivalry between Lebowa and KwaNdebele reflected tribal loyalties, as did Moutse's preference for the former (though by the end Moutse rejected it for South Africa). But even these polarities fluctuated. Lebowa's commitment to Moutse was always uncertain—why else did Phatudi wait more than five years to challenge the 1980 excision in court? And during the critical months before South Africa proclaimed Moutse's incorporation into KwaNdebele it appears to have bought Lebowa's acquiescence with a bribe of land and development aid.

In any case, tribes were hardly monolithic. Within both Moutse and KwaNdebele there were significant divisions between urban and rural residents, modern and traditional culture, more and less formally educated, youths and elders, women and men, businessmen and consumers, rulers and subjects. While Braklaagte's case was pending before the Appellate Division, Leeuwfontein argued that its claim was stronger—and Braklaagte's weaker—because only it had been denied notice and consultation. At the same time, traditional adversaries formed strange alliances. Pupils and teachers—often adversaries during the 1980s—united in Moutse to oppose incorporation. KwaNdebele comrades looked to traditional elders for leadership against independence. Indeed, the formation of Contralesa in September 1987 broke the government's domination of traditional leaders in other communities. Civil servants—attacked as sell-outs in other settings and even killed as collaborators—struck three times to protest independence. Some businessmen refused to deal with KwaNdebele licensing authorities (perhaps fearful of suffering consumer boycotts). Conservative rural women grew into outspoken champions of democracy. Members of the Ndzundza royal clan switched sides to join their demand for the vote. Even white farmers joined the fray, fearing disruption of their labor supply and angered by expropriation of their land. They found surprising support in the Progressive Federal Party, who insisted their reasons were not "the racist opinions which some have expressed, such as that such good land should not be given to Black people. . . ." The Conservative Party, on the other hand, championed homelands, independence, and ethnic purity long after the Nationalists had abandoned apartheid ideology for pragmatism. One Conservative had the gall to complain about "democracy utterly destroyed, I could almost say violated." Both parties were equally embarrassed to find themselves on the same side.

Within KwaNdebele, one main fault line divided the Ndzundza royal house from Skosana, his successor (George Mahlangu), and their henchmen. In this struggle, ironically, "tradition" was progressive and democratic, while "modernity" was regressive and autocratic. But even the official KwaNdebele leadership followed the prevailing political winds, shifting from pro-independence to anti, back to pro, and then back to anti, all within four years. Chance events played an important role: the successful assassination of Piet Ntuli, quickly followed by Simon Skosana's death from diabetes, slowed the momentum for independence, even though the government had no difficulty finding substitute puppets in George Mahlangu and F K Mahlangu. These divisions within KwaNdebele, fostered by the indiscriminate violence of Skosana, Ntuli, George Mahlangu, Brigadier Lerm, and Mbokotho, were critical to the defeat of

incorporation, which Moutse alone was too weak to resist. Once incorporation and independence were rejected, however, the principled fight against apartheid deteriorated into a struggle for power in a post-apartheid South Africa.

Within black communities and the national government there was constant interplay between legal and political forms. Political institutions invoked legalism to avoid tough decisions. Moutse's approach to the tricameral Parliament—a rare opportunity for disenfranchised blacks to participate in national politics—was frustrated by the House of Assembly Speaker's ruling that Lebowa's lawsuit rendered the matter *sub judice*. The KwaNdebele Legislative Assembly Speaker almost prevented debate on independence because it was not on the agenda; a year later that Assembly disregarded the earlier decision against independence on the same ground and because no formal vote had been taken; and it justified the abolition of Mbokotho not on the ground that it was evil but because it lacked a constitution and had not been approved by King Mapoch.

Political institutions themselves rested on shaky foundations. White rule, of course, was built on the crime of apartheid. The Houses of Delegates and Representatives had been elected by the small minorities of "coloured" and Indian voters who disregarded the mass boycott. The KwaNdebele Legislative Assembly was dominated by nominated members; women were excluded from serving or voting. Even this limited legitimacy was undermined by blatant manipulation: the detention of members of the royal family just before elections; the expulsion of Cornelius and Solly Mahlangu from both the government and the Assembly. The only political processes with any claim to reflect the popular will, such as mass meetings and boycotts, not only lacked legal form but often were formally illegal. Ironically, the formally undemocratic process of litigation expressed the popular will, while the formally democratic process of voting and the legislature and executive it produced lacked any democratic foundation. The pervasive, undeniable violence used to suppress opposition to incorporation and independence may have helped persuade the courts to rule against both.

Judicial decisions did possess significant legitimacy. Applicants made great sacrifices to attend oral argument, even though they understood little of the proceedings. They invested great faith in victories, denying the government's power to overturn them legislatively. Critics in all three Houses castigated the regime for betraying its oft-proclaimed commitment to the rule of law by introducing bills to reverse judicial decisions. They protested that "Parliament is being asked to legislate for a lie because we are being asked to say that there was consultation when there was not." The Government replied that such criticism revealed "a purely academic way of thinking" by someone who "is not a politician." The PFP said the Government "has had a history of riding roughshod over the decisions of appeal courts." It warned that the courts—one of the few government institutions that still enjoyed any respect—were about to lose it. "To hell with the courts"—that was what the Nationalists were saying. It was "a vote of no confidence in our courts." The Labour Party asked: "What type of an example are

we setting for those who must follow us when we are prepared to override court decisions by means of legislation?"

But the Government also invoked law to justify politics. Its explanation for the two bills validating KwaNdebele legislation after the incorporation and women's vote cases was that those judicial decisions had sown confusion; retroactive legislation was necessary to restore legal certainty! The Nationalists mobilized this cliché to justify everything: stripping Moutse of representation in the Lebowa Legislative Assembly, retroactively finding "consultation" in order "to establish security of justice." Roelf Meyer maintained that "divergent" and "retrospective" court judgements in the Moutse and Botshabelo incorporation cases had created "legal uncertainty." Because the Government needed a "clear criterion" in order to finalize consolidation the Bill allowed the State President to alter homeland boundaries whenever he deemed it expedient. Meyer had the nerve to assert that this would create "a clearly demonstrated basis on which the court will be able to pass judgment." Heunis claimed that retroactive validation of the acts of the KwaNdebele Legislative Assembly was "intended to give effect to the Supreme Court ruling" finding the Assembly illegitimate. "We are not dealing with a political issue in this Bill, but with a legal issue." This persuaded the majority National Peoples Party in the House of Delegates: "When there is no law there is lawlessness and when there is no order there is disorder." But when Roelf Meyer defended the bill retroactively validating KwaNdebele's legislation in Moutse by repeating the claim that "if we do not pass this Bill . . . we will not be abiding by the court ruling," his rationalization failed to convince anyone.

Even though the Appellate Division had invalidated the incorporation of Moutse, Viljoen took comfort in the fact that "the Supreme Court, which dealt with this case in the first instance, rejected the objection and regarded the incorporation as being valid. . . . There was consequently nothing obviously invalid or illegal in the situation. . . ." Government contended that Parliamentary supremacy *obligated* Parliament to "correct" the courts when they had "misunderstood" its intent! Doing so preserved "democracy in the hands of the people who sent us here" rather than allowing it to be usurped by "appointed people" (i.e. judges).

In the last instance, however, politics was determinative. The judiciary enjoyed some autonomy. Ideology exercised some influence. But no one doubted that the Nationalist government could work its will. It could retroactively nullify judicial decisions and routinely did so. The government tabled the Alteration of Boundaries of Self-Governing Territories Bill in 1989 to reverse the Appellate Division judgment and approve the incorporation of Moutse and Botshabelo. It used the Borders of Particular States Act to incorporate Braklaagte and Leeuwfontein into Bophuthatswana over their opposition, eliminating any meaningful judicial review. The legal formalism of Supreme Court adjudication could not conceal blatant illegal violence by the KwaNdebele government and its surrogates. George Mahlangu and his supporters never surrendered. Even after being ousted by women voting for the first time, they threatened to challenge the election in court, sought to control the nominated members, and resorted once again to police and Mbokotho violence. Yet South Africa did not succeed in incorporating

Moutse into KwaNdebele, disenfranchising KwaNdebele women, or foisting independence on the homeland. In the end, the political climate changed—partly as a result of the struggles detailed above and partly because of extraneous events, such as Botha's stroke, de Klerk's selection, and the initiatives he launched in February 1990. Sensing the new direction, all the homeland leaders (except Mangope of Bophuthatswana) hastened to reach accommodations or outright alliances with the ANC. Grand apartheid was dead even before the ANC electoral victory in April 1994.

NOTES

1. For an account of the valiant, but ultimately unsuccessful, resistance to the removal of Crossroads, see Cole (1987); Lawyers Committee for Human Rights (1987). The definitive history of removals is Platzky & Walker (1985); for an update, see Murray & O'Regan (1990).

2. GN 2106, GG 5771 (16.11.56).
3. Proc 174, GG 142 (29.12.61).
4. GN 1887, GG 2909 (30.10.70).
5. GN R 1274 (10.8.62).
6. Proc R225, GG 3666 (29.9.72).
7. McCaul (1987: 4).
8. GN 2143, GG 2217 (22.11.68).
9. McCaul (1987: 4).
10. Proc 135, GG 4337 (19.7.74).
11. McCaul (1987: 5).
12. McCaul (1987: 57).
13. Proc R871 (20.5.77).
14. GN R2021, GG 5766 (7.10.77); also Proclamations R253-255.
15. Procs R204-205, GG 6661 (14.9.79).
16. *Sunday Times* (18.11.79), quoted in McCaul (1987: 6).
17. *The Star* (2.8.84), cited in McCaul (1987: 59).
18. McCaul (1987: 59).
19. *Rand Daily Mail* 11 (29.11.82); *Sunday Express* 11 (24.7.83).
20. McCaul (1987: 6); Proc R60, GG 7499 (20.3.81).
21. *The Star* (25.2.81), quoted in McCaul (1987: 8).
22. *Sunday Times* (30.5.82), quoted in McCaul (1987: 6-7).

23. *Sowetan* (1.6.82); *Citizen* (28.5.82); *Rand Daily Mail* (15.6.82), quoted in McCaul (1987: 9).
24. McCaul (1987: 57).
25. Government of the Republic of South Africa and another v Government of KwaZulu and another, 1983 (1) SA 164(A).
26. Patrick Laurence, "Moutse—another pawn in apartheid's grand plan," *Rand Daily Mail* 11 (29.11.82).
27. McCaul (1987: 58).
28. Patrick Laurence, "Sixfold increase 'is not enough,'" *Rand Daily Mail* 4 (22.2.83).
29. *Hansard* cols. 10734-36 (P G J Koornhof) (30.6.83).
30. Jean Le May, "76 000 people forced to move: the high price of giving Lebowa's Moutse area to KwaNdebele homeland," *Sunday Express* 11 (24.7.83).
31. *Hansard* cols. 10832-32 (8.8.83).
32. *Hansard* col. 10838 (Z P le Roux) (8.8.83).
33. *Hansard* cols. 10843-48 (8.8.83).
34. *Hansard* cols. 10862-63 (P R C Rogers) (8.8.83).
35. *Hansard* cols. 10868-71 (8.8.83).
36. *Hansard* cols. 10881-83 (8.8.83) (all PFP).
37. *Hansard* cols. 10883-84 (W C Malan) (8.8.83).
38. *Hansard* cols. 10896-99 (J H Hoon) (9.8.83).
39. *Hansard* cols. 10933-42 (9.8.83).
40. *Hansard* cols. 11041-42 (10.8.83).
41. *Hansard* col. 11043 (P R C Rogers) (10.8.83).
42. *Hansard* cols. 11047-54 (10.8.83); see also Chris Freimond, "Govt move to dodge courts," *Rand Daily Mail* 1 (10.8.83).

43. *Hansard* cols. 11110-11 (11.8.83) (all the speakers were PFP).
44. *Hansard* cols. 11116-17 (Z P le Roux) (11.8.83).
45. *Hansard* cols. 11127-28 (H D K van der Merwe) (11.8.83).
46. *Hansard* cols. 11154-57 (11.8.83).
47. *Trac* (1988: 116).
48. *Rand Daily Mail* (20.6.84), quoted in McCaul (1987: 60).
49. SAIRR (1984: 504); McCaul (1987: 60-61).
50. *Hansard* col. 5005 (24.4.84).
51. *Hansard* cols. 8349-51 (7.6.84).
52. *Hansard* cols. 8359-62 (7.6.84).
53. *Hansard* cols. 8443-44 (P R C Rogers) (8.6.84).
54. *Hansard* cols. 8459-60 (A Fourie) (8.6.84).
55. *Hansard* cols. 8498-8501 (C J van der Merwe) (11.6.84).
56. *Hansard* cols. 8502-03 (N J J Olivier) (11.6.84).
57. *Hansard* col. 8533 (F Hartzenberg) (11.6.84).
58. *Hansard* cols. 8546-50 (11.6.84).
59. *Hansard* cols. 8571-72 (11.6.84).
60. *Hansard* cols. 8634-37 (R A F Swart) (12.6.84).
61. *Hansard* col. 8639 (12.6.84).
62. *Hansard* cols. 8645-46 (12.6.84).
63. *Hansard* cols. 8697-700 (12.6.84).
64. *Hansard* cols. 8700-02 (C J van der Merwe) (12.6.84).
65. *Hansard* cols. 8707-09 (12.6.84).
66. *Hansard* cols. 8753-54 (12.6.84).
67. McCaul (1987: 61).

68. SAIRR (1985: 526).
69. *Hansard Standing Committees 10-11* (2.5.84).
70. *Hansard Standing Committees 25 (Z P le Roux)* (2.5.84).
71. McCaul (1987: 9).
72. *The Star* (16.11.84), quoted in McCaul (1987: 9); *The Cape Times* 7 (13.8.86); see also SAIRR (1986: 526). Heunis later claimed that 46.5 percent of those eligible had voted. *Hansard Questions and Replies* cols. 2325-27 (Reply to P G Soal) (19.6.86); McCaul (1987: 10).
73. McCaul (1987: 64).
74. SAIRR (1986: 307).
75. *Sowetan* 7 (13.2.85); McCaul (1987: 62).
76. *Sunday Mirror* 2 (17.2.85).
77. Sejamothopo Motau, "The near panic mood at Ekangala," *Pretoria News* 8 (25.2.85). The article described the fear that Soshanguve would be incorporated into Bophuthatswana and argued against it on the ground that the township was "inhabited by Sothos, Shangaans, the Ngunis (Zulus and Xhosas) and Vendas. It is unlikely the homeland leaders of these national groups would take kindly to converting these people into 'instant BophthaTswanans' [sic]."
78. *Hansard Questions and Replies* 1511 (Reply by Viljoen to H Suzman, PFP) (15.5.85); McCaul (1987: 64-65).
79. Mzikayise Edom, "Ekangala residents in protest threat," *Sowetan* 3 (26.2.85).
80. "3 000 Will Trek," *Sowetan* 1 (12.3.85).
81. *Financial Mail* (15.3.85).
82. *Weekly Mail* 2 (15.11.85).
83. Haysom (1986: 68).
84. Mzikayise Edom, "KwaNdebele abduction claim," *Sowetan* 1 (17.4.85).
85. *Weekly Mail* 3 (21.6.85).
86. McCaul (1987: 64); Haysom (1986: 68-70); Legal Resources Centre (1989: vol. 2).

87. Trac (1988: 119).
88. Trac (1988: 118). For a contemporaneous critique by a columnist, see Joe's 'Burg, "Left out in the cold," *Sunday Mirror* 4 (28.4.85).
89. *Hansard* Questions and Replies cols. 977-80, 2131-23 (Replies to P G Soal) (8.4, 4.6.86).
90. There were *two* such bills, one tabled on 17 May, *Hansard* col. 5654, and another on 29 May, *Hansard* col. 6424. Both were reported out on 6 June, *Hansard* cols. 6937-38.
91. *Hansard* col. 7393 (12.6.85).
92. *Hansard* cols. 7396-97 (R A F Swart) (12.6.85).
93. *Hansard* cols. 7436-37 (12.6.85).
94. *Hansard* col. 7330 (12.6.85); McCaul (1987: 61).
95. *Hansard* Questions and Replies 470 (Viljoen to P G Soal) (11.3.85).
96. *Hansard* Questions and Replies 1295 (Viljoen to Soal) (26.4.85).
97. *Hansard* Questions and Replies 1487, 1511, 1597 (Viljoen to Soal and Suzman) (14, 15, 27.5.85).
98. *Weekly Mail* 6 (13.12.85).
99. McCaul (1987: 61).
100. McCaul (1987: 66).
101. *Weekly Mail* 3 (22.11.85).
102. *The Star* (19.11.85); Siphon Ngcobo, "Govt goes ahead on Lebowa consolidation," *Business Day* 3 (20.11.85); "Govt to push ahead with removal despite pleas by MPs," *The Daily News* 8 (20.11.85); Haysom (1986: 73).
103. *Weekly Mail* 5 (22.11.85).
104. "Moutse [sic]: Call for referendum," *Sowetan* (20.11.85); McCaul (1987: 66-67).
105. David Breier, "Thousands of Sothos to become Ndebele," *The Sunday Star* 4 (8.12.85); Trac (1986: 2).

106. *Hansard* Questions and Replies cols. 153-56 (Reply by Law and Order Minister Adriaan Vlok to PFP MP Peter Soal) (25.2.86).
107. Also reported in Derrick Luthayi, "Leave Moutse alone!" *City Press* 2 (8.12.85).
108. Also reported in "Government ends tug-o'-war between homelands," *Business Day* 2 (6.12.85).
109. See also SAIRR (1986: 285).
110. Phillip van Niekerk, "Moutse being given to KwaNdebele," *The Cape Times* 11 (6.12.85).
111. "Row over Govt move," *Sowetan* 5 (9.12.85); "Moutse move 'spells suffering, violence,'" *The Cape Times* 11 (9.12.85).
112. "Forced consolidation," *The Cape Times* 12 (10.12.85).
113. *Sowetan* 6 (20.12.85).
114. *The Argus* 14 (23.12.85).
115. Peter Wallington, "Violence feared if Moutse incorporation goes ahead," *Business Day* 5 (11.12.85).
116. *Financial Mail* 21 (20.12.85).
117. "Shops burnt in outbreak of violence in Moutse," *Eastern Province Herald* 2 (17.12.85); Trac (1986: 2); McCaul (1987: 67).
118. Sheila Rule, "South Africa Holds TV Crewmen, Citing an Unspecified 'New Act,'" *The New York Times* A4 (18.12.85).
119. Phillip van Niekerk, "Moutse 'under siege' as govt resistance grows," *The Cape Times* 2 (19.12.85).
120. "Govt blamed on Moutse conflict," *Sowetan* 4 (19.12.85).
121. *The Star* (19.12.85), quoted in Haysom (1986: 73-74).
122. McCaul (1987: 67).
123. *The Star* (3.1.86), quoted in McCaul (1987: 67).
124. GG 10053.

125. *Weekly Mail* 12 (10.1.86); see also Haysom (1986: 76-77); "Five die as Moutse erupts in violence," *Pretoria News* 3 (2.1.86); Phillip van Niekerk, "7 die in Moutse clashes," *The Cape Times* 1 (3.1.86).

126. Patrick Hlahla, "Fear mounts among Moutse residents after bloody clash," *Pretoria News* 2 (4.1.86); Phillip van Niekerk, "Heunis: Ndebeles to keep Moutse," *The Cape Times* 1 (4.1.86); "Ministers 'were seen at flogging,'" *The Natal Mercury* 3 (6.1.86); Themba Molefe, "Tension rises in Moutse as independence looms," *Sowetan* 4 (14.1.86); McCaul (1987: 68-69); Trac (1986: 2).

127. "18 killed at Moutse—claim," *The Citizen* 2 (3.1.86).

128. "SAP hit back at Moutse," *The Citizen* 4 (4.1.86), quoted in Haysom (1986: 74).

129. Trac (1988: 121).

130. "Cops slain," *Sowetan* 1 (3.1.86); "17 now dead in Moutse, says MP," *Sowetan* 8 (3.1.86); Claire Pickard-Cambridge, "Fierce battles push Moutse deaths to 9," *Business Day* 1 (3.1.86); Phillip van Niekerk, "22 claimed dead in Moutse raids," *The Cape Times* 2 (6.1.86); "Moutse erupts," *Financial Mail* 36 (10.1.86); Ray Kennedy, "Black police killed in tribal clashes over homeland," *The Times* (3.1.86); McCaul (1987: 69); Trac (1986: 3).

131. McCaul (1987: 69).

132. Phillip van Niekerk, "Heunis: Ndebeles to keep Moutse," *The Cape Times* 1 (4.1.86); "Minister Heunis sketches Moutse background," *The Citizen* 2 (4.1.86).

133. *The Star* 8 (20.1.86).

134. "The Moutse mess," *The Cape Times* 6 (7.1.86).

135. "Foolish spark to tribal violence," *Eastern Province Herald* 4 (7.1.86).

136. "The tragedy of Moutse," *The Argus* 8 (6.1.86).

137. "Tragic spectacle," *Evening Post* 8 (6.1.86).

138. "Why, why, why?" *The Natal Mercury* 6 (20.1.86).

139. "Ethnic realities," *Pretoria News* 8 (4.1.86); see also "Strife-torn Moutse faces tough dilemmas," *Pretoria News* 8 (4.1.86). *The Cape Times* 6 (6.1.86) published a cartoon showing Chris Heunis connecting Moutse to KwaNdebele with a crayon and the caption: "Reform is still on track. I'm reforming the South African map."

140. Phillip van Niekerk, "Transfer of Moutse land 'scandalous'—Suzman," *The Cape Times* 1 (6.1.86); *City Press* 4 (12.1.86).

141. Mudini Maivha and Sello Seripe, "Cops stood by as we were tortured," *City Press* 4 (12.1.86); *Weekly Mail* 6 (24.1.86); McCaul (1987: 68-69).
142. *Weekly Mail* 5 (28.2.86).
143. Legal Resources Centre (1989: 15).
144. *Weekly Mail* 4 (7.3.86).
145. *Weekly Mail* 8 (30.6.89).
146. McCaul (1987: 78-79), citing *Sowetan* (21.1.86); *The Star* (20.3.86); *Sowetan* (20.3.86); Ritchken (1989: 427).
147. Michael Hornsby, "Violence claims lives of 11 blacks as Botha sets terms for reforms," *The Times* (2.1.86).
148. Alan Cowell, "10 Blacks Killed in South Africa In New Outbreak Between Tribes," *The New York Times* 1 (2.1.86).
149. Michael Parks, "South Africa Is Firm on Annexation," *Washington Post* (4.1.86) (this may originally have appeared in the *Los Angeles Times*).
150. Allister Sparks, "Torture Alleged in S. African Tribal Conflict," *Washington Post* (7.1.86).
151. *The Star* 16 (3.3.86).
152. *Washington Post* (7.1.86); *The Cape Times* (6.1.86); *City Press* (12.1.86); "Kwandebele Chief Minister hits at Black Sash," *The Citizen* 8 (8.1.86); McCaul (1987: 69).
153. McCaul (1987: 70), citing *The Star* (10.1.86).
154. McCaul (1987: 70), citing *The Star* (10.1.86); see also "Assurance on KwaNdebele," *Sowetan* 2 (10.1.86); "Pledges to residents in Moutse take-over," *The Citizen* 5 (10.1.86); Patrick Hlahla, "Residents won't have to become citizens," *Pretoria News* 5 (10.1.86).
155. Sello Rabothata, "Moutse: Shift for teachers," *Sowetan* 1 (13.1.86).
156. *City Press* (16.2.86), cited in McCaul (1987: 71).
157. "Why another homeland?" *Eastern Province Herald* 8 (16.1.86); Allister Sparks, "Creating a new trouble spot," *The Natal Witness* 8 (16.1.86).

158. "Reopen talks on Moutse," *Pretoria News* 7 (17.1.86); "Lebowa Govt rejects SA's Moutse move," *The Citizen* 3 (17.1.86); "Sectional strife," *Financial Mail* 57 (24.1.86); McCaul (1987: 73). Godfrey Mathebe was released after two weeks. *Financial Mail* 60 (31.1.86).
159. *New Nation* 3 (16.1.86); *Financial Mail* 60 (31.1.86).
160. "Govt caused Moutse tiger," *The Cape Times* 2 (17.1.86).
161. Cedric Kekana, "Moutse says: Isolate KwaNdebele," *New Nation* 3 (16.1.86), cited in McCaul (1987: 70-71).
162. Trac (1986: 4); McCaul (1987: 71), citing *City Press* (9.2.86).
163. "Sectional strife," *Financial Mail* 57 (24.1.86).
164. Haysom (1986: 66), citing *Rand Daily Mail* (2.8.84).
165. SAIRR (1985: 528).
166. Sello Rabothata, "Free Reign [sic] for Ndebele 'Watchdog,'" *Sowetan* 4 (28.1.86).
167. McCaul (1987: 77-78), citing *The Star* (30.5.86).
168. Trac (1988: 122).
169. *Hansard* Questions and Replies cols. 1247-48 (Reply by Gerrit Viljoen to P G Soal) (21.4.86).
170. "KwaNdebele to gain independence," *The Cape Times* 11 (5.2.86), 2 (6.2.86); *Business Day* (5.2.86), cited in McCaul (1987: 81). According to the *Weekly Mail*, however, van der Merwe said independence was unlikely before 1987 at the earliest (see below).
171. *The Cape Times* 10 (6.2.86). A cartoon the next day showed him holding a map, declaring "one citizenship, one country!" while KwaNdebele dropped off a jigsaw puzzle already missing the other four "independent homelands." *The Cape Times* 8 (7.2.86).
172. *The Argus* 12 (7.2.86).
173. *Weekly Mail* 5 (28.2.86).
174. "Sectional strife," *Financial Mail* 57 (24.1.86).
175. Mandla Ndlazi, "Forced removals at Moutse—Trac," *Sowetan* 7 (17.2.86).

176. *The Sowetan* 6 (10.2.86).
177. Themba Molefe, "Goodbye Moutse!" *Sowetan* 4 (February 11, 1986).
178. *Hansard* Questions and Replies cols. 623-24 (Reply by Minister of Education and Development Aid Gerrit Viljoen to PFP MP Helen Suzman) (18.3.86).
179. "Removal squad moves in on Moutse," *The Argus* 4 (7.2.86); Themba Molefe, "Hundreds moved from Moutse," *Sowetan* 1 (7.2.86); "Removals go on," *Sowetan* 1 (9.4.86); *Trac* (1986: 5-6); McCaul (1987: 74-75).
180. *Sowetan* 4 (14.4.86).
181. *Sowetan* (18.9.86), cited in McCaul (1986: 76).
182. See also "Viljoen: Removals not forced," *The Cape Times* 2 (8.2.86); "No Govt pressure for Moutse moves—Viljoen," *The Citizen* 10 (8.2.86); "Moutse move not forced—Viljoen," *Pretoria News* 3 (10.2.86).
183. *Hansard* cols. 226-27, 234-35 (5.2.86); Barry Streek, "Petition on Moutse transfer submitted," *The Cape Times* 4 (6.2.86); "Suzman pleads for Moutse," *Pretoria News* 3 (5.2.86); McCaul (1987: 72).
184. "Moutse removals: row grows," *Pretoria News* 2 (14.2.86); "Lebowa breaks ties with SA govt," *Daily Dispatch* 3 (14.2.86); McCaul (1987: 73).
185. "Moutse that roared," *Pretoria News* 12 (14.2.86).
186. "Moutse: Heunis tells of anxiety," *The Cape Times* 2 (15.2.86).
187. Tom Wentzel, "LP, NPP united to oppose Govt on Moutse removals," *The Argus* 1 (17.2.86); "Two houses may hear Moutse case," *Pretoria News* 7 (18.2.86); "Joint caucus formed against consolidation of homelands," *The Natal Witness* 2 (18.2.86); Barry Streek, "Suspend Moutse move—Suzman," *The Cape Times* 2 (18.2.86).
188. "[T]he Moutse issue winds its way to Parliament, where it seems set to cause a major upheaval. . . ." Gary van Staden, "Moutse into kwaNdebele: it just doesn't want to go," *Pretoria News* 20 (20.2.86); "The ripples spread," *Financial Mail* 57 (28.2.86).
189. Brian Stuart, "Debate on Moutse likely in all 3 Houses," *The Citizen* 8 (18.2.86).
190. "Captive parties play their trumps," *The Star* 14 (18.2.86).
191. "Row over Moutse," *The Daily News* 8 (18.2.86).

192. *Hansard* col. 1448 (4.3.86); *The Star* 4 (5.3.86); *The Citizen* 13 (5.3.86); *Weekly Mail* 2 (7.3.86).

193. *Hansard* Questions and Replies cols. 106-111 (18.2.86); "Moutse: No poll says govt," *The Cape Times* 4 (19.2.86).

194. *Hansard* Questions and Replies cols. 171-73 (25.2.86).

195. "Shelve Moutse," *Pretoria News* 14 (18.2.86).

196. "Homelands are apartheid," *The Cape Times* 10 (20.2.86).

197. David Braun, "A new, insidious form of resettlement," *Pretoria News* 10 (10.3.86); "A dishonest farce," *Pretoria News* 12 (11.3.86).

198. Transvaal Provincial Division, Case No 3409/86. Dr Phatudi's founding affidavit was dated 19 February; the *Weekly Mail* said the action was filed 20 February; Trac (1986) said it was filed 16 March; but it must have been filed before the Speaker of the House of Assembly ruled on 4 March that the matter was *sub judice*.

199. Brian Stuart, "Moutse stepping up fight against incorporation," *The Citizen* 11 (7.3.86); "Moutse men opposed to floggings in public," *The Citizen* 11 (7.3.86); "Moutse delegation arrives in City," *The Cape Times* 6 (6.3.86); McCaul (1987: 72); Eye Witness (Bophuthatswana) (7.3.86); "Home sweet home," *Financial Mail* 69 (14.3.86).

200. Dugard et al. (n.d.: 10).

201. "'Don't force us to join,'" *New Nation* 3 (25.3.86).

202. Commonwealth Group (1986: 60).

203. *Hansard* cols. 3734-40 (18.4.86); "Suzman 'creating trouble,'" *The Citizen* 4 (19.4.86); McCaul (1987: 72).

204. Roy Devenish, "Moutse: the sad legacy lingers on," *Pretoria News* 11 (18.4.86).

205. "Ndebele 'rights and privileges' in SA," *The Citizen* 12 (5.4.86); "KwaNdebele independence on December 11," *The Citizen* 3 (8.5.86).

206. *Mathebe v Government of the Republic of South Africa and others*, Transvaal Provincial Division, Case No. 9171/86.

207. Interviews August 1990 and July 1991.

208. See also Delius (1989).

209. Sophie Tema, "Homes, shops set alight," *The Cape Times* 2 (27.5.86); for a description of the violence, see SAIRR (1988: 681-85).
210. "Residents hold protest on Square," *Pretoria News* 5 (29.5.86).
211. McCaul (1987: 87-88) *Weekly Mail* 2 (6.2.86); Desmond Blow and Sol Morathi, "KwaNdebele civil servants join war of independence," *City Press* 11 (8.6.86).
212. Trac (1988: 129) *Weekly Mail* 5 (4.7.86); McCaul (1987: 88).
213. McCaul (1987: 89-90).
214. "KwaNdebele: Listen to what the people say," *City Press* 2 (29.6.86).
215. "Independence for blobs," *The Cape Times* 6 (30.6.86).
216. Jon Qwelane, "Pressure grows to scrap homeland's independence," *Sunday Star* 2 (20.7.86); McCaul (1987: 91).
217. *Weekly Mail* 1 (18.7.86); Monk Nkomo, "Strike halts Ndebele services," *Sowetan* 2 (17.7.86).
218. *Hansard* Questions and Replies cols. 2562-63 (Heunis to Soal) (5.9.86); McCaul (1987: 91).
219. McCaul (1987: 92).
220. David Breier and Deon Delpont, "Homeland issue embarrasses Govt," *The Sunday Star* 2 (27.7.86); Deon Delpont, "Inquiry call as KwaNdebele independence protests grow," *Sunday Tribune* 3 (27.7.86).
221. *Weekly Mail* 3 (25.7.86). William Finnegan (1988) describes these events from the perspective of a white American accompanying black South African reporters.
222. McCaul (1987: 94).
223. Patrick Hlahla and Robyn Green, "KwaNdebele torn by violence," *Pretoria News* 1 (24.7.86).
224. Robyn Green, "KwaNdebele: State giving it top priority," *Pretoria News* 1 (25.7.86); "Comrades exploiting KwaNdebele situation," *The Citizen* 5 (25.7.86).
225. Johan Gagiano, "'Violent' home land calm," *Pretoria News* 15 (29.7.86).
226. McCaul (1987: 94).
227. "Confusion over homeland," *Business Day* 1 (30.7.86).

228. Allister Sparks, "Death of a Strongman: KwaNdebele Residents Celebrate a Killing," *Washington Post* A1 (3.8.86).
229. David Breier, "Chaos after Minister's murder. Chances for kwaNdebele independence 'slimmer,'" *The Sunday Star* 1 (3.8.86); "Qualms about KwaNdebele," *Sunday Tribune* 6 (3.8.86); McCaul (1987: 94-95); *Weekly Mail* 1 (1.8.86), 2 (12.9.86).
230. "Dying for 'uhuru' they do not want," *Sowetan* 4 (7.8.86).
231. Alan Cowell, "Car Bomb Kills Cabinet Minister In a 'Homeland' in South Africa," *The New York Times* (30.7.86); Allister Sparks, "Death of a Strongman: KwaNdebele Residents Celebrate a Killing," *Washington Post* A1 (3.8.86).
232. Quoted in *Pretoria News* 6 (11.8.86).
233. Allister Sparks, "Death of a Strongman: KwaNdebele Residents Celebrate a Killing," *Washington Post* A1 (3.8.86); "Bleak KwaNdebele divided by bloody independence war," *The Natal Witness* 3 (12.8.86); "Riotous KwaNdebele rejects independence," *The Cape Times* 7 (13.8.86).
234. *Sowetan* 4 (1.8.86).
235. "From ages past," *Sunday Times* 20 (3.8.86).
236. Peter Fabricius, "Trouble is brewing over the latest homeland," *Weekend Argus* 3 (2.8.86); Peter Fabricius, "Crisis looming over KwaNdebele," *The Daily News* 6 (5.8.86).
237. "KwaNdebele may put off independence," *Sowetan* 3 (4.8.86); McCaul (1987: 96); *Weekly Mail* 1 (1.8.86).
238. "Chiefs to work on KwaNdebele independence," *The Citizen* 5 (2.8.86); Derrick Luthayi, "Chiefs say no—now for the assembly," *City Press* 1 (3.8.86).
239. David Braun, "Govt to go ahead with Kwandebele independence plan," *The Argus* 1 (4.8.86).
240. "Kwandebele independence?" *The Argus* 12 (5.8.86).
241. *The Daily News* 6 (5.8.86).
242. "UDF warns govt," *Sowetan* 2 (6.8.86).
243. "KwaNdebele independence: Push for a rethink," *Financial Mail* 52 (8.8.86).
244. Patrick Laurence, "Homeland to disband vigilantes," *The Guardian* (4.8.86).
245. *Sunday Times* 19 (10.8.86).

246. *Weekly Mail* 3 (8.8.86).
247. "The bloody price of freedom," *Sunday Times* 19 (10.8.86).
248. Cedric Kekana, "We'll fight to the last drop," *New Nation* 6 (13.8.86).
249. McCaul (1987: 97).
250. McCaul (1987: 97-98); *Weekly Mail* 14 (15.8.86); Derrick Luthayi, "Death of a sacred cow . . . and of a beast called Imbhokoto," *City Press* 5 (17.8.86); "Victory!" *New Nation* 3 (13.8.86); Joanne Yawitch, "Kwandebele—a rural trojan horse," *Sash* 24 (31.8.86).
251. Sophie Tema, "KwaNdebele Legislative Assembly rejects independence," *Business Day* 1 (13.8.86); "Homeland rejects govt plan," *The Cape Times* 1 (13.8.86); "Rejection of autonomy welcomed," *Pretoria News* 2 (13.8.86); Phillip van Niekerk, "KwaNdebele assembly rejects independence," *The Guardian* (13.8.86); "Govt will accept 'no independence' decision," *The Citizen* 10 (14.8.86).
252. "KwaNdebele Assembly rejects independence," *The Citizen* 1 (13.8.86). Suzman briefly describes her role in the conflict (1993: 209).
253. "'Ndebele: Jaap not surprised," *Pretoria News* 3 (14.8.86).
254. "Buthelezi hails homeland's refusal," *The Daily News* 4 (16.8.86).
255. *Sowetan* 9 (15.8.86).
256. "KwaNdebele victory," *Pretoria News* (13.8.86).
257. "One nation," *The Cape Times* 6 (14.8.86).
258. "Nightmare," *Sowetan* 4 (14.8.86).
259. *The Natal Witness* 8 (14.8.86).
260. *The Argus* 8 (15.8.86).
261. "kwaNdebele: a warning to homeland leaders," *New Nation* 6 (13.8.86).
262. *The Sunday Star* 16 (17.8.86).
263. "KwaNdebele: The truth shall set you free," *City Press* 2 (17.8.86).
264. "United States of SA?" *The Daily News* 10 (13.8.86).

265. Mzikayise Edom, "KwaNdebele: The People Won," *Sowetan* 2 (14.8.86); "Kwandebele woman 'necklaced,'" *The Argus* 1 (14.8.86); Sello Rabothata, "KwaNdebele gets on with the job," *Sowetan* 9 (15.8.86); "kwaNdebele's 'sorry,'" *New Nation* 1 (13.8.86); McCaul (1987: 99-100).

266. Jacob Mnyakeni v KwaNdebele Minister of Law and Order and others, Transvaal Provincial Division Case No 19407/86; *Weekly Mail* 5 (31.10.86).

267. *Weekly Mail* 11 (13.10.89).

268. Joseph Gagiano, "KwaNdebele tense, but not explosive," *Pretoria News* 7 (14.8.86); *Weekly Mail* 13 (21.11.86); "KwaNdebele releases detainees," *Pretoria News* 3 (14.8.86).

269. Government Notice 9/86, Umthetho Ogadangisiwe (12.8.86). These were reissued with slight modifications by Government Notice 4, Umthetho Ogadangisiwe (27.3.87); Government Notice 3, Umthetho Ogadangisiwe (Official Gazette) (12.6.87); Government Notice 7, Umthetho Ogadangisiwe (8.8.87), Government Notice 24, Umthetho Ogadangisiwe (20.12.87).

270. *Financial Mail* 51 (15.8.86), 30 (22.8.86).

271. "KwaNdebele 'back to normal,'" *The Citizen* 16 (9.9.86); "Life in Kwandebele returns to normal," *The Argus* 8 (10.9.86).

272. "KwaNdebele independence: Still dreaming?" *Financial Mail* 53 (12.9.86); McCaul (1987: 99-100).

273. *Hansard* cols. 11681-82 (5.9.86); "Parts of kwaNdebele set to become 'independent,'" *New Nation* 3 (11.9.86); *Weekly Mail* 3 (12.9.86).

274. *Weekly Mail* 3 (9.10.86).

275. "Resign call," *Sowetan* 2 (8.9.86).

276. "'Buthelezi option' . . . on cards for kwaNdebele?" *New Nation* 4 (9.10.86).

277. *Weekly Mail* 3 (17.10.86).

278. McCaul (1987: 100-01); *Weekly Mail* 5 (14.11.86), 6 (8.5.87).

279. "Anti-independence leaders held in raids," *Business Day* 2 (13.11.86); "6 more people detained in KwaNdebele—lawyer," *Sowetan* 13 (14.11.86); "KwaNdebele crackdown," *City Press* 1 (16.11.86).

280. *Sowetan* 8 (14.11.86).

281. Robyn Green, "KwaNdebele independence denial," *Pretoria News* 13 (17.11.86).
282. Patrick Hlahla, "Confusion follows Minister's death," *Pretoria News* 15 (18.11.86); *Weekly Mail* 13 (21.11.86); "After Skosana," *Financial Mail* 57 (21.11.86); Deon Delpont, "Hopes of independence for KwaNdebele buried with Skosana," *Sunday Tribune* 7 (23.11.86). For a graphic description of the funeral, see Mufson (1990: 290).
283. *Weekly Mail* 5 (28.11.86).
284. "Moutse facts set out in booklet," *The Citizen* 8 (11.9.86).
285. Mzikayise Edom, "Govt warned over Moutse," *Sowetan* 3 (16.9.86).
286. Kym Hamilton, "Moutse move breaks law, says professor," *The Star* (26.11.86).
287. Kym Hamilton, "Human rights 'inevitably violated in consolidation,'" *The Star* 4 (27.11.86); Pat Sidley, "Dressing up Verwoerd in liberal clothes," *Weekly Mail* 5 (28.11.86).
288. I am grateful to Cherie van Onselen for translating the unreported Afrikaans judgment; I have reworked the language slightly.
289. M A Farquharson, "Moutse people disappointed in court again," *Pretoria News* 5 (3.12.86); *The Star* 3 (3.12.86); *Weekly Mail* 2 (5.12.86).
290. Alan Fine, "SA's homelands stance described as 'cynical,'" *Business Day* 3 (4.12.86), "Fears of homeland violence," *Business Day* 3 (5.12.86); "Moutse loses battle," *City Press* 4 (7.12.86); "Moutse appeal for help," *Sowetan* 7 (8.12.86); McCaul (1987: 103).
291. *Mahlangu v Mahlangu and another* 1989 (2) SA 132 (T); *Weekly Mail* 2 (30.1.87); Derrick Luthayi, "Short-lived victory," *City Press* 1 (2.2.87); Isobel Shepherd Smith, "KwaNdebele: Dumped . . . on a desolate land north of Pretoria," *Sunday Tribune* 25 (1.3.87).
292. Derrick Luthayi, "KwaNdebele government's 'secret plan,'" *City Press* 1 (22.3.87); *Weekly Mail* 3 (30.3.87).
293. *Weekly Mail* 2 (24.4.87).
294. "KwaNdebele prince is dismissed from legislature," *The Citizen* 14 (6.5.87); "Former Minister speaks out," *Pretoria News* 5 (6.5.87); McCaul (1987: 104).
295. *Hansard Questions and Replies* col. 431 (23.2.87).

296. "KwaNdebele votes for independence," *The Citizen* 21 (7.5.87); Mzikayise Edom, "Independence vote," *Sowetan* 4 (7.5.87); McKeed Kotlolo, "UDI for kwaNdebele," *Pretoria News* 22 (7.5.87); McCaul (1987: 104); William Claiborne, "KwaNdebele Accepts Status As Republic," *Washington Post* (7.5.87); *Weekly Mail* 6 (8.5.87).
297. *Hansard* Questions and Replies col. 51 (Reply to P G Soal) (2.6.87).
298. "Independence plan slated," *The Citizen* 13 (8.5.87).
299. "Ndebele decision 'sheer madness,'" *The Citizen* 11 (11.5.87).
300. *Business Day* 8 (7.5.87).
301. "SA to consider independence for KwaNdebele," *The Citizen* 2 (9.5.87).
302. Patrick Hlahla, "An uncertain future for kwaNdebele," *Pretoria News* 13 (22.5.87); McCaul (1987: 104); *Weekly Mail* 2 (15.5.87).
303. *Weekly Mail* 1 (22.5.87).
304. Affidavits in support of Siphila Dlamini, David Mabosa Mahlangu, Emily Mahlangu and Esther Mahlangu v KwaNdebele Minister of Justice and others, Transvaal Provincial Division, Case No. 8298/87 (filed 19 May).
305. "The kwaNdebele nightmare," *The Sunday Star* 1 (24.5.87); see also Finnegan (1988: 215-34).
306. David Beresford, "Violence brews over homeland's 'independence,'" *The Guardian* 9 (12.5.87); Derrick Luthayi, "Homeland of fear," *City Press* 1 (17.5.87); "Powderkeg," *New Nation* 1 (21.5.87); "'Independence' not surprising," *New Nation* 19 (21.5.87); Patrick Hlahla, "An uncertain future for kwaNdebele," *Pretoria News* 13 (22.5.87); Sophie Tema, "KwaNdebele's independence," *Business Day* 15 (27.5.87); "KwaNdebele reacts to 'bad press' over detainees," *The Citizen* 16 (28.5.87); "Date for independence," 3 (28.5.87); "Mahlangu sets date for 'independence,'" *The Cape Times* 11 (28.5.87); Patrick Hlahla, "kwaNdebele independence to go ahead," *Pretoria News* 2 (29.5.87); "MPs accused," *New Nation* 1 (28.5.87); McCaul (1987: 104).
307. *Hansard* cols. 23-24 (19.5.87).
308. *Hansard* col. 36 (A P Treurnicht) (20.5.87).
309. *Hansard* cols. 229-30 (21.5.87).
310. *Weekly Mail* 3 (22.5.87).
311. *Weekly Mail* 2 (22.5.87).

312. "KwaNdebele group detained," *The Citizen* 5 (29.5.87); "4 detained after meeting diplomats," *The Cape Times* 3 (29.5.87); Monk Nkomo, "Uhuru row—plan to meet Botha," *Sowetan* 9 (29.5.87); "MPs accused," *New Nation* 1 (28.5.87); *Weekly Mail* 4 (5.6.87).

313. *Hansard Questions and Replies* col. 316 (Reply by Chris Heunis to Peter Soal, PFP) (23.6.87); "KwaNdebele 'asked for independence,'" *The Citizen* 4 (3.6.87); Brian Stuart, "KwaNdebele: support for independence is prerequisite," *The Citizen* 9 (10.6.87); "KwaNdebele 'will get' independence," *Pretoria News* 3 (10.6.87); "PW switches attitude to homelands," *The Cape Times* 13 (10.6.87); "PW sets conditions for the Ndebeles," *Sowetan* 2 (11.6.87); "KwaNdebele: A state of fear," *Financial Mail* 28 (12.6.87); *Weekly Mail* 11 (12.6.87); Gary van Staden, "The road to nowhere starts here," *The Sunday Star* 21 (14.6.87); "KwaNdebele leader hits at Suzman," *The Citizen* 11 (16.6.87); "Kwa-caution," *The Cape Times* 12 (17.6.87); "KwaNdebele to get 'false independence,'" *The Citizen* 4 (20.6.87); "LP against 'independence,'" *The Cape Times* 6 (20.6.87); Gary van Staden, "Potential for violence runs high in Kwandebele," *The Argus* 26 (24.6.87).

314. Transvaal Provincial Division, Case No 16943/87.

315. William Magolego v Mbhokotho and others, Transvaal Provincial Division, Case No. 9121/87.

316. *Weekly Mail* 6 (26.6.87).

317. "New attack on Ndebele royal family," *New Nation* 1 (9.7.87); *Weekly Mail* 2 (10.7.87); Martie Meiring, "Just what IS going on in KwaNdebele?" *Sunday Times* 19 (19.7.87).

318. Nomsa Mdaka v Lt C J Jones and others, Transvaal Provincial Division, Case No 11866/87.

319. Thomas Ngwenya v Sibanyoni, Job Skosana, the KwaNdebele Commissioner of Police, and the KwaNdebele Minister of Law and Order, Transvaal Provincial Division Case No 11296/87 (filed 12 July 1987).

320. *Weekly Mail* 3 (17.7.87).

321. Dominique Gilbert, "KwaNdebele dodges issue," *Business Day* 2 (20.7.87).

322. *Weekly Mail* 5 (31.7.87).

323. *Weekly Mail* 5 (7.8.87).

324. *Weekly Mail* 5 (14.8.87); Sol Morathi, "KwaNdebele's independence in the balance," *City Press* 4 (8.11.87).

325. *Hansard* col. 2574 (F Hartzenberg) (29.7.87).
326. *Hansard* cols. 2582-86 (29.7.87).
327. *Hansard* col. 2587 (A Fourie) (29.7.87).
328. *Hansard* cols. 2619-21 (R J Lorimer) (29.7.87).
329. *Hansard* cols. 2653-55 (29.7.87); "Civil war' remark 'mean,'" *Pretoria News* 5 (30.7.87); "KwaNdebele talks to be continued," *The Citizen* 4 (12.8.87).
330. "Fear rises in kwaNdebele," *New Nation* 2 (12.8.87).
331. Government Notice 15, Umthetho Ogadangisiwe (Official Gazette) (4.9.87).
332. *Mary Tshabalala v KwaNdebele Minister of Justice, Law and Order, Transvaal Provincial Division, Case No 14607/87.*
333. *Gibson Thlokwe Mathebe and others v KwaNdebele Commissioner of Police and another, Transvaal Provincial Division, Case No 14181/87.*
334. Alinah Dube, "Lawyer can't oppose 'uhuru,'" *Sowetan* 2 (9.9.87).
335. Patrick Laurence, "Setback for rulers of homeland," *The Guardian* (22.9.87).
336. *Hansard* cols. 5736-37, 5811-12 (11.9.87).
337. "No vote on independence for KwaNdebele," *The Citizen* 12 (23.9.87); "No plebiscite," *Financial Mail* 61 (25.9.87); Roger Smith, "Mahlangu firm on independence," *Business Day* 9 (26.9.87); Patrick Laurence, "kwaNdebele tug-of-war has begun," *The Star* 9 (26.9.87). One newspaper, however, noted that none of the 46 representatives who opted for independence in 1982 had been elected. Gary van Staden, "Let the people speak, to avoid revolt," *The Sunday Star* 15 (4.10.87).
338. "No uhuru as yet," *Sowetan* (30.9.87).
339. *Hansard* Questions and Replies col. 1127 (Reply to P G Soal) (6.10.87).
340. "Chiefs will fight uhuru," *Sowetan* 1 (24.9.87); Patrick Laurence, "kwaNdebele tug-of-war has begun," *The Star* 9 (26.9.87).
341. Patrick Hlahla, "Contralesa allegations 'unfounded,'" *Pretoria News* (date unknown—late September/early October 1987).
342. *Weekly Mail* 7 (25.9.87).
343. "Court reserves judgment on Moutse's future," *The Citizen* 15 (8.9.87); "Moutse: Judgment reserved in appeal," *Business Day* 4 (8.9.87).

344. Government of Lebowa v Government of the Republic of South Africa and Another 1988 (1) SA 344 (A).

345. "Lebowa loses appeal over excising of Moutse," *The Citizen* 13 (30.9.87); "Lebowa loses Moutse appeal," *The Cape Times* 5 (30.9.87); "Lebowa loses Moutse case," *Sowetan* 7 (30.9.87).

346. *Weekly Mail* 3 (2.10.87); Sol Morathi, "Fate of Moutse again hangs in the balance," *City Press* 2 (11.10.87).

347. Paulina Machika en vier ander v Die Staatspresident en 16 ander, Transvaal Provincial Division Case No 17864/87. *Weekly Mail* 7 (30.10.87); "Women's challenge to one man, one vote," *The Leader* 7 (8.11.87). The tension between traditional patriarchy and modern sexual equality emerged in an unrelated incident several months later, when the Elandskraal secondary school expelled ten girls, some as young as 15, because lobola had been paid for them. The principal told them to go home and care for their husbands (some of whom were classmates). The students boycotted the school and beat the principal. Revelation Ntoula, "Violent action after expulsion of 'wives,'" *City Press* 2 (7.2.88).

348. Interview July 1990.

349. Advocate Wim Trengove commented on the draft affidavit on 21 October: "Do we not perhaps have an applicant who wanted to be a candidate in the 1984 election but was precluded from being nominated by the disqualification in s 4 of Schedule II?" They did not find such an applicant.

350. Nomsa Mdaka v W O Magangwa and others, Transvaal Provincial Division, Case No 17726/87.

351. Statement to attorney Geoffrey Budlender at KwaMahlanga Police Station (4.12.87).

352. Affidavit of C P Kimble (3.12.87) in Paledi Mathebe and another v Minister of Law and Order and others, Transvaal Provincial Division.

353. *Weekly Mail* 4 (6.11.87).

354. Paledi Mathebe and Carolyn Patricia Kimble v Minister of Law and Order and others, Transvaal Provincial Division (Case No unknown).

355. "Two SA townships linked to homelands," *The Citizen* 19 (3.12.87); *Sowetan* (7.12.87); Colin Murray and William Cobbett, "Backdoor apartheid," *The Guardian* (11.12.87). On the history of Botshabelo, see Murray (1992); NCAR (n.d.).

356. *Hansard* cols. 5663, 5792 (10.9.87). Heunis was responding to a question from J M Beyers. *Hansard* fails to indicate his party. The index identified him as the MP for Schweizer-Reinecke; but the list of MPs recorded that seat as vacant! Given his criticism of the Government, he must have been either CP or HNP.

357. Viljoen told P C Cronjé that Botshabelo had 400,000 people. *Hansard* Questions and Replies col. 669 (25.8.87).

358. NCAR (n.d.); *Weekly Mail* 7 (4.12.87).

359. Orange Free State Provincial Division, Case No 5338/87.

360. *Weekly Mail* 3 (22.1.88).

361. Sol Morathi, "KwaNdebele's independence in the balance," *City Press* 4 (8.11.87); Sol Morathi, "KwaNdebele may not accept independence," *City Press* 9 (6.12.87) (both dates uncertain).

362. Transvaal Provincial Division, Case No. 20066/87; *Weekly Mail* 3 (24.12.87).

363. *Weekly Mail* 5 (15.1.88).

364. Peter Thabo Ncube v Minister of Law and Order and others, Transvaal Provincial Division, Case No 20813/87; *Weekly Mail* 2 (15.1.88).

365. Ramotlogedi Johannes Makitla v State President and others, Transvaal Provincial Division Case No 400/88 (agreement noted by J Curlewis, 19.1.88).

366. Frans Nkopodi Phatlane v State President and others, Transvaal Provincial Division, Case No 5729/88 (331/88?).

367. *Weekly Mail* 1 (19.2.88).

368. David Mabosa Mahlangu v KwaNdebele Commissioner of Police and KwaNdebele Minister of Justice and Law and Order, Transvaal Provincial Division, Case No 2598/88.

369. "New KwaNdebele Terror," *New Nation* 1 (18.2.88).

370. "Farmers protest over valuations," *The Citizen* 10 (18.12.87); Lesley Wroughton, "Farmers up in arms over farm valuations," *Pretoria News* 2 (19.12.87); *Weekly Mail* 8 (20.11.92), 16 (27.11.92).

371. *Hansard* col. 846 (P.G. Soal) (15.2.88).

372. *Hansard* col. 5188 (7.5.86), col. 11657 (5.9.86).

373. *Hansard* cols. 848-49 (15.2.88).
374. *Hansard* col. 852 (C J Derby-Lewis) (15.2.88).
375. *Hansard* cols. 839-41, 860 (W J D van Wyk) (15.2.88);
376. *Hansard* cols. 861-71 (G van N Viljoen, Minister of Education and Development Aid) (15.2.88); "PFP opposed to KwaNdebele incorporation," *The Citizen* 4 (16.2.88); "District is to be part of homeland," *The Citizen* 4 (16.2.88); "President giving SA away: CP," *The Citizen* 4 (16.2.88); "Handover of land: 'farmers ignored,'" *The Citizen* 4 (16.2.88); "White farms included in KwaNdebele," *Business Day* 4 (16.2.88); *Weekly Mail* 7 (8.4.88).
377. *Hansard* cols. 360-61 (9.2.88).
378. *Hansard* cols. 966-67 (D Lockey) (15.2.88).
379. *Hansard* cols. 970-73 (15.2.88).
380. *Hansard* cols. 975-82 (G van N Viljoen, Minister of Education and Development Aid) (15.2.88).
381. *Hansard* cols. 982-86 (15.2.88).
382. *Hansard* cols. 13636-77 (17.2.88).
383. *Weekly Mail* 10 (4.3.88).
384. LRT (1988: 27-28).
385. *Weekly Mail* 4 (11.9.87).
386. "Moutse struggle goes to the Appeal Court," *New Nation* 8 (3.3.88).
387. Chief Gibson Tlokwe Mathebe v KwaNdebele Minister of Law & Order and KwaNdebele Commissioner of Police, Transvaal Provincial Division, Case No 3593/88.
388. Chief Gibson Tlokwe Mathebe v KwaNdebele Minister of Law and Order and KwaNdebele Commissioner of Police, Transvaal Provincial Division, Case No. 3594/88.
389. Peter Soal asked in Parliament whether, in view of the two orders, the State President "would consider exercising the powers vested in him . . . to issue a proclamation requiring the KwaNdebele Police Force to perform their duties in accordance with the common law in South Africa." Botha replied curtly: "No. The court has already applied common law." *Hansard* Questions and Replies col. 597 (22.3.88).

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391. Commission for Socio-Economic Development of the Bantu Areas within the Union of South Africa, U.G. 61/1955.
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591. Bill Keller, "Mandela's Inheritance: Bloated Bureaucracy," *The New York Times* §1 p4 (15.5.94).
592. *Weekly Mail & Guardian* 30 (12.4.94).
593. Hughes (1971).
594. For an account of such practices in the Ciskei, see Haysom (1983).
595. *Weekly Mail & Guardian* 6 (26.3.93).
596. Carroll (1946-229-30). The rest of this dialogue is worth quoting. Humpty Dumpty began again. "They've a temper, some of them . . . [but] I can manage the whole lot of them! Impenetrability! That's what I say!" "Would you tell me, please," said Alice, "what that means?" "Now you talk like a reasonable child," said Humpty Dumpty, looking very much

pleased, "I meant by 'impenetrability' that we've had enough of that subject.
...."

597. Suzman (1993: 209).

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