

BROADCASTING COMPLAINTS COMMISSION of SOUTH AFRICA

COMPLAINANTS: EMET - SOUTH AFRICA AND OTHERS

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vs.

RESPONDENT: eTV

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A: GLOSSARY

1. In this Complaint the following terms will have the following meanings:
 - a. “BCCSA” – the Broadcasting Complaint Commission of South Africa;
 - b. “the Code” – Code of the BCCSA
 - c. “Emet” - the Complainant 1
 - d. “The Association for Fair Media” – the Complainant 2.
 - e. “Michael Kransdroff”-Complainant 3
 - f. “The Complainants” – Complaint 1 and Complaint 2 together.
 - g. “eTV” – the Respondent;
 - h. “Patta” – Debora Patta, eTV presenter of the 3rd Degree Program.
 - i. “Pilger” – John Pilger directed, scriptwriter and narrator of the Documentary;
 - j. “Kasrils” – Ronnie Kasrils, member of the South African Politburo; Minister of Water and Forestry
 - k. “Segal” – Chagai Segal, nominated representative of the South African Jewish Board of Deputies;
 - l. “Pappe” – Ilan Pappé Professor at Haifa University and member of the Israeli Communist Party Politburo;
 - m. “The Episode” – the 195 minute feature comprising 4 parts: the Interview, the Documentary, the Debate and the Tutu interview;
 - n. “The Interview” – the Interview conducted by Debora Patta via satellite between herself and Pilger comprising the first part of the Episode;(30 minutes)
 - o. “The Documentary” – the documentary movie entitled ‘**Palestine is Still the Issue**’, directed and written by Pilger, comprising the second part of the Episode;(one hour)
 - p. “The Debate” – the debate following the Documentary comprising the third part of the Episode. The debate participants were Kasrils and Segal. The debate adjudicator was Debora Patta.
 - q. “The Tutu Interview” – an interview with Archbishop Desmond Tutu conducted by Debora Patta comprising the fourth part of the Episode;(the debate and interview was 45 minutes)
 - r. “The Viewing” – the viewing of the Episode on eTV on the 2002 at 8pm.
 - s. “The Second Viewing” – the viewing of the entire program of 195 minutes again on eTV on the 11th November at 10h00am-13h00pm
 - t. “The Interview Complaint” – the complaint in respect of the Interview
 - u. “The Documentary Complaint” – the complaint in respect of the Documentary
 - v. “The Debate Complaint” – the complaint in respect of the Debate
 - w. “The Overall Complaint” – the complaint
 - x. “IDF”-Israeli Defense Forces
 - y. “ITC”-British Complaints Commission
 - z. “PLO”-Palestinian Liberation Organization
 - aa. “JPS”-Journal of Palestine Studies (official PLO academic Journal)
 - bb. “COS”-Chief of Staff

B: SUMMARY

This complaint stands on two legs, viz:

- The "Episode" as a whole does not meet the double requirement set down in section 7.2.1 of the Code i.e. the requirement of "reasonable efforts to fairly present significant points of view"; and the requirement that such presentation be "within a reasonable time and in substantially the same time slot".
- The "Episode" as a whole does not meet the overall requirement of factual reliance as stipulated in section 3 of the Code.

The complaint will survey the Constitutional law provisions (especially section 16(1)) that are pertinent. It will show that Constitutional Court decisions in this regard are in line with jurisprudential and philosophical tradition. There is then a survey of the relevant BCCSA Tribunal decisions. A case will be made to synthesize the relevant sections in the Code and the Tribunal decisions with the thinking underlying the Constitutional Court decisions.

The UK equivalent of the Tribunal has handed down a decision in connection with the Documentary. An analysis

of this decision will be made. It will be shown that the decision is inappropriate in this case for two main reasons. Firstly: the UK case dealt with a screening of only the Documentary, this case deals with a screening of the Episode of which the Documentary forms a part. Secondly: the past behaviour of Carlton, the Respondent in the UK case, was indicative of an effort to present a balanced picture overall over a year; this is not the case with the Respondent in this case. Furthermore, an attempt will be made to show two incorrect factual findings of the ITC. Firstly: that the ITC misinterpreted the Dr. Dore Gold interview in the Documentary. Secondly: that the ITC accepted the authority of Carlton's historical sources; in this regard it will be shown that the ITC's decision was made without being presented with the relevant evidence.

The legal principles will then be applied to the particular facts of the case in accordance with the two legged argument of the Complaint.

Firstly: it will be shown that the Episode does not satisfy the "effort" and "reasonable and substantial time" test. It will be argued that in this case the pure mathematical test is pertinent, i.e. the amount of time given to one point of view as opposed to the amount of

time given to the other point of view is imbalanced and that a pure numerical calculation is justified. However, an argument will also be made that substantially there was not "effort" and "reasonable and substantial" time afforded to the opposing view.

Secondly: in so far as factual accuracy is concerned, it is recognized that the Tribunal is not a tribunal of "history" (as was also admitted by the ITC). The point by point historical argument is both futile and inconclusive - there are legitimate interpretations of facts on both sides and the Tribunal cannot be asked to adjudicate which interpretation is correct. However: it will be shown that the sources relied upon by the Respondent are highly suspect. Indeed, evidence will be adduced proving that the Documentary's historical consultant is a fraud, has supported a historical fraud, and despite the fraud being exposed, has compounded that fraud. The fraud relates directly to the historical integrity and historical credibility of the Documentary's historical consultant. At the very least: this fraud should have been communicated to the viewing public. Moreover, it will be argued, that such a fraud in the way it was presented is a form of "thought control" which the Tribunal should outlaw.

C: LEGAL

1: FREEDOM OF EXPRESSION IN SA LAW

1.1 Section 16(1) of the Constitution:

"Everyone has the right to freedom of expression which includes:

- (a) freedom of the press and other media;*
- (b) freedom to receive or impart information or ideas;*
- (c) freedom of artistic creativity; and*
- (d) academic freedom and freedom of scientific research."*

1.2 Section 16(2) of the Constitution:

"The right in subsection (1) does not extend to

-

- (a) propaganda for war;*
- (b) incitement of imminent violence; or*
- (c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm."*

1.3 Section 1 of the Constitution

"The Republic of South Africa is one, sovereign, democratic state founded on the following values:

- (a) Human dignity, the achievement of equality and the advancement of human right and freedoms."*

1.4 Freedom of expression is a right protected by the Constitution. However, under the SA Constitution "freedom of expression" is not an absolute right. The right is explicitly curtailed by section 16(2) and implicitly by a conflict of rights i.e. where

the expression is contrary, for example, to the provisions of section 1 - there is no automatic guarantor that section 6(1) prevails.

1.5 The Constitutional Court of South Africa has pointed out the limits of section 16(1) within the South African context. In this regard The ***State vs. Russel Mamabolo (Case CCT 44/00)*** is the seminal decision. It should be pointed out that the current Respondent appeared as amicus curia in the ***Mamabolo*** case.

1.6 In ***Mamabolo***, Mr. Marcus representing the Respondent as amicus curia, argued that "the clear and present danger" test adopted by the US Courts in connection with the ***First Amendment*** should be the test adopted in connection with section 16(1) of the South African Constitution.

1.7 At [41] KRIEGLER J in his magisterial judgement writes:

"The fundamental reason why the test evolved under the First Amendment cannot lock onto our crime of scandalizing the court is because our Constitution ranks the right to freedom of expression differently. The First Amendment declaims an unequivocal and sweeping commandment; section 16(1), the corresponding provision in our Constitution, is wholly different in style and significantly different in content. It is carefully worded, enumerating

specific instances of the freedom and is immediately followed by a number of material limitations in the succeeding subsection. Moreover, the Constitution, in its opening statement and repeatedly thereafter, proclaims three conjoined, reciprocal and covalent values to be foundational to the Republic: human dignity, equality and freedom. With us the right to freedom of expression cannot be said automatically to trump the right to human dignity. The right to dignity is at least as worthy of protection as is the right to freedom of expression. How these two rights are to be balanced, in principle and in any particular set of circumstances, is not a question that can or should be addressed here. What is clear and must be stated, is that freedom of expression does not enjoy superior status in our law."

1.8 At [37] KRIEGLER J writes:

"Having regard to our recent past of thought control, censorship and enforced conformity to government theories, freedom of expression - **the free and open exchange of ideas** - is no less important than it is in the United States of America. It could actually be contended with much force that the public interest in the open market-place of ideas is all the more important to us in this country because our democracy is not yet firmly established and must feel its way. **Therefore we should be particularly astute to outlaw any form of thought-control, however respectably dressed.**"

1.9 In a recent Constitutional Court decision **The Islamic Unity Convention vs. The Independent Broadcasting Authority And Others (Case CCT 36/01)** LANGA DCJ quotes KRIEGLER J's opinion cited above word for word and adopts it. The Islamic Unity Case dealt with a narrow issue of the constitutionality

of section 2(a) of the Code of Conduct of Broadcasting Services. (On the very narrow question before the Court see [24] of the Judgement.)

1.10 In the Islamic Unity case LANGA DCJ at [29] writes:

"The pluralism and broadmindedness that is central to an open and democratic society can, however, be undermined by speech which seriously threatens democratic pluralism itself."

1.11 At [37] LANGA DCJ writes:

*"In the context of broadcasting, freedom of expression will have special relevance. It is in the public interest that people be free to speak their minds openly and robustly, and, **in turn, to receive information, views and ideas.** It is also in the public interest that reasonable limitations be applied, provided they are consistent with the Constitution."*

1.12 In summary:

1.12.1 Freedom of expression has limitations in South Africa.

1.12.2 Freedom of expression is the free and open exchange of ideas. The operative words being "free" "open" and "exchange". It is a two-way flow and not one way: not enough to be able to say what you want openly and freely but also to "receive" openly and freely.

1.12.3 Freedom of expression can be abused so that it negates the very right it itself wrests upon. The important refrain not to be forgotten is that of KRIEGLER J, cited by LANGA DCJ and even by this Tribunal in (*Case Number 61/2002 Polakow vs. Radio Islam* at [5] by Prof Kobus van Rooyen SC.

"Therefore we should be particularly astute to outlaw any form of thought-control, however respectably dressed."

2: PROTECTION AGAINST THOUGHT CONTROL

2.1 The difficult question here, of course, is what constitutes "thought control"?

2.2 Western jurisprudence, philosophy, socio-economics and politics have been grappling with the question of "thought control" ever since Plato banned the poets from his Republic. Tocqueville, Montesque, John Locke, Adam Smith, von Nises, Schumpeter, Orwell, Solzhinistyn, Zinoviev, Revel, Aaron and Hayek are the moderns who have written extensively on the subject. Especially pertinent to the current complaint are the writings of the Frenchman Jean-Francois Revel - a relatively unknown writer in the English speaking world - but a profound thinker who

has analyzed "thought control" in the context of the modern day media. I will be quoting extensively from Revel's book "The Flight From Truth - The Reign of Deceit in the Age of Information".¹

2.3 At pg. 29 Revel writes:

"Democracy cannot live without the truth; totalitarianism cannot live without falsehood. Democracy commits suicide if it lets itself be invaded by lies, totalitarianism if it lets itself be invaded by truth (le verite). With mankind now moving ever further into a civilization dominated by information, democracies will not be viable if they are nourished and sustained by regularly falsified information."

2.4 LANGA DCJ makes the profound remark that there cannot be freedom of speech in a democracy that threatens the fiber of democracy.²

2.5 There is a frightening text that describes the disintegration of a real democracy because of the abuse of speech. I will quote it in full. It makes for harrowing reading.

"To fit in with the change of events, words, too, had to change their usual meanings. What used to be described as a thoughtless act was now regarded as the courage one would expect to find in a party member; to think of the future and wait was merely another way of saying one was a coward; any idea of moderation was just an attempt to disguise one's unmanly character; ability to understand a

¹ Jean-Francois Revel, 'The flight from Truth - The Reign of Deceit in the Age of Information' (Translated from the French by Curtis Cate - Random House 1991). Revel was the former editor and director of L'Express. He had written over 20 books on the subject of democracy and journalism.

² At [9] of CCT 36/01

question from all sides meant that one was a traitor. Fanatical enthusiasm was the mark of a real man, and to plot against an enemy behind his back was perfectly legitimate self-defense. Anyone who held violent opinions could always be trusted and anyone who objected to them became suspect. To plot successfully was a sign of intelligence, but it was still cleverer to see that a plot was hatching. If one attempted to provide against having to do either, one was disrupting the unity of the party and acting out of fear of the opposition. In short, it was equally praiseworthy to get one's blows in first against someone who was going to do wrong, and to denounce someone who had no intention of doing any wrong at all.

"Family relations were a weaker tie than party membership, since party members were more ready to go to any extreme for any reason whatsoever. These parties were not formed to enjoy the benefits of the established laws, but to acquire power by overthrowing the existing regime; and members of these parties felt confidence in each other not because of any fellowship in religious communion, but because they were partners in crime. If an opponent made a reasonable speech, the party in power, so far from giving it a generous reception, took every precaution to see that it no one heard it....

"Love of power, operating through greed and through personal ambition, was the cause of all these evils..

"Thus neither side had any use for conscientious motives; more interest was shown to those who could produce attractive arguments to justify some disgraceful action. As for the citizen who held moderate views, they were destroyed by both the extreme parties, either for not taking part in the struggle or in envy at the possibility that they might survive..

"As a rule those who were least remarkable for intelligence were the loudest, the only ones heard. They showed the greatest powers of survival."³

³ Thucydides, 'The Peloponnesian War' , Book III 82 (Penguin Classics translated by Rex Warner pp. 242-244

2.6 It is hard to believe the context of that description. It was not written about the break up of the democracy Weimar Germany in the 1930s, or of Italy's descent into fascism. The above text was written over 1500 years ago. It describes Athens dissolution into the Tyranny of the 500. Athens, the first democracy in the history of mankind; Athens - were freedom of expression was so sacrosanct that even lies and calumnies could be freely aired. The lie creeps into the fabric of democracy and chokes it.

2.7 In the literature there is a continual theme that heterodoxy and pluralism is of the hallmarks of the freedom of speech in a democracy. This point was picked up by LANGA DCJ:

"The pluralism and broadmindedness that is central to an open and democratic society can, however, be undermined by speech which seriously threatens democratic pluralism itself."

In other words one of the tell-tale signs of "thought control" is the lack of "pluralism", "openness" and "broadmindedness".

2.8 In **Shabalala and Others vs. AG, Transvaal and Another (SA 725(CC))** it was stated that South Africa is committed to a society based on "constitutionally

protected culture of openness and democracy and universal human rights for South Africans of all ages, classes and colors." In the context of "freedom of expression" I take this to mean that all South Africans of all points of view not only have the right to express those points of view but should be afforded the equal opportunity to express that point of view. Where only one point of view is preponderantly communicated through State controlled mechanisms of communication to the detriment of the opposing point of view, there can be no freedom of expression or a "*constitutionally protected culture of openness*".

2.9 In a real democracy than can be no single orthodoxy to the exclusion of orthodoxies. Hence, the plurality of ideas, of various ideologies is essential. Revel, after castigating the right for muzzling any expression, deals with the Left who manipulate freedom of expression :⁴

*The Left refuses to understand that freedom of expression destroys democracy when it becomes an oft-used freedom to lie and to defame. It remains faithful to the old principles of fanaticism: that a just cause - what cause is not just in the eyes of its partisans? - **justifies unjust proceedings. Does it not understand, will it never understand, that democracy is the regime where there is no single just cause, only just methods?"***

⁴ Revel, pg. 142

2.10 I propose that thought-control is the implicit or explicit propagation of a lie as the truth. Thought-control is the preponderance of one orthodoxy, ideology, interpretation or point of view, call it what you will, without allowing fair opportunity to an opposing or different orthodoxy. Thought Control is an assault on human dignity.

2.11 The real nature of the threat of thought control through mendacity, strict imposition of orthodoxy and denial of an opposing point of view is made terrifyingly succinct by George Steiner in his essay "Language and Silence":

"The language was infected not only with these great bestialities. It was called upon to enforce innumerable falsehoods, to persuade the Germans that the war was just and everywhere victorious. As defeat began closing in on the thousand year Reich, the lies thickened to a constant snowdrift. The language was turned upside down to say 'light' where there was blackness and 'victory' where there was disaster. Over the radio, between the interruptions caused by air-raid warnings, Goebbels voice assured the German people that 'titanic secret weapons' were about to be launched. The nightmare fizzled out on a shameless lie. Goebbels solemnly told the Herrenvolk that Hitler was in the front-line trenches, defending the heart of the capital against the Red beast. Actually, the buffoon lay dead with his mistress, deeply in the safety of his concrete lair."⁵

⁵ George Steiner, 'A Hollow Miracle' from Language and Silence, 1959.

2.12 No one summarizes it with greater wit than Gulliver relating his encounter with the Houyhnmns:

"And I remember in frequent Discourse with my Master concerning the Nature of Manhood, in other parts of the World; having occasion to talk of Lying and false Representation, it was with much difficulty that he comprehended what I meant; although he had otherwise a most acute judgement. For he argued thus: that the Use of Speech was to make us understand one another and to receive information of Facts; and if anyone said the Thing which was not, these Ends were defeated; because I could not properly be said to understand him; and I am so far from receiving Information, that he leaves me worse than in Ignorance; for I am led to believe a thing Black when it is White, and Short when it is Long. And these were all the Notions he had concerning the Faculty of Lying, so perfectly understood and so universally practiced among human Creatures."

3. THE MEDIA, FREE SPEECH AND TELEVISION

3.1 In the *Mamabolo* case KRIEGLER J rejects the notion of "absolute freedom of expression" in relation to the "media" in modern society. KRIEGLER J writes at [49]:

*"Mr. Fabricus argued, however, that the public interest in the protection of the legitimacy of the judicial process could be better served by allowing calumnies, even malicious falsehoods to be aired and refuted by open public debate. There is a certain stark appeal in such an absolutist stance, yet it is both unrealistic and inappropriate - **unrealistic in an imperfect world with massive concentration of power of communication in relatively few hands** and inappropriate where the Constitution requires a balancing exercise."*

3.2 Nowhere is the danger of "massive concentration of power of communication in relatively few hands" more accurate than in the description of the national Television broadcasting rights in South Africa.

3.3 More than any other person or body in South Africa, the national TV broadcasters are not only the facilitators of the right of freedom of speech but also its guarantors. The responsibility is awesome. Thus, the constitutional obligations of South African Television Companies - as opposed to radio stations or schools or Universities - demand a far

more stringent and rigorous requirement of "freedom of speech" in the sense of a "free", "open", "equal", "pluralistic" exchange of ideas. What would not be construed as "thought control" on a local Radio Station aimed only at a specific sector believing in the same "ethos" could be "thought control" in a Television Station broadcasting to the entire nation. It is precisely in the context of South African TV stations, such as the Respondent, where a higher raft of "thought control", plurality of ideas and equality should be demanded and enforced.

3.4 A National TV broadcaster walks the fine line between guaranteeing "freedom of speech" conducive to democracy and "freedom of speech" destructive of democracy. The latter is utilizing the media to condone orthodoxy, deny plurality all of which amounts to "thought control".

3.5 It is a worthwhile effort to analyze the situation where the media is used as a vehicle of "thought control".

3.6 In an article in the Washington Post, January 7, 2002, the Pakistani President Pervez Musharaf made

an honest observation: "The Muslim world," writes Musharaf has 25% of the world's people and 70% of its energy resources, and yet its combined output equaled just one half that of one Western Country, Germany."

3.7 According to the World Bank, the Middle East, despite the opportunities offered by its immense oil and gas wealth - had the lowest overall and per capita economic growth in terms of GDP of any world region between 1965 and 1999, except for sub-Saharan Africa.⁶

3.8 Is there any coincidence that such a pitiful and tragic performance occurs in a part of a world where the media is there to lie and deceive?

3.9 Barry Rubin in his 'The Tragedy of The Middle East' writes:

"Given the Arab regimes pervasive controls and ideological power, mass media offers one of the few potential ways for alternative information and ideas to reach their citizens. But rather than representing a window on the rest of the world, the media usually - with rare exceptions and slight variations - act as a wall, reinforcing near unanimity, shutting out the kind of discourse that

⁶ World Bank, World Development Indicators, 2001 (Washington DC) pg24-26.

has become dominant almost everywhere else in the world. Within each Arab country, radio and television are tightly controlled by the State. In this hothouse of fundamental consensus, failed policies and problems are analyzed only in the reigning framework's context of ideas, which excludes the kind of new thinking needed to find a better way."⁷

3.10 It is best for the courageous few Arab journalists to speak for themselves. In his article, 'Censorship and State Control of the Press in the Arab World'⁸, the Lebanese journalist, Jihad Khazan, no friend of Israel, observes:

"The assigned task of the Arab media is to deny the news or praise the ruler.

"Al Hayat was never banned in Israel. It was banned 60 times in 1994 in various Arab Countries, 35 times in 1995, 20 times in 1996 and 20 times in 1997."

"In Saudi Arabia, there are many sensitive stories, especially those concerning religion, women and the military. In Bahrain and Qatar, the prohibited story is the border dispute. And so forth. In all Arab countries, perhaps with one or two exceptions, criticism of the head of state and his immediate family is taboo. In some cases, it is tantamount to signing ones own death warrant. If we write about fundamentalist groups in London, we risk being banned in Algeria and Tunisia; if we write about women's rights to drive a car, we risk the wrath of the Saudi censor. The peace process is never a safe topic. Al-Hayat was the first newspaper to interview Israeli government leaders and to publish articles by Israeli writers. Al Hayat suddenly came under attack in Syria for 'dealing with the enemy'. Israel is the one

⁷ Barry Rubin - Director of Global Research and International Affairs (GLORIA) - 'The Tragedy of the Middle East' - Cambridge University Press, 2002, pg. 259

⁸ Jihad Khazan - 'Censorship and State Control of the Press in the Arab World', Harvard International Journal of Press Politics - vol4, No3 (1999) pg 87.

country in which we as Arab journalists can take out our frustrations, attacking it without risk. No statement, regardless how inflammatory, and no claim, no matter how contrary to facts, will ever be checked or criticized."

3.11 When Gibran Tueni, editor of the Lebanese newspaper El Nahar published an open letter to Syrian President Bashar Al Assad asking him to withdraw Syria's army in accordance with UN Resolutions, Lebanon's President, Emile Lahoud arrested Gibran on charges of treason. Gibran wrote: *"It is a pity that someone who calls for the minimum standards of sovereignty and independence for his country is accused of treason"*⁹

3.12 Hani Shukaralah, the Egyptian columnist, sums it up most poignantly as follows:

*"We've become immune to nonsense - the manipulation of language into an instrument of equivocation, ambiguity and sheer mumbo-jumbo...And so well trained have we, as a people, become in this art that on occasion the hidden message is understood as the exact opposite of the outward meaning. Thus for instance, when an official pronounces Egypt free from mad cow disease, Egyptians immediately stock up their freezers with poultry."*¹⁰

⁹ Al Nahar, March 27, 2000; Daily Star, March 29, 2000.

¹⁰ Al Aharam Weekly, March 8-15, 2001

4. THE BCCSA CODE AND THE CONSTITUTION

4.1 The relevant sections of the BCCSA Code should be read according to the spirit, wording and interpretations of the Constitution. The Constitution mandates that all legislation and legislative activity should be carried out under the aegis of the Constitution.

4.2 This principle had also been explicitly recognized by Commission. In **BCCSA Case 1998/19 Jennifer Burke vs SABC** (which matter dealt with the another Pilger film 'Apartheid did not Die') van Rooyen and Mokoena wrote in their judgment that the BCCSA Commission is "*bound by the fundamental rights chapter of the RSA Constitution.*" The Commissioners emphasized the Commission's obligation to "*promote the values that underlie an open and democratic society based on human dignity, equality and freedom.*"¹¹

¹¹ It must be pointed out, however, that the **Jennifer Burke** decision was handed down before the **Mamabola** judgement. In the **Jennifer Burke** case the Commissioner's cite "the free market place of ideas" argument: "*It has often been said within freedom of speech writings that nothing is as good as free-market place of ideas.*" **Mamabolo** has subsequently rejected the adoption of this test with regard to section 16(1) of the Constitution.

4.3 The relevant sections of the Code that will be relied on are Section 3¹² and Section 7.2.1¹³.

4.4 The Respondent is one of those few referred to by KRIGLER J who has almost exclusive right to the most powerful mode of communication in South Africa. Indeed, the Respondent is in even more powerful a position than say MNET whose reach is limited to its subscriber base. The Respondent has no such limitation; its reach, in this sense, is unlimited within South Africa. Therefore, in implementing the relevant sections of the Code against the Respondent, the highest and strictest test of compliance must be applied Republic is limited by its subscriber base.

4.5 The Complaint is against a "current affairs" programme or what the British ITC Code refers to as "personal view" programme. Current affairs programs

¹² "3.2. Comment shall be presented in such a manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to."

"3.3. Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair and balanced account of all available facts which are material to the matter commented upon."

¹³ "7.2.1. in presenting a programme in which controversial issues of public importance are discussed a broadcasting license shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time and in substantially the same time slot."

are normally the fora in which various point of view of controversial issues are aired. In such programs no view should be censored. However, the Constitutional requirement of "a free exchange of ideas" and "equality" of opportunity to express those ideas is practically implemented by presenting the opposing view points and allowing the viewer to "weigh up" the pro and contra.

4.6 In **BCCSA Case 2002/33 Streit, Mizrahi & Nel vs. SABC**, Commissioner van Rooyen wrote:

*"News differs from current affairs programmes where likely viewers often have the capacity to weight the pro and contra arguments against each other and, in any case, come to the conclusion that the views expressed should not be taken at face value. **Current affairs programmes would also be lengthier and afford the viewers an opportunity to weigh up the alternatives, which would be offered in such a programme.**"*

In other words, there is a constitutional expectation that alternative view points must be offered. This is not an option but an obligation.

4.7 In **BCCSA Case 2002/08 Muslim Youth Movement vs. SABC** the Complainant objected to the fact that on a radio programme the political affiliation of a guest on a radio talk show was not made clear to the listening

public.¹⁴ (The said radio guest was Hagai Segal who appears in the Debate. Interestingly, the political affiliations contended by the Complainant in that case and accepted by the Respondant were explicitly denied by Mr. Segal himself in the Episode. However, the principles are still valid.

In the judgment the Commissioner, Prof Henning Viljoen wrote:

"This fact, to our mind, would make Mr. Segal a biased analyst and contradict any status as an objective professional with a reputable broadcaster like the BBC. We find that it amounted to a contravention of the Code not to inform listeners to the Tim Modise show that Mr Segal was an important figure in the World Zionist Organization"

And later:

*"We have also in past judgments emphasized that we are reluctant to find contraventions in the Code because of things that were said on this kind of talk show. Lively debate and provocative viewpoints are part and parcel of this kind of talk show. However, we think that **transparency** is necessary when introducing a guest speaker on this kind of program. This is only fair to the*

¹⁴ The radio guest was one Hagai Segal, the same individual who is the SAJBD representative in the Debate. The political affiliations contended by the Complainant in the **Muslim Youth Movement Case** were not contested by the Respondent. However, Hagai Segal in the Debate states that he was never consulted and the judgement was based on a mistake on the facts. The political affiliations contended were simply not true. This notwithstanding, the legal principle of the **Muslim Youth Movement Case** is still valid.

listeners to inform them from what view point the guest will be expressing his/her opinion."

And later:

"...an impression of objectivity was created which was not fair towards the listeners. This contravened the Code which requires fair and balanced comment on all matters of public importance."

The above decision sets out the requirement for transparency. It finds that creating a "façade" of impartiality is "unfair". "Non-transparency", creating a false impression of non-bias and objectivity is a form of thought control. I think the lesson to be learned from this decision is that the propagation of a falsehood, implicitly or explicitly, even by omission, is inimical to freedom of speech. In short, it is a form of thought control. In the Muslim Youth Movement Case, the false impression was caused by omission. As will be shown, in the present Case, the false impression is caused by a willful act of fraud. In this case, therefore, the Commission must be particularly more "astute" to outlaw such a phenomenon.

4.8 Leaving aside legal principles, for one moment, and dealing with a legal technicality: Section 7.2.1. of the Code applies to the current complaint in that the matter dealt with in the i.e. the current

Israeli-Palestinian conflict has been held by a slew of recent **BCSSA judgements** to be a matter of "public importance".¹⁵ (Muslim Youth Movement Case 2002/08; Polakow vs. Radio Islam Case 61/202; Streit, Mizrahi & Nel Case 2002/33). Further, the *Islamic Unity Constitutional Court Decision* (CCT 36/01) implicitly recognizes the that the Israeli-Palestinian conflict is a "matter of public importance".

5. THE ITC CODE AND DECISION

5.1 Section 39(1)(c) of our Constitution allows a Court of Law or Tribunal to regard foreign law. It is therefore useful in to view the English Broadcasting Code of Conduct - the UK ITC Programme Code published in January of 2002. Firstly, the Documentary is an English documentary and was broadcast first in the UK. Secondly, the UK equivalent of the BCCSA had the occasion to adjudicate a plethora of complaints against the the Documentary.

¹⁵ **Muslim Youth Movement Case 2002/08; Polakow vs. Radio Islam Case 61/2002; Streit, Mizrahi and Nel Case 2002/33.** It will even be argued that the Islamic Unity Constitutional Court Case (CCT 36/01) also implicitly recognizes this issue to be one of public importance.

5.2 Essentially, the new ITC enforces the general principles recognized by the our own Code and by our Constitution. A few of the relevant sections are: 2.1¹⁶; 3.1¹⁷; 3.2(i)¹⁸; 3.5¹⁹; 5.3²⁰. There is an

¹⁶ "Licensees may make programmes about any issues they choose. However, the method of treatment is limited by the obligations of fairness and a respect for truth, two qualities which are essential to all factually based programmes."

¹⁷ "**Due impartiality**

Broadcasters should deal even-handedly with opposing points of view in the arena of democratic debate. Opinion should be clearly distinguished from fact. Judgement will always be called for. The requirement will also vary with the type of programme; the considerations applying to drama, for example, are different from those applying to current affairs programmes. Licensees transmitting to countries other than the UK should be aware that the due impartiality requirement applies to them no less than to licensees operating solely within the UK"

¹⁸ **The 'series' provision**

The Broadcasting Act's requirements about impartiality allow a series of programmes to be considered as a whole. For this purpose, the ITC defines a series as more than one programme broadcast in the same service, each one of which is clearly linked to the other(s) and which deal with the same or related issues. It is not sufficient to claim that programmes on other channels or other media will ensure that opposing views will be heard.

¹⁹ **Personal view programmes**

Programmes in which an individual contributor is given the opportunity to put forward his or her own views, without necessarily referring to opposing views have a valuable place in the schedules. Personal view programmes on 'controversial' matters covered in the act are, however, subject to specific safeguards in order to ensure compliance with the general provisions relating to due impartiality.

The safeguards, which apply to all personal view programmes on 'controversial' matters, are as follows:

(a) Each programme must be clearly identified as giving a personal view both in advance announcements and at the start of the programme itself.

(b) Facts must be respected, and licensees have an obligation to do what they can to ensure that the opinions expressed, however partial, do not rest upon false evidence.

(c) A suitable opportunity for response to the programme should be provided, where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme.

²⁰ **Terrorist or criminal activity**

Particular care is required with a programme which carries the views of people or organisations who use or advocate the use of violence or other criminal activity within the British Isles or abroad to attain political or other ends. Programmes must not give the impression of condoning criminal activity, even (or especially) where its seriousness may not be accepted or recognised in every section of society.

"obligation of fairness and respect for the truth", a requirement of "due impartiality" which can be viewed in the context of a "series" of programmes and not necessarily within the confines of specific programme.

5.3 116 complaints were lodged with the ITC against the Documentary. The ITC was flooded with over 553 emails supporting the programme. The ITC did not find that the broadcasting of the Documentary infringed the Code. It is respectfully submitted, that the ITC did approach the matter of adjudication in the proper manner.

5.4 Firstly, it addressed the issue of "due impartiality". This requirement is only necessary in matters of "political controversy" much like our own Code's section 7.2.1.

"These require that "due impartiality" be observed by programmes treating matters of political controversy. The Israeli-Palestinian question, though outside UK borders, does in the ITC's view fall within this category of political controversy. However, the term "due" is significant. It should be interpreted as meaning adequate and appropriate to the nature of the subject and the type of the programme. While the requirement of due impartiality to all areas of controversy covered by the Broadcasting Act, it does not (as the Broadcasting Act puts it) 'require absolute neutrality on every issue or

detachment from fundamental democratic principles.' It does not mean that balance is required in any simple mathematical sense or that equal time must be given to each opposing point of view. It does mean that the programme makers can come at the subject matter from particular directions so long as facts are respected and opposing viewpoints represented."

The ITC found that the requirement of due impartiality was met for two reasons:

Firstly:

"The time given to the expression of the pro-Israeli perspective was not commensurate with that given to the Palestinian contributors but the ITC is satisfied that Dore Gold, as a senior advisor to the Israeli Prime Minister, was afforded adequate opportunity to respond to the key points raised by the programme."

Secondly:

"This programme formed part of a range of current affairs coverage of the Middle-East which ITV broadcast over the course of the past year."

5.5 The second requirement adjudicated by the ITC was the obligation to respect the truth. In this regard, the ITC was persuaded that Carlton, the respondent had fulfilled its obligation to the truth, for the following reason:

"In addition to the "due impartiality" requirement, all factually based programmes have an obligation to respect the truth. The ITC raised with Carlton all significant areas of inaccuracy critics of the programme alleged and the

broadcaster answered the, by reference to a range of historical texts. The ITC is not a tribunal of fact and is particularly aware of the difficulties of verifying 'historical fact' but the comprehensiveness and authority of Carlton's sources were persuasive, not least because many appeared to be of Israeli origin."

5.6 This complaint attacks the Episode on exactly the same two legs considered in the ITC judgement i.e. "due impartiality" and "respect for the truth."

5.7 On the issue of impartiality the considerations in this instance are different to those in the UK instance.

5.8 In the UK, the Documentary and only the Documentary was broadcasted. What was a recognized bias in favour of one point of view and the countervailing point of view were confined to the documentary. In this instance, the documentary was preceded by 30 minutes of only one point of view. There seems to be no indication that Carlton endorsed the biased point of view. As will be shown, in this instance the Respondent has not only endorsed but embraced a single point of view.

5.9 In the UK, the Documentary was part of a series and clearly that series, in accordance with the ITC

code, achieves a balance of points of view. In the current case, the Documentary is an orphan. It is not part of a series which will create an overall balance.

5.10 Thirdly, it will be argued the so-called balance achieved by Dr. Dore Gold in the Documentary is an illusion. It is respectfully submitted, the balance is artificial, in form only and not in substance. Surely the requirement for "due impartiality" or "balance" is a requirement not of "form" but of "substance."

5.11 In so far as "respect for the truth", the ITC based its finding on the fact that the "authority of Carlton's historical consultants were persuasive, not least because they were of Israeli origin. As will be shown in the course of this complaint, the "authority" of the historical consultants, indeed the main consultant, is a fraud and a cover up. Clearly, the evidence that will be put before this Commission was not put before the ITC. The fact that the "authority" is Israeli does not preclude the possibility of an Israeli historian lying against the official Israel point of view.

6. FREEDOM OF SPEECH AND INVESTIGATIVE JOURNALISM

6.1 Before launching into the particular facts and evidence of the case, it is worth while to try synthesize the constitutional notion of freedom of speech, the specific sections of the BCCSA Code with the duties and obligations of an "investigative journalist".

6.2 I think no one has achieved this synthesis more eloquently than Jean-Francois Revel. In weighing the arguments and evidence that will follow, the Commission is asked to consider them against the following thoughts of Revel.

*"When a journalist invokes the 'right to inform' and the 'right to information', he or she refers to the right to present facts as he or she pleases, almost never to the public's right to be accurately and honestly informed."*²¹

*"Instead of informing their fellow citizens, too often journalists want to govern them. What, in effect, is a democracy? It is a system in which the citizens govern themselves. What purpose do the press and other media serve in this system? To place at the disposal of the citizen information without which they cannot govern themselves wisely or at least pick out and judge those who are to govern them. It is the organic link between self-government and information, without which the citizens' choice would be made blindly, which justifies the freedom of the press and makes it so necessary to democracy. When information the press feeds to the public is false, the process of democratic decision making is itself falsified."*²²

²¹ Revel pg. 249

²² Revel, pg. 247

"As soon as journalists, while pretending to provide information, consider that they have the right to present current happenings in such a way as to orient public opinion in a manner they regard as salutary, democracy is amputated of one of its main supports. It is effected just as perniciously as it is by a corrupt judiciary or electoral fraud."²³

"It would seem abusive to claim independence in the name of the right to lie or make mistakes."²⁴

"To counter this approach, journalists often entrench themselves behind the so-called distinction between opinion and information - another standard cliché from the high-sounding but hollow platitudes one so often hears. Yet the distinction is seldom observed. The controversy over the present day press comes precisely from the fact that the right (the first right to be recognized) to express all opinions - even the most extravagant, the most hateful - the right to be wrong, to lie, to say stupid things has spilled over and influenced the mission of information gathering and transmitting, which appeared only later. If today one accuses a journalist of being a falsifier of facts or an ignoramus on a precise point of information, one is immediately accused of indulging in a "witch hunt", of assailing the freedom of the press, of rejecting 'pluralism'...According to the famous maxim: 'Commentary is free, information is sacred.' I must confess that I have often had the impression that the very opposite holds true. Information is free and fanciful, commentary is sacred. But the most pernicious ill is opinion disguised as information"²⁵

²³ Revel, pg. 251

²⁴ Revel, pg. 252

²⁵ Revel, pg. 239

D: FAIR REPRESENTATION OF OPPOSING VIEWS

7. ANATOMY OF AN EPISODE

- 7.1 The "**Episode**" comprises of 4 sections. The duration of the entire Episode was 150 minutes.
- 7.2 The "**Interview**" - a live satellite link up with John Pilger. Here - as will be elaborated - Pilger was not so much questioned as given a platform to expound his point of view. The duration of the "**Interview**" was 30 minutes.
- 7.3 The "**Documentary**" - the screening of the documentary "Palestine is Still The Issue" written and presented by John Pilger, produced by Christopher Martin and directed by Tony Stark. The duration of the Documentary was 60 minutes.
- 7.4 The "**Debate**" - a live studio debate between Hagai Segal - nominated by the Jewish Board of Deputies and Honorable Minister Ronnie Kasrils. The Honorable Minister Kasrils feels passionately about the Palestinian issue²⁶ and represented the Pilger point

²⁶ In this regard, it is interesting to note that the official South African Ministry of Water Affairs and Forestry Web Site has an extensive section on the Israeli-Palestinian conflict. The information on the Web Site represents an anti-Israeli view and

of view. Segal represented the opposing point of view. The duration of the Debate was 30 minutes. Pata managed the debate and was especially strict in not letting either side "dominate" the debate - the wording his hers. Thus Kasrils had about 10 minutes of the floor and Segal about 10 minutes. Patta spoke for about 5 minutes.

receives much of its information from The *Media Review Network* - see Kasril's diatribe on the site 'Inequity of distribution of Resources in Palestine - Apartheid in the Holy Land.' The *Media Review Network* is a fundamentalist Islamic organization that glorifies and encourages suicide bombings of civilians. That such material appears on an official Government Web Site is worrying enough, that it appears on the Web site of the Ministry of Water Affairs is tragic. *Britain's Center for Ecology and Hydrology* together with the *World Water Council* have developed a new water poverty index. The index grades countries according to their water resources, access, use and environmental impact and awards them a score out of 100. In effect, the index is an adjudication of how various Department of Water Affairs around the world are scoring in carrying out their mandate: providing water to their population. Out of 100 countries surveyed in 2002, South Africa was 8th from the bottom. South Africa scored 52 points which was slightly above the desert country of Saudi Arabia with 51 points and China with 50 points and over a billion population. A country such as Israel with scarce water resources comes in at 58 points and the score includes the provision of water to the West Bank and Gaza residents. South Africa's dismal performance in the provision of water to its population is compounded when the average rainfall in South Africa is aggregated together with amount of the population in contrast to say a country like Saudi Arabia or Israel where the rainfall is sparse. (**'The Economist' - December 21st 2002 - January 3rd 2003 pg.146**) Given such a dire and tragic water situation in South Africa, one would think that the Department of Water Affairs should dedicate every cent of its budget to quench the thirst of its famished population. But, like Nazi government departments, the singling out of Jews is just as deserving of the department's budget as is the carrying out of its designated mandate. One cannot but recall Hitler's gleeful remark in a speech he gave on August 20 1920 when he noted with consummate delight that the "*scientific demonstration of the danger of Judaism originates from none other than a Jew.*" (RH Phelts(ed), 'Hitlers "Grundlegende" Rede uber den Antisemitismus', *Vierteljahrshefte fur Zeitgeschichte*, 16(4),1968 pp.414-415.)

7.5 The "**Tutu Interview**" - an Interview conducted with Debora Patta. The duration of the interview was 30 minutes. Though Tutu was more measured than both Pilger in his interview and in the documentary and the Honorable Minister Kasrils, clearly Tutu presented a view point extremely critical of Israel. His was a moderated articulation of the Pilger position.

7.6 From the above, it is clear that there is a factual misrepresentation of substantial import in the RESPONSE TO COMPLAINT of the Respondent. In section 1.1 of its RESPONSE, the Respondent contends:

"On Wednesday, 6 November 2002, at 20h00, eTV broadcast a documentary entitled 'Palestine is Still the Issue' ("the documentary"). The documentary formed part of a continuous 2 ½ hour programme which commenced with the documentary."

The "Episode" commended with the Pilger Interview and NOT with the documentary.

8: SECTION 7.2.1: THE DOUBLE TEST

8.1 Section 7.2.1. of the Code calls for "reasonable efforts to fairly represent significant points of view". Opposing points of view should be aired

within a "reasonable period of time and in substantially the same time slot".

8.2 The provisions of our Code are worded differently to the similar provisions of the ITC Code under the section "Due Impartiality"(section 3.1).The precise wording there is:

"Broadcasters should deal even-handedly with opposing points of view in the arena of democratic debate."

8.3 Where section 3.1 of the ITC Code is amorphous and vague, section 7.2.1 of our Code is detailed in that it delineates a two test criteria that must be met for their to be "fairness".

8.4 Firstly, section 7.2.1 requires a "reasonable effort" - I emphasize the word "effort" to represent all points of view. This requirement must be read in the light of the constitutional requirement of "heterodoxy and pluralism". It is not enough just to represent the other point of view - but an active "effort" must be made to achieve this.

8.5 Secondly, and in addition to the first test, section 7.2.1. requires that even if there is a "reasonable

effort" to represent the opposing point of view, that presentation for a reasonable period of time.

8.6 It will be shown now that the Respondent failed both tests.

9: "REASONABLE TIME"

9.1 Pure arithmetic shows that the Pilger point of view was afforded 130 minutes of the 150 minutes. The opposing point of view had 10 minutes of the 150 minutes i.e. 87% of the time to the Pilger point of view and 7% of the time to the opposing point of view. I have not included the interview with Dr. Dore Gold in the documentary for reasons which will be given later. If the Dr. Gold interview is included (all 3 minutes of it and not the Pilger interruptions of it) the percentage is 85% to 9%.

9.2 It is recognized that the requirement of "reasonable time" does not mean equal time much less substantially equal or similar time. But surely where the mathematical disproportion is glaring and so unbalanced that the "reasonable" requirement loses all meaning if such a pure mathematical disproportion is deemed "reasonable". Clearly, the mathematical imbalance might be deemed reasonable in

relation to total duration. A 10 minute piece that gives 8.5 minutes to one side and 1.5 minute to the other side - might be reasonable even though the percentage proportions are more or less the same as that of the Episode. Here, the shortness of the duration militates against making any mathematical consideration.

9.3 The 87%-7% imbalance in this instance where the total duration is 150 minutes on a purely mathematical basis defies all judicial meaning of the word "reasonable". Such a disproportion can never be termed "reasonable" if "reasonable" is ever to mean anything. This interpretation is compounded by "substantially same time slot" requirement.

9.4 As will be recalled, in the ITC decision on the Documentary "imbalance" was seen against the background of a "Series" of programmes. Thus, a clear case for "unreasonableness" on a mathematical basis should be seen within the overall context. The ITC Commission clearly stated that Carlton, the respondent, had, within the last year, presented a number of programmes on the Israeli-Palestinian question. Taken as a whole, there was an overall balance.

9.5 This is valid but inappropriate in our case. Firstly, as has been mentioned, Carlton screened the Documentary and nothing else. Secondly, the Respondent here, eTV, has not within the past year offered an overall balance of opposing points of view on the Israeli-Palestinian crisis. If they will do so - within this year is an open question which should be addressed as pertinent to this Complaint.

9.6 The argument is raised that an Israeli Government spokesman was given the opportunity to speak. In the documentary Pilger interviews Dr. Dore Gold.

Pilger with the objectivity many have come to praise him for, makes this point in characteristic humility:

"The film was accurate, restrained and fair; the longest interview was with an Israeli government spokesman. Every word and frame was subjected to a legal examination for accuracy and to ensure it complied with the fairness regulations in the Broadcasting Act."²⁷

²⁷ Guardian, September 23 article: "Why My Film is under Fire."

The ITC in its decision also mentioned the Dr. Gold interview as satisfying the requirement of presenting an opposing view.

9.7 If Pilger has taught his disciples anything, it is to see behind the façade, to see the crafty manipulation of language, image and sound in modern journalism. A careful look at the Dr. Gold interview will show a perfect example of what Pilger criticizes in others. The Dr. Gold interview is not an honest attempt to hear the other side. It is a crafty manipulation masquerading as honesty.

9.8 All interviewees who accord with the Pilger view express their opinions fully, freely, uninterruptedly and unopposed: see the interviews of "Professor" Ilan Pappé, Mustapha Barghouti, Rami Elhanan, Yishai..., Palestinian Women 1 & 2. Their speech is not interrupted with photomontages; they are never cross-examined; if they are questioned, Pilger gives them the specifics of his question.

9.9 Dr. Gold's interview however is continually interrupted - either by Pilger's cross examination or by, what I call, Goebbel's like editing. Some of

the questions Pilger puts to Dr. Gold are impossible to answer: for example, Pilger asks Dr. Gold what he, Dr. Gold makes of the fact that Israeli soldiers deliberately targeted and killed a civilian; the documentary gives us no details as to this allegation (Who? What? Were?) and Pilger himself, in his question gives no such detail. In addition to being questioned on incidents (the details of which only Pilger knows) Dr. Gold is asked to respond to the fact that Israeli leaders from the 1940s have been terrorists; that Israel's current Prime Minister is a terrorist; that Israel practices "ethic cleansing". How can an unsubstantiated interrogation be regarded by any stretch of the imagination of letting the other side present its point of view?

9.10 But worse: in the middle of his interview, the camera cuts away from Dr. Gold. There is a 2-3 minute mini-documentary on Sabra-and-Shatilla all with running commentary by Pilger. Then, after our little lesson in history, the camera returns to Dr. Gold. The Dr. Gold interview was edited, cut and spliced. What the viewer gets is not the opposing point of view; instead - the viewer gets the opposing point of view as doctored, edited and

commented by Pilger. Why is this Goebellsian technique not used with any of the interviewees who espouse the Pilger view? Can a manipulated version of a point of view count as presenting the other point of view? This is compounded when the edited interlude skillfully is used to enunciate an untruth contradicting Dr. Gold before he has even finished speaking.

9.11 During the interlude Pilger comments that an Israeli Judicial Commission of Enquiry found Prime Minister Ariel Sharon "indirectly responsible" for the Sabra and Shatilla massacres, and therefore, says Pilger, Ariel Sharon is a "terrorist". For someone who has spent his life criticizing others for manipulating the truth by misquoting or by selective quoting or by quoting out of context or by putting ideology before truth, one should not expect the perpetration of these very "hypocrisies" by Pilger himself. This is not the time and the place to go into the findings of the *February 3, 1983 Report of the Commission of Enquiry Into the Events at the Refugee Camps in Beirut (The Kahan Commission)*. Suffice to say that the Kahan Commission did not impute any

criminal liability whatsoever to Prime Minister
Ariel Sharon.²⁸

²⁸ In the preamble to the Kahan Report, it is stated: "No Israeli was directly responsible for the events which occurred in the camps." In the Introduction section of the Report, it is stated: "Our procedures are not those of a criminal court; and therefore the criterion of criminal courts that stipulates that in order to convict someone his guilt must be proven beyond a reasonable doubt, does not apply in this case. Nevertheless, we are aware that our findings and conclusions are liable to be of significant influence from a social and ethical standpoint." How "social" and "ethical" responsibility equates with "criminal" responsibility, when the Report clearly states it is not adjudicating "criminal responsibility", only Pilger can say. The responsibility founded by the Kahan Commission was "ethical" and "social" and more than anything else heightened responsibility under "Jewish Law". The Report under the Indirect Responsibility section states: "If it indeed becomes clear that those who decided on the entry of the Phalangists into the camps should have foreseen - from the information at their disposal and from things which were common knowledge - that there was danger of a massacre, and no steps were taken which might have prevented this danger or at least greatly reduced the possibility that deeds of this type might be done, then those who made the decisions and those who implemented them are indirectly responsible for what ultimately occurred, even if they did not intend this to happen and merely disregarded the anticipated danger." And later: "It is said in Deuteronomy (21:6-7) that the elders of the city who were near the slain victim who has been found (and it is not known who struck him down) 'will wash their hands over the beheaded heifer in the valley and reply: our hands did not shed this blood and our eyes did not see.'" Rabbi Yehoshua ben Levi says of this verse (Talmud, Tractate Sota 38b): "The necessity for the heifer whose neck is to be broken only arises on account of the niggardliness of spirit, as it is said, 'Our hands have not shed this blood.' But can it enter our minds that the elders of a Court of Justice are shedders of blood! The meaning is, [the man found dead] did not come to us for help and we dismissed him, we did not see him and let him go - i.e., he did not come to us for help and we dismissed him without supplying him with food, we did not see him and let him go without escort." (Rashi explains that escort means a group that would accompany them; Sforno, a commentator from a later period, says in his commentary on Deuteronomy, "that there should not be spectators at the place, for if there were spectators there, they would protest and speak out.") When we are dealing with the issue of indirect responsibility, it should also not be forgotten that the Jews in various lands of exile, and also in the Land of Israel when it was under foreign rule, suffered greatly from pogroms perpetrated by various hooligans; and the danger of disturbances against Jews in various lands, it seems evident, has not yet passed. The Jewish public's stand has always been that the responsibility for such deeds falls not only on those who rioted and committed the atrocities, but also on those who were responsible for safety and public order, who could have prevented the disturbances and did not fulfill their obligations in this respect. **It is true that the regimes of various countries, among them even enlightened countries, have side-stepped such responsibility on more than one occasion and have not established inquiry commissions to investigate**

10: "REASONABLE EFFORT"

10.1 Has an effort been made to present the opposing point of view? An effort will not suffice; it must be reasonable. The facts speak for themselves: not only was there no reasonable effort; not only was there no effort at all. Worse: there was an effort to give even more time to only one point of view.

10.2 The Respondent made the effort in money to procure the rights to broadcast the Documentary and in broadcasting time to broadcast the Documentary. There can be no dispute that the Documentary presents one point of view. But the Documentary was only part of the *Episode*. The Respondent put effort, money and time to create a live satellite link up

the issue of indirect responsibility, such as that about which we are speaking; but the development of ethical norms in the world public requires that the approach to this issue be universally shared, and that the responsibility be placed not just on the perpetrators, but also on those who could and should have prevented the commission of those deeds which must be condemned." Indeed, where are the Commission of Enquiries for those indirectly responsible for the genocide in Rwanda, the Srebrenica massacre and, dare I say, the massacres in the ANC camps such as Qaturo. If such a criteria were applied to the UN in Bosnia during the Srebrenica Massacres, or the UN during the Rwanda Genocide then UN Secretary General Kofi Anan would also be "indirectly responsible" as would the entire government of the Netherlands. If such criteria were applied to the ANC camps such as Qaturo and others, then even the Honorable Minister Kasrils, Chief of ANC Intelligence when these massacres were being perpetrated, is "indirectly responsible" for those massacres. Does this mean that the Kofi Anan is a terrorist; that the Right Honorable Kasrils is a terrorist; that the entire Dutch Government during Srebrenica are terrorists?

with John Pilger and to give 30 minutes of Pilger unopposed: Pilger on Pilger, as it were. And then the Respondent sought out an interview with the only Noble Peace Prize Laureate, Archbishop Desmond Tutu, who confers with the Pilger point of view. Indeed, there has been an effort, more than a reasonable effort, a gargantuan effort to make sure Pilger's point of view is heard.

10.3 An apt comparison can be made with the screening of the Pilger movie **'Apartheid did Not Die'** by the SABC. There the Documentary was screened and then a panel debate took place. Although opposing points of view were not given the exact same time period - the time period afforded the opposing point of view was "reasonable". But we did not have Pilger on Pilger for 30 minutes and then Archbishop Tutu for Pilger for another 30 minutes.

10.4 One could understand if the Documentary was preceded by Pilger and an Israeli representative in the studio (forget about a live satellite link up - that would be unreasonable).

10.5 One could even understand a challenging cross-examination of Pilger by Patta. To start off with, Patta could have confronted Pilger with the fact that his own commentary of his own Documentary was inaccurate.

10.6 As an example: Pilger waxes lyrical in describing the excrement in the cultural center at Ramallah. I quote:

"There were bottles of urine everywhere. Piles of excrement smeared all over the place. Abuse graffiti splashed on every wall."

10.7 Pata could have least interrupted Pilger on Pilger and said: "But Mr. Pilger we have seen the Documentary. There is one excrement stain on a photo-copying machine; one on the floor just outside of the toilet; there is not a single bottle of urine and no abusive graffiti. Furthermore, the _____(Palestinian women herself) says there are only **two** bags of excrement. Why are you exaggerating, Mr. Pilger." Pilger on Pilger cannot be trusted. But instead, an expensive effort is made to give Pilger an uninterrupted opportunity to give a bias,

inaccurate, 30 minute gloss to his bias and inaccurate Documentary.

10.8 It gets even worse. Patta endorses everything Pilger says. When Pilger claims to have "*exposed the truth*", to have gone behind the "*official façade*" - Patta says: "***Certainly that's what's been done in the documentary.***"

10.9 Patta is so in awe of Pilger that she over-credits him. On three occasions when she is praising him to his face and in front of the viewing public, Patta tells us the documentary "*was written and produced by Pilger.*" Anyone who can read English can see that credits to the documentary state that producer was one: **Christopher Martin** and not Pilger.

10.10 I have rarely seen on South African Television in the post Constitution era a more sycophantic endorsement by a supposedly unbiased television interviewer of an obviously biased point of view. I stress post-Constitution South Africa. In a certain sense, Pilger is right: Apartheid did not die in South Africa - it is alive and well at eTV.

10.11 Again comparison with the screening of "Apartheid did not Die" is apt. Before the screening of that documentary, the SABC presenter said and I quote:

*"The following documentary which is being broadcasted simultaneously in Britain and South Africa tonight presents a highly critical view of the new South Africa by the Australian journalist John Pilger. **Pilger's views and interpretations are not those of the SABC.**"²⁹ (see BCCSA 1998/19)*

10.12 One is forced to conclude: Either the Respondent is grossly negligent due to the pitiful inexperience or total ignorance of Patta. Or, alternatively, the Respondent endorses the Pilger point of view as the "hard facts" (these words are uttered by Patta during the Episode). Either way: the effect is the same. Patta defends the documentary. She states that the documentary underwent 3 weeks of extensive factual scrutiny (in the same breath she admits that eTV has not checked the facts). She points out that the Director was Jewish and the Lawyer who checked the historical facts was Jewish (what has this got do with anything - who knows?). She then says - if it is not factually incorrect then where are the defamation

²⁹ Quoted in BCCSA 1998/19

suits? I am fairly au fait with British Libel law - what has libel got to do with historical inaccuracy?

10.13 The Respondent did not make a reasonable effort to give the opposing view because the Respondent could not. The Respondent through Patta has totally and fully endorsed the Documentary, is in awe of both Pilger and Archbishop Tutu that she seems incapable of making the required reasonable effort. Nothing brings this home more than the way she handled the so-called "scandal" that ensued in England as a result of screening of the Documentary. Her words to characterize what ensued are: "**vicious backlash**". Let us examine this "vicious backlash"?

10.14 During the **Interview** Pilger, once again humbled by his own sense of partiality - shows us how courageous he really is:

"This documentary is a fair and restrained and I repeat fair portrayal - this is not pro-Palestinian, it is pro justice, pro the truth - because Israelis and Jews were interviewed - just shows the intimidation that the broadcaster is up against and has to face."

10.15 Or Pilger in the Guardian Monday September 23, 2002, "Why my film is under Fire":

"An unforeseen threat to freedom of speech in British broadcasting emerged last week. It was triggered by the showing of my documentary, Palestine is Still the Issue, on ITV. The film told a basic truth that is routinely relegated, even suppressed - that a historic injustice has been done to the Palestinian people, and until Israel's illegal and brutal occupation ends, there will be no peace for anyone, Israelis included."

"If Michael Green and his vociferous friends succeed in intimidating ITV and the Independent Television Commission, the freedom of broadcasters to be more than mere channellers of "official truth" and to offer viewers suppressed facts and a true diversity of perspective, will be destroyed. No matter how big and powerful the corporate media, journalists and broadcasters have a duty to resist on behalf of the public we are meant to serve."

10.16 Or Pilger quoted by Jason Deans, Friday
September 20, 2002, Guardian:

"TV Boss "irresponsible" says Pilger": "Mr Pilger said (in reaction to Mr Green): 'His behaviour is irresponsible and a disgrace because it threatens the work of others who might now think twice before embarking on a film about a people who are denied a voice.'"

10.17 We might get some perspective from another entirely objective journalist, Robert Fisk in a piece aptly entitled **"How to shut up your critics"** appearing in Independent October 21:

"John Pilger made a programme for Carlton Television called Palestine Is Still The Issue. I have watched it three times. It is accurate in every historical detail; indeed its historical adviser, Professor Ilan Pappé, was a left-wing Israeli academic. But Carlton's own chairman, Michael Green--in one of the most gutless statements in recent British journalism--announced that it was "a tragedy for Israel so far as accuracy is concerned". Why Mr Green should want to utter such trash is beyond me. But what does he mean by "tragedy"? Is he comparing Pilger to a suicide bomber?"

10.18 Should we take Patta at her word and believe her description of a "vicious backlash"; or Pilger describing it as a "threat to freedom of speech" or the noble Fisk more measured in his response: "utter trash"? Or should we do what Pilger preaches: go behind the words, behind the façade?

10.19 All these descriptions refer to remarks made by Michael Green to the Jewish Chronicle after the Documentary was screened. Michael Green is the Director of ITV which owns Carlton, the company that commissioned the documentary.

10.20 This is what Michael Green said:

"There is no doubt in my mind that this programme is a tragedy for Israel in so far as accuracy is concerned. What I am doing right now, what I am focused on is to make sure there is a programme that shows the Israeli point of view. The Carlton network center is looking at making a programme showing the Israeli point of view. That is very important and I feel very strongly about that. I

*have made it known what I would like to see. What is terribly important is to try get balance and redress. I had seen the programme before it was broadcast and was extremely unhappy about it. It was one sided, it was totally unrealistic but it was John Pilger. We present programmes that give differing point of views."*³⁰

10.21 Is Green calling Pilger a "suicide bomber"? Does what Green say constitute a "vicious backlash"? Is Green a threat to freedom of speech? Is he asking to have Pilger shut up? Or is Green asking for balance, for the other side to be heard.

10.22 Green was not saying that Pilger was not entitled to his point of view; he was not saying Pilger could not air his point of view. All he was saying - was that in a democratic, pluralistic, open society - where we should be "astute to outlaw thought control" - the opposing point of view not only can be heard but should be heard.

10.23 It is perfectly legitimate for Pilger to have a point of view; it is perfectly legitimate for Patta to have her own private point of view; but to have the Respondent, with its awesome power, endorsing a single point of view is a threat to democracy and a form of thought control.

³⁰ The original Jewish Chronicle article was published on Friday 20, 2002 in the Guardian Unlimited as reported by Leon Symons.

10.24 Again no one articulates it better than Revel describing how solipsistic journalists react to criticism:

*"He cannot, therefore, without flagrant hypocrisy, raise an uproar and protest 'profanation' when the freedom to criticize - which is what he lives off - is applied to himself."*³¹

10.25 What we can say in this regard of Pilger and Patta is what Pilger said on what he claims was the duplicity of world coverage of Israel: "Goebels would have approved".³² Indeed, he would have also approved of Pilger and Patta.

³¹ Revel pg. 252

³² "How The Media Cover Israel", International Socialist Review, August 2002 edition.

E: FACTUAL MISREPRESENTATION

11 AUTHORITY OF HISTORICAL SOURCES

11.1 The general purport of section 3 of the Code requires that comment should be made on the basis of factual accuracy.

11.2 As has been stated, the similar ITC provision calls for "respect for the truth" and the ITC Commission found that such a condition was met after having reviewed the historical sources used by Carlton. In this regard the ITC Commission was impressed by the authority of those sources and especially their Israeli progeny.

11.3 At the ITC hearing Carlton presented sources in three main areas of historical controversy: the so called "ethnic cleansing" doctrine of David Ben Gurion in the late 1940s; the fact that Israel commenced the Six Day War of 1967 not out of self-defence but to colonize; the fact that during the post Oslo talks between Arafat and Barak, it was

the Israeli's who were intransigent and uncompromising.³³

11.4 In respect of "ethnic cleansing" Carlton relied on the historical writings of Benny Morris and Avi Shlaim both of whom have been shown to have fraudulently manipulated archival material³⁴; in respect of the Six Day War, Carlton relied on Norman G. Finkelstein's 'Image and Reality in the Israel-Palestine Conflict', a bogus piece of thumb-sucked propaganda by a discredited academician and leading Jewish Holocaust denier³⁵; in respect of

³³ See Summary of Historical support cited by Carlton in the ITC Hearing

³⁴ See especially: Martin Kramer, 'Ivory Towers on Sand - The Failure of Middle Eastern Studies in America'; see also: Efraim Karsh, 'Fabricating Israeli History - the New Historians'. Karsh's work shows how Pappé, Morris and Shlaim fraudulently manipulate the archival material. As an example, this is how Karsh explains his encounter with Morris's book "The Birth of the Palestinian Refugee Problem": "While leafing through the book's English version, I came across a quote from David Ben Gurion to his son Amos in 1937 stating that 'we must expel the Arabs and take their place' (Morris book, English edition 1987, at pg. 25). Having read Morris's book in the Hebrew version several years earlier, I recalled the letter saying something quite different. Indeed, an examination of the Hebrew text confirmed my recollection. It read as follows: 'We do not wish, we do not need to expel Arabs and take their place...All our aspiration is built on the assumption that there is enough room in the country for ourselves and the Arabs.(Morris Book, Hebrew edition, pg. 45)". - Preface to 2nd Revised Edition, pg. xvii.

³⁵ Finkelstein is characterized as an historian. This is not the case. For a systematic demolition of Finkelstein and his exposure as a fraud, see "A Comment by Daniel J. Goldhagen On: A Nation on Trial - The Goldhagen Thesis and Historical Truth". Finkelstein has written a book entitled "The Holocaust Industry" labeling the Noble Prize Laureate "a clown and a fake" and castigating Jews for making money out of the Holocaust; Finkelstein makes his money lecturing on the "exaggeration of the Holocaust". See Anthony Julius article "A People Cast Aside", Literary Times, Wednesday July 19, 2000. Finkelstein was sacked from New York University where he had lectured in the Dept. of Sociology for 10 years; he was sacked for fraudulently manipulating historical archives - see Finkelstein interview in as-Safir, December

post Oslo, Carlton relies on Ilan Pappé's comments in the Documentary and single quote by Robert Malley, one of President Clinton's National Security Advisors at the time, who, when he made the remark was a paid consultant to the PLO³⁶.

11.5 None of the sources cited derive from the actual historical consultant to the Documentary. Notwithstanding the fact that the sources quoted by Carlton at the ITC Hearing can be discredited one by one, it is respectfully submitted that the credentials and authority of the historical consultant to the Documentary that should be adjudicated.

12 WHO IS ILAN PAPE?

12.1 Pata assures the viewer that the Documentary has been thoroughly researched for three weeks.

12.2 Pilger assures us the same thing - an eminent Israeli historian - Professor Ilan Pappé - was historical consultant.

7, 2001 for Finkelstein's twist on his sacking. For an accurate, authoritative view on the Six Day War, see: Michael B. Oren, "Six Days of War - June 1967 and the Making of the Modern Middle East", Oxford University Press, 2002.

³⁶ Robert Malley is a paid employee of the PLO: <http://www.nad-plo.org/eye/news30.html> - the official web site of the Department of Negotiation Affairs of the PLO;

"Our historical adviser, Professor Ilan Pappé, the distinguished Israeli historian. He wrote to Carlton Television that "the film is faultless in its historical description and poignant in its message". None of this deterred the chairman of Carlton, Michael Green, a supporter of Israel's policies, from abusing the programme makers in the Jewish Chronicle, calling the film "inaccurate", "historically incorrect" and "a tragedy for Israel".

Not one of his accusations was, or can be, substantiated. Professor Pappé called the attack "an attempt to delegitimise any criticism of Israel". This was followed by an unprecedented rebuke of its chairman by Carlton's Factual Department, which stood by the film's accuracy.³⁷

Or Pilger quoted by Jason Deans, Friday September 20 2002 Guardian: *"Our historical advisor, Professor Ilan Pappé, was one of Israel's most distinguished historians."*

12.3 None other than the respected Robert Fisk is sure of the historical accuracy - after all - he has viewed the Documentary three times and, Professor Ilan Pappé, a respected Israeli historian was the historical consultant.³⁸

12.4 Who is Ilan Pappé?

³⁷ Pilger, "Why My film is Under Fire", Monday September 23, 2002

³⁸ Robert Fisk, "How To Shut Up Your Critics With A Single Word", Guardian, 21 October 2002

12.5 According to the Documentary, Ilan Pappé is Professor Ilan Pappé, and Israeli Historian. Every time Pappé appears in the documentary, this is the caption.

12.6 According to the "Journal of Palestine Studies" - the official PLO academic journal - upon whose editorial board Pappé sits: "*Ilan Pappé is a Professor of political science at Haifa University and the author of a number of books, including The Making of the Arab-Israeli Conflict 1947-1951.*(London IB Tauris, 1992)."³⁹

12.7 According to a notice given by the Palestine Solidarity Movement in London in connection with a meeting at Manchester University 11 September 2002 a talk will be given by the "*leading Israeli academic - Professor Ilan Pappé - in support of the academic boycott of Israel*".⁴⁰

12.8 Pappé also refers to himself as "Professor".⁴¹

³⁹ Journal of Palestine Studies, Vol XXX, No. 3, Spring 2001, Issue 119.

⁴⁰ Interestingly, the Honorable Minister Kasrils also attended this meeting at South African taxpayers expense. It seems the Manchester meeting is all important to South African water resources.

⁴¹ Pappé eMail to friends 12/5/2002 re: Expulsion Trial.

12.9 Should we rely on Pilger, Fisk, the JPS and Pappe himself? Or should we rely on the facts.

12.10 These are the facts:

12.10.1 Pappe is not a Professor and never has been. In this regard the Documentary knowingly lies and so does Pappe.

12.10.2 Pappe is not an historian and never has been. He is not in the Political Science Department of Haifa University. He is a junior lecturer in the Department of International Relations at that University.

12.10.3 Pappe has not "written" a single book. "The Making of the Israeli-Arab Conflict" is a collation of previous documents. In this regard, it is interesting to note what the eminent E.H. Carr said of the book:

"Ilan Pappe's The Making of the Arab-Israeli Conflict is virtually a synthesis of published writings on the topic, making no original archival discoveries. In short, what Ilan Pappe has done is to write propaganda or historical fiction, and merely use facts of the past to

embroider a kind of writing which has nothing to do with history."⁴²

12.10.4 Pappe is a politician. He ran for the Israeli Parliamentary Elections in 1999 on Hadash, the Israeli Communist Party list.

12.11 The most important and unmentioned fact for our purposes, however, is that Pappe and Pilger were good friends prior to the making of the Documentary. Their friendship stems from a common political ideology and orthodoxy. This in itself means nothing; but when that friendship is predicated upon whitewashing a fraud that goes to the very heart of Pappe's integrity as an historian and Pilger is well aware of this fraud and still utilizes Pappe as his historical consultant, then this prior friendship has profound significance in the context of the Documentary.

13 THE TEDDY KATZ THESIS

13.1 In March 1998, a Phd. Graduate student, Theodor Katz, at the Haifa University submitted his doctoral thesis entitled: "*The Exodus of Arabs from Villages At the Foot of the Southern Mount Carmel In 1948*".

⁴² Cited in Efraim Karsh, 'Fabricating Israeli History', pg. 196

13.2 The thesis dealt with the battles between the Hagana Alexandroni Unit and the Arab inhabitants of Tantura and Um-al-Zinat. In both battles, the Hagannah prevailed and the two Arab villages were destroyed.

13.3 The thesis was based on interviews that Katz had conducted with Arab survivors of Tantura and Um-al Zinat and the surviving Alexandroni veterans.

13.4 The thesis was dedicated to and I quote:

"My friend and teacher, Dr. Ilan Pappé, who more than once, read every sentence of this work, made pertinent comments, and who helped me immensely to bring this work to fruition."

13.5 The thesis, adjudicated by Dr Kais Piro and Ilan Pappé received 99% - the highest mark ever awarded to a thesis in an Israeli University.

13.6 In the thesis Katz made the following ground-breaking discovery.

13.7 Up until KATZ the only example of atrocities committed against Palestinians had been De'ir Yassin. According to KATZ after the battle of Tantura, the Palestinian villages gave up their

weapons and surrendered. The men were separated from the women and children. The men were then led by the Alexandroni fighters to the Tantura graveyard (250 of them - unarmed and blindfolded), where they were forced to dig a mass grave and were then systematically slaughtered.

*"All together 14 Jews died in the battle including the members of the Palmach who fell from friendly fire. Not more than 10 or 20 of the Arab fighters of Tantura died in the battle but at the end of the fighting there are an extra 200 to 250 dead men of Tantura in circumstances where these men had been without any weapons and without any protection. These are the hard facts that arise from the eye-witness testimony which will be elaborated upon in this work."*⁴³

13.8 An Israeli journalist, Amir Gilat, found out about the shattering historical discovery made in the Katz thesis and ran an a five page article in a weekend edition of the Israeli newspaper Ma'ariv.⁴⁴

13.9 One journalist put it: *"The thesis by Katz was no small historiography coup. Until his revelations - no Palestinian source had ever pointed to the Tantura massacre."* Prominent Israeli academics, artists, public-figures, philosophers (we have all the articles) - wrote calling for the Israeli

⁴³ Introduction to Chapter 4 of Katz Thesis, pg. 88

⁴⁴ Ma'ariv 21/1/2000

nation to face up to the atrocities of the past. I need not tell you how the Palestinian and anti-Israel camp did with KATZ's revelations of the Tantura massacre.⁴⁵

13.10 No one ever doubted KATZ's credentials. After all, a distinguished University lecturer, Ilan Pappé, had vouched that he had painstakingly checked the historical accuracy of every word of the thesis.

13.11 The surviving veterans of Alexandroni who had participated in the Tantura battle also read the articles. These are old men in their eighties. They were no branded as "war criminals" of the worst sort.

13.12 The veterans vehemently denied that there had been massacre at Tantura. No one listened to them.

13.13 If we now jump from here to 3 years later, this is how Pilger describes the outcome of the Katz thesis:

"Ilan Pappé is one of Israel's "new historians", a distinguished and courageous critic. He has likened the Israeli state to apartheid South Africa, with its Palestinian "bantustans" and plethora of humiliating controls which now

⁴⁵ See relevant sources in Katz Bibliography

restrict the movement of people within their own communities.

"Now it might be Professor Pappé's turn to be expelled from Haifa University. In an open letter circulated two weeks ago, he writes that the dean of the humanities department has demanded his expulsion for criticising the university over the Katz case. This runs deeper; Pappé has been a consistent opponent of Israel's illegal military occupation of Palestine. He describes the university "court" that threatens to punish him as a "McCarthyite charade". He has called upon universities worldwide to debate a boycott of Israeli institutions, given their contempt for basic principles of academic freedom and dispassionate research". He says that only international shaming, free of the intimidation that equates criticism of Israel with anti-Semitism, will break the silence about "horrific deeds in 1948, and so prevent their repetition".

"Others in Israel, as courageous as Ilan Pappé, are also under pressure, both crude and insidious. In Ha'aretz, Israel's equivalent of the Guardian, two outstanding journalists, Amira Hass and Gideon Levy, have consistently reported the unpopular truth about Israel's occupation of the remaining 22 per cent of the Palestine it conquered in 1967. They live daily with threats and hate mail. Upholding the bravest traditions of Jewish humanity, they need international solidarity. You can support Ilan Pappé, and the cause of justice in both Israel and Palestine, by e-mailing pappe@poli.haifa.ac.il"⁴⁶

13.14 Pilger was instrumental in forming an international campaign to support Ilan Pappé who was up for disciplinary action in connection with the Katz Case. Pilger tells us nothing about the Katz Case. He ignores everything that happened between when

⁴⁶ Jon Pilger, 'Israel's Secret Shame' appearing in left.ru

the Katz Thesis was first covered by the press to the final outcome, a University instigated case, the first of its kind in Israel, to expel a tenured academic, Ilan Pappé.

13.15 The Katz Case referred to by Pilger is crucial to the historical integrity of Pappé and the journalistic integrity of Pilger. Therefore, it is vital to go into the details of the Case, something which Pilger, the honest journalist courageously fighting for the truth, refuses to do.

14 TEL-AVIV DISTRICT COURT CASE 1686/2000: ALEXANDRONI NGO VS ILAN KATZ

14.1 They formed an NGO to gather funds to fight a libel suit against KATZ. A year went by - but they could not - between - recruit enough money to institute libel proceedings.

14.2 Just before the statute of limitations came into effect, a leading Israeli commercial lawyer, Giora Erdinast - whose deceased father had also been a member of Alexandroni brigade - agreed to take the libel case pro-bono.

14.3 Case 1686/2000 Alexandroni NGO vs. Ilan Katz was opened in the Tel Aviv District Court. In it - the Plaintiffs charged that they had been libeled by Katz in his thesis and that no massacre had taken place at Tantura.

14.4 KATZ was defended by three attorneys. Israel's leading Trial Lawyer - Avigdor Feldman - headed the Defense team. In an agreement between Feldman and the University of Haifa, the University joined as amicus curia and argued for KATZ, and initially paid for KATZ's legal costs.

14.5 Avigdor Feldman asked the Court to summarily dismiss the libel suite. The Israeli legal system has adopted the USA "clear and present danger" test in cases of freedom of expression. Feldman argued that - even if KATZ's thesis was libelous - he had a constitutional right to express whatever he wanted and there was no clear and present danger in what he had written - indeed his thesis had been written and submitted years previously. After hearing both sides on the application to dismiss, Tel Aviv District Court Judge, Dr. Drorah Pilpel in a decision handed down on 29/6/2000 refused to dismiss the suite.

On page 4 line 28 ff to honourable Judge writes:

"To base this application on the right of freedom of expression seems to me to be inappropriate. Freedom of expression is indeed and important and vital right that this court has recognized but it is inappropriate in this matter. The thesis in question claims to make historical findings, based on facts, concerning what actually happened after the battle of Tantutra - was there a massacre of innocent civilians there or not. The facts that form the basis of a historical interpretation are not themselves interpretations. Historical facts are not a matter of opinion. You cannot say of the facts that they are "good" or "bad". You are free to interpret the facts in any way you want but you cannot make them up under the guise of freedom of expression. The formulation of historical facts, which is what this case is about, has to be pure, correct and factually exact in so far as that is possible. The applicant Dr. Katz admits himself that in his thesis he is determining historical facts and not passing judgment. Plays, poetry, anecdotes and commentary - these are protected by freedom of expression. The determination of historical facts have got nothing to do with freedom of expression."

14.6 Before Trial, in an interlocutor, KATZ confirmed that his findings that a massacre took place were based on interviews he conducted with Tantura survivors - in particular ALI ABD EL RACHMAN ELARGI known as ABU FAHMI, MUHAMMED ABU SALACH known as ABU NAIF, MAHMUD ABU AL RAZAK CHASDIAH known as ABU RIATCH, NADJI HASAH IOB and TUFIK EL ABED SALACH known as ABU EL ABD.

14.7 During the discovery proceedings, Giora Erdinast asked that the tape-recordings KATZ had made of the interviewees for the thesis be handed over. KATZ had no alternative but to comply.

14.8 The tapes were handed over to two professional translation companies to transcription and also translation from Arabic to Hebrew.

14.9 Ilan Pappé, in his capacity as Dr. and not Professor this time, submitted an affidavit on behalf of his student KATZ before the trial. Pappé was going to appear as the star supporting witness. In his affidavit, PAPPÉ' assured the court that he vouched for the historical accuracy of the finding on the TANTURA massacre and that he personally had compared the findings to what appeared on the tapes of the interviewees.

14.10 The trial commenced on 13/12/200 with KATZ's cross examination by Giora Erdinast. KATZ was cross-examined for three days. In the middle of his cross examination the case came to an end. But during the Trial the following came to light.

14.11 At pg. 118 of his thesis, KATZ writes "ABU FAHIMI was one of the central eye-witnesses to the massacre at TANTURA. In 1948 he was about 40 years old, and despite his old age, according to Katz (pg. 119), ABU FAHIMI is "one of the cleverest men who survived from the village".⁴⁷ KATZ quotes ABU FAHIMI as saying :

*"What happened was that they collected all of the people from the village, they stood them all up in front of a wall and murdered them in cold blood. I was a eye witness to this crime. About 95 people were murdered that I saw. I wrote down the names of those who were murdered."*⁴⁸

*"At this stage, when the ammunition was finished, we put down our weapons and surrendered. Then the Jewish soldiers entered the village and gathered all the men in groups next to the sea next to a building that was there. The soldiers took their semi-automatic Bren guns and one by one they killed the people. Plenty were murdered. Many of the Jewish soldiers - big and small - wanted to participate in the killings."*⁴⁹

This is what KATZ had on his tape recording:

"TEDI: So it is clear that they shot at the people after they had surrendered? That's true 100%? They killed the people after they had surrendered? After they raised their hands. They killed about 100?

ABU FAHIMI: I didn't see that they killed anyone after we surrendered.

TRANSLATOR: He saw nothing.

ABU FAHIMI: They did not murder. We gathered, all the member of the village gathered in an open space. No they did not kill anyone then.

⁴⁷ Katz Thesis, pg.119

⁴⁸ Katz Thesis, pg.119

⁴⁹ Katz Thesis, pg.120

One soldier shot some bullets into the air or at a house. A big house near the sea. But I am telling you I did not see anyone being killed."

14.12 Another "central witness" was ABU NAIF who according to KATZ in his thesis (121, 122): KATZ quotes ABU NAIF directly:

"I know of the massacre for certain. I myself saw how they killed my cousin and two other members of my family."⁵⁰

This is ABU NAIF in the transcription on tape:

*"**TEDI:** We are always clean like soap. But don't think like that. It's not fair. It's not good. It's not true. I am not coming and saying who is good and who is bad. Forget about that for the moment. The Arabs are not ok. The Jews are not ok. It doesn't matter. The important thing is to know what happened and to speak about the massacre.
ABU NAIF: I can't tell you. If someone told you there were killings, I don't know. I myself saw nothing with my own eyes."*

This central witness, ABU NAIF, even he wanted to could not be a central witness. This is what he says on tape:

*"**ABU NAIF:** I wasn't there. I was in jail at the time. I should have told you that. Shmuel Karni saved me. He came and took me out of jail.
TEDI: Who?
ABU NAIF: Shmuel Kkarni"*

⁵⁰ Katz Thesis, pg.121-122

14.13 Or ABU RIATCHI according to KATZ quoting him in his thesis:

*"I know that that murdered people after the battle after everyone had surrendered and the battle was over. There was an atmosphere of murder and everyone did what he wanted, I saw it all."*⁵¹

ABU RIATCHI on tape:

"How could I have seen? That same day I was in Faradis. I am hearing stories now for the first time. Maybe its true but I saw nothing."

14.14 Or the tape of ABU AL ABD:

*"**TEDI**: Now did you see them taking the men and killing them?"*

*"**ABU AL ABD**: No, I did not see. We saw nothing of the killing but maybe there are some people who saw something. I was 20 at the time. But I am telling you I saw no killing. It's all stories they made up afterwards."*

*"**TEDI**: But how did they bury the bodies of those that were murdered?"*

*"**ABU AL ABD**: I don't know. I saw nothing I tell you."*

14.15 We can go on and on. I am not going to go through the even more revealing cross-examination of Teddy Katz in the Court Protocol. One quote will suffice:

*"**TEDI**: I confess now in this court room. There was no massacre at TANTURA."*⁵²

⁵¹ Katz Thesis pg.125

⁵² Court Protocol from 13/12/2000 pg.13 line 8

14.16 Court proceedings were halted on the fourth day. KATZ agreed to apologize in writing. On the 19th of December 200, in the presence of his attorney's, Katz signed a formal apology, which, the next day, was given the status of a judgement by the District Court Judge Pilpel.⁵³

15. APPEAL AND PLO FUNDING

15.1 Four days after the conclusion of the Trial - after the court has given final status to the agreement - in the presence of KATZ and all 3 lawyers -Katz went back to Court and said he wanted to rescind the

⁵³ "APOLOGY

In the month of March 1998 I submitted a thesis the University of Haifa as an integral part of the requirements for a Doctoral dissertation (hereinafter: the thesis)

"In the part of the thesis that deals with TANTURA, I wrote, that the overall picture that arises from the eye-witness accounts is that the soldiers of the Alexandroni Brigade carried out a murderous massacre of the elder men of the village and murdered about 200 to 250 of them in cold blood. These men were murdered, I wrote, after they had surrendered and when they had no weapons in their hands.

I hereby attest that after I sat down and checked the documentation it is clear to me beyond any doubt that there is absolutely no justification for the allegation that a massacre was committed at Tantura after the surrender by the Alexandroni Brigade members or by any other Jewish fighting group for that matter.

I want to point out I am categorically stating that there was no massacre at Tantura.

I believe the Alexandroni veterans who always denied that there was a massacre, and I retract every part of my thesis that implies or explicitly states that there was a massacre or that defenceless men were killed. In light of the above, I hereby apologize most profusely and honestly before the Alexandroni veterans, before their family and before the family of the Alexandroni men who died in battle. I apologize for falsely accusing them of something they did not do.

This apology will be published in a major newspaper.

Signed on 19 December 2000 TEDI KATZ.

agreement he had signed (in the presence of his lawyers I might add). The court dismissed his application to rescind the agreed judgement.

15.2 Katz appealed to the Supreme Court of Israel. The reason for rescission was as follows:

*"The agreement was signed in the presence of only two of the appellants lawyers and not all three of them. The appellant signed on the agreement after a lengthy meeting and he was under extreme pressure from his family to sign. The appellant is not a healthy man. 12 years ago he suffered a stroke. It was clear while he was in court that he was unhealthy."*⁵⁴

15.3 The Israeli Supreme Court dismissed the appeal with costs. There was no basis in law and no factual basis to rescind the agreement.

15.4 What was the real reason that KATZ came back to the Court to rescind his previous agreement. It so turned out, that the PLO had funded his entire research effort paying him \$8,000 (USD); this funding had been procured by none other than Pappé.⁵⁵ The PLO wanted their money back - they did not pay KATZ to admit to the truth - they paid him to invent history.

⁵⁴ Section

⁵⁵ See Katz interview in Ha'aretz 2/9/2002

16 THE HAIFA UNIVERSITY COMISSION OF ENQUIRY

16.1 The credibility of the Haifa University was now at stake. It had awarded a Doctorate with the highest grade ever in the University's history to a man who had admitted in Court to having fraudulently falsified the evidence. Furthermore, the same man had been funded by a political institution in carrying out his research - a clear violation of the not only the University's rules and regulations but also academically unethical (this fact had never been acknowledged by Katz).

16.2 In the end the University formed a commission of Enquiry. The mandate of Commission was to independently check the claims in the thesis against the evidence gathered i.e. the tape-recorded interviews. The rector if the University, Professor Aaharon Ben Ze'ev, wrote to members of the commission in their mandate:

"The academic debate should be determined by an academic institution and not by a court of law. The Commission must ascertain independently a simple question: does the thesis by KATZ misrepresent the evidence or not."

16.3 The Commission did not rely on any material for the trial. It commissioned its own independent

transcription of the tapes. KATZ was represented in the proceedings.

16.4 On the 10 June 2001 the Commission handed over its findings to the Rector. The Commission analyzed each and every one of the interviews. The Commission found that on 14 occasions KATZ had written his thesis on what had purportedly been said by the interviewees but what in fact had not been said or the opposite had been said. Those 14 occasions are precisely the 14 elements of evidence KATZ relies on to allege that there was a massacre at TANTURA. Furthermore, the Commission found that the PLO had financed KATZ's thesis. The financing of an academic thesis by a political body is illegal at the Haifa University.⁵⁶

16.5 Despite the findings, the University decided to allow Katz to rewrite his thesis. He has subsequently rewritten the thesis and it is pending adjudication.

17 ILAN PAPE RE-ENTERS THE FRAY

17.1 This is where PAPE' enters the fray - as PROFESSOR PAPE. Obviously, a finding of fraud for something he

⁵⁶ The Report of the Committee to Research The Thesis On the Topic of Tantara, Haifa University 10 June 2001

has vouched for, supported and stands by, has a direct bearing on his credibility as an historian.

17.2 Pappé begins writing to all his friends, including Pilger, of McCarthysim at Haifa University; of Gestapo tactics; of suppression of the truth. He writes about the TANTURA massacre in countless fora. He cites, as evidence, tapes that he has transcribed claiming the tapes transcribed by the University and those used in Court were the real fraud. PAPPÉ' under a fraudulent guise - using a transcription - which it subsequently turned out - does not exist - begins bringing the University of Haifa into disrepute throughout the world. In so doing, he advances the fraud.

17.3 Pappé's arguments and evidence are all summed up in an article entitled 'THE TANTURA CASE IN ISRAEL: THE KATZ RESEARCH AND TRIAL', which he writes under the fraudulent title of Professor.⁵⁷

17.4 In the article Pappé claims Katz signed the agreement out of court because he had been "weakened by a stroke several weeks earlier". As we have seen,

⁵⁷ Professor Ilan Pappé, 'The Tantura Case in Israel: The Katz Research and Trial', Journal of Palestine Studies, Vol. XXX, No.3, Spring 2001, Issue 119

in his notice to Appeal, Katz claimed to have had the stroke several years earlier.

17.5 In the article Pappe claims that after the publication of the Katz thesis, the IDF Archives secretly "extracted" documents that corroborate Katz's thesis and which Katz and Pappe had consulted. Professor Yoav Gelber, of the Department of Land of Israel Studies in Haifa University, who gathered the evidence against Pappe comments thus:

*"Checking with the archive's director, I have learned that neither Pappe nor Katz had worked in the IDF archives. Furthermore, on the basis of Pappe's references in his articles the archivist could not trace any of these documents."*⁵⁸

*"Professor Benny Morris had given these documents to Katz after the latter completed his thesis and the scandal broke out. Katz even did not know how to write down a simple reference to an archival document and Pappe copied his errors. Morris confirms that there was nothing in these documents to corroborate allegations of massacre."*⁵⁹

*"Pappe mistakenly identified Chief of Staff Dore who was ill at the time (June 1948) and did not play any role, as the writer of one of these documents. The writer of this letter was Zvi Ayalon, who signed in the name of the COS using his old code-name 'Boaz'. The minor difference is indeed irrelevant to the Tantura affair, but it is relevant to Pappe's competence (or, better, incompetence) in reading and analyzing documents."*⁶⁰

⁵⁸ Document prepared by Professor Yoav Gelber for the Complainant, 'After the Decision of the Supreme Court', para.9.

⁵⁹ Ibid, para.10

⁶⁰ Ibid, para 11

"A second error was less innocent: Pappe interpreted the word sabotage (KHABALA) mentioned in the document as massacre (TEVACK). This is something that the present Hebrew language, all the more so 1948's Hebrew, would not accept. None of these documents mentions, refers, relates or hints at a massacre that had allegedly been perpetrated in Tantura."⁶¹

17.6 Gelber multiplies the examples of Pappe's fraud in the JPS article.⁶² Gelber concludes:

*"The academic community and the general public should take his [Pappe's] arguments in the Katz affair as well as his personal testimonies on other matters not with a grain but with a mountain of salt."*⁶³

17.7 There is no more eloquent testimony to Pappe's historical integrity than Pappe himself. I cite here from his affidavit submitted to the Tel Aviv District Court in support of his student and protégé, the self-confessed fraud Teddy Katz:

Section 2: "In so far as methodology is concerned: in so far as the tools and territory available to a modern historian is concerned - the leeway the a historian has in using interviews, eye-witness accounts and memoirs is such, that, in most academic circles, the quality and mature of the work, is not in any way dependant on the question of whether the researcher can point to specific sections in these works word for word. As far as I am concerned, if the researcher uses his own impressions, these impressions are as valid, if not more so, than the actual material gathered.

⁶¹ Ibid, para 12

⁶² ibid, paras. 12,13,14, 15, 16, 17; and Gelber document to the Complainants entitled 'Ilan Pappe and the Tantura Blood Libel'.

⁶³ Ibid, para 17.

Section 3: *When, as in this case, there is a large quantity of tape recordings, what I said above is even more true. The legitimate leeway between what was actually said and recorded and what Mr KATZ interpreted of what was said and recorded is extensive.*

Section 4: *A modern day historian should be able to infer meanings from what has been said; should be able to glean the subconscious text that stands behind the actual words spoken."*

F: CONCLUSION

18.1. Ilan Pape - no professor - a fraud - an imposter - the only Israeli academic who has disciplinary proceedings against him for falsification of history - the spiritual father of TEDI KATZ the self-confessed liar. Pilger knows this and deceives the viewing public in South Africa by perpetuating the lie. The South African public must rely on Pape's credentials and integrity as an historian to vouch for the historical accuracy of the Documentary? Where is the minimal transparency demanded by the Code? Where is the exposure of the "truth behind the truth" and the "hidden agendas" preached by Pilger?

18.2. Pape is free to invent whatever he wants. Pilger is free to use Pape's inventions. They have every right to lie and deceive. They can claim the earths flat. It's their right. And eTV is entitled to broadcast their lies. BUT: eTV cannot portray the lie as a truth; it cannot condone much less endorse the lie; it cannot honestly claim that the Documentary was researched and has an eminent historical consultant; it cannot perpetuate the lie

that Ilan Pappé is a Professor of History. And when someone comes and says but the earth is round and asks for equal time to show this - you eTV cry "scandal", "a threat to freedom of speech", "a vicious backlash", there is only one truth and its our truth - eTV cannot act as the thought police for PILGER's thought control bending over backwards, making every effort to give preponderant time to one orthodoxy which is supported by the credentials of a fraud and an imposter.

*"Having regard to our recent past of thought control, censorship and enforced conformity to government theories, freedom of expression - **the free and open exchange of ideas** - is no less important than it is in the United States of America. It could actually be contended with much force that the public interest in the open market-place of ideas is all the more important to us in this country because our democracy is not yet firmly established and must feel its way. **Therefore we should be particularly astute to outlaw any form of thought-control, however respectably dressed.**"*