

IN DIE HOOGGEREGSHOF VAN SUID-APRIA

(TRANSVAALSE PROVINSIALE AFDELING)

R 922 VOL. 447 PG. 26 318 - 26420

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-25

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21  
ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST en  
ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS  
ADV. P. FICK  
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON  
ADV. G. BIZOS  
ADV. K. TIP  
ADV. Z.M. YACCOB  
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 447

(Bladsve 26 318 - 26 420 )

THE COURT RESUMES ON 25 AUGUST 1988

MR CHASKALSON: May it please your lordship. Yesterday your lordship asked me a question as to why the UDF should be discussing the Freedom Charter and I told your lordship that I thought there was evidence to show that some of the affiliates were making demands and my attention has been drawn to EXHIBIT H.1 which is a document which we will discuss later in a different context, but paragraph 4.1.1 EXHIBIT H.1 which are the minutes of the NEC meeting held on 21 and 22 July reads as follows: (10

"With regard to the future of the Front it was noted that the conference resolutions indicated continuity of the UDF. The view of the NEC in this respect is that the UDF must be retained as a front; however, that the focus thereof may change and that this will be determined by contradictions arising out of the implementation of the so-called new deal. It was further noted that some affiliates were beginning to feel that the front was not militant enough, lacked enough depth. On this aspect NEC decided that although affiliates could be militant (20 and committed.."

must be "to", I think is left out -

"..programmes such as the Freedom Charter the UDF had to remain broad enough to accommodate all forces particularly the unions."

And your lordship will remember, and I am looking for that passage in the evidence now, your lordship will remember that one of the big union groups which had affiliated to the UDF was CUSA which was a federation of trade unions and it was in fact a black consciousness group. And I will find your (30  
lordship / ..

lordship some evidence - we are looking for it - where I think Mr Molefe gave evidence to the effect.

ASSESSOR: On 5 August 1987.

MR CHASKALSON: Is that when he gave evidence about..

ASSESSOR: Yes.

MR CHASKALSON: Well, we will look for that, thank you. But I do remember that there was reference to CUSA and the importance of CUSA being able to espouse black consciousness if it wished to do so. So it was in that context that there were discussions, it was in that context that the decision was (10 actually taken again; it was taken and it was then reaffirmed at the next meeting that the UDF would not adopt the Freedom Charter, that they wished to remain broad enough as a front to accommodate both liberal and black consciousness groups that wished to be within the front. And that though they were important affiliates who espoused the Freedom Charter and I think that is clear from the evidence that some of the important affiliates did follow and had adopted the Freedom Charter and some of the people speaking for those affiliates would speak for the Freedom Charter on occasions the UDF (20 deliberately as a matter of policy chose during the period of the indictment not to be a Freedom Charter organisation.

Now if I could go back then to the state's written argument..

COURT: You can call it "betoog". You have called it "betoog" so far.

MR CHASKALSON: Very well, m'lord, the "betoog"..

COURT: If you refer to it as argument everybody gets mixed up now.

MR CHASKALSON: Well, I would not like to add to the  
confusion/..

confusion m'lord. The "betoog" after dealing with the..

COURT: What page?

MR CHASKALSON: Page 5, m'lord. I think yesterday I had finished dealing with the Nkhondo letter and of course there is another matter in the Nkhondo letter which I should perhaps observe and that is that he is talking about an organisation, the founding of an organisation and what actually came into being was the Front which your lordship will remember that there is long debates in papers about the difference between an organisation and a front, but that is merely by the way (10 because the Nkhondo letter as I put it to your lordship is of no relevance to this case, but at page 5 of the "betoog" the paragraph 1.3, it is said that:

"Hierdie dokument is van baie groot waarde geskat deur UDF en die binnelandse leiers van die sameswering en was duisende eksemplare gedruk en versprei, nasionaal en internasionaal. Wat veral belangrik is, is die feit dat toesprake van verskeie lede in die geledere van UDF in sameswering in hierdie bewysstuk opgeneem is waarin UDF se beleid en strategie en doelstellings (20 uiteengesit word en in dié verband word verwys na hoe Boesak hul primêre doel stel: "So our struggle is not only against the white government and their plans but also against those in the black community who through their collaboration seek to give credibility to these plans."

and then follows a series of quotations indicating that this is the..in the context of "primêre doel" and "doel" and so on.

Now there are a number of submissions to make to your (30 lordship/..

lordship about this. First quotations from speeches made by individuals at the launch are not necessarily to be characterised as UDF policy was debated and we know that the policy that was adopted was the declaration. These are views expressed by individuals who addressed the meeting and I think if we would start, if your lordship as EXHIBIT A.1; let me take as an immediate illustration the speech of Abdul Chamid Kabir. Your lordship will see it begins as follows:

"In the name of Allah, most gracious and most merciful, I testify that there is no God worthy of word but (10 Allah and I testify that Mohammed is a messenger of Allah."

Now is that UDF policy? Is it suggested that the UDF was to be an Islamic organisation, promoting the worth of Allah? Clearly not, that was the view of the speaker and indeed if one seeks to apply section 69(4) of the statute as the state does, it certainly has very far reaching consequences in its application to the opening paragraph. But still the first submission is that one cannot take isolated sentences or paragraphs in a document and say that they all represent the (20 policy of the UDF, and I think one of the things one needs to do now is to put each one of these quotations into their context. Perhaps since I was dealing with the speech of Abdul Chamid Kabir I should finish it and that is the second of the quotations, the extract which is taken your lordship will see is:

"We demand the establishment of a democratic government representing all the people for the people."

That is the second paragraph in the "betoog". It is the second cite in paragraph 1.3 of the "betoog". Now perhaps one (30 should / ..

should put that into its context. I assume that it has been cited because whenever the state sees the word "people", it seems to see that the use of the word connotes some form of power struggle and it uses - there was a lot of cross-examination about the use of the word "people" and I am going to deal with that in another context later. Now first of all the democratic government representing all the people for the people I would have thought on itself was a very good description of how the word "the people" is used. It is I think a fairly traditional way of describing a democracy. (10 Politicians always use this sort of language. It means really that you shall be a representative democracy and not ruled over by others. I think there was President Lincoln's favour address about "government of the people by the people and for the people" and it is just common place I would have thought in politics to see that sort of language, but if one puts that quotation, that citation into its context we will see that what the speaker is saying is: "Let it be said here today loud and clear as South Africans, we demand changes - not cosmetic changes, we demand justice, we demand equality (20 for all our people; we demand the restoration of the rights with which we were born and the abolition of homelands. We demand freedom of movement and the abolition of the pass laws. We oppose with all that it means apartheid, segregation, separate development and any other names for Africans. We oppose apartheid in toto because it is anti-religious. We demand the establishment of a democratic government representing all the people for the people. Anything short of this.." I am sorry, m'lord, I..

COURT: There is a misquote there: "All the people for (30  
all / ..

all the people".

MR CHASKALSON: For all the people. Yes, I am sorry, m'lord, I had not noticed that a word had been left out and it may have got into my mind what the state had said. I think in fact the omission of the word "all" I should have noticed myself because in fact it makes the passage even stronger for the point that I am arguing to your lordship. Because all the people means "all the people of the country", not just some of them. "Anything short of this will be non-democratic and anti-democratic and as such will be unacceptable". (10

Now if that be the policy and if it is put forward as the "primêre doel" what is wrong with it? How do you spell out of that a violent revolutionary struggle? And we submit to your lordship that if one looks at that speech, all that it is, is a plea for democracy rooted in the speaker's belief that that is what his religion requires, and that is how puts it and that is how it is reproduced. Indeed if one looks at the speeches in EXHIBIT A.1 and if one wants to find a central theme in these speeches and of course each speaker does approach the problem from a somewhat different viewpoint (20 but if one is looking for a central theme and if one really looks for it one will find that the central theme is four-fold. First opposition to the new constitution and the Koornhof bills; secondly the importance of a united opposition to such proposals; thirdly, a vision of a non-racial and democratic South Africa in which all the people will be entitled to participate in the government of the country, and fourthly generally, in general terms opposition to apartheid. Those if one is looking through these speeches and looking at what everybody says are the central themes. If one looks at the (30

speech / ..

speech we have been examining, the speech of Abdul Chamid Kabir, we will see that in the first column on page 44 what is recorded is this:

"For me this is indeed a unique occasion in the history of South Africa, more so for the oppressed people of South Africa. The formation of the UDF and its launching is like a dream come true. People from all walks of life have come together for the first time to voice their rejection of the South African situation particularly the Koornhoff bills and the so-called new dispensation (10 for the so-called Coloureds and Indians by introducing the Presidents Council. This gathering despite all the hardships and difficulties which we, the oppressed, face shows the power of humanity, the noble creation of God."

We will see there the theme of opposition to the Koornhoff bills and the new constitution. He talks about the so-called new dispensation, he talks about the people, the oppressed people coming together so we have the idea of unity here. We have in the next passage that I have referred to your lordship, the vision of a non-racial and democratic society; that is the one that I have already ready to your lordship, in which everybody will be entitled to participate in the government of the country and we also find a general statement there opposing apartheid. And you will see again he says:

"We have been divided for too long, brothers and sisters. Our survival depends on our unity."

That is in the second column on page 44. So if one looks at the speech as a whole you will see those four propositions which I have put to your lordship being there and simply (30



no support for the suggestion or the proposition upon which the state relies in taking those few sentences out of the speech and putting it into the "betoog".

Now the first of the passages, the first of the passages cited is from the speech of the Rev Allan Boesak and it is put this way:

"In dié verband word verwys na hoe Boesak hul primêre doel stel.."

so this is now taken and said to be the primary goal of the UDF: (10

"Our struggle is not only against the white government and their plans but also against those in the black community who, through their collaboration, seeks to give credibility to these plans."

Now one asks why should this sentence have been lifted out of a large speech and given the accolade of the primary goal, and I think there is only one reason for it because if you look through these proceedings, it is the best passage they can find to support their thesis that the black people associated with black, or collaborators should in some way (20 be dealt with. Because it is not a theme of the conference, it is not a theme of the launch and so for some extraordinary reason because there is a reference to collaborators and collaboration we have a sentence taken out of a very long speech and said to be the primary goal. Now first of all let us see the context in which that was used and then let us look at the speech rather as a whole and I am afraid I may be a little bit slower than I should be because the passages I have marked up on my copy I left in Johannesburg and I am working off an unmarked copy but I think I can find them. (30

If your lordship will bear with me.

COURT: We may help you along because they have been dealt with before.

MR CHASKALSON: Yes, I am sure and I have read it before too that is why I hope I will find my way through it, but I am not sure that your lordship knows which particular passages I want to turn to. But if one looks at that passage which is cited, it is cited out of page 50 column 5. First of all can I draw your lordship's attention to the fact that the speech is the longest of all. It covers six pages of this (10 document and we have taken out of those pages this one sentence and we are told it describes the primary goal, but if one looks at its context really why it has been used, is that it had been used in the context of addressing the issue as to whether it is right for the United Democratic Front to include whites or not, because the speech addresses if you go right up to the top, the second paragraph in the first column at page 50. It says:

"We must turn to one other important question, namely the question of whites and blacks working together. (20 This has been mentioned as the reason why the United Democratic Front has been so severely attacked by some and why they have refused to give their co-operation."

It is in that context that the speaker then proceeds to examine the role of whites, to examine the role of blacks and to point out that the support for the principles of the United Democratic Front do not depend upon the colour of your skin, but depend upon your commitment to their goals for a non-racial democratic society and that if you have those goals that is all that is necessary, and it does not matter (30

whether / ..

whether you are white or black, and he points to the fact that within the black community there are people who have collaborated with apartheid whereas in the white community there are people who have fought against apartheid. And it is purely in that context that the passage appears and it is purely for that purpose and by no stretch of imagination can it be reasonably lifted out of its context and elevated to a statement that this is the primary goal.

If we want to see what Dr Boesak says, is the purpose of coming together which I would assume to be the primary goal (10 of the proceedings; one must go back to page 46 m'lord and your lordship will see at the bottom of page 46 the second paragraph:

"We are here to say that the government's constitutional proposals are inadequate and that they not express the will of the vast majority of South Africa's people but more than that, we are here to say what we are working for is one undivided South Africa which shall belong to all its people, an open democracy from which no single South African shall be excluded; a society in which (20 the human dignity of all its people shall be respected. We are here to say that there are rights that are neither conferred by nor derived from the state. You have to go back beyond the dimnest of eternity to understand their origin, they are God-given so we are here not to beg for those rights, we are here to claim them."

and what he is saying here m'lord is we have come together to oppose the government's constitutional proposals because they are inadequate and we have come here together to demand the creation of an open democracy from which no single South (30

African shall be excluded. And I would suggest if you are going to look at Dr Boesak's speech for what he, Dr Boesak, perceives as the primary purpose of the meeting I would say that you will find it there rather than in that sentence which has been taken out of its context. But if we look at Dr Boesak's speech, we will see the themes which I have mentioned come through them. We will see that at page 46 he stresses the theme of unity. He says:

"I am particularly happy to note that this meeting is not merely a gathering of loose individuals. No, we (10 represent organisations deeply rooted in the struggle for justice, deeply rooted in the heart of our people.

Indeed, I believe we are standing at the birth of what could become the greatest and most significant people's movement in more than a quarter of a century."

His speech contains all the propositions that I put to your lordship as being what one could find, his speech contains opposition to the new apartheid, the importance of the united opposition, the vision of a non-racial democratic South Africa and a very broad and general attack upon apartheid. (20

Now the next passage that is relied upon is at page 5 where a quotation is taken from the speech of George Supersat:

"This gathering here shows that the people of South Africa are not merely asking for change, but they by their activities and their struggle, they will actually change South Africa and bring about a South Africa in which power will be in the hands of the people. We will never rest, we will continue with the struggle until leaders like Nelson Mandela are free to govern this country." (30

And / ..

And they quote that passage later in a different context but if one looks at the beginning of Mr Supersat's speech at page 40 you will see the statement:

"From this gathering and the spirit of this gathering we can see that most of the people are determined to build a united democratic South Africa where there will be freedom for all."

There is a reference to the theme of unity. There has been a reference to the rejection of the government proposals for the President's Council and so what he says is entirely (10 consistent with those propositions. And then there is a citation, the fourth citation taken from EXHIBIT A.1. It is an extract from the speech of the Rev Frank Chikane. He there says:

"And I want to call upon you, all peace-loving people of South Africa, to put hands together to walk side by side, to fight against the implementation of these reform proposals so that we can then destroy the system, so that we can put up a government by the people, where people shall govern according to their will." (20

Now once again if one construes that passage it is entirely consistent with the theme of a government based on democratic principles in which all the people will have the vote and in which the government represents all the people and not simply an elite section of the community. We will see if on looks at it, it may be that this is taken out and put in here because of the use of the word "destroy". There are so much - if I could remind your lordship what his lordship BEKKER J said about those words. It is common political parlance and that is the evidence in this case. You can (30

destroy / ..

destroy institutions by non-violent means as well as by violent means and your lordship will remember that the Labour Party claimed credit for destroying the Coloured Representative Council by boycott. And there are all sorts of ways in which you can show a government that it must change its policies. One cannot elevate that into a claim for violent resistance.

You will see I think at page 36 at the bottom that he cites acts which have got to do with acts like the Group Areas Acts, the Suppression of Communism Act and other acts and he says: (10

"All those acts necessitated the coming together of people to fight together as the oppressed. The struggle of our people has put so much pressure on the system that it could not take it any more. Apartheid could not contain the resistance of the people and as a result the oppressive state had to think of a new way of continuing to oppress the masses of our people."

Now he is there talking about the fact that the government was howing itself to be responsive to pressure which had been put on it before and that the new constitutional proposals (20 were the result of that pressure. Then he deals in the next paragraph, it is the second column:

"The constitutional proposals, the reform proposals came up as an attempt to reach a climax of apartheid instead of leaving it to collapse."

Then he talks about the Labour Party's role and the call for the Front and he talks about the working principles and the demands around which they can rally in opposition. So again we see the opposition to the Koornhof bills, we see the concept of an opposition to apartheid and we see the concept of (30

unity and we see the concept of a non-racial democratic South Africa. Those are the passages upon which they rely and I suggest to your lordship that none of those passages properly construed in their context and with due regard to the evidence which has been given in this case can be understood to support the propositions for which they are used. And that all of them properly construed support the proposition that we have urged on your lordship. And if I could remind your lordship in EXHIBIT A.1 at page 4 where your lordship will find a declaration which we have looked at so often, your lordship (10 will find the four themes that I have put to your lordship to be spelled out in that declaration. Your lordship will see at page 1, the statement that we stand for the creation of a true democracy in which all South Africans will participate in the government of our country and we stand for a single, non-racial, unfragmented South Africa. Your lordship will see that the theme of unity is stressed. Your lordship will see the opposition to the new constitutional proposals in the Koornhof measures and your lordship will see that the whole declaration is rooted in the objection to apartheid (20 which is seen to be likely to continue under the new dispensation. It is only if a different dispensation is introduced, one which is not based and premised on apartheid that the aspirations of the people who came together on that day could be realised. So the themes of the speeches really reflect, the central themes which I have said can all be picked up in the declaration itself and that declaration was adopted as the primary goal of the United Democratic Front on that occasion.

Now then the last of the passages which was cited and (30

that / ..

that is page 6 from the "betoog" comes from a different document. It is a passage taken out of EXHIBIT W.69. It is attributed to Frank Chikane. Now there is no admissible evidence of this document on the main count of treason and the common law counts. It has not been proved for the purposes of those counts. As far as the statutory counts are concerned it is admissible under section 69(4) because it was found in the possession of Mr M Vally who is admitted to have been the secretary of the regional executive committee - he is the secretary of the Transvaal region I think, Mr Vally. Anyhow, I do not dis- (10  
pute that he is a person of the class described in section 69. Now the rhetoric of the last paragraph, the rhetoric of the speech and particularly the last paragraph; the ending of the speech is in our submission entirely consistent with the underlying theme of the defence case which is that the struggle is ultimately won for a true democracy in which the government will be elected by votes of all the people in the country. This is the people's struggle towards..

COURT: Could we pause here on the question of common law admissibility. If it is shown that this document was (20  
found in possession of accused no.5; it was also found in the possession of Vally, one can say that it was distributed, this specific document.

MR CHASKALSON: Distributed, m'lord? It is a newspaper, it sells. People buy it.

COURT: Yes, it is published, you can buy it.

MR CHASKALSON: Yes.

COURT: In it is published a message from Frank Chikane, vice-president of the UDF.

MR CHASKALSON: We have nothing to show that that was not (30

his / ..



his message. Can we not take it to be his message?

MR CHASKALSON: No, m'lord.

COURT: Why not?

MR CHASKALSON: Because you have got nothing to show that it was his message. It is those cases which I cited to your lordship last - a week or two ago. It is the Prometius Printers case and all those. A document, documents are not self-proving. If you want to prove that Mr Chikane made that statement the state should have called the printers and publishers.. (10)

COURT: If you take it one step further and you say that Speak is a document, a publication which is, let us say, furthered by the United Democratic Front in the sense that it is handed out at meetings and that sort of thing.

MR CHASKALSON: Well, handed out by whom at meetings? Not handed out by them, there is no evidence that the United Democratic Front hands it out at meetings. There is the evidence that people, that on some occasions some people at some meetings distribute Speak; ask people to buy Speak; if Juta's at a bar conference have a table at which they (20 have law books you cannot say that the bar is handing out that book and approving of what is contained in those books.

COURT: Well, let us take it one step further then. We have in the witness-box accused no.21, accused no.19 and accused no.20. Did anyone of them tell the court that this was not the message of Frank Chikane?

MR CHASKALSON: Well, let us see what the evidence was, m'lord.

COURT: Apart from interpreting it.

MR CHASKALSON: M'lord..

COURT: The interpretation I can do myself but did they (30 say / ..

say it was not..

MR CHASKALSON: There is no onus on the accused to state..

COURT: Well, apart from an onus (simultaneously)

MR CHASKALSON: How do they know it was a message from Mr Frank Chikane? How do they know it?

COURT: Yes.

MR CHASKALSON: Mr Chikane knows it, the publishers know it, they do not know it.

COURT: It is not just Mr Chikane, it is the vice-president of the UDF speaking, not Mr Chikane. (10)

MR CHASKALSON: And if I write an article and publish it in De Rebus and I am described as the vice-chairman of the Johannesburg bar or the vice-chairman of the general council of the bar and a little thing at the front and I happen to have written it without reference to the general council because it is my own article?

COURT: That is right, and the chairman of the bar is in the witness-box and he refers to the article and does not say it was not authorised, what conclusion does one draw?

MR CHASKALSON: Well, let us see whether he says it was. (20)  
Well then perhaps we should see what the evidence says?

COURT: Yes, I think that is better.

MR CHASKALSON: Well, if your lordship would turn to volume 296 we will see what it says because I am not sure myself.

COURT: Page?

MR CHASKALSON: I see that there is a reference at page 16 609 volume 296 line 29.

ASSESSOR: Will you repeat the page, please?

MR CHASKALSON: Yes, there is no reference one way or the other to that. (30)

COURT / ..

COURT: 296 or 269?

MR CHASKALSON: 16 669 but I will look elsewhere because there might be other evidence concerning it but 16 609 Mr Lekota is being cross-examined on it, to the last three paragraphs. And it is put to him that this is a call to violence in the liberation struggle and he says no, that is not say, the Rev Chikane is a church minister.

"Court: Which church? -- I forget the name of his church. Priests would not speak in terms like that. It will be the day that this will happen and on that day it will (10 happen and so on. This is not a call for violence."

and he says:

"I put it to you that this is also a reference to the alternative structures of the people, to call on the people that they must organise and mobilise the oppressed masses in South Africa and create such structures and networks that will enable the liberation movement to break the system of apartheid. -- As far as I am concerned all that he is referring to is organisations, setting up organisations and one of the documents (20 told us this morning there there is no weapon that is stronger than organisations and if we are able to persuade the government effectively in the final analysis we must build our organisations; we need organisations."

and that is all the cross-examination is.

COURT: And that is the publicity secretary. Now could one not have expected the publicity secretary to say this is not a message from our vice-president?

MR CHASKALSON: Well, he was not asked this in this passage.

COURT: Whether he is asked or not, he was led by able (30  
counsel / ..

counsel.

MR CHASKALSON: He was being cross-examined at the time.

COURT: Yes, he was led by able counsel in reply as well.

MR CHASKALSON: We will - I cannot tell your lordship whether there is any passage in the record which says that this was not an official statement on behalf of the UDF. But I have a recollection that there is somewhere in which it is disputed. Let me look for it, m'lord because like everything in this case it takes a very long time to find. As your lordship has put that to me I will see if I can find it, but I have (10 a recollection somebody said that he was speaking for himself and not on behalf of the United Democratic Front. And I think I know where I may be able to find it because I have a recollection but I would not like to say it is there, because my recollections are not always correct.

But leaving aside for the moment, because this arose out of a question as to whether it is admissible on the common law charges. It was not proved otherwise in tendering it so it was tendered through section 69(4). It has an element of admissibility for the purposes of section 69(4) and it is (20 dealt with in the evidence. And one cannot say simply because the accused responded to questions which were put to them that they were acknowledging that this is in fact adequate proof of that statement. The publisher of Speak could have been called and they could have been asked questions. The state chose not to call Speak. One could have found out from Speak if the state had chosen to call Speak to explain why this had happened, the circumstances in which the publication came to be made; who gave the description, whether it was their description; whether they were asking for an (30 official / ..

official statement by the Rev Frank Chikane or whether they were merely asking him for a statement and they chose to describe it that way. That is why the common law requires that evidence to be given. That is why documents are not self-proving, and that is why those cases which I referred your lordship to at the very beginning of my argument say that the documents do not prove themselves without the evidence, and the fact that we are in a case in which common law charges have been mixed up with statutory charges cannot give to a document the quality of admissibility for the (10 purpose of the charge which it would not otherwise be admissible.

And perhaps on reflection common law, it may be right that common law charges ought not to be joined with these statutory charges for that reason because it leads to great confusion and often to potential prejudice.

COURT: That is a point you may take at the next case. It is a bit late now.

MR CHASKALSON: But if one could look at that - if I could just go back..if we could look at that statement in itself (20 what it comes down to is language entirely consistent on the construction, on the principles of constructions which I have put to your lordship, that people should be brought together in mass organisations to make the demands for a non-racial and democratic South Africa which will ultimately be sufficiently strong to lead to that situation and ultimately to lead to a government representative of all the people. And that paragraph is entirely consistent, that construction. The language may be militant but you cannot look at it and take it to mean something which it does not claim to be. (30

And / ..

And if one goes back to the earlier page you see the stressing of the importance of organisations. Page 6 in that fourth paragraph:

"Our task now is to make sure that we are not carried away by the euphoria of the power of unity and action but use this opportunity to strengthen our organisations resuscitate those which are declining and create new grass root organisations where there are none."

He is really calling and stressing the power of organised people.

(10)

ASSESSOR: Are you now referring to page 6 of..?

MR CHASKALSON: Of the "betoog".

ASSESSOR: Of the "betoog", not of Speak?

MR CHASKALSON: No, I am sorry, of the "betoog".

COURT: It is 7 of Speak, is it not?

MR CHASKALSON: Oh. I do not have Speak in front of me, I have the "betoog" in front of me.

COURT: It does not matter, we will take the "betoog".

MR CHASKALSON: We will take the "betoog", yes. I am sorry, it is...He says that the government, the introduction says:(20

"After years of forced separation between white, coloured Indian and African, in the last two decades between African and tribal lines the government found all those people together at Mitchell's Plane saying a big "no" to apartheid. Our task is now to make sure that we are not carried away by the euphoria of the power of unit and action but use this opportunity to strengthen our organisation, resuscitate those which are declining and create new grass root organisations where there are none."

(30)

So what he is saying is unity organise and it is that which will ultimately lead you to the victory. Now that is the language of politics. Goodness me, that is what politicians are always saying. We will win a great victory. You come together and it will be your strength that will do it. You will do it for yourselves. I mean all politicians say that, m'lord, and if you compare that with the sort of language which the court was considering in the 1961 treason trial it simply pales into insignificance. And if you compare that with the language which was construed in the (10 cases such as Nathie and others which I read to your lordship yesterday or possibly the - no, it was yesterday - that construction that I verge on your lordship is entirely consistent with the way in which courts read documents because one must allow people making political statements, the exaggeration, the militancy of language, the claiming of their potency; all that is what you get in political language. That is the grist of politicians, to inspire people to come into the organisation because they want the mass organisations to demonstrate their power and ultimately - your lordship (20 has heard that they will continually contemplate actions such as..at one stage they were considering different types of action and I think I will find your lordship the passage later when we come to look at it, but there was discussions or whether there should be a defiance campaign and that was rejected. But you cannot do anything unless people come together and you cannot get people together unless you can promise them a victory by coming together. And I do not think one can say anything more than that, but you cannot elevate that into a statement on behalf of the UDF, claiming that (30

its / ..

its goal is to overthrow the state by violence. It is also realised, one must accept that this was being published in a publication which circulates openly. It seems highly improbable that the Rev Frank Chikane thought it to be a call to violence. Well m'lord, those are the references which are put forward in support of the submission made in paragraph 1 concerning the freedom struggle and ultimately the submission is that they support the state's thesis that the struggle was a violent struggle for the overthrow of the government and its replacement with a government according (10 to the principles of the Freedom Charter and we submit to your lordship that those references are wholly insufficient to support that conclusion. Now the next part of the state's argument focusses on the concept of the enemy and it is argued that the - and that begins at page 7 of the "betoog" and it is argued that the enemy is identified with the state with the government, government institutions and officials and that they constitute a common enemy which has to be destroyed by violent confrontation. They say that the evidence of the state showing that the enemy was identified in this way was not contradicted and then somewhat inconsistently it is later said if one goes to page 10; I think it is page 10 that 2.10 on page 10 of the "betoog":

"Beskuldigdes 19, 20 en 21 en ander verdedigingsgetuies het hulle bes probeer om hierdie hof te oortuig dat hul vryheidstryd gemik is teen apartheid synde die abstrakte beleid en nie teen die regering en gesag van die staat per se nie."

So on the one hand they say that it was common cause that the enemy which is presumably the people against whom the (30



freedom struggle is directed, that is the state, the government, the government institutions and officials and then they say that that is not disputed and then they put up a proposition that in fact - a contrary thesis was put forward and that the accused's evidence should be rejected for that purpose, and of course we do not have any references to the record so we do not know how they reached that conclusion. But I think it might be helpful to examine some of the evidence that was given concerning the use of the word "enemy" and who is regarded as the enemy. I think it (10 was taken up initially with Mr Molefe in his evidence-in-chief. He was being questioned at that stage about the - it is volume 247 page 13 164 line 23 to 13 165 line 27. Mr Molefe was being questioned then about the pamphlet which he had obtained from Stuurman whom he subsequently identified, who was identified as being Dr Neville Alexander, calling for the united front and he read a passage which I won't repeat which is under the heading: "Who is the enemy?" and the question then asked him at the top of page 13 165:

"Can you just pause there for a moment? This idea of (20 identifying the enemy, is that something which was current in political discussions and writings at the time? -- It was though it had been there before that.

When did you first encounter the use of this idea of identifying the enemy? -- I think from as early as I really begin to understand politics, listening to people talking about the political situation in the country. The other time while I was still at school really, I cannot say precisely when but I recall very clearly that even at the time that I was involved with the (30

Azanian People's Organisation, AZAPO, the word "enemy" was used generously in documents and in speeches.

That means that you were to take up arms and fight a bloody revolution? -- No, it did not mean that.

How did you understand it? -- I understood the use of the term an "enemy" really to be part of the political language, the political language that is used generally. It simply refers to a person or to an organisation that differs with you in terms of views or politically. It also refers to the government or anybody, a party. (10 It is in that context really that I have always understood it. I do not preclude the fact that those who would take up arms are also using the words."

Now that was his evidence-in-chief. And it is taken up with him on a number of occasions in cross-examination. In volume 254 page 13 655 line 28 the cross-examiner put to Mr Molefe the following proposition:

"And another fundamental principle of the freedom struggle is that the people, for the people to understand and accept and associate themselves with the fact that (20 in your freedom struggle the government is the enemy?"

That is what is put by the cross-examiner and the answer is:

"Well, I do not know if the matter has never been considered a matter that the masses must be educated about. I do not know of a conscious decisions to do that but certainly I myself have referred to the government as the enemy and I have referred to the policies of apartheid as the enemy and I have referred to these things in the manner that I have set out in the context of the common use of political language. It is not something that (30 started/..

started with the UDF. This has been there many, many years. It simply refers to a government that pursues policies with which one does not agree or a group or an organisation that holds views that are contrary to the principles of democracy and it is promoting those views at the expense of the rest of the people to enjoy freedom, justice and equality. In that context the government, the parties and organisations would have been referred to as the enemy."

And then your lordship asks the question:

(10

"Apart from your grouping, that is the UDF and its affiliates and the BC groups, what other groups refer to the government of South Africa as the enemy?"

He says:

"The Non-European Unity Movement, the African People's Democratic Union of South Africa. I believe the ANC as well, I believe the PAC, I believe Inkatha - those are the few examples that I can think of now as I stand here."

and then he said he was not sure about Inkatha and then he (20 was asked about some of the other movements and then your lordship finished off the questioning at page 13 657 with the question:

"Apart from Inkatha about which you are not sure, is the UDF and all these groupings that you have mentioned the most moderate?"

and his answer was:

"I think so."

And then the cross-examiner takes up the questioning again and he says:

(30

"I / ..

"I put it to you that it is a fundament principle of the freedom struggle and it is fundamental in the policy of the UDF to depict the government as an enemy so that the people can associate them with the idea of regarding the government as an enemy."

and the answer is:

"I reject that proposition. The UDF has never sat down and decided through its policy structures that we will now promote this as the policy and call the government the enemy. I have indicated that it is simply part (10 of political language, it is something which has been there for many years. It has been there for many years and people who came and join the UDF are people who had been part of the political development in the country. It did not sit down and say: we will call the government the enemy but I do not dispute the fact that from time to time when people spoke that was meant. It was simply taken as part of the normal political language and nobody would have raised his head and said: what do you mean? It is understood generally on the basis that (20 our government is promoting apartheid, we are opposed to apartheid; we want democracy, the government does not want democracy."

And then the cross-examiner takes it up again a little lower down on page 13 568. I won't read the question because Mr Molefe asks the question to be repeated and then it is..

COURT: I am sorry, is it 13..?

MR CHASKALSON: 658. Question put to him, he asks for the question to be repeated and again it is put to him essentially that the use, the word is used to describe the government (30

so / ..

so that they can associate themselves with the idea of fighting against the government as an enemy and his answer is:

"I reject that proposition. However, I agree that the UDF has consistently criticised the government on a number of issues and it has spoken openly about it. But I reject the suggestion that it is a fundamental policy to blacken or denigrate the government because it is fundamental to the struggle. We criticise because there are concrete issues that are affecting us that need to be criticised. We cannot keep quiet. We have(10 got to talk about these things, they are affecting our lives; they have given rise to conflict in our country, a very violent one."

Now that is when the cross-examination was first taken up with him and he drew attention to the common use of political language, he drew attention to how this would be understood in the community in which he lived and particularly by those who attend meetings. He drew attention to the fact that that form of expression was there long before the UDF started; that people who came into the UDF had been using that form (20 of expression before they came in and they continued to use it afterwards. There are other passages that I can give your lordship. And then at page 13 708 the question put to Mr Molefe is this, it is 13 708 line 7.

COURT: And the volume is?

MR CHASKALSON: I am sorry, it is volume 255.

"Also paragraph 11, a programme of action. Our decision is to draw up a programme of action, bringing to the fore important considerations, to pull our enemy both mentally and physically and direct our skills and resources (30 towards / ..

towards the realisation of our programme.."

and so on. And then it is put to him:

"Also here it is clearly depicted that I put it to you

that the state is the enemy, the government is the enemy."

and it is interesting to note that the cross-examiner identifies state and government in his own question, he says the state is the enemy, the government is the enemy. We will come back to that a little bit later because Mr Molefe himself does comment on it at a later stage - and the answer is:

"Well, this paragraph does not say anything about the (10 enemy but I have on more than - close on a hundred and one occasions accepted that the government is called the enemy so it is not really an issue in dispute."

The cross-examination goes as follows at volume 256 page 13 720 line 18:

"Is it also correct then that the enemy is referred to here as a racist government? -- Well this document is really, this section is talking about the racist government. I cannot see the word enemy in that line. /

I put it to you that the enemy is referred to under (20 different names. One of the different names is racist government, we have gone through quite a few of them so far. -- Well, if we are dealing with the paper written by someone else who is not here and he writes racist government we cannot change that word to the enemy. I do not dispute the fact that the government was referred to as the enemy in other document and that I myself may have said so in the past. I have said so and I have given the context in which it was said and what it means, so I think if we are dealing with a paragraph in a (30 document / ..

document, a section in a document and counsel must refer me to what is written here, we must not read too many things into it. Maybe this writer might not have thought of that when he wrote the documents."

and your lordship says:

"And that Mr Jacobs, is a very valid comment."

And the evidence is then that this was how the word was used. Unfortunately there is an exhibit which shows that - EXHIBIT AT.8.

COURT: A?

(10

MR CHASKALSON: AT.8. It is a handwritten letter and if your lordship..my document has been put together with page 2 coming before page 1. I do not know whether your lordship's document is put..

COURT: It is the same.

MR CHASKALSON: The same. Well, if your lordship would go to the page numbered 2, he says the writer is appealing for unity. He talks about how in Zambabwe people have been persuaded to join hands in fighting the common enemy and as a result of this patriotic alliance they finally defeated (20 the enemy, white domination. The white domination is there described as the enemy:

"I therefore appeal to our brothers in the BC camp to join forces with all those progressive organisations affiliated with the UDF and fight our common enemy once and for all through peaceful means at our disposal.

United we stand, apart we fall should be our motto."

So in fact quite coincidentally we find support in a document written before this trial that the enemy is used in political parlance to denote within black politics, to denote people (30

against / ..

against whom you are struggling and it does not necessarily denote a violent struggle. Now that is the evidence. There is a document to show how that was used, on what basis is your lordship now asked to say that that evidence could not reasonably be true. The state has given no reason to your lordship and I suggest that none exists. I am told it is 11h15.

THE COURT ADJOURNS FOR TEA / THE COURT RESUMES

MR CHASKALSON: I think I should also refer your lordship to a passage dealing with Mr Molefe's own perception of the (10 differences between the state and the government and he points out that that is not always kept in mind by people when they use the word. At volume 254 page page 13 663 the cross-examiner says:

"And the enemy - the state I put it to you - is also depicted and propagated as the apartheid system. Is it correct, do you refer to the state as apartheid?"

and Mr Molefe says:

"Are we talking about the government?"

and the cross-examiner says:

(20

"Yes, the state."

So the cross-examiner is also making that initial confusion between the state and the government and then Mr Molefe says:

"The government? I think there is a difference between the state and the government and although sometimes people use it interchangeably, but when they talk about the state of the enemy they refer to the government. I think the state is something that transcends party politics but the government that is in power is essentially the government of the Nationalist Party and the state (30



is something much broader than that as I understand it because that would include the courts and so on and I do not believe that the courts are part of the Nationalist Party.

But the courts are part of the government, man. -- Part of the state."

And your lordship says: "Is that official, Mr Jacobs"? Mr Jacobs says no, I asked him, and your lordship says: Oh, is it a question? Mr Jacobs says it is a question and Mr Molefe says:

"No, no, I do not regard the courts as part of the government. The government is essentially that of the National Party, it is set up to promote the ideology of the National Party of apartheid, but the courts are sometimes much more than that; they are part of the state, they transcend party politics. The courts are part of the broad structures that deal with the interests of the entire country, the people of the country, black and white, not the interests of apartheid."

And then the questioner says:

"Do you say that the courts are part of the government? -- I do not see them as part of the government."

Now the point there is that Mr Molefe draws a distinction but says it is not always borne in mind by people and that they sometimes use the word "the state" when they mean the government and indeed we see the cross-examiner using that word or failing to make that distinction himself in seeing the state and the government as the same. Then your lordship will see in DA.30 that the UDF issued a press release on a successful court order saying that a decision of the

(30

Supreme Court was a major success for human rights in South Africa. They are seeing the courts as somewhat different to the government and that is referred to in Mr Molefe's evidence, volume 273 page 14 857 line 12 to 30. And then it was put to Mr Molefe again just to complete these references at the bottom of page 14..it is volume 267, 14 443:

"I put it to you that the so-called enemy in the struggle that you referred to and described as so-called enemy in the struggle as the enemy, meaning the state or the government. -- We certainly do not mean the state, we (10 mean the policies of apartheid; apartheid as an ideology in the sense that the government who implement those policies might in political terms be described as "the enemy".

Now I think I should tell your lordship that I have not been able to find any passage in Mr Molefe's cross-examination in which it was disputed that the word "enemy" was part of the normal political language in black politics and that it had been there for years before then. Of course the record is very long. I looked for it, I did not see it. (20

If one turns then to page 8 of the "betoog" one finds in fact that the passages cited in the argument of counsel for the state show an inconsistent use of the word "enemy" which again supports Mr Molefe's statement that people do not always think carefully when they use the word. The first of the passages cited is from EXHIBIT J.3. It is a document which we- oh sorry, it is EXHIBIT C.1 and J.3. If I might remind your lordship, that was the two documents which we discussed yesterday. C.1 is the handwritten document and in your lordship's copies of the exhibit, attached to it (30

is a typed copy which is not in fact a true copy of the handwritten document. Apparently as I understood from our discussion yesterday that was so, but it does not matter I think the passage is actually taken from C.2 and not from C.1 or J.3, the passage that they cited. Because the words that they have there are as in the Freedom Charter, "for those of us who subscribe to it". And I think that comes into C.2 that it does not form part of C.1 or J.3, but I do not think that it matters for the purpose that we want it because in J.3 your lordship will find under paragraph 2 of J.3 which is (10 the typed copy and an easy one to follow:

" 2. Our objective is to dismantle apartheid and replace it with a most just and democratic system.."

so the words "as in the Freedom Charter" are not in J.3.

"Often in a day to day heat of the struggle we forget that our enemy is the apartheid system and not those whose views differ from ours."

So there the enemy is described as the system of apartheid which I would say is really the ideology of apartheid. This document was an input document to a meeting. It has (20 nothing to do if one looks at it with violent confrontation. and it begins at paragraph 2.1 to say:

"The first question which needs to be asked is what is wrong with apartheid."

It seems to relate back previously to the identifying of the ideology of apartheid as the enemy. It was never adopted, I have given your lordship the references previously, it was never adopted as UDF policy, it was merely an input document; a discussion paper. It has nothing to do with violent confrontation. All that it would show is that the author, (30

that / ..

that the word "enemy" is the sort of word which is used by people associated with the UDF to describe the ideology of apartheid which is not really in the dispute, the passages which I gave to your lordship from Mr Molefe's evidence which shows that it was used to describe apartheid, to describe government and a lot of other things as well.

The next document relied upon is EXHIBIT C.5. It is described as "Input on organisational aspects of the UDF" and there is also a reference to EXHIBIT J.1 which refers at paragraph 4 - it is really paragraph 5 at page 4 of (10 EXHIBIT J.1 : "To input and discussion on organisational aspects of the UDF", and the minute in paragraph 5 on J.1 says that "The attached input was presented as much of the issues raised were self explanatory and suggestions were to be referred back. Not much discussion ensued. The following points were raised: Insufficient attention has been paid to the development of rural structures. NEC members must attend NEC meetings fully armed with information on activities, feelings etc at base level. There had been no feedback whatsoever on amendments to the working principles." (20 So it is apparent from the minutes that the input paper on organisational strategy which your lordship will find also as EXHIBIT J.4 was discussed, there was very little discussion about it. It certainly was not documented in any sense so that we have the fact then that this document is merely a document prepared by an individual for discussion and that there was very brief discussion about it. I am trying to find the precise context of the passage taken by the state m'lord, which I had marked on a different copy. Yes, it is really the concluding paragraph (h) relating to non- (30 affiliates/..

K1514

affiliates:

"Our emphasis should always be to seek those areas where co-operation is possible. It is important that we should continue to try and win over all progressive organisations. As far as other political tendencies are concerned, our most serious consideration should be those which have a mass base. By now we should be able to be realistic about the areas and nature of co-operation which is possible. It is our task to ensure that we and those affiliates never lose sight of the fact that the apartheid state is the enemy and that if any ideological differences do exist we should respect those and not allow it to undermine the potential areas of unity."

Whatever it is, whether it is the correct use of the word or not in that context or whether it has been used loosely there is nothing in it. Nothing in that document or in that passage to support the thesis that it is used in the sense of a violent confrontation. The next extract relied upon in paragraph 2.3 of the "betoog" is an extract from a speech of the Rev Frank Chikane made on 16 June 1984 commemoration service. Now the evidence and I will have to give that to your lordship later. The evidence concerning this meeting is that it was not a UDF meeting. Your lordship will recollect that the meeting was arranged by the ministers because of the conflict. I think I have referred to it previously, I think it was probably in an earlier section of my argument and I will pick up that reference again. But it had been organised by the religious ministers in Soweto because of the conflict which existed between the organisations particularly

UDF and AZAPO and so they set up the ceremony and they took control of it and it was not a UDF meeting. So it is a speech, an extract from a speech by the Rev Frank Chikane and the fact that he chose to use a particular word on that occasion shows only that it is language which he uses in his speeches and that such language was used is not disputed. Now it is in fact if one looks at the context of the speech - we refer to page 5, the second paragraph. Now the extract does not tell you who the enemy is:

"Our common enemy controlled by Pretoria is not (10  
happy with all this achievement."

Now the achievement he refers to is the ability to have held a meeting on that day and the reason why there had been problems, and the particular reason why there had been problems appears from the rest of the second paragraph which is not contained in the citation. It is on page 5. If you look at the second paragraph your lordship will see:

"You can rest assured that our common enemy controlled by Pretoria is not at all happy with this achievement, of this week of unity during our negotiations, for (20  
our unity is their downfall and our division is actually their victory. That pamphlets which have been distributed in the name of AZAPO has been accordingly denounced this morning and the system is bound to be disappointed and frustrated and Pretoria in particular Protea which is around the corner as an agent of Pretoria. Let us finish them up by concluding the status for the dignity in spirit, for unity and action in reconciliation."

Now it seems if one looks at the context that the common enemy is whoever was responsible for distributing the (30

false statements and it is attributed to whoever those persons were are said to be controlled by Pretoria, presumably by the government. So what he is really saying is that some people distributed false pamphlets at the instance of the government and that whoever that is, is not happy with the fact that it did not achieve the result and that in fact the ministers' fraternal were able to get the people together at a meeting despite the false AZAPO pamphlets which have been distributed. I do not think one can say much more than that. But whatever it does mean or does not mean, one thing is (10 quite clear and the context in which it is meant has got nothing to do with violent confrontation.

Now the next passage is a passage from a speech of Oupa Monareng and that was at the protest meeting concerning the events at Ngoya university. Your lordship will remember that a number of students had died on the campus and that a protest meeting was organised and I will give your lordship the references to the record later, but the evidence showed that AZASO which is the students organisation took the lead in organising the meeting, that the chairman of the meeting (20 was - well, I had better check that, I am not entirely sure but I think that the chairman might have been an AZASO person.

COURT: Was it not accused no.19?

MR CHASKALSON: I do not think he was the chairman, I think it was Moseneke but I will check that. I think Mr Moseneke was the person who.. but we will have to check on that. I think accused no.19 read a message at that meeting, and I think in the passages that I am going to read to your lordship that we will find that the chairman was Mr Moseneke, but I may be wrong. (30

COURT / ..

COURT: I have a note here that a medical doctor, Bogozzi, was the chairman.

MR CHASKALSON: I see.

COURT: I may be wrong, but..

MR CHASKALSON: I do not know, I will have to check the record but the important thing is that the evidence did show that AZASO took the lead for that meeting. The UDF was associated with it but the programme was primarily arranged by AZASO. Now there is an extract from that speech and it is cited on more than one occasion by the state. Of course the fact (10 that it appears in several different places does not elevate it to the rank of several speeches. It is one speech and it..

COURT: You mean in the "betoog"?

MR CHASKALSON: In the "betoog, yes.

COURT: Yes, repetition..

MR CHASKALSON: I am sorry, I am getting into the habit of..

COURT: Repetition has never improved an argument.

MR CHASKALSON: Well, it is separation m'lord, it is not.. you find it in different places. You keep coming across it and it looks as if some person is running around the (20 country speaking all the time where it was one speech made on one occasion at this gathering. Now the evidence given was that Mr Monareng did not speak on behalf of the UDF at this gathering. That the speech that he made was not UDF policy and Mr Molefe in his evidence very specifically denies that Monareng said here was in accordance with the policy of the UDF.

COURT: Who arranged this meeting?

MR CHASKALSON: It was arranged - I think I will find that passage, I think it was arranged - the UDF was party to (30 the / ..



the arrangement but the evidence as I recollect it was that AZASO was primarily responsible and let me...I tend sometimes to get a little confused with all the evidence and my recollection may not be right. Yes, he was being led in chief. If your lordship goes to page 13 488 line 6, it is volume 252 page 13 488 line 6:

"Was AZASO one of the organisers of that meeting? --

That is so, in fact the problem was handled by AZASO."

I am not sure whether that is not a typing error for programme because the next question is:

(10

"Was Mr Moseneke then really the person in charge of the programme of that meeting? -- That is so."

So that does accord with my recollection that the evidence was that the programme was arranged by AZASO and that Mr Moseneke was in charge of that programme. And at page 13 487 it is still in chief, the question is asked of him:

"Was Mr Monareng a student? -- No, he was not a student.

Did you hear him speak? -- That is so.

Did you remember discussing his speech with anybody after it had taken place? -- I did.

(20

Who did you discuss it with? -- I discussed it with the Rev Frank Chikane initially.

And after you spoke to Rev Chikane did you speak to anybody else? -- Then we agreed that we should..then I spoke to.."

that is a typing error, it should be Tiego..

"..Tiego Moseneke who was .."

it says present, it must be president -

"..president of AZASO at that time.

Was he a student? -- He was a student at that time.(30

What / ..

"What did you say to Mr Moseneke? -- I asked him to make it clear that our involvement in the struggle was not intended, our struggle was not against individuals and our struggle was not against the members of Inkatha and he must correct that situation and that was made by Mr Monareng and stated clearly that it was not our policy to do that. In his speech Mr Monareng had suggested that the hostel dwellers who were mostly members of Inkatha would be attacked for something like that. (10

Why did you decide to ask Mr Moseneke to do that? Why did you choose him? -- Firstly he was the president of the organisation which was seen to be at the forefront of the issue; secondly, he is a respected person because of the position in that organisation, he was articulating our view and I was satisfied he put across the position clearly; secondly, because I myself was not a speaker at the meeting."

and then the questioning continues with the fact that AZASO was in charge of the programme. Now Mr Molefe made it (20 clear that he read a message at the meeting.

Now the AZASO meeting - of course it was a student issue. It was a student issue because the people who had been killed had been students, it was an incident which had taken place on a campus and AZASO were clearly the people primarily concerned with the matter. They had to shape the programme and Mr Molefe says that he asked Mr Moseneke to deal with that. Now I will give your lordship some other references to this. There is a reference at volume 264 page 14 227 line 30 to 14 228 line 5. Volume 264 page 14 220 line 8 (30 to / ..

to 14 221 line 1; volume 264, page 14 221 line 2 to 14 222 line 10; and then there is a long series of questions at volume 164, page 14 228 to 14 230. And all this will be relevant to the time, it is really a different passage that the state rely on subsequently but if we look at this passage he says - it is at 2.6 of the "betcog":

"We together with the rest of the entire progressive forces, freedom lovers in our country and the world over identify the enemy in terms of his violent, brutal and merciless actions. We should tirelessly fight all (10 symbols and manifestations of oppression and exploitation. In this era of darkness of brutality our revolution cadres and comrades are prepared to chase, attack and destroy the enemy from all areas, levels and corners of the world, despite the fact that they are black, white yellow or green."

Now I am actually not quite clear what one infers about the enemy on that passage. It seems to be a somewhat extravagant statement made by - I think the evidence was that he was a member of a youth organisation. He was not a student but (20 he was a member of a youth organisation; apparently made by a young man. He identifies the enemy in terms of "his violent brutal and merciless actions". Now I am not sure to whom that refers because the one thing that seems clear is that that is not the government that is being held responsible here, other than remotely for whoever may be responsible for the apartheid system but the issue here was the depth of the students at Ngoya and to chase the enemy from all corners of the world is just a somewhat extravagant statement. It is really difficult to know what he is talking about. (30

There / ..

There are parts of that speech which I think reasonably can be construed as threatening violence to individuals and I will deal with that later when it is cited but on the context of the enemy that - I cannot take that argument any further. I do not think one can draw any inference as far as the state is concerned other than that the speaker uses the word "enemy", but it is in such extravagant terms and so unrelated to anything that goes before it, it is very difficult to know who the enemy is.

COURT: That might appear from the next paragraph. (10

MR CHASKALSON: Perhaps I should look at the next paragraph.

COURT: It is not quoted I think. .

MR CHASKALSON: I was merely looking at what the state relied upon.

COURT: Yes, look at page 18: The enemy is the government.

MR CHASKALSON: Page 18?

COURT: Of the exhibit.

MR CHASKALSON: (reads)

"It is clear and obvious that they, the Sebes, the Gatshas, the Mangopes, the Matanzimas and the Taba- (20  
hales are prepared to replace the actual enemy and subject  
our people to constant harassment and cruelty."

Well, that assumes that he is being consistent which is rather difficult if one looks at each one of the three. It may be - it may be that the enemy is the government. It may be that the enemy are the people who were responsible for the killing of the students and they have taken..you see if one goes forward he says it is the youth, the Soweto Youth Congress known as SOYCO together with the entire youth movements throughout the country, namely CEICO, PEYCO, AYCO, SAYO and(30

NOYO and in the passages that I have given your lordship, your lordship will see that Mr Molefe said he could not possibly have had a mandate from all those organisations because the programme was only arranged that morning. It was an urgent meeting got together that morning and that speakers were appointed that morning and that he could not possibly have got a mandate from places outside of Johannesburg to say these things. It was physically impossible to do. That is the youth movements or congresses throughout the country, so now we have gone to the whole country (10 purported to be representing, which has been formed and mushrooming, are endorsing their abhorrence and indignation at the "cruel, brutal and merciless killing of five innocent Ngoya students by the primitive, shortsighted and blockheaded Zulu impi's and warriors". Perhaps they are the enemy, because in the next sentence he says: We identify the enemy - in the very next sentence -

"We together with the rest of the entire progressive forces, freedom lovers in our country, identify the enemy in terms of these violent, brutal and merciless (20 actions."

He has referred previously to the merciless killings of the five innocent Ngoya students, so I would suggest to your lordship that there the word enemy is used in relation to the primitive shortsighted, blockheaded Zulu impi's and warriors. It is a speech which can be construed if one looks at different passages of it, it is cited later in the "betoog" and I will deal with them there, as inciting violence against members of Inkatha. That is what seems to be the thrust of that speech, or not the thrust of the speech, but if one (30

looks / ..

looks at the violence it seems to be inciting violence against Inkatha and it was that which Mr Moseneke addressed.

Then the next passage is - I am sorry, I have gone beyond the passage. I do not think I have dealt with paragraph 2.5. The passage from the Frank Chikane speech:

"Therefore we should understand that there cannot be reconciliation in South Africa as long as the apartheid was there, as long as injustice was there, there will be more and more conflict and for people to face the truth and say: this is an unjust system, let us dis- (10  
mantle it and put up a just system. Then people shall be reconciled. Thank you."

Now it is cited in support for the proposition that the Rev Frank Chikane identifies : "dit wat beveg word". I am not sure that it relates to the enemy at all but if one is asking what is being fought against on that extract of the Rev Frank Chikane, it is apartheid. He says really as long as apartheid is there, there will be conflict. If apartheid goes there will be peace, and people will become reconciled. So I am not quite sure what the state - I am not quite sure (20  
how the state uses that, because there is no dispute in this case that the struggle is a struggle against apartheid. Mr Molefe was questioned about that passage m'lord, in volume 264 page 14 217 , at the bottom of the page he says line 29:

"All I understand Rev Chikane to be saying is that the conflict that is in this country today is caused by the policies of apartheid and he sees that as evil and he sees the good as the direct opposite of apartheid, a society where people lived together in harmony in one society as equals and he said there is no way that(30

you / ..

you can reconcile apartheid with a non-racial society. Apartheid must go and a new order must be established and that would end the conflict, because the conflict arises out of the policies of apartheid. That is all I understand him to be saying.

And the questions says: And until that time there will be more conflict? -

"Well, that is what he is saying. I understand that simply to say that there will continue to be people who struggle to end apartheid and attempt from the other side also to suppress those who are struggling against apartheid. " (10

And so it goes. But that passage insofar as it was relied upon by the state is a plea to people to understand that apartheid is a problem. Until people there say - it says: "Let us dismantle it and put up a just system", presumably that must be the electorate. Then people should be reconciled, thank you. Whatever it is, it does not seem to take the state case any further.

Then the next passage is paragraph 2.7. It was in Tiego Moseneke's speech. He says: (20

"This man above all the noise that he makes, this man is a Bantustan leader, this man serves to reproduce an unjust system that we find in this country; this man is part of the system and when we all go out and destroy the system he should be part of the enemy and we should destroy the system together with him."

Now there the enemy seems to be identified as a Bantustan leader who supports the apartheid system. There was cross-examination directed to that and it was pointed out that (30

certainly /..

certainly nobody understood that as an incitement to go and commit violence against presumably Chief Buthelezi and that nothing like that happened at the time or at any time during the period of the indictment. The next document relied upon is in paragraph 2.8 where the state says:

"Sien ook BEWYSSTUK AB.37, bladsy 1 en BEWYSSTUK AB.7 dokument 6, die eerste en laaste paragrawe."

A reference to EXHIBIT AB.37 I assume is an error. It is a document entitled "Contact" which was found with Mr R Hallem of Lenasia. On the face of the document it was (10 published in 1982 before the UDF had been established and Mr Hallem is not identified in the evidence or the admissions. The document seems to be admissible neither under common law nor under the statutes and also if one looks at it, it seems to have no relevance whatever to the submission made by the state in the argument. I may have missed something but it seems to me on looking at it that it had something to do with sport and cricket and the Sri Lankan tour and I could not even find the word "enemy" in it, but it may be that it is just an error. Whatever it is, it is neither admis- (20 sible nor relevant and I will say no more about it.

Now the next cite is to EXHIBIT AB.7, document 6, page 3. And this document is referred to again in their argument - It is referred to again and I have mislaid the page at which it is referred to again. It is a document upon which I have made notes I do not have with me, but we will find it. Let me address your lordship on the document now so that I do not have to do it in two stages. Now AB.7, document 6 is a document headed: "Press statement" and it purports to deal with a meeting called on 10 October with the - by COSAS (30



to discuss the education crisis, civic problems and labour problems. It says that meetings were held and then it refers to, under 20 heads, to organisations which were present and your lordship will see that no.20 is entitled: "And many others", so it was apparently a large gathering involving 19 identified organisations and many others. Now the evidence was that some but not all of the organisations were UDF affiliates and very importantly - I will give the lordship the evidence and I will read it to your lordship as I go through the document. But very importantly at this stage I(10 might point out for what follows later that FOSATU is not a UDF affiliate, document no.5.

Now I am going to take your lordship through the evidence which dealt with this document but I want to tell your lordship first that the document was found with a Mr P Camay and the evidence shows I think that Mr Camay was associated with CUSA - that is the Council of Unions of South Africa and I have already told your lordship that I am looking for that too, that CUSA was a Black Consciousness group, union federation within the UDF and that.. (20

COURT: Within the UDF?

MR CHASKALSON: Yes, it affiliated to the UDF and it disaffiliated and I will get that for you too. My recollection is that it was within the UDF until January of 1985, but I can easily be wrong. I will find that. I will ask Mr Marcus to look for that now. He would actually have to do all the work which should really have been - I mean we have to keep going back to this to try and find out why the state has tendered it, because it does not tell us. It disaffiliated in January 1985. Your lordship will find that in SCHEDULE (30

1 of AAS.2. Now there is no evidence as to when this document was found or how it came to be..

COURT: Could we now pause there? This raises a problem which I have foreseen for a long time coming. I could have raised it with the previous document, that is the letter of Mr Nkhondo. I did not because it was not raised by you. At the outset of this case I asked counsel to enter into an agreement on formal matters. The formal matters were, I did not want to have evidence of a policeman saying that on such and such a date in such and such a place, in the house of (10 Mr X I found this particular document and on that basis counsel got together and over quite a long period they negotiated and they produced certain written admissions. So far I have taken it that those admissions relate to relevant periods when the document was found and that this is a point which would not be raised, but if it is going to be disputed on each and every document when it was found, then counsel will have to go back to the drawing board on this aspect. Or I will have to call the witnesses if it is relevant - I do not know whether it is relevant but we cannot have a (20 situation where an agreement is entered into and then a matter is left in the air and the court has to guess afterwards. I do not know whether it is relevant, it depends on the document. I do not know whether it is relevant on this document.

MR CHASKALSON: I do not think it is relevant on this document.

COURT: It may not arise further but I cannot just leave this in the air.

MR CHASKALSON: I noticed in my reading of the record, I noticed that your lordship raised this with Mr Jacobs.

COURT: Yes.

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MR CHASKALSON: At some stage during the trial.

COURT: Yes, this is not the first time this has been bothering me.

MR CHASKALSON: I do not think it is relevant. I do not think it is relevant.

COURT: I was under the impression that when a document is placed before the court by agreement at least the time and place of finding must be such that it is relevant. It means that it has some sort of relationship to the period of the indictment and not 20 years before or 15 years after, that (10 sort of thing.

MR CHASKALSON: The document itself contains dates within the period of the indictment.

COURT: Yes, that is so, once it is admitted.

MR CHASKALSON: Yes the question of admissibility is a question of law.

COURT: Yes. Well, I would like to leave this just hanging in the air for the moment. It may or may not arise further in this case but at present I hold the view that I cannot leave a loose end to this sort of thing if there is going (20 to be an argument. If there is going to be an argument I will have seriously to consider and having argument from both sides whether I should not call the particular person who found the particular document. If it is relevant - I do not know.

MR CHASKALSON: Well, I can only tell your lordship, your lordship raised it with Mr Jacobs. We heard nothing from him since your lordship..to the best of my knowledge..

COURT: Yes, it may be Mr..I am not blaming you or your side Mr Chaskalson, but it may well be that I have a duty to (30

clear / ..

clear up the matter in terms of the Act.

MR CHASKALSON: I do not know, m'lord..

COURT: So that duty will only arise if it is really relevant.

MR CHASKALSON: Yes, I remember another passage in the cross-examination where it was put to a witness that a document had been found at a certain time and subsequently it appeared from the document itself that it had been found at a different time. It had a date written on it and it was some time in June 1985 and not February 1985. We know that (10 there had been many different raids at different times. What the relevance of the time is - it may or may not be relevant.

COURT: I know. You raised it now and that is why I raised it.

MR CHASKALSON: Well, all I am saying is that there is no evidence as to when the document was found, how it came into Mr Camay's possession. There is no evidence of the distribution of the document. We do not know whether it was a draft of a document, we do not know whether it was ever issued. There are some handwritten notes on it. It was (20 presumably a document which may or may not have been discussed. If it was discussed by the Transvaal area committee, we do not know whether it was approved by the Transvaal area committee. For all we know and I say it again, from my knowledge of the record - it is a very long record and I have struggled, taking days trying to find things which I expected to find in the state's argument. But I know of nothing to show and the state has put nothing before your lordship to show that this document was ever adopted by anybody. It never became a formal document which was issued to the press and (30

published. All I can say is I found nothing. The evidence shows and that is why I say I think that the question of time is really irrelevant because I think in the end even if it is admissible and it may be admissible irrespective of the time of finding; I have addressed argument to your lordship as to how I understand section 69(4), what I understand the provisions of section 69(4) to mean. Time may or may not be relevant to the construction..

COURT: This Mr Camay, do we have him somewhere on the list or not?

(10)

MR CHASKALSON: I think that Mr Camay..

COURT: Put otherwise, is he a listed person?

MR CHASKALSON: For the purposes of this case he is shown as a CUSA man.

COURT: And CUSA was affiliated?

MR CHASKALSON: And CUSA was affiliated.

COURT: Was he on the management of CUSA or was he just a member of the union?

MR CHASKALSON: No, I think Mr Camay is shown to be - I think if I remember the form of the admission, Mr Camay is shown (20 as having attended a regional general council meeting of the Transvaal UDF on behalf of CUSA and I do not know if a time is given but I think that that is the form of the admission, but let us check it so as not to mislead your lordship. I think that is the form of the admission. Yes, he is shown as having attended UDF Transvaal general council meetings on behalf of the Council of Unions of South Africa and he is shown as secretary.

COURT: Secretary of CUSA?

MR CHASKALSON: I think as secretary of CUSA.

(30)

COURT / ..

COURT: And where is your reference there?

MR CHASKALSON: It is page 52 of AAS.4.

COURT: Thank you.

MR CHASKALSON: If I can go back to say that there is no evidence concerning the document itself from the state and it was prepared we know - whether it was discussed and approved by the Transvaal area committee, and I will come back to that committee later on, we do not know. No evidence has been given about it. To the best of my knowledge no evidence was given about it in the state case other than it formed part of the bundle of documents which went in. I do not recollect any witness having dealt with it on behalf of the state.

COURT: I have no note of anybody referring to this document. It was put to a number of accused and to Dr Motlana, but that is all.

MR CHASKALSON: Yes, all that I want to say about it is that we do not know that the Transvaal area committee whatever it may have been, that it ever adopted it and was ever issued. We only can see it for what it is, a statement which had (20 presumably if one is going to have to guess because we do not know - we know it was in Mr Camay's possession. All we can infer from it was that it was a draft press statement which may or may not have been discussed at a meeting; which may or may not have been discussed with Mr Camay as an individual, or may have been given to somebody and somebody else gave it to Mr Camay. We know really nothing about the document. But what we do know is that there is no area committee in the UDF ..

COURT: No Transvaal area committee?

(30

MR CHASKALSON / ..

MR CHASKALSON: No Transvaal area committee.

COURT: That is what accused no.20 told the court.

MR CHASKALSON: Yes.

COURT: But Dr Motlana says there was.

MR CHASKALSON: Well, I will have to find Dr Motlana's evidence but I was not aware of the document having been referred to by Dr Motlana at all, so I will have to read Dr Motlana's evidence.

ASSESSOR: 15 June.

MR CHASKALSON: Perhaps I had better read Dr Motlana's (10 evidence before I address argument to your lordship on this document. I think that will be more sensible.

COURT: Well, he did not know about the document. The question was asked whether there was a Transvaal area committee and he said the Transvaal Area Committee consists of UDF affiliates.

MR CHASKALSON: Oh, just a moment. Now it is coming back to me. If that is it, I think that what was put to Dr Motlana was that some of the people on that list - if you go back to the list, AB.6 - I seem to, now that is coming (20 back to me, I seem to recollect that Dr Motlana said that those organisations in the list are UDF affiliates, but..

COURT: Maybe, but I do not know.

MR CHASKALSON: Yes well, let me get the passage, I can find it, and I will look for it because I do remember I have seen Dr Motlana's evidence but I had not connected it with this at the time I was doing it and as your lordship said that it comes back to me that he did talk about some of the organisations who are shown as being part of the Transvaal area committee as being affiliates of the UDF. But I will look (30 and / ..

and see what he did say, but there is direct evidence that there are organisations which were not affiliates of the UDF. Let me take it in stages, m'lord. No, let me rather - I am sure that I can find it during the lunch adjournment, let me rather not argue without having read Dr Motlana's evidence as your lordship now raises it. We will look for it. You gave me a date which may help me, 15 June. I will look for it and I will come back to it, after I have had a chance of reading it. At paragraph 2.10 of page 10 of the argument -

COURT: "Betoog".

(10

MR CHASKALSON: I am sorry, "Betoog". It says:

"Graag vestig ons die agbare (2.9) hof se aandag daarop dat verskeie bewysstukke na verwys in hierdie hoofstuk word'n definisie van die vyand gegee wat ons nie weer na verwys onder hierdie sub-hoof nie."

All that I can suggest to your lordship is that the word seems to have many meanings. Well, let me put it differently, it is used in many different senses and I think that that is not disputed. I think Mr Molefe made it clear that it is used to refer to different institutions, people and policies at different times, sometimes used loosely. Then the next thing which is said, 2.10:

"Beskuldigdes 19, 20 en 21 en ander verdedigingsgetuies het hul bes probeer om hierdie hof te oortuig dat hul vryheidstryd gemik is teen apartheid, synde die abstrakte beleid en nie teen die regering en gesag in die staat per se nie. Dit is ons respekvolle betoog dat hierdie hierdie getuies van die verdediging doelbewus 'n powere poging aangewend het om hierdie agbare hof te mislei."

It is my respectful submission to your lordship that the (30

state / ..



state has put before your lordship nothing to support that proposition. And then the next sentence is:

"Dit word verder betoog dat dit onomstootlik bewys is dat UDF en vername leiers soos beskuldigde 19, 20 en 21 te alle tye die massas opgesweep het tot konfrontasie en geweldpleging teen die staatsgesag en die regering."

"Geweldpleging"? Well, all I can tell your lordship is that I have looked at the evidence, I have read the evidence of accused 19, 20 and 21 and I could find nothing in their (10 evidence which suggested that they were sweeping up the masses to violence. Indeed it seems quite remarkable that they should have been singled out by the state. Accused no.21 and we will show your lordship this later, whenever he figures he really figures as a person of reconciliation. There is not a bit of evidence which we are aware of to suggest that accused no.21 ever suggested the commission of violence to anybody at any time. He is a person who says that the police are not your enemy. He is the person who tried to make peace at the school boycott; he is the person who emerges (20 wherever he appears as a person of peace and how he gets linked to this as a person who is sweeping up others to violence, and accused no.20's speeches are always speeches of reconciliation. They are always speeches that we can all live together in this country, let us live together in this country. And accused no.19, nothing in his writings or speeches which supports this proposition and indeed I really do not recollect that it was suggested that "beskuldigdes 19, 20 en 21" at any time did what the state said they did, and I cannot really deal with that argument otherwise than to say that they (30

just give me nothing to support it and that I suggest to your lordship that there is just nothing in the record to support that proposition. And then we get the next statement:

"Die leuenagtigheid van beskuldigdes 19, 20 en 21 en ander verdedigingsgetuies word opmerklik bewys deur die feit dat in die praktyk is die aanvalle in die vryheidstryd doelgerig uitgevoer teen raadslede polisiebeamptes en hul eiendom, raadseiendom, skole en ander staatseiendomme. Verder is die aanvalle - in die aanvalle is padversperrings opgerig en is (10 direkte aanvalle gerig teen die polisie en ander wetstoepassers."

That is said to prove the dishonesty of accused 19, 20 and 21. Now if of course the state proved that accused 19, 20 and 21 directed the attack, a violent attack and cited people to violence and going around the country stirring up people to do this, if they proved that then their denial would obviously be dishonest, but the question in the case is: did they do it? So the state argument is: you did it therefore you are dishonest, but it fails to show your (20 lordship how they did it. And again I suggest to your lordship that your lordship can derive no assistance whatever from these grounds for attacking the credibility of accused 19, 20 and 21. They are sweeping statements accepting as proved what the state has to prove and therefore concluding, having made the statement that we proved that, everybody else is not telling the truth and there is really nothing that calls for a reply and nothing indeed that anyone can reply to and it is of no assistance whatever to your lordship in dealing with the issues in this case and I suggest that (30

they / ..

they can safely be ignored.

Now the next section of the argument proceeds - or perhaps I should conclude this. Really this question about whether the struggle is against apartheid or not. I have read your lordship passages today which show quite clearly that as far as the accused was concerned that apartheid was the root cause of the trouble, that it is a policy of the government and you cannot really separate the government from apartheid; the two are seen together. Perhaps I should give your lordship a passage in the evidence that says (10 that. There is a passage at the bottom of page 13 665 where it is put to Mr Molefe:

"Do you agree that the word "apartheid" is abstract and it cannot kill anybody, it is an ideology? -- Yes I accept that it does not find practical manifestation in real life.

And the apartheid referred to here must be the government? -- Well, I cannot say that. I do not know, I was not there when this document was written. Apartheid is an ideology, it is an ideology, something which (20 exists independently of the government and something that can go and the government can remain. It is simply a policy that has been the foundation of the policy of the government.

Do you agree that the use of the word "apartheid" here is a loose use of the word? It is not defining anything properly but it is referring to the system the apartheid system and it means the government? And then it says "Where here in this document" and then there is some more questioning between, to try and clear up the question / ..

question which I do not think I need trouble you with and then it continues:

"Do you agree that the apartheid system here and apartheid referred to the government? -- It refers to both really. The government that implements the policy and the laws that are based on the policy. It refers to the same. I have got no problem, I think any interpretation is capable of the meaning.

When you say in the UDF that you are fighting against apartheid, what do you mean? Is it the government? If you ask the people to fight against apartheid is it the government? -- I mean the people must post the policy the ideology of apartheid must go. The government as a structure is not something that the people are opposed to, to government. We are opposed to it only insofar as it implements the policies of apartheid. If for instance this government tomorrow were to say look, we are now scrapping all the apartheid laws that we have enacted since 1984, all those things must go and now everybody is free to vote when the next election comes or let us now hold an election and establish a government where everybody has participated or alright we do not want to establish it now but we think our next election is coming in 1989, when those elections come that everybody in South Africa will be free to participate in those elections I would have no trouble with that kind of government. No, I would have no problem. Really the ruled cause..."

and I think that that means "root cause "

"..the real problem is the ideology which the

(30

government / ..

government follows and it seeks to make the foundation of every level of relationship in the country."

and then your lordship's assessor says:

"What about the position before 1948"

and Mr Molefe says:

"Well, I think there was discrimination. I think really there has been discrimination ever since.

and: "When did apartheid start?" -

"The grand design of apartheid and the way it is really started, the real implementation and tightening up (10 started in 1948 but I believe that by the time Dr Hertzog, the prime minister Dr Hertzog started dealing with the question of the Native and the issue of land around 1911 up to enactment, that right through to the Hertzog bills in 1935/36, he was really beginning to lay the proper foundation of what today is the apartheid system, but I think the two people in particular who effected it were I think dr Malan and Dr Verwoerd during the period 1948.."

and so on.

(20

COURT: What is your volume number?

MR CHASKALSON: It is volume 254, and your lordship will...

COURT: Volume?

MR CHASKALSON: 254. Your lordship will of course realise that Mr Molefe was born under apartheid and he has lived all his life under apartheid. He has really known nothing else, but I do not think I need take that any further.

Now the next section - I do not know whether your lordship would like me to go to that document in Dr Motlana's evidence so that can round off this section before starting a new (30

section / ..

section or whether your lordship would like me to start a new section and then come back to that document. It will take me - that document itself is one where I need to refer your lordship to various passages in the evidence, it is not just going to be a form of reference.

COURT: On the document itself?

MR CHASKALSON: I need to argue to your lordship on the document itself and I will probably be ten or fifteen minutes I think on the document itself and if your lordship would like to round off the section without starting a new section it (10 might be convenient to do it.

THE COURT ADJOURNS FOR LUNCH.

COURT RESUMES AT 14h00.

MR CHASKALSON : My lord, I found both the passages that I was looking for and I thank you for the direction to the date which made the task of finding one much easier. The one passage was, I think I told your lordship that there was evidence that the Council of Unions of South Africa is a black consciousness movement. Volume 257 page 13 839. It is in the evidence of Mr Molefe. It was in line 14 and the question was asked of Mr Molefe by your lordship. Your lordship said :

(10)

"What were the objections against the adoption of the freedom charter on part of some of your affiliates? -- I had not had the opportunity to discuss the freedom charter broadly with all the affiliates, but I know that for instance the Council of Unions of South Africa is a black consciousness orientated union and it would not want to accept the document that would turn it into a non-racial organisation. Some of the objections the people raised is that the freedom charter talks about national groups. They believe that it is entrenching(20) the present situation as created by the policies of apartheid or defining people as to the ethnic groups to which they belong or racial groups to which they belong. Those were some of the objections."

So, we have it that the council - that CUSA was the black consciousness orientated union and that ties back into the question - another question that your lordship asked somewhat earlier.

I have too the passage that I was directed to in the evidence of Dr Motlana. It is in volume 419 page 24 561. (30)

He/...

He was being cross-examined, in fact one can take up his cross-examination on the previous page, because it is really a very brief passage. It is at 24 560 roundabout line 25.

"I would like to show you another document, EXHIBIT AB7. It is in volume 1 document number 6. It is a press statement. What page is that? Oh, here we are. Yes, it is a press statement."

Sorry the question continues :

"Yes, it is a press statement. According to the document(10) I am reading from the middle of the page, the first page of the press statement. 'On 27 October the meeting took place and went through the same issues as outlined in the previous agenda, but this time a concrete action was to be taken. The organisations present are the following."

Then a number of organisations are mentioned and when you turn the page, you will find Soweto Civic Association at the top organisation number 17.

"What can you tell the court about this meeting? -- I (20) cannot remember this particular meeting, but it is possible that we had representation at this meeting.

But was it not reported back to your meeting? -- I cannot remember.

Do you know the Transvaal area committee? -- I know of the Transvaal area committee.

Would your organisations belong to the Transvaal organisation? The Transvaal area committee? -- I am not sure what the organisations' names are.

Will it be correct to say that they were affiliates (30)

of/...



of the UDF? -- It will be correct to say they are affiliates of the UDF."

And that is where it is left and he is being shown the document. There is more precise evidence about that from Mr Molefe and then I will give your lordship to Mr Lekota's evidence after that in volume 262. It is in Mr Molefe's evidence in volume 262 page 14 089 lines 13 to 29. He is cross-examined by Mr Jacobs :

"Document number 6 was found with P. Camay of CUSA.

On document 6 there are a lot of organisations mentioned on page 1. Are they or do you agree that they are all affiliates of the UDF? -- Well, may be I should read it quickly.

If you start at page 1 and it goes over to page 2, can you just mention if any of those documents (I suppose he means organisations) are not affiliated to the UDF? -- Well, VECO to my knowledge was not an affiliate of the UDF. I do not even know the organisation and 16 Wadeville Youth League, my recollection is that it was not an affiliate of the UDF." (20)

COURT : What was the first one?

MR CHASKALSON : It says VECO in the record.

COURT : It must be changed to VAYCO and what is the next one?

MR CHASKALSON : Wadeville Youth League?

COURT : No, it is Wattville Youth League.

MR CHASKALSON :

"My recollection is that it was not an affiliate of the UDF. I do not know it. YCS on the next page, number 19, my recollection is that it was not an affiliate of the UDF. I think it was not affiliated and then (30)

the/...

the others, the many others referred to in 20, I do not know what is referred to. FOSATU was also not an affiliate of the UDF and SASPU Transvaal as at that time was not an affiliate of the UDF. SASPU is number 8 and FOSATU is number 5 on the first page of the document.

I think that is all."

COURT : Now, did accused no. 19 say that there was no Transvaal area committee?

MR CHASKALSON : Yes, and I will come to that.

"No Transvaal area committee of the UDF." (10)

Dr Motlana does not say that the Transvaal area committee is a Transvaal area committee of the UDF. He was not asked whether it was a Transvaal area committee at all.

COURT : So, if he leaves it open that there was a Transvaal area committee, but not a committee of the UDF?

MR CHASKALSON : On his evidence he says he knows of the Transvaal area committee, but he does not say of what.

COURT : Who is that now?

MR CHASKALSON : Dr Motlana.

COURT : No, no, but accused no. 19? (20)

MR CHASKALSON : I am just coming to his evidence. I think there are other passages in his evidence which may be relevant. Because he is not asked here, it is not suggested to him that it was the Transvaal area committee of the UDF. He is merely showing at this passage by Mr Jacobs - he is referred to that and he points out organisations which are not affiliated to the UDF. Then Mr Lekota, if I could take that up as far as he also says draws attention ... (Court intervenes)

COURT : Could we just get clarity. He did not say yea or nay as far as the existence of a Transvaal area committee (30)

was/...

was concerned?

MR CHASKALSON : He was not asked about that.

COURT : So, either way he did not say anything?

MR CHASKALSON : Yes, it was not canvassed with him. It was not put to him. Let me put it to you this way. It was not put to him by the state that this was - in this passage it is not put to him that this is a body of the UDF.

COURT : Did he say he did not know this body at all?

MR CHASKALSON : The record that I am using is unfortunately incomplete. It has a couple of pages missing. I have a (10) page 14 088 is missing. I just have that page missing, going back I see that I have 14 087 but I do not have 14 088.

COURT : It is not dealt with ... (Mr Chaskalson intervenes)

MR CHASKALSON : No, it is, I am sorry. At the bottom of 14 088 there must be something, because looking at the top of 14 089 :

"I never saw it before. I saw it as an exhibit in this case and this area committee, this is not a UDF committee as I see it.

Did you attend any of these meetings? -- No, my impres-(20) sion is that this document is dealing with matters that took place while I was in detention.

But it was held in Khotso House on 10 October? -- It may well be. I do not know.

Is that in the UDF offices or at the UDF offices? -- I say I was not there, I do not know. There are very many offices there at Khotso House.

Mr Molefe's evidence is this is not a UDF committee as I see it.

At the top of page 14 089. Then Mr Lekota - there are (30) various/...

various passages in his evidence. First at volume 285 page 16 564. That is a wrong reference I have got. Let us just see if it is not 15 000.

ASSESSOR (MR KRUGEL) : 15 600.

MR CHASKALSON : If it is 15 600, that is the right volume, but I am not sure whether I have got the right page and the wrong volume. It is volume 295 apparently and not 285. A question is put to him by the cross-examiner - perhaps I should, while I have got this passage open, at the top of page 16 564 I would like to refer you to J1 page 3. Now, (10) page 3, paragraph 4.1 the second paragraph. A brief analysis was given on discussions of the assessment meeting of the Transvaal stay-away committee. There would not be another stay-away. Instead the TAC would support the call for a black Christmas. That is wrong. I looked up the minute yesterday and that is TSC. Let us get that out at J1.

ASSESSOR (MR KRUGEL) : Is the record wrong here?

MR CHASKALSON : The record I think is wrong, but may I just get J1 and look at the record. I think the question was put wrongly. It was not the TAC, it was the TSC. (20)

While we have, can I show your lordship while you have it open at page 2 of EXHIBIT J1, you will see the reference to FOSATU's call for a black Christmas.

COURT : Yes, but just a moment. Are you not mixing up two things?

MR CHASKALSON : I am, but I have got it open and I thought rather bringing it back to your lordship when I subsequently draw your lordship's attention to this fact that the black Christmas call was a FOSATU call and that the FOSATU is not an affiliate of the UDF, but in fact the passage which is (30)

referred/...

referred to at the top of the page J1 page 3, it has been put incorrectly, it should be TSC and not TAC.

COURT : Reverting to this paragraph?

MR CHASKALSON : Right.

COURT : It refers to the Transvaal Stay-away Committee.

What is that?

MR CHASKALSON : The only evidence that I have so far found dealing with it, is the evidence which was taken up with Mr Lekota and Mr Molefe and it was also taken up with Dr Motlana. As far as I am aware those are the only people (10) that it was taken up with. The Transvaal Stay-away Committee is a committee which Mr Molefe and Mr Lekota both say is not an organ of the UDF. It seems to be an ad hoc committee because it contains affiliates of the UDF and non-affiliates of the UDF and it seems as if it was some attempt by a group which called itself the Transvaal Stay-away Committee to get together people or organisations which were both in and out of the UDF and I think there may be some other evidence which I will look for ... (Court intervenes)

COURT : Does this not correlate with the AB7 document 6 (20) under different names, Transvaal Area Committee or Stay-away Committee because at the same time the stay-away we know was on 5 November 1984. This deals with that period and the other one as well.

MR CHASKALSON : Well, it may be, but all I am saying to your lordship is that the Transvaal Area Committee whatever it may be is not an organ of the UDF?

COURT : No, no, that may or may not be. It is not what I am debating at the moment. Can one not conclude that this stay-away committee which gave a brief report - well, a brief(30 report/...

report was given on discussion of the assessment meeting of this Transvaal Stay-away committee, but this stay-away committee to which here reference is made, is the same as the Transvaal Area Committee in AB7.6 where we started.

MR CHASKALSON : No, it is not necessarily so.

COURT : If not, then what is the stay-away committee? What did the witnesses say?

MR CHASKALSON : I can only give your lordship at the moment the passages which were taken up with Mr Lekota and Mr Molefe, both of whom were in jail at that time and they both say (10) there is no such thing as the Transvaal Area Committee, there is a Transvaal region and that you could not have a Transvaal Area Committee because you have already had a region. Whatever that was an area committee of, it was an area committee of something else. There was not an area committee of a UDF organ, of the UDF qua UDF. What it is at the moment on the evidence seems to be a matter of speculation. In another part of its evidence the state characterises it as COSAS.

COURT : Let us forget about the state. You do not always agree with what the state says, I have understood, but the (20) question is, what do accused no. 10 and no. 19 say about the Transvaal Stay-away Committee or do they not know anything about it?

MR CHASKALSON : They were in jail at that time and I would have to find the evidence - let me give your lordship the references that I have to this. If we could go back to volume 295 Mr Lekota at page 16 563, if one starts at line 2 "If you look right at that on the last page you will see it is issued by the Transvaal Area Committee. Now, the question is or it is put to you that this is an area committee of the UDF?" (30)

"To/...

"To the best of my knowledge the UDF does not have a committee that is called Transvaal Area Committee. I think the other day I was explaining to the court what my understanding of the area committees is like. It is just incongruous to say Transvaal Area Committee. Ordinarily it will be a small area. Transvaal is a whole region. So, it is the first time I see the document here. I may say to the court that this is not a UDF policy document."

"Well, I put it to you according to the document there are various organisations which are affiliated to the UDF?(10) If you look at page 1 and page 2? -- Yes."

"Who partake again in the stay-away of 5 and 6? -- Yes. I may again tell the court for a fact that the stay-away was not a UDF stay-away. There was some of the organisations here which were affiliated to the UDF but there are others which are not affiliated to the UDF. It was not at all a UDF business."

"But I put it to you that this Transvaal Stay-away Committee - do you know anything about this Transvaal Stay-Away Committee? -- No, at this time I was in jail. I know there(20) was a stay-away, two stay-aways, the one in October and in November, but that is as much as I can say because I was in jail."

"I put it to you that there was a report of a reference to the stay-away in the minutes of the NEC meeting held on 10 and 11 November? -- That may be, I do not know."

"I would like to refer you to J1 page 3. Page 3 paragraph 4.1 the second paragraph, a brief report was given on the discussion of the assessment meeting of the Transvaal Stay-away Committee. There would not be another stay-away. (30)

Instead/...

Instead the TSC would support the call for a black Christmas."

In that context I draw your lordship's attention to the fact that the call was a FOSATU call. So, it is not a UDF call .

"The NEC unanimously decided to support the black Christmas call? -- I see that this is so. I was not here. I do not know about this. As far as I have always understood it, the Transvaal Stay-Away Committee is not an organ of the UDF."

"Was the Transvaal Stay-Away Committee not formed (10) by a number of affiliates of the UDF? -- Well, if we go by this document here, AB7 it is clear that, look there were organisations like FOSATU which are not affiliated to the UDF. If you look at number 5 FOSATU. That was not an affiliate of the UDF. Then there was SASPU to the best of my knowledge who was no longer affiliated. I am not sure about SARU. So, I understand that it was an ad hoc structure set up specifically for that purpose and that was that."

"Well, I put it to you, Mr Lekota, from AB7 it is (20) clear that the Transvaal Area Committee in which a number of affiliates of the UDF were represented, preached violence. -- That the Transvaal Area Committee preaches violence?"

"Yes. -- Not to my knowledge."

"Will you please look at the last paragraph. It states 'But the call still remains adapt or die. Meet our demands or face the wroth of the people. The ball is now rolling on the courts of the authorities. The power should be the government for we are on the offensive and on the march towards a democratic future.'"-- Well, I do not know (30) whether/...



whether one can interpret that as a call to violence. Earlier on I told the court that this phrase here 'Adapt or die' I know its origin to have been the state president. Sometime in the beginning of the eighties and that is when the statement was made. It was not made as a call to violence. It was at the time as I understood it a warning that if our country did not adapt the new conditions, do not abandon the policies of apartheid, we may find ourselves engulfed with an all consuming conflict. Now, I do not know in what sense it was used here but as far as I am concerned these organisations that are cited here are non-violent organisations. They remained non-violent organisations to the best of my knowledge until now and that they could not have been calling for violent action."

Those are the only references that I have - can I just have a look at another one which may be relevant. I will go back to the record and try and look if I can find anything else about this stay-away committee. There is a cross-examination on the meaning of the statement at volume 263 page 14 141 to page 14 144. It is a cross-examination of (20) Mr Molefe who denies it to be a violent statement. The cross-examiner simply puts it to him despite Mr Molefe's earlier statement that it was not an organ of the UDF and that there were a number of bodies represented on that committee which were not affiliated to the UDF. I think he starts the cross-examination by saying :

"It is that press statement and you have already identified the affiliated organisations attached to this document which are affiliated to the UDF. -- You pointed out those who are affiliated."

(30)

"Will/...

"Will you turn to page 3 of the press statement and will you read the first paragraph."

I have no other reference here to that, but I will go to the record and see if I can find anything else. For the moment if I could come back to the document itself. The first thing is that we do not know what was done with this piece of paper. We do not know whether it was actually issued as a press statement. We know it is drafted as a press statement. We see some writing on it and Mr - the - copy found with Mr Camay, we do not know whether it was (10) discussed and approved by the Transvaal Area Committee, whatever that may be. We do not know what the Transvaal Area Committee is a committee of. For all we know the press statement may have been rejected and never issued. If it was issued it would have been a simple matter for the state to have called the newspapers to whom it was issued and to have established whether it was put in circulation in this form. As the matter now stands, all that we know is that it was a piece of paper found with Mr Camay and whether it was adopted or not, we know nothing about it and the evidence (20) as it stands says that the Transvaal Area Committee - that the UDF has no Transvaal Area Committee and would never have any need for one, because it has got a Transvaal region and you cannot have an area committee which is the same as a region. The area committee has to be some smaller group within the region. So, the evidence shows that there - that it is not a UDF document and the evidence specifically states that it is not UDF policy and there is a dispute as to what the meaning of this piece of paper may be.

Now, the state in fact relies on it again in paragraph (30)

4.5 of the "betoog" at page 16 and there it characterises "Dit is h persverklaring deur COSAS." Again I merely repeat what I have said and that is that there is no evidence at all that it is a press statement by COSAS. It may or may not be and there is certainly no evidence that it was drawn up by somebody in COSAS, that it was ever adopted or issued or put into circulation by COSAS.

A number of press statements had been referred to in this case. Whenever the defence relied upon a press statement, it took the trouble to ask the question, there is (10) a document, was it issued and in what circumstances was it issued and your lordship knows then that it was or was not issued and your lordship knows nothing about this piece of paper from which your lordship would be able to infer anything other than that the unknown person who drafted it, used particular language in the draft and from that your lordship can in our submission draw no inference in relation to any matter relevant to this case. Certainly not on the common law charges, because it is clearly inadmissible there and on the statutory charges, if I were for the moment to (20) assume its admissibility, because I have addressed a number of arguments to your lordship why it may or may not be admissible, but if I were to assume its admissibility, it still finishes up as the piece of paper without our knowing whether that piece of paper was ever published or not and it is not a matter upon which your lordship need to have any doubt. If it was issued, it would have been a difficult matter for the state to prove it was issued and if the state chooses to leave its case in a state of complete uncertainty in regard to a document, the state must bear the consequence (30) of/...

of it. I will go back to the record and see if I can find anything else, because I was looking at it from an entirely different point of view. I was trying to find references to AB6. I now look at it from another point, but it will still take some time.

COURT : We have dates when the document was referred to. That might help you.

ASSESSOR (MR KRUGEL) : On 4 February 1987 accused no. 10 referred to it and on 3 September 1987 accused no. 16 referred to it when he was asked about it. Then we have (10) accused no. 10 again on 4 - no, I have given you that. No. 8 on 20 February 1987. No. 9 on 3 March 1987. No. 19 on 18 August, we have had that. I think I have given you the lot.

MR CHASKALSON : We will try and trace the references and see if they add anything to the picture that we have now.

COURT : Our recollection is that the answer was "We do not know."

MR CHASKALSON : We extracted what we thought when we were going through it that was relevant, but we were looking at it from a somewhat different point of view, not necessarily (20) from the point of view of the questions which your lordship subsequently asked. So, it really means going back to it, to follow that same path again. We will see what we can find.

If I now may turn to page 11 of the "betoog". It is headed "Strydmagte van UDF en trawante." I am not sure whether I am right or not. I understand the word "verwante" to carry somewhat of a derogatory connotation. If I am wrong, I am wrong. If I am right, it does not help to characterise bodies in derogatory terms. Your argument becomes no stronger by the use of such words. The use of the word cannot (30)

reflect/...

reflect upon the accused or the organisations and I will say no more about that.

The state argues here that the fact basically that the masses and not the leaders are seen to be the people who will bring about change, confirms the violent nature of the struggle. The submission we make to your lordship is that that is another one of the several logical fallacies with which the state argument - which we find in the state argument. Why should mass action connote violence? Why not non-violent mass action such as protest, strikes, consumer boycotts, (10) stay-aways and other non-violent methods which had been discussed and debated and referred to in the evidence? That as a proposition is not even considered. The state simply does not address its argument to that. It simply states if it is mass action, it must be violent. We submit to your lordship that you cannot draw that conclusion. Something more is needed if the state wants that conclusion to be drawn. What does it then rely on? We go back to C1 and J3 and I have now got so confused with the C1's and the J3's which keep cropping up. May I simply alert your lordship of the fact (20) that there is a handwritten C1 and the state tends to confuse C2 and C1 at times, but J3 seems to be the safest document to look at if we are looking at the input document, because J3 is the input document for the November meeting which the Transvaal regarded as a workshop. The first proposition is one which I have made before and I will merely make it again because it is raised here again that it is not a policy document, but once again I want to make it quite clear that what this document says about the masses is not inconsistent with the UDF attitude as it emerges from the evidence as I (30) understand/...

understand it. It was clearly part of the UDF - one of the things which the UDF hoped to achieve was to bring more and more people into the organisations of the affiliates and of course there was a good reason for that. The reason was, one which I had mentioned before and that is that if the UDF can point to the fact that it has affiliates with a very substantial membership and that they command the support, that its affiliates command the support of a large part of the population, call it the masses if you will, what they say will be taken more seriously by the government and (10) more seriously by opinion makers within the country, than would be the case if they had no support and the leaders spoke without that backing.

I did undertake to give your lordship references to that in the record and let me do so now. My first reference is in volume 249. In his evidence-in-chief Mr Molefe is asked the question - I am not reading from the very beginning of the question. It is volume 249 page 13 226 line 28 :

"I would like to know how you would assess the value of one individual's protest on the one hand and the value (20) of protest which is made on behalf of a number of organisations representing a large number of individuals? -- My experience is that when a decision is taken on a very crucial matter, it affects a lot of people. That is if we go according to the principles of democracy. It is always done on the basis of how broad, how wide, how widespread is this kind of feeling in regard to a particular attitude - particular issue. It is normally not decided on the basis of the view of an isolated individual from the main group. Therefore my view (30) would/...

would be this. That when people ask as an organised group, when they are organised, when they come together in lots of organisations to deal with the matter, to express their protest in the matter, it affects them. Whoever is in power, who understands what democracy is, who understands that there is no way that you can do things when the majority of the people are not supportive of that, is persuaded to consider the view of the majority. The tendency is that if it is done by an individual these things are normally ignored and in (10) fact the government has said on many occasions that this is not what the majority of the people think. You are just representing, you know these people are not speaking for the majority. This is not a majority view. That is my response to that question. I think it is crucial that a thing is done in such a way that those in authority can be convinced that it is not the work of a single agitator who is manipulating people."

The next question :

"In that context, can you say something about the (20) purpose of the United Democratic Front in seeking mobilised and organised people around the country? -- The purpose of the United Democratic Front as I indicated yesterday from the outset has always been to persuade the government to change from the course that it was taking. In organising and mobilising the people in the country, the UDF sought to build as broad support as possible reflecting divergent interests in order to be able to persuade the government that the most popular voice of the people at this particular point in our history (30)

views/...

views the situation in this manner and to persuade the government to look at things differently. I think my simplest answer is that. I do not know if I understand the question properly."

And it is then not taken any further, but then there is cross-examination. At volume 256 page 13 786. Mr Jacobs asks the question line 18 :

"Is it also the belief and policy of the UDF that the masses must participate in the struggle? -- It is in line with the policy of the UDF in the context in (10) which it was set out here, although I must point out that this not a UDF policy document, but its contents is consonant. This paragraph is consonant with the views of the UDF with regard to the participation of the ordinary people."

Then in volume 257 ... (Court intervenes)

COURT : You need not read all these passages. We have listened to the evidence and we made our notes as we went along. Just give us the references.

MR CHASKALSON : I will give your lordship the reference (20) and tell you what the passage says. It is volume 257 page 13 825 line 8 to page 13 826 line 7. It is where he directly addresses the question as to whether the change will be brought about by the masses and what it means and he points in the answer to the fact that the actions of people and as he puts it "Is intended as a signal to the government that is in power that it was now set in process, begin initiatives that will set in process the necessary changes or begin to investigate seriously what changes will satisfy the people." He describes it as a two-way process. One intending to (30) bring/...



bring pressure on the government and the other intending to bring about a situation in which the government will take notice of voices.

Of course that is really the point made in the judgment in S v Turrell yesterday and as I think really the reason underlying the concept of freedom of political speech, because the - and I did promise to give your lordship the judgment of the US Supreme Court in the Sullivan and New York Times and in case I forget I should give it to your lordship. It is really that that underlies it because (10) the speech and actions of people ... (Court intervenes)

COURT : Just tell me as you know what happens in America, what does certiorari means?

MR CHASKALSON : Certiorari as I understand it is the process whereby a case arrives at the US Supreme Court. In other words, you cannot as of right go to the US Supreme Court.

COURT : But it says certiorari to the Supreme Court of Alabama.

MR CHASKALSON : Let me have a look at it and let me see if I can understand it a little bit better. (20)

COURT : It is not very material I think, but just for interest sake.

MR CHASKALSON : I do not have the judgment in front of me. If I could borrow Mr Fick's. As I understand it and I say so without complete knowledge, but as I understand it, the matter was decided in the Alabama State Court. That it got as far as the Supreme Court of Alabama. That is as far as you can go unless certiorari is ordered. Once certiorari is granted, then and only in that event does the matter then go on appeal. I would assume what is meant is that the (30)

order/...

order is directed to the Supreme Court of Alabama, that the matter come to appeal to the US Supreme Court.

COURT : You mean sort of leave to appeal?

MR CHASKALSON : Yes, but under their system as I understand it, there is no case which can go to the US Supreme Court without certiorari. There are no circumstances where you can get there without certiorari. I think you always have to have it to get there. I can ask people who know better than me. I think that is the position.

COURT : It is not necessary. I know that you need leave (10) to appeal, that I picked up. This then may be the leave to appeal?

MR CHASKALSON : It is. That is what they call it. They call it certiorari. If I could come back to that. The reason for free political speech, the reason why the common law recognises it and the reason why Brennan, J. and Brandise, J. say that it is better for the safety of the state, is because it sends messages. Now, governments cannot know - let me put it to you differently. Governments may not know what ordinary people are thinking and doing in society if there (20) are no good channels of communication between them, but if ordinary people in society can organise and mobilise and express their attitudes, they can through that process in fact bring to the attention of government what their feelings are and the government is able to assess them. Wise governments usually respond because they get voted out of office if they do not, but in any event, the reason for it, is that government may be aware and may react. Where the speech is not allowed, what in fact happens then is that instead of having a public arena in which the views may be ventilated (30) and/...

and communicated through to the government, the forces get pushed underground, because if you cannot organise and mobilise and if you cannot articulate your feelings, then you get driven into doing things which are essentially unlawful and ultimately you get driven into violence and that really I suppose is the underlying theory of fundamental rights and human rights protection and one finds it in the preamble to the universal declaration of human rights, but the reason for the respect of human rights is that to avoid the threats or the risk of people turning to violence and (10) in fact an organisation would operate openly publicly as the UDF did which holds public meetings to which the police can come and which the government knows it. It is sending messages to the government all the time. If the government want to stop its speech, it has got the power to do so, but that is the purpose - that was the purpose of organising the masses and it is obviously a sound and sensible and proper political purpose and one cannot infer from the fact that the UDF was seeking to organise the masses that it was bent upon a policy of overthrowing the state by (20) violence. The answers given by Mr Molefe accord with common sense and human experience over a very long period of time and the state gives your lordship no reasons why that answers should be rejected.

The next document relied upon in this section is EXHIBIT C6. EXHIBIT C6 is referred to at page 11 of the "betoog" and it is referred to again at pages 49 to 50 of the "betoog" and it is referred to at page 24 867 somewhat expansively in the oral argument. It is put forward by the state later in its argument in the passage at pages 49 to (30)

50 and in the oral argument at the page which I gave to your lordship as a UDF document. For instance at the top of page 49 of the "betoog" it says

"In hierdie UDF dokument word openbaar dat UDF 'n revolusionêre organisasie is."

In the oral argument it is said

"Dit is van UDF Grens en Nkinki Stofile van UDF Grens wat dit stel UDF is 'n revolusionêre organisasie. UDF se leierskap is revolusionêre leierskap. Hy assosieer hulle met die ANC en ANC leiers. Hy stel dit dat die(10) UDF koester die doel om kapitalisme te vernietig ..."

Perhaps the document warrants a little bit - the document and the evidence call for somewhat closer examination than that. The document was found with a Mr A. Hendricks.

Mr A. Hendricks is on the regional - on the Border region and it meets the requirements of section 69(4). The document has not been proved for the purposes of the common offences. It is a typed address running to just more than five pages. It bears a heading "UDF Border extraordinary regional general council meeting, Rhodes University, June 10, 1984. Second(20) paper. Cde (I assume comrade) Nkinki Stofile." It is not alleged that Nkinki Stofile is a co-conspirator. Nor is it shown that Mr Nkinki Stofile is a co-conspirator. When the matter was taken up very directly with Mr Molefe and Mr Lekota in cross-examination, they both denied knowing Nkinki Stofile. They said that there is the Reverend Makenkezi or Makenhezi, I cannot remember the exact word, Stofile who was on the Border committee of the UDF and it appears that the name Stofile is a very common name in that area. The passages where your lordship will find that (30)

is/...

is in Mr Molefe's evidence volume 263 page 14 125 line 21 to page 14 126 line 9 and in Mr Lekota's evidence volume 291 page 16 204 line 20 to page 16 205 line 15.

The fact that the surname is the same, is certainly not sufficient to have that document characterised as a document coming from an official of the UDF. That is made clear in the evidence. It is a common name, it is a different initial. Indeed, the one man is a reverend. It seems extremely unlikely - well, let me put it no more than this. His title is left out if indeed it was and if it were his paper (10) it should have been the Reverend M. Stofile not Nkinki Stofile. We have no evidence as to who N. Stofile was. We have no evidence at all concerning this paper. Assume it was delivered, but there is no evidence that it was, we do not know exactly how he delivered it, in what circumstances he delivered it. Assuming it was delivered and there is no evidence that it was, we do not know how it was received by the audience. So, the document itself is not admissible on the common law charges and it is of little evidential value for the purposes of the statutory charges. No where in the document is (20) there any reference to the UDF.

ASSESSOR (MR KRUGEL) : Is that correct?

MR CHASKALSON : I think it has got a heading, but I do not see it in the body of the document.

ASSESSOR (MR KRUGEL) : In the heading he talks of the UDF Border extraordinary regional council meeting?

MR CHASKALSON : I meant in the text - it is a document, according to the document it is the second paper for that meeting, but in the text I see nothing in it which refers to the UDF. I may have missed it, but I did not see (30) anything/...

anything which referred to the UDF.

ASSESSOR (MR KRUGEL) : Well, the use of words like "my, we, our" et cetera.

MR CHASKALSON : Can I give your lordship an example? Let us assume that Nkinki Stofile who is addressing the question "The role of the youth in the liberation struggle", let us assume that he comes from a youth organisation. Let us assume, I do not know, we are all speculating here, but let me give your lordship an example. Let us assume that he comes from a youth organisation, the X youth organisation and (10) he is asked to speak here on the role of the youth and he is introduced as Comrade Nkinki Stofile of the X youth, which may or may not be an affiliate of the UDF and he delivers a speech, who is he speaking for? For an unknown organisation, his identification with an unknown organisation. The mere fact that a paper is delivered at a conference does not make that the policy of the conference and does not make the person who delivers the paper associated with the conference at all.

COURT : No, it was not a conference, it was a RGC? (20)

MR CHASKALSON : Yes. We have got a very good example. We have got the labour party conference, to take the most crucial decision as to whether to go into the tri-cameral parliament or not and who gives the key-note address. Chief Gatsha Buthelezi.

COURT : No, it was Bengu was it not?

MR CHASKALSON : No, no, that is a different one.

COURT : Oh, is that a different one?

MR CHASKALSON : A different one. On the occasion of - the document is here - that major occasion the key-note address(30)

is/...

is given by somebody who is not a member of the party and who in fact urges them to do something which they do not decide to do. We see here that papers are being delivered. That is one Nkinki Stofile, who we know nothing about, who delivers a paper and who - we do not know anything about the discussion. Does your lordship know whether somebody stood up - we do not know whether it was delivered, but let us assume it was delivered. Did anybody stand up and say "I agree with Comrade Nkinki Stofile that that is exactly what we should do"? or did somebody say "Look, I do not (10) agree with what you say, I think you have got the wrong approach"? We know nothing about that. Were any resolutions taken on this? Where can you get a policy statement out of a document which purports to be the second paper at a meeting delivered by a person whose affiliation is unknown and without any evidence whatever in regard to the response to that? All your lordship can say is that this is a speech. The furthest you can go if you make the assumption that the paper was in fact delivered, is well, that is the sort of speech that was made at this meeting, without knowing what (20) other speeches were made and what the audience reaction was? From that I suggest to your lordship - the inferences you can draw from that are really of no weight whatever in this case.

DA123 is the document that I was referring to. That is headed and it has been proved through Mr Dangor "Minutes of the seventeenth annual congress". I see it is also a congress "of the labour party of South Africa held at Eshowe. Address by Chief Gatsha Buthelezi."

On the state thesis if you found a document which said "address - key-note address by Chief Gatsha Buthelezi to (30)

the/...

the seventeenth annual congress of the labour party of South Africa", you could produce it and you could say this is the policy of the labour party. Look, "Labour party declares" and yet we know that he urges them not to go into tri-cameral and the congress decides not to go into tri-cameral or to go into tri-cameral. So, I suggest to your lordship that you can really base no inference on this what purports to be the second paper.

Also, if one reads the paper, it is not in my submission a call to violence. It seems to be no more than an analysis (10) as to whether or the central theme to the paper seems to be whether the struggle, the national liberation struggle should be characterised as a national struggle or as an economic struggle. That is the main - that is really what he is addressing and he says that there are really two limbs to the struggle. There is both a national and an economic character but that the paramount - what is paramount is the national character of the struggle because it is concerned with the liberation of the most oppressed group in society, the black people. We suggest that the contents of the (20) paper even if it were shown in some way to be a policy statement, which is not the case, would not even in that event advance the state thesis that it confirms the violent nature of the struggle. We say that your lordship really cannot pay any attention or - no, I cannot go that far, but your lordship cannot derive any useful inference for the purposes of the statutory charges from that paper.

The next document is EXHIBIT C8. This was apparently found at the UDF offices in Vryburg. The author of the document is unknown. There is no evidence that I am (30) aware/...



aware of that it was discussed, adopted or in any way form part of the policy documentation of the UDF. It seems to be a document prepared by an unknown author for an unknown purpose without our even knowing how it was used, but if one even looks at the contents of the document and asks the question how does this help the state? The state has underlined certain passages. The passages underlined I assume are those that they want to attach weight to.

"The UDF is a tactical alliance. You must simply accept the UDF declaration and be prepared to oppose the (10) new deal."

I would not have thought that actually advanced the state case at all.

"The autonomy of organisation is abrogated only insofar as opposition to the new deal is concerned."

I would not have thought that that advanced the state case. The next passage underlined

"Instead they unite on the basis of a common cause of anguish and a common thread to the hard won unity of the oppressed and all other freedom loving South (20) Africans who are prepared to stake their privileged position by fighting side by side with the oppressed majority. It means that the sport bodies, youth organisations, cultural groups, women's organisations, trade unions, professional organisations, church and political organisations would have a broad basis for unity and action under the banner of one front. This the UDF has proved and it is possible."

It may be that it is relied upon- we are not told in the oral argument why they rely on it. Perhaps they point (30)

to/...

to fighting side by side. I do not know. Really, if one looks at the passage it just lends no support whatever to the submissions made by the state and really confirms I would have thought large parts of the defence evidence. Mr Lekota was asked about it and he said "Well, I have not seen it before. Somebody wrote it and that is all I can say. It is not a UDF policy document." Volume 291 page 16 175 lines 28 to 30.

The next document - it is in 3.4. My recollection is that it was found in circumstances in which it would be (10) admissible, but it has not been proved for the common law offences and it is C138. The passage cited is from C138 page 13.

COURT : If this is C102 it is the proceedings of the national general council.

MR CHASKALSON : But it is actually C138. If your lordship goes to page 13 you will see the passage - that comes from C138. Let me not waste your lordship's time, because the passage cited really takes the state case no further. It is page 2 : (20)

"This awareness has stretched through the breadth of our land. It has reached into areas where no organisation existed before and the presence of delegations from the rural areas here today bears testimony to this. In many areas UDF structures have given birth to strong and militant grassroots organisations. The UDF has awakend our people's determination to fight back. It has become a symbol of our people's will throughout the country. So, today we can talk of a national political response and movement against apartheid. Slowly we can begin(30)

to/...

to talk of a nationally co-ordinated struggle. This, comrade, is important. Firstly we tend to become caught up in our work and our problems to the point where we forget that we extend beyond Du Toit's Kloof mountains and secondly because this national movement has only been made possible by the UDF. Our organisations as they existed could never have achieved what they have now united in the UDF."

What he is saying is that there is slowly we can begin to talk of a nationally co-ordinated struggle. There is (10) a beginning, it is talked of slowly and indeed it deals with the first five months I think of the UDF's existence. No, I am sorry, I am wrong. I am quite wrong about that, but it talks about slowly the nationally co-ordinated struggle. It is quite clear, Mr Lekota and Mr Molefe made it clear that the UDF sought in certain areas where it was active to try and co-ordinate struggles. That has never been an issue. Militant grassroots organisations. Unless there is a misunderstanding as to what militant means, it does not say violent, it says militant. That is, I think, something (20) which we associate with the militant suffragettes, militant trade unions, militant political organisations, people who are prepared to go out and engage in direct action such as boycott in the sense, but nothing there which advances the state case.

Now, the next document is C99. This document C99 was found at the UDF office in Johannesburg. There was no evidence to prove it to make it admissible for the common law offences, but it would be admissible under section 69(4), but if we turn to the document it just purports to be a report on (30)

a/...

a civic workshop It is unsigned, the authorship is unknown. If we look at the reference to the body it contains a reference to a number of civic associations. There is nothing in the body of the document to show that it was a UDF document or a UDF workshop. It does not say so. If one looks at the affiliates in it, the evidence is that the Ratanda Civic Association did not affiliate. Let me put it - there is certainly no evidence of affiliation of the Ratanda Civic Association, of the Duduza Civic Association, of Tladi Moletsane. I believe there is no evidence of the Alexandra(10) Civic Association, of Mofolo Civic, of Orlando Civic and the Leandra Action Committee we know did not affiliate although it had close links with the UDF.

I think that there was some speculation as to whether Orlando Civic and Mofolo Civic may have been branches of the Soweto Civic Association. I do not recollection anybody giving evidence that that was so. The document itself, it is difficult to know what is relied upon. Pages 4 and 5 we are told are relied upon. I do not what it is. Possibly under 3 (20)

"People are independently anger. They need to be organised in order that this anger transform into action. Masses realise councillors are not working for them. They are joining civics, responding to calls to demonstrate against the BLA. What is the nature of demonstration? Occupation of rent offices, et cetera. What are they doing? Teaching people about local authorities to act, going house to house campaigns, getting councillors to resign. Minimum role played by the civics, because of the struggles have been spontaneous and not well (30) organised/...

organised."

That is prima facie proof of the contents thereof. I would have thought that would be rather harmful to the state case. I cannot find anything in that document which supports the proposition - which they put up there, which supports the proposition for which it is put up.

3.6 is an extract from a speech - oh, I left out paragraph 8.1 of C102. I think in fact this is cited - that paragraph 8.1 has been cited at page 15 and let me deal with it where I have the text in front of me when I get to page (10) 15 because - we then come in paragraph 3.6 to a speech made by Mr Naidoo at the Krisch Rabilal meeting. There was no evidence that this was a UDF sponsored occasion. Mr Naidoo was apparently from the Natal Indian Congress. He was - the extract is - the speech was apparently made on a somewhat emotional occasion and Mr Naidoo said what is attributed or apparently said what is attributed to him in this passage. That cannot be elevated into UDF policy. It is a statement made by an individual on an emotional occasion organised by the UDF and the most you can say from that is that this is (20) the sort of thing that a member of the Natal Indian Congress said on that particular occasion and the evidence about it, let me read it to you briefly, so that your lordship does not have to go and turn it up is 14 613 line 10 to 14 614 line 27. After the speech is read out, the passage is read out. It is volume 270. After it has been read out the cross-examiner says :

"I put it to you, Mr Molefe, that what is said here and the message brought to the people at this meeting is quite clear, that there is a clear link-up again with (30) the/...

the ANC."

Your lordship intervenes and says

"Just a moment. How can you hold this witness responsible for what one N.J. Naidoo says at a Krisch Rabilal meeting? How was the UDF involved?

Mr Jacobs: Mr Krisch Rabilal, is he the executive of the UDF? -- I do not know that person. He is not.

And in the Natal region of the UDF? -- No.

Assessor (Mr Krugel) : Is this a commemoration service for Mr Krisch Rabilal? -- It seems like that. (10)

And Mr Naidoo, do you know from which organisation he is? -- I believe he is a member of the Natal Indian Congress. I do not know what position he holds.

And the Natal Indian Congress is an affiliate of the UDF? -- That is so.

And I put it to you that that is the perception of the UDF and the affiliates of the UDF that there is this link with the ANC? -- He does not speak for the UDF.

That may be his perception, and I would not say his perception is the perception of the affiliates of the (20) UDF."

That is the end of that section of the state argument. The suggestion we make to your lordship is that a few isolated statements, some taken out of context, some inadmissible, some by - one by an individual of an affiliate, one by an unknown speaker at a meeting of the UDF, some by input documents, some favourable to the defence, some inconsequential, where do you get the brand policy for which these are advanced as the state's proof of the proposition which it puts to your lordship before it cites these. In our submission (30)

there/...

there is wholly insufficient material to draw the inferences that the state asks you to draw and we turn then to deal with the next chapter of the state's argument which is under the heading "Magstryd." It is put "Die stryd waarvoor die UDF en trawante hulle beywer is n stryd vir die oornome van staatsgesag en nie net verwesenliking van burgerregte nie. Dit is die massas en veral die swartmassas wat verenig moet word en oorreed moet word om aktief tot die stryd toe te tree en die gemeenskaplike vyand fisies aan te durf en te vernietig en die gesag oor te neem." (10)

Really, what they are saying here is that it is a struggle for the take-over of power. It is not concerned with civil rights and the argument seems to be constructed around the submission that the fact that the masses have to be involved and that the struggle is not for the acquisition of civil rights, shows that it must be a physical struggle and presumably from that a violent struggle.

A mixture of themes and here we have paragraph 8.1 which I told your lordship was set out in the text of the "betoog" and I said I would like to deal with it now. It is C102.(20) C102 is discussed at many places in the state's argument. I would deal with the particular passages they rely upon in the context in which they rely on them, but when I - I think perhaps one should look at the EXHIBIT C102 because we will see that the passage which is being left out actually has a bearing on 8.1 that follows. What has been left out is this:

"In the last nine months of our existence major gains were made at the level of building the front and increasing our capacity to mobilise our people. We (30)

can/...

can call a mass meeting at any time at Fill Fun City or the Jabulani amphitheatre, but now the question that we must ask ourselves is what are the challenges facing the UDF today? The key questions facing us are."

So, 8.1 is posed as a question and 8.2 for that matter, but they only rely on 8.1 for the moment. So, 8.1 is posed as a question and not as UDF policy. Really the question which is being posed is how do we organise ourselves so as to bringing into the front those organisations who belonged to what is described as the people's camp and who are not in it and(10) so, for the purposes of this section, it does not really - he is talking about the civil rights, but what seems to be stressed is the underlining. The reference to the camps. The one camp being the people and the other camp being the enemy and the reference to contribute effectively to the people's struggle for power.

We have discussed the use of the enemy. I think what is really being focused here is the struggle for power and it goes back to what is meant by these phrases people's power, power for the people and the like. (20)

This was taken up with a number of - in a number of passages. Let me give your lordship some references. Volume 257 page 13 851 line 6 to page 13 852 line 14. Volume 260 page 13 961 line 27 to page 13 962 line 10. Volume 259 page 13 946 line 2 to page 13 948 line 4. Volume 259 page 13 950 line 2 to page 13 951 line 2. Volume 267 page 14 442 lines 2 to 11. Volume 271 page 14 733 line 13 to page 13 7 - I made a mistake there. I will have to check that. Volume 271 page 14 734 line 28 to page 14 735 line 29. I would just like to check that reference. The passage I have in (30) mind/...



mind is at page 14 733 line 13 to page 14 734 line 27. I think out of all these references I will just give your lordship the one I have open in front of me because I think it is the refrain which is repeated continually by Mr Molefe when he is cross-examined. I will pick it up at page 14 734 and I will read from line 5 :

"I put it to you that this is in the line with the people's power and power to the people. That has the same meaning? -- Well, I do not know. That is a very, very old slogan. When I started really to read and seeing (10) people talking to people, they were talking about power to the people. It is a very, very old slogan. We used it in AZAPO. I believe it would have been found in the documents of AZAPO at its founding conference in 1978. BPC used it then. It is really a very old slogan. It is used in trade unions in quite a number of places. I recall very well prior to the banning of SASO, the then minister of justice, I think he was minister of Justice and Police, Mr Jimmy Kruger, used to accuse the black consciousness movement especially SASO and (20) BPC being a black power movement, that found its origin, the black power movement, in the United States and he was saying that because that slogan was used at that time, power to the people.

I put it to you in this pamphlet there is nothing about power to the people, explaining to the people what is meant, that they have the right to vote? -- It is true. It is not written there, but concepts that are used in the community or in an organisation are understood best by the people in that organisation." (30)

Your/...

Your lordship will see in these several references that I have given to you, that the struggle for power is always characterised as a struggle for the vote and indeed some of these passages you will find reference back within the documents themselves to show that that is show. Certainly the two refrains which come through are universal franchise and let us meet and work out a new dispensation. There is no where that it is suggested that the UDF is engaged in a struggle as it were to seize power and substitute itself for the government of the day, which is how the state seeks (10) to develop its argument. There is just nothing to support such a proposition.

Then there is a reference again to Mr George Sewpersadh's speech. We have had it before. It is the same issue all over again. We have got the same passage which I think is cited before. It omits the other parts in Mr Sewpersadh's speech where he talks about the spirit to build the united democratic South Africa where there will be freedom for all and the words he uses at page 40 are quite interesting.

He says

(20)

"Where there will be freedom for all. The wealth of this country has been produced by the workers in this country and the message in the UDF is that those people who are responsible for the development of this country must have a share in the destiny of this country."

So, a share in the destiny is no means support for the state's proposition that there is to be, as it were, a take over of power. In fact it is clear that they are to share and the passage which is there simply means that by their struggle they will change South Africa. It does not suggest that (30)

the/...

the struggle should be violent and not non-violent. It is equally consistent with by your non-violent struggle you will change South Africa and in the context of everything else and that, you cannot say that he is talking about violence as the state does and it is clear from the speech as a whole and particularly to the share of the power and when he is talking about power will be in the hands of the people, that he is talking about the doctrine of universal franchise.

Then we have a passage from Francis Baard and really (10) it is the same issue all over again. South Africa is going to be free even if the government does not want it. Well, the government may not want it, but by your struggle you will be able to create a free South Africa. Once again it does not suggest that the struggle will be violent and not non-violent.

Then there is a passage from Frank Chikane's speech and again we have the same thing. They seem to focus accordingly on we will destroy the system, but he does not say how. He does not say that the fight will be a violent and not a (20) non-violent fight and I want to remark your lordship of what was said in R v Adams about this sort of language. It is no different to that. It is in precisely the same sort of category.

Then we finish up with this other document which we have seen before. In fact, we are now starting to see these documents coming back and back again. All of these ones I think we have seen before. It is AB7 document 6. Now this document is characterised as a press conference - press statement by COSAS. I have already addressed argument to (30)

your/...

your lordship on that and I am not going to repeat that argument. The submission we make to your lordship is that these passages relied upon by the state in this section do not advance its case and do not prove a proposition for which they are put up and that they are at the very least equally consistent with the defence and we argue to your lordship in the light of all those cases that we have already cited to your lordship that that is the way they should be dealt with.

The next argument is on capitulation and the theme (10) here is that the UDF was seeking to bring about a complete capitulation of the state and the government and that nothing else would satisfy them and I think that the inference which they then draw from that is that because the government would not capitulate, you must be contemplating violence.

The central structure of this section of the argument seems to be directed to the UDF's attitude to the national convention. I think over half of the section is devoted to that proposition. The argument begins with the statement that the UDF and its affiliates are supporters of a national (20) convention and that much is correct, but the same cannot be said for what follows which largely ignores the evidence given by the accused on this issue and on occasions does not correctly state the evidence given concerning the documents that are relied upon.

The first proposition is at paragraph 5.1 where it is said that

"Notwithstanding the denial of accused no. 19, it appears that the UDF had considered its strategy and political advantages to the finest detail and had (30) discussed/...

discussed it."

It begins by putting up a document, EXHIBIT C18 and in the oral argument that document is described - I think I better just find the passage. It is described according to my note as "n spesiale dokument. n UDF dokument is uitgereik en versprei onder hulle lede."

Page 24 848 lines 26 to the bottom of the page.

What is the evidence about EXHIBIT C18? According to the evidence EXHIBIT C18 was found in the possession of Lucille Meyer and there is an identical document AL1 (10) which was also found with Lucille Meyer. There is no evidence that EXHIBIT C18 was prepared by the UDF. There is no evidence that it was distributed by the UDF to its members, its members of course are affiliates or that it was distributed by the UDF to alleged co-conspirators. There seems to be no evidence that EXHIBIT C18 found its way to anybody other than Lucille Meyer. There is no evidence to show who wrote C18. There is no evidence to show you it got into the possession of Lucille Meyer and the evidence shows that neither Mr Molefe nor Mr Lekota had seen EXHIBIT CA18 prior to the court (20) proceedings. Mr Molefe's evidence is in volume 254 page 13 642 lines 22 to 28 and Mr Lekota's evidence is in volume 288 page 15 936 lines 25 to 30.

Both Mr Molefe and Mr Lekota says that the document does not reflect UDF policy. Mr Molefe in volume 253 page 13 548 line 1 to page 13 549 line 20. Again in volume 254 page 13 642 lines 11 to 28. Mr Lekota's evidence is at volume 288 page 15 937 lines 12 and in the same volume at page 15 941 lines 1 to 29.

The document was not proved in evidence in an ordinary (30) way/...

way and is not admissible on the main count of treason or on the common law charges. On examination it appears to be a photostat of part of a larger publication. That is apparent from its appearance because it begins with the letter B "Some notes on a call for a national convention." If your lordship goes - it seems to start, I cannot see it on my document but I am told its pagination shows it is taken ... (Court intervenes)

COURT : Sorry?

MR CEASKALSON : I am told, I cannot notice it on my copy, (10) that its pagination indicates that ... (Court intervenes)

COURT : We start on page 6?

MR CEASKALSON : Page 6. So, we do not know what pages 1 to 5 said. Behind it is another document which quite clearly - perhaps I should not be so bold, looking at it, it is part of the same document. It seems to me to be an entirely different type face. It looks if one is to speculate because we are driven to speculation because there is no other evidence- it looks as if photocopies from certain publications, we do not know what the publications are, but photocopies (20) from certain publications were made, they seem to be different, indeed the numbering is different. I see that the document behind, if I have got the full copy, starts at page 15 and of a different type face. So, the inference one might draw is that somebody photocopied articles which had been written in unknown publications by unknown authors and somehow or other either have clipped them together or they were found together. The contents of the article refer to the UDF but they record discussions and not decisions and if your lordship looks at the introductory paragraph

we go down that introductory paragraph under the heading "Introduction" we will see

"We need to develop an understanding of how far we still have to go referring to the freedom charter and the people shall govern.

It is in the light of all this that discussions of a national convention call has arisen in our ranks. How can we in UDF and organisations begin to set the political pace. We will always just be reacting to the government's new recipe or can we begin to spell (10) out our own political demands?"

Now, the first thing is that we are told that there is discussion which has arisen and not decisions, but what really seems to be important if we look at it, we in UDF and organisations. That seems to suggest that this document has been out or may have been put out by some other organisation which has members in the UDF and has members in other organisations and it seems as if it may be a directive to such persons or a suggestion to such persons as to how they might conduct themselves. (20)

But we do not know, possibly an affiliate, possibly some organisation which is not an affiliate, possibly such organisation which is not an affiliate, but has members and is seeking to influence the UDF. It is all very speculative.

Now at the bottom of the first column of page 8 we see the statement "While there is no commonly agreed official position, those arguing for an NC call, see it as being."

COURT : I am not with you.

MR CHASKALSON : If one goes to the next page of this (30) document/...

document.

COURT : We start at page 6 and next to it is page 7. Then you have 8 and then you have 9.

MR CHASKALSON : Well, if we go to 8 then. It is really the next full page, under - at the bottom of the page "While there is no commonly agreed official position those arguing for an NC call see it as being." Insofar as it is saying we who are, we who belong to - part of the problem is we do not know what this document is.

COURT : And we do not know when it was dated? (10)

MR CHASKALSON : No. The other thing is, the part of the document is it admissible at all under section 69? But the document says

"Beklemtoon die leuenagtigheid van beskuldigdes nrs. 19 en 20 se getuienis oor die nasionale konvensie."

I am not sure whether I am taking that from the "betoog" or whether I am taking it from the oral argument to which I gave your lordship the page. I think it is probably the oral argument that it was advanced as, but there is in fact as I will show your lordship no basis for that. First of (20) all it is not a writing for which they were responsible.

COURT : Will you be long on this document?

MR CHASKALSON : I will take it up tomorrow if your lordship wants me to. I think what I am going to say is going to run into something else.

COURT ADJOURNS UNTIL 26 AUGUST 1988.



## **DELMAS TREASON TRIAL 1985-1989**

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