

V447.

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

K. 2.2.3 VOL 449 PG 26 473 - 26 545.

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-29

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. YACOOB
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

VOLUME 449

(Bladsye 26 473 - 26 545)

Mador
COURT RESUMES ON 29 AUGUST 1988.

MR CHASKALSON: I am informed that all the accused are here save for accused no. 9 who was excused on Friday to enable him to attend a doctor's appointment. At the adjournment on Friday we were dealing with the speech of Cedric Kekana and I indicated that I was going to refer your lordship to the evidence relevant to that speech. His speech is in EXHIBIT V.15, it is recorded in EXHIBIT V.15. Now first the state called a witness who had been present at that meeting. The witness was IC.14. IC.14 testified that the meeting had lasted for approximately (10) five hours and said that the tape which was shown in court recorded only a small part of what had taken place at that meeting. IC.14 also said that there were other speeches which were made at the meeting in addition to those which were recorded on the video tape. Now IC.14's evidence will be found in volume 88 page 4 411 and the passages at lines 11 to 29. Now the, according to EXHIBIT V.15 the transcript of the meeting itself begins at page 7 and it continues to page 27. So we only have 20 pages from a five hour meeting. IC.14 was unable to say whether the speeches recorded on the video tape were (20) complete or whether they were only portions of the speeches and the evidence, or this witness admitted to having no independent recollection at all of the speeches. That your lordship will find in the evidence of IC.14 at volume 88 page 4 412 lines 6 to 9. Now your lordship asked me a question on Friday in regard to whether the chairman of a meeting should repudiate a speaker if the chairman wished to distance himself or the meeting from what had been said. Now as far as that is concerned IC.14 indicated that the chairman of the meeting was a person called Deacon Mathi. That person is not an official (30)

of/.....

of the UDF but is a member of a youth affiliate. Or let me put it to your lordship slightly differently, is a member of a youth organisation which had affiliated to the UDF. Now neither Deacon Mathi nor Cedric Kekana had authority to make policy for the UDF. Policy can only be made by the National General Council and between meetings your lordship knows the role of the National Executive Council. Now your lordship will recollect from the passages which I referred to during the course of that portion of the argument when I examined the judgments in the Adams case, in the treason trial, that the judges (10) there said that policy may be changed informally by consistently acting outside of policy parameters as determined by the NGC but to establish that there would have to be a considerable body of evidence showing a widespread consistent and general application of a policy other than that which had been adopted by the NGC. It really comes down to a question as to whether an organisation may be said between NGC's to have amended its policy in some form. And the first submission that we make to your lordship is that the few instances of persons having acted outside of policy which have been produced by the state (20) in this case are wholly insufficient to establish such a proposition, and since we have only a minute portion of the speeches which were actually made by the UDF officials and members of UDF affiliates and since only very few of this totality that have actually been produced are in fact relied upon by the state the submission that we make to your lordship is that it cannot be held that contrary to the specific denials of accused nos. 19 and 20 and the general trend of the defence evidence that these few isolated instances establish a different UDF policy. But if one were to even go to the transcript (30)

of/....

of the meeting itself your lordship will see that at page 27 the transcript comes to an end. It seems to come to an end during Kekana's speech. This, according to this transcript, is still part of Kekana's speech. I think I should tell your lordship that the tape that I have had access to in fact does not have Kekana's speech on it because your lordship will remember that what happened was that it says that according to the transcript it says that the tape goes black and there is a long interruption.

COURT: And what happened then? (10)

MR CHASKALSON: Well apparently on one of the tapes Kekana came back again but on the one that I had, and that is probably a copying error, I do not see Mr Kekana ...

COURT: I think you can work on the basis that what is on our tape is in EXHIBIT V.15.

MR CHASKALSON: And I assumed that and I have assumed that the transcript is correct but I have not, I tried, I spent a long time on the weekend trying to view the tape and I could not get the second part of Mr Kekana's speech. So I am merely saying to your lordship I am acting off the transcript. I have not (20) actually had an opportunity of seeing the tape myself.

COURT: Does your copy stop just before Kekana?

MR CHASKALSON: My copy stops at the, I have the beginnings of Kekana.

COURT: I see.

MR CHASKALSON: But your lordship will see at page 23 it says "Screen black and sound intermittent". That is where my tape stops.

COURT: Oh yes.

MR CHASKALSON: I remained in the dark for a long time (30)

thereafter/....

thereafter until my tape reached its end. And so I have not seen that part. But I have accepted that what is recorded appears on the court's tape and I have also accepted ...

COURT: Yes well it was shown to us and we made notes.

MR CHASKALSON: Yes. No I have assumed that to be so. I am making no point of it. I am merely saying to your lordship I am working off a document and not off the tape but what one sees ...

COURT: Now just a moment, at page 24 I have got a note that this whole portion, there is no picture at all, only sound. (10) So you have the sound running through and not the picture.

MR CHASKALSON: Yes.

COURT: At page 24, I do not know what is the position at the bottom of 23.

MR CHASKALSON: All I wanted to show your lordship is page 27.

COURT: And that applies to page 24, 25, 26 and 27. So you did not miss anything.

MR CHASKALSON: I missed the sound my lord, but can I show your lordship what I wanted to draw attention to on page 27?

COURT: Yes. (20)

MR CHASKALSON: And that is, as I understand the transcript, Kekana is still speaking. I do not know whether he continued speaking after that or that was the end of his speech or what happened, but whatever happened there is nothing to show what the chairman, what happened at that stage. There is nothing to show what the chairman did or did not do or what other speakers did or did not say thereafter. Now the transcript itself is not a particularly good one. There are large tracts of apparently inaudibility but all I want to draw your lordship's attention to is that your lordship, that there is not (30) evidence/....

evidence from which your lordship could infer that after Kekana spoke the proceedings thereafter indicated that the chairman associated himself with what Kekana had said. We do not know what was said thereafter at all, we know nothing. And reading this I, and I say that by merely looking at the transcript. We do not even know that this is the end of Kekana's speech. It may be. So the submission that we make to your lordship is twofold. One is that the state did not produce evidence from which your lordship could be asked to infer that the person in charge of the meeting in some way identified the UDF with what Kekana had said or suggested in any way that this was UDF policy. And then the second part of the submission is that in any event that a member of a, an affiliate of a youth organisation even if he had done that would not have had authority to make policy for the UDF. So the submission that we make to your lordship is that this speech cannot be relied upon as being a statement of UDF policy nor can it be characterised as the state did in its argument as a statement made by "n vername UDF spreker". Now what in fact was the evidence, because again the state do not tell you what evidence was given about this in their "Betoog". What was the evidence that was given about this? Well both Mr Molefe and Mr Lekota were questioned about this speech during their evidence. Both of them made absolutely clear in the course of their evidence, first that Cedric Kekana in fact had no authority to speak on behalf of the UDF, secondly that he was not at the meeting as a representative of the UDF, that he had never been appointed as it were to go there to speak for the UDF, and thirdly that what he said did not represent UDF policy. I will give your lordship a reference to a number of passages in the

evidence/....

evidence and I will tell you briefly what they say. I am not going to read them to your lordship. Mr Molefe in volume 265 page 14 296 line 27 to 14 298 line 9 said in effect that he thought that what Mr Kekana was saying was really nonsense as far as UDF policy was concerned and that it did not represent the policy of the UDF. In volume 265 at page 14 300 lines 11 to 15 Mr Molefe stressed that Mr Kekana was not a representative of the UDF. In the same volume at page 14 301 lines 12 to 27 and 14 302 line 10 to 14 303 line 5 he said that Mr Kekana was expressing his own views, in other words Mr (10) Kekana's views, and not the policy of the UDF. He says he characterised the speech as an irresponsible speech and indicated that the UDF would not share the sentiments expressed by Mr Kekana. And in volume 265 page 14 306 lines 19 to 27 he said what this speaker is saying is nothing that he could attempt to defend. He said it certainly was not UDF policy. Then as far as Mr Lekota was concerned he too, volume 298 page 16 779 line 6 to 16 780 line 18 said that Mr Kekana was not speaking on behalf of the UDF. At page 16 000 - all these references are from volume 298, page 16 780 line 22 to (20) 16 781 line 19 he said that it was not UDF policy, what was said in the speech, and at page 16 783 lines 10 to 14 he said

"I dissociate myself and my organisation from the speech."

And finally I have a reference to his evidence at page 16 784 lines 16 to 29. Both Mr Molefe and Mr Lekota said that they had not been aware of this speech before the court proceedings and that no report had been made to either of them about it prior to the trial and it is clear from their evidence, and passages I will give to your lordship, that certainly it was (30)

nothing/....

nothing which had ever been brought formally to the attention of the UDF National Executive or of which it was aware as far as they were concerned. Mr Molefe says that in volume 265 page 14 300 line 28 to 14 301 line 4, and Mr Lekota says that at volume 298 page 16 784 line 12 to 22. And the submission then that we make to your lordship is that in the light of all this evidence your lordship cannot hold that this speech reflects the policy of the UDF. Now I would like to turn to deal with another question that was put to me on Friday and which I said to your lordship I would like to go and read the record before (10) answering the question. The question was, and I do not have a precise note of the question but the gist of the question was one which your lordship put to me which was to the effect that the National General Council's statement ...

COURT: Is that 102, C.102?

MR CHASKALSON: C.102. And I think the gist of it - I am sorry - I think when I said to your lordship I will need to go back to the record and said that the state had not referred to that in its argument your lordship had said to me should not there have been something said by the UDF when making this state- (20) ment to record its attitude to violence, in other words to in some way to indicate that what was being said at this time was not a call for violence. Basically that there should have been a reaffirmation of non-violent principles at this time, in the light of what was happening in the country and in the light of what was said in the statement. I think your lordship put a question along those lines to me. And the reason, one of the reasons I wanted to go back to the record was that I had myself no recollection of that question ever having been put either to Mr Molefe or to Mr Lekota or to, Mr Chikane was (30)

not/....

not at the meeting so it would not have arisen, during the course of their evidence. Now during the weekend we have done our best to review the evidence. We have been unable to find that that question was ever put to them. But we have been able to find a body of evidence which shows the context in which that statement was issued, what had been said before the statement was issued and what was said after the statement was issued and let me take your lordship through that evidence. First the evidence shows that the National General, the NGC's statement - if I may call it that rather than continually (10) refer to C.102 because there are different passages in C.102, I will simply call this the NGC statement. It was apparently adopted on the last day of the conference. Apparently discussions about it on the last day of the conference and that was if I am right Sunday 7 April 1985. I do not think the date appears from the passage I am going to give you but I am told that that is the date and I think it is right. That is volume 259 in Mr Molefe's evidence at page 13 900 line 20 to line 22. It was subsequently put together by a person called Cheryl Carolus who would ... (20)

COURT: Do you mean the statement or the whole pamphlet?

MR CHASKALSON: Well it is not clear to me which it was. I think it is probably the pamphlet, the document which we were looking at. I think it is that but I will check that. It was put together - the statement itself, there was, I will show your lordship that there was a handwritten statement in existence. I am not suggesting it was something which came into existence after the conference but I think what we have seen was put together by Cheryl Carolus who was then the acting administrative secretary of the UDF. That appears in Mr (30)

Molefe's/....

Molefe's evidence at volume 258 page 13 847 line 22 to 24. Now Mr Molefe said that he was not himself a party to the drafting of the statement but that he did see it there and he was present at a later occasion when it was read out. His evidence to the effect that he was not a party to drafting the statement your lordship will find at volume 259 page 13 900 lines 13 to 18 and that should be read with Mr Molefe's evidence at volume 258 page 13 885 line 27 to 30. And his evidence was to the effect that he actually saw it and heard it at the press conference held after the NGC at which the statement was (10) read out. There are two passages there. It is volume 258 page 13 866 line 9 to 13. That was when he was asked whether he had ever seen it.

COURT: 13 866?

MR CHASKALSON: Yes. Lines 9 to 13, and the second passage is volume 259 page 13 900 line 13 to 13 901 line 1. And I think I should read that passage to your lordship. It was, he was being cross-examined and the cross-examiner says to him:

"Mr Molefe if I understand your evidence correctly you said yesterday that you knew nothing about this (20) statement? -- That is not true."

And that is actually correct because the passage I have given you earlier is the one where Mr Molefe the previous day, when he was asked when he had seen it for the first time he had said he had seen it at the press conference. Then he continues as follows:

"What do you know? -- All I said was that I was not there when the statement was drafted but I did see the statement at the time of the press conference after it had been adopted. (30)

How/....

"How long after it had been adopted? -- On the same day that it was, that it had been adopted because I understood it was adopted some time on Sunday, that was the last day of the conference.

And in what form did you see it? -- Well I saw it in this form.

Did you have a copy of it or what do you mean? -- There was one copy that the National Publicity secretary read to the newspapers at the press conference. I had occasion to look at it. (10)

Was this statement of the National Executive, UDF National General Council, read out to the newspapers? -- Yes it was.

In the form it appears here? -- That is so."

So the evidence then is that the statement was prepared during the conference, it was apparently, according to Mr Molefe's evidence it was settled on the Sunday at the time when he was not present but it was then read out at the press conference, at a press conference which took place on the Sunday evening. Now the context in which the statement was issued and was (20) read out to the press conference is important and I think I should take your lordship through that evidence and though it may mean drawing your lordship's attention to some exhibits which I have already referred to I think it is necessary to bring them together in this context to answer the matter which was troubling your lordship on Friday. First of all on the eve of a the conference - I suppose I should really call it the, well on the eve of this, it is a National General Council conference, I will call it a conference but your lordship will know what I mean, a press conference was held at which it (30)

was/....

was stressed that what would be emphasised, what the emphasis would be at the conference would be non-violent means of direct action. Now I think when your lordship asked me on Friday what a certain passage meant in regard to direct action I said that why not non-violent action, why must it be violent action. On the eve of the conference in DA.72 the statement records that the theme of the conference - this is reported, when I say we do not have the text of a press statement at this stage but what we have is the press report which was confirmed by Mr Lekota, it says:

"The theme of the conference, from protest to challenge, (10) from mobilisation to organisation, reflected that the UDF was facing a crucial new phase, said publicity secretary Mr Terror Lekota. 'What we are saying is that in its initial phase the UDF protested against the new constitution and mobilised the masses against giving it their democratic approval but now the government has gone ahead and imposed the constitution. Our new task is to challenge its implementation. The conference will have to decide on tactics and methods to be put into practice such a challenge' said Mr Lekota. 'The (20) emphasis would be on non-violent means of direct action' he said, adding that the Uitenhage and other township killings would force the conference to ask itself, in the face of such brutal repression, how can the front continue to organise without risking heavy loss of life."

Now that was said on the eve of the conference and it obviously would have had wide publicity. We know that at any rate it appears in The Start newspaper which has a circulation of approximately 200 000. But during the conference the evidence is that this was reaffirmed and that it was made clear that (30) non-violent/....

non-violent direct action was the form that the so-called challenge would take. And within a week of the conference we can find amongst the documents which we have tendered to your lordship ...

COURT: Now your first statement that it was reaffirmed during the conference, where do we find that?

MR CHASKALSON: Oh sorry, Mr Lekota's evidence, volume 284 page 15 607 line 20 to 15 609 line 13. Mr Lekota said that this reflected in those passages, this reflected the non-violent stance of the UDF and the views of those at the conference, (10) and he said that at the conference in fact it had been noted that there had been a lot of spontaneous undisciplined action that had been taking place in some of the townships and that it was important that our organisations must attempt to move into the situation and strengthen the organisations so that when people have got a protest or they have got a complaint there must be clearly disciplined action taken, so that first of all the complaints of the people must be clearly stated so that the government can hear what the complaint is, at another level of course there were a lot of unruly elements, people (20) who belonged to no organisations and who were just doing as they pleased and it was important to undercut that kind of thing. There must be clear publicly acknowledged organisations that the people could respond to and not respond to any Tom, Dick and Harry that came around and said he was a leader. So the question of disciplined action was a concern of the conference. It must be disciplined and in that way first of all the government can hear clearly, you can state the complaints and you can be heard clearly. Secondly people are not then exposed to anarchy and then people lose their lives (30)

unnecessarily./.....

unnecessarily. Now we have been able to find, or we were able to find a press cutting which was put in as EXHIBIT DA.73 and which was confirmed by Mr Lekota. That press cutting bore the date 12 April. It came in in the context, now 12 April of course is within a week of the conference. And what the statement says is it points out that the UDF has no plans to harm the New Zealand players and the statement says:

"That would conflict with our fundamental non-violent stance', UDF publicity secretary Mr Terror Lekota said last night." (10)

And then he goes on to say this:

"He said that the UDF determination to lead mass action was precisely because the conference had noted there was a need to discipline protest in order to avert anarchy. Disciplined mass action would correctly channel the energies of the people and effectively demonstrate to the government where their feelings were without destruction to property or loss of life."

Now there is a further press statement which we were able to find, a further cutting which was put in in evidence. That (20) was in EXHIBIT DA.42. Now that was a publication of the, or that was a press statement which seems to have been made on 20 April. So we are now approximately two weeks away from the conference. In that there is again a reiteration of the fact that it is the UDF was determined, a denial of the fact that the UDF was intent on precipitating revolution and a drawing attention again to the fact that only the unconditional dismantling of apartheid could bring about peace in South Africa. He says it is irrelevant whether the UDF and the ANC called for a national convention, what matters is whether that (30)

suggestion/....

suggestion can bring about a democratic and non-racial constitution for this country in a reasonably peaceful manner, reasonably peaceful fashion, or whether Mr Botha will allow his army and police to continue to shoot and kill black children for the preservation of apartheid. Mr Lekota gave evidence about that at volume 283 page 15 511 line 10 to 20 and there is another passage in volume 274 page 14 901 line 21 to 14 901 line 26. And again it picks up the anger which was, existed at the time in regard to the shooting of young people. And then there is another press report which is reported on 21 (10) April. It was, it appeared in the Sunday Tribune. It was an interview with Mr Lekota and again making the point ...

COURT: The reference number?

MR CHASKALSON: It is DA.74. Mr Lekota's evidence is volume 284 page 15 609 line 14 to 15 610 line 28. And on 23 April Mr Lekota was arrested. So if we take the context - and on the same day Mr Molefe was also arrested - so if we take the context of this NGC statement we see that it was preceded with a public statement that the action contemplated would be non-violent direct action, we see that it was, the evidence (20) tells us that that was what was stressed at the conference itself and we see that within, we know that it was read out, the statement was read out at the press conference immediately following the NGC meeting, that nobody asked any questions about that at all. So that what was said at that conference was not investigated. But we know that within a week Mr Lekota had indicated publicly what had been said and what the policy meant and continued, on two occasions, to draw attention to the non-violent strategy of the UDF and that all that took place within the space of a fortnight which culminated in his (30)

being/....

being arrested. So the, if he had been asked very specifically the question of linkage it seems clear what his answer would have been. It was made clear before, it was made clear during, it was made clear after, and your lordship will realise also that this was a document prepared and read out at a press, it was the end of the conference press statement. Not as it were some secret directive to certain persons in the UDF which was to be kept hidden and not generally known. It was a publicly stated position in the context of publicly stated attitudes to non-violent linked with non-violent direct (10) action is what was being talked about. Now if we go back to the statement itself your lordship in our submission should not approach the statement as if you were construing a statute or a contract but it should be approached for what it is, it is a political statement couched in political language, issued to the press at a time of considerable anger amongst the front on whose behalf the statement was issued, arising out of what was perceived to be attempts by the state to crush its activities and to use violence. Use not violence so much - violence is the wrong word. I think "force" is the word I would choose. (20) The shooting of young people in the streets produced immense anger which one sees in the documents and which is reflected in the statement and which is understandable irrespective, irrespective of where the fault lies initially. It does not matter, the accused perceives the fault, the root cause of the problem to be apartheid and the government's determination to proceed with that policy. It does not matter, for the purposes of this part of my argument whether their perception is right or wrong. The shooting of young people always produces anger and if you think the people who shot did so because their (30)

purpose/....

purpose was to instil fear and to force the angry young people into compliance, that produces anger as great as anything else. And when you see a statement which talks about not more, not one more drop of blood need be shed, part of that is surely what had been happening before. So we ask your lordship to approach the statement in the context which we have given to your lordship, in the manner which we have suggested to your lordship would be appropriate and not to read into it things that it does not in fact say, and on the evidence things that it was never intended to say. And we say further that this (10) statement, no matter how it is construed, cannot, does not as it were state a policy, a UDF policy, to overthrow the state by violence. There is nothing, in our submission, in that statement properly construed which could lead to the conclusion is that is clearly what that statement meant. And again we urge your lordship to follow the approach of the Adams court to the construction of political documents and the use of political language. Now at page 25 of the "Betoog" that section, page 26 really. After the passage to which I have referred the state says, the state relies on another passage, (20) it says:

"Verder op bladsy 7,

'We recognise the need to encourage the increased and dynamic participation of progressive trade unions within our front and to build the UDF so that it accurately reflects the centrality and leadership of the African masses in our struggle. Finally we pledge to organise the masses of our people to effectively challenge the apartheid state by frustrating its efforts, preventing its (30) advance,/....

'advance, forcing its retreat and if possible to cut off all its lines of retreat.'"

Again it is part of the longer statement which was made in the context which I have already given to your lordship. Secondly it refers to trade unions and we know that the primary weapon of a trade union in its struggles on behalf of its members for better working conditions has always been the strike, which is above all I would think an example of non-violent direct action.

It is a means of putting pressure on employers but it is done, it is a form of non-violent action. So again we see that (10) linked to the statement. Now the fact that the statement itself warns of the future, warns of the risks which the "country faces if an unpopular policy is imposed on the majority of the population, those are warnings which, they are two things - those are warnings which politicians have always issued, there are, indeed we hear warnings, different types of warnings, from time to time coming from people with different political attitudes as to the consequences which may follow and as to what people's reactions may be if segregation is dismantled. We know that and we know historically of those (20) sort of warnings. They are always issued because in a sense they are a reality. They are something which politicians have, those in control of government have to take into account in formulating their policy and it is part and parcel of the political process. But when Cassandra warned the Trojans about the war that did not make Cassandra an as it were party to the Greeks struggle nor indeed an accomplice to what happened subsequently. Warnings cannot be elevated into threats and warnings incorporated into political speech are not a substitute for evidence which is needed to support the state's (30) case/....

case that the violent overthrow of the government was being planned. Now if I could move on the next passage cited in the "Betoog" at page 27 is at paragraph 6.2 where there is a reference to a matter which I have already dealt with. I dealt with it when I dealt with paragraph 4.5 and I do not need to repeat what I have already said. In paragraph 6.3 there is a reference to an extract from a speech by the Reverend Allan Boesak. I do not need to take up much time on that. The passage cited is the demands are there and are clear, release the political prisoners, unban the organisations, (10) scrap all of these laws that have made South Africa a hell for so many people to live in, stop killing our children and our people in the streets, let us participate in an open democratic society and then there will be peace in South Africa. Before that there will be no peace in this country and that is true. So the state threatens to ban organisations and they threaten to ban the United Democratic Front. It will be a little difficult because the UDF I have often said is the people of South Africa and they cannot ban the people. Now what the Reverend Allan Boesak does in this passage is to articulate the demand (20) for the abolition of apartheid, to link the conflict in the country to apartheid, to draw attention in strong language, it is a hell for so many people to live in. The impact that the laws have had upon so many people in South Africa and to refer again to stop killing our children and our people in the streets. If people, if I were to give your lordship an entirely different example, if people who were active supporters of apartheid were to take to the streets and the police were to shoot and kill them would not one expect the same sort of thing to be said? Because it does not matter whether the (30)

police/....

police shot because they thought that they had to restore order. There are ways of handling those sorts of things and in the end when people take to the streets to voice their protest you do not expect to be met with bullets and there has been evidence of random shooting, random use of teargas. These are things which affect people and if they refer to it it is because they have, they feel deeply about it. But his speech, he is putting forward an alternative. He says create an open and democratic society and thereby remove the cause of the conflict. The result he says will be peace. Now his (10) recipe for peace may or may not be correct. He may be right, he may be wrong. But to spell out of what he considers necessary to restore peace an incitement to violence or to a violent overthrow of the police is just not there. It is certainly not treason to say what you think is necessary to restore peace to a society which is in conflict. And then in paragraph 6.4 we have again Cedric Kekana and I do not want to say anything more about that. In paragraph 6.5 there is a reference to the report by CAHAC, and this document was found in circumstances which satisfy the requirements, the factual requirements of (20) section 69(4) but it has not been proved by evidence which would make it admissible for the purposes of the common law charges. We did not find any reference in the evidence to this document. There may be but we did not find any reference to it. The extract in the "Betoog" is incorrect. It leaves out a line and I should give your lordship the line that is left out. It is midway down....

COURT: The secretarial report does not have seven pages.

What page are you referring to?

MR CHASKALSON: Page 5, and it is from the secretarial (30)
report./....

report. I am not, it is really on the first page of the secretarial report but the words which have been left out is after the words "like in the Vaal triangle".

COURT: I am sorry let me just pick it up please? Yes thank you.

MR CHASKALSON: If your lordship would go to the "Betoog" where you have, it is halfway down the cite, "a massive response like in the Vaal triangle". What should be added is ", Grahamstown and Graaff-Reinet." Then it should carry on "A rent increase has led to the destruction of" and then (10) we come back to "local community councils in these areas". Now the state says that this is a reference to violent resistance. There was of course no evidence about that but I am not sure why it is a reference to that and not to the rent boycott. After all it would be the rent boycott which would have had the most profound effect upon local government. It seems as if it may well be that if this had been investigated that that is what may have been the answer. I do not know, I am merely speculating. But what is CAHAC? We have had very little evidence about CAHAC. I think it probably has been mentioned (20) in the course of the trial but in my reading I can remember nothing of any real significance about CAHAC.

COURT: I think Miss Platzky referred to it.

MR CHASKALSON: Yes. But if we look at that EXHIBIT W.72 your lordship will see that CAHAC appears to be some form of federal structure. It has its own affiliates. The, we also have a document called "Guiding Principles" which sets out under its aims and objectives that its aims and objectives are to assist with the establishment of community organisations where these are non-existent and to strengthen all community (30) organisations, /....

organisations, to act as an inter-community forum, to act as a resource centre for the community, to strive towards unified action on housing and related issues affecting the community. So it seems to, those seem to be its aims and objectives, its guiding principles are set out that people should have the right to live where they choose, to be decently housed and to raise their families in comfort and security, that rents, rates, water and electricity charges should be what people could afford, that true legitimate organisations of the people should be consulted. They reject dummy forms of representations, (10) including management committees and community councils and they ask for a direct say over their own lives. Now it also sees, apparently their decision making process page 5, page 6 of this little document paragraph 5 says that all matters should be decided by the general body on a majority vote. All proposals deemed to commit organisations to action shall be referred back to affiliates via delegates. Such mandates will be brought to the subsequent general meeting. Each organisation affiliate shall have one vote by mandate. On immediate procedural matters each delegate may exercise an individual (20) vote. Now in a way this is one of the very few pieces of paper which we have to show us how affiliates function and it underlines part of the problems that I have drawn to your lordship's attention previously, that where you find a document or a speaker from a particular affiliate the very first question you have got to answer before one asks the next question how does this relate to the UDF is what is, how does it affect the policy of the affiliate, what is the affiliate's policy, and you have got to go through that same process as one went through in the Adams case of putting that particular (30) statement/....

statement in the context of the goals and purposes of the organisation, its constitutional documents and its other public statements. And there has simply been no attempt to do that. So we are faced with a situation where even isolated speeches of the character of Cedric Kekana which one would have to go a stage back to try and find out how that fitted in to the youth organisation to which Cedric Kekana belonged. It may or may not have been consistent with its attitude. But we do not know because that just has not been investigated in this case. Now, so the submission that we make to your (10) lordship is this statement which in my submission to your lordship is not a statement which really takes the state case very much further one way or another. But that statement by an individual in a report to a general meeting cannot even be elevated, it is a somewhat equivocal statement in a secretarial report does not become CAHAC policy without knowing a little bit more about what happened at the CAHAC meeting and what was decided at the CAHAC meeting and what took place there and we have had no evidence about that at all. Still less can it be elevated into UDF policy. (20)

COURT ADJOURNS FOR TEA. COURT RESUMES.

MR CHASKALSON: The next passage is paragraph 6.6 of the "Betoog". A document which was found in circumstances which seem to meet the requirements of section 69(4) but not admissible at common law. The state cites an extract from a SASPU national editorial, it describes it as a SASPU national editorial of December 1984. SASPU was not an affiliate of the UDF at that time. So what it said would not be UDF policy and indeed I think your lordship here would have regard to the observations made by Rumpff, J. in his judgment in the (30)

Adams case at page 100 when he was dealing with community, when he was dealing with the press that gave support to the then African National Congress as it then pursued its affairs in South Africa. Next the states relies upon, in paragraph 6.7 of the "Betoog", it relies upon a speech by, it is Mr Ramgoben. It is at an NIC meeting and again your lordship would then have to follow the procedure of is Mr Ramgoben stating NIC policy, what do we know about the NIC, what other statements and documents do we have from the NIC sufficient to locate Mr Ramgoben's statement there within the framework of NIC policy? Once (10) again your lordship has, in our submission, too little evidence before you to undertake that task but in any event, as I hope to be able to show your lordship, it is of no moment as far as this particular speech is concerned. It is, the extract begins by referring to what had been said during Mr Botha's tour. I think he was then prime minister, I think it was before the new constitution. During his tour of Europe. And Mr Ramgoben - I do not know whether correctly or incorrectly - says that Mr Botha had said we are tired of conflict in Southern Africa and that Southern Africa should not be (20) turned into a battlefield. And then he says:

"We the Natal Indian Congress, ladies and gentlemen, declared, and Mr Botha if you are not here today to listen we hope that you have some means of listening to us."

So again directed, hear us when we say to you that we the oppressed people of South Africa are tired of apartheid which is the basis of all conflict. So it is again that theme which one sees so frequently in the speeches. Mr Botha we are tired of telling you and your allies, whether they are here or in (30)

the/....

the western world, that apartheid is the cause of all conflict. That Mr Botha, we are tired of telling you, but yes we are engaged in a battle and the battle is between apartheid and human dignity. Now it seems to be that that the state - I do not know but it seems that that reference to battle, because it appears again in the next paragraph, that until you have had the sense and the humility to say that we have been wrong thusfar, we will not and never be able to solve the problems of this country together, that your government in its lawlessness has negated all the moral principles(10) as Mr Barber has already said, and that until you realise this we will never never never stop to engage apartheid in battle. Now that is ^{''}relied upon by the state as an incitement to:

"Dit word die massas opgesweef om bereid te wees om enige prys te betaal of offer (must be op te offer) te bring in die 'battle' teen die regering."

Now how is this battle to be waged? The next sentence tells us:

"Therefore ladies and gentlemen in asking you not to vote and in declaring that the Natal Indian Congress (20) will do everything within its power to urge people not to vote."

So the pursuit of the battle which is being taken up here is asking people not to vote, urging you not to vote, and he says

"The choice is between abject and abject power of the state, spiritual degradation and the denial of truth and our moral prosecution for reasons that we consider base and vulgar."

I think that might be "persecution" I am not sure.

"Or opposition to the constitution with all the (30) consequences/....

"consequences thereof or therein no matter what the price, no matter what the sacrifice."

Now if one asks is this a violent speech, no people are being urged not to vote. What are the sacrifices? Well we have heard a lot of sacrifices here, we have heard about people who have been detained without trial, people who get jailed and so on. There is nothing there to show that he is asking people to engage in a violent struggle and indeed if one goes to the document recording the speech and sees what came shortly before it and what comes shortly after it you will see the (10) same context. At page 30 of EXHIBIT V.17 in the passage it is the beginning of Mr Ramgoben's speech:

"Ladies and gentlemen, Mr Barber has given you the details of the constitution itself. I just want to say that Congress on your behalf will do nothing on the one hand to give respectability to this dispensation which we call vulgar and we on the other hand will do everything within our power to see to it that we keep the polls as low as we possibly can and in wanting to keep the polls as low as we possibly can we would like to (20) reiterate over and over again that we will not vote and we beseech our people not to vote because we do not want to help the system of the government to create new systems of administration and leave the fundamentals of oppression intact."

So that the speech is directed to not voting, which is certainly a non-violent form of action. The language here used is "we beseech our people not to vote". There are no threats, no reference to violence at all and if one then goes to page 32 after that passage we find the same thing. At the end (30)

of/....

of - I have given you the beginning of his speech and now the end of his speech, page 32:

"And therefore ladies and gentlemen, and in asking you not to vote and in proclaiming (it says) that the Natal Indian Congress will do everything within its power to urge people not to vote we say this to you because after being listening to our previous speakers and hopefully to what I have had to say that our choice is between the abject submission (and that is a passage that they have cited, no matter what the sacrifice - he carries on to (10) say) it is on that basis ladies and gentlemen that the Natal Indian Congress has called and will call, over and over again, until August 28 upon you and the rest of you who are outside not to vote."

So if we take what comes immediately afterwards and look at the introduction of this speech it is no more than a fairly mild political speech stating the strong opposition to apartheid and urging people not to vote. And he does so on behalf of the Natal Indian Congress. So insofar as this is evidence of the attitudes of the Natal Indian Congress he is speaking for (20) them and he is clearly making a peaceful speech and saying that what we are doing is we will do everything which we can and we are beseeching people not to vote. Then the next passage is at page 30 of the "Betoog". It is paragraph 6.8, another passage from EXHIBIT A.1 from the Reverend Allan Boesak's speech. I am not going to go through that speech again. I have referred your lordship to it on more than one occasion. These little extracts taken out of it must be located in the context of the whole speech. This extract, even standing on its own, says nothing which is really of any (30)

help/....

help to the state. He says that we must remember that apartheid is thoroughly, is a thoroughly evil system and as such it cannot be modified, modernised or streamlined. It has to be irrevocably eradicated and we must continue to struggle until that glorious day shall dawn when apartheid shall exist no more. It is simply a speech in fairly mild political language calling upon people to struggle and to continue to struggle until the policy which is perceived to be the cause of their suffering is withdrawn. It certainly does not support the submissions made by the state and the purpose for which it (10) is cited. Now then we then turn to paragraph, page 30 of the "Betoog" where the submission is made that:

"Die getuienis bewys oorweldigend dat UDF en trawante ter alle tye besef en voorsien het dat as die regering nie kapituleer nie en aan hulle eise voldoen nie geweldpleging en bloedvergieting onvermydelik is in die konfrontasie tussen die regering as die sogenoemde gemeenskaplike vyand en veral die swart massas as die sogenoemde demokratiese magte. Hierdie getuienis deur die staat aangebied word nie weerlê nie." (20)

That simply ignores about a year and a bit's evidence.

"Maar bevestig deur die verdediging getuienis die gewelddadige aard van die vryheidstryd word hierdeur sterk beklemtoon."

Now this is really the point which has already been made put slightly differently. It is again the theory that they foresee violence, they foresee conflict and that unless, as it is put here, the government capitulates there will be some form of violent conflict between the government and the democratic forces. And it has said well that is really what you are (30)

doing./.....

doing. And it is stated that you are therefore, that this demonstrates the violent nature of the struggle. But that again contains two hypotheses which are neither right or not shown to be right and gaps which really show the logical fallacies of what is being said. First of all the supposition is that the struggle must be pursued by violent methods and it simply ignores all the evidence which was called by the defence to show the non-violent methods of pursuing struggles which had been effective in the past and which could be effective in the future. And it makes the assumption that (10) the government, or that it is foreseen that the government will not capitulate. In other words what it is saying is you know that whatever you do; or you do not believe that the government will respond to what you are doing therefore you must be planning violence. And, well I want to look at some of the documents which they rely upon and refer your lordship to some of the evidence which is relevant to this. And the argument begins with a reference to C.102. Now we have been through C.102. It is the National General Council statement.

I spent a lot of time this morning on that and I do not (20) want to come back to that again. I have made my submissions to your lordship about that, that it must be located in the context in which it was made, in the light of the evidence which has been given about what was said before and after about the type, the nature of the action which was being planned and undertaken and I do not want to go over that ground again. But the purpose is to achieve peace and that appears from the statement. The goal is to achieve peace, not to pursue violent revolution. But if I may move away from EXHIBIT C.102 to paragraph 7.2 of the "Betoog" and that (30)

ought/....

ought really to be read with paragraph 7.3 and I would like to take them together. The document is EXHIBIT C.105. It was found in a UDF office so it meets the requirements of section 69(4) and what is said about it, that it is put up as showing

"Sonder enige twyfel dat as die regering sou voortgaan met die regering se hervormingsplanne dit sou lei tot geweldpleging en bloedvergieting en in die volle besef hiervan het die leierskap in die UDF voortgegaan, beplanning gedoen en die massas betrek in aksies waar geweld en bloedvergieting voorgekom het toe die (10) regering nie gehoor gegee het aan die UDF ultimatum."

And then in paragraph 7.3 after referring to the reference in speeches to the need for sacrifice it continues:

"Wat belangrik is is dat die massas nooit gevra word om onderhandelinge en gesprekvoering met die regering te voer nie maar dat hulle positiewe aksie en opofferings moes bydra in die vryheidstryd."

Now if I could take that, those submissions together. First of all it says the document begins, EXHIBIT C.105 begins, or the passage cited begins with a reference to the letter to (20) the then prime minister Mr. P.W. Botha. Now that document which is referred to in this document concludes with the following statement:

"We sincerely believe that a speedy and harmonious solution to the country's problems can be found. To this end we call upon your government not to implement the Constitution Act and not to enact the Koornhof bills. We urge you to release all political prisoners unconditionally, to lift the bans on those who are silenced and restricted and to recall those who have been (30) forced/....

"forced into exile by the inhuman and racist policies of successive white minority governments. The chosen leaders of all our country's people can then sit together in an atmosphere free of fear and suspicion to work out a constitution based on the will of the people, a constitution acceptable to all. As a first step in this democratic direction we suggest that you refrain from banning public meetings convened by the UDF, its affiliates and other organisations opposed to apartheid. As mature and responsible citizens we have an obligation to participate in the process of shaping the future of our country. It would be irresponsible for us to sit back complacently and entrust such a grave responsibility to one racial group, whether that group be black or white. Your government must heed this voice of reason, respond to the urgency of this moment in our country's history and abandon its present disastrous course." (10)

Now that document, that letter which is referred to in EXHIBIT C.105 does not suggest a lack of willingness on the part of the UDF to engage in negotiations and discussions with the government. (20)

COURT: Could you just give me the reference to the letter again?

MR CHASKALSON: It is EXHIBIT DA.21.

COURT: Yes. Thank you.

MR CHASKALSON: Then the fact that at the time of the introduction of the new constitution there were warnings about the fact that this may lead to violence. It is not something which was said only by the United Democratic Front. It was a sense of the reaction to, it was a sense of the reaction (30)

to/....

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to/....

to these proposals. If your lordship would have regard to EXHIBITS DA.41, DA.35, DA.36 and DA.62 your lordship will see that there are references to other people making similar statements. Your lordship would also have regard to the evidence of Mr Molefe in volume 248 page 13 177 line 24 to 13 180 line 6 and Mr Lekota in volume 283 page 15 439 line 2 to 15 496 line 18. Your lordship will see references there to the sense of outrage which was experienced within the african community at having been, having had it made clear that they were to be excluded from the reform process, that the policy(10) of denationalisation and bantustans was to continue and that there would really be no place for them, despite the reforms which were being undertaken. The document itself, if one looks at it, is a document which is not really described. I am not sure that it has been referred to in the evidence. It seems to be in the nature of some form of release, some form of press release because it finishes up with the statement "Ends" at page 6. If one reads the document it is not a threat for violence at all, it concludes:

"We in the UDF are deeply committed to peace in our (20) country. It is in this spirit that we once again appeal to this government to abandon the destructive course upon which it has embarked."

So there is certainly an appeal which is being made to the government. If one looks at the date the first page of the document you can find some form of internal dating because the third paragraph. I think it is the third paragraph, says:

"The UDF was launched in August 1983 at Rocklands, Mitchell Plain, where 12 000 people from all corners of our country pledged to fight side by side against the (30)

"new constitution and Koornhof bills. The track record of the UDF since then bears testimony to this commitment. We have made massive strides in the struggle against apartheid in the 20 months since the launching of the front."

Now if we take the 20 months from the launch of the front in the 20th of August, we find ourselves in the second half of April 1985. So the document itself is a document issued about the time of the National General Council statement. I think we can only have a coarse dating of the document because (10) we know it is April 1985 but we, but if we look at other passages in the document we see again at page 5 of the document:

"We in the UDF wish to reissue our challenge to Mr P.W. Botha and the Nationalist government. We call on them to dismantle apartheid. Attempts to reform unreformable structures is not the solution. Our people have never participated as equals in the government of our country. We are therefore demanding our right to self determination in the country of our birth. The UDF (20) declaration states this clearly. We stand for the creation of a true democracy in which all South Africans will participate in the government of our country, we stand for a single non-racial unfragmented South Africa, a South Africa free of bantustans and group areas. We say all forms of oppression and exploitation must end. This is our vision of a new South Africa and what we in the UDF are striving for. We will therefore welcome any moves which will set us on this course of change. But in order to embark on such a course certain realities (30)

of/....

"of the South African situation needs to be considered." And then there is a reference to the need to unban the ANC, to release Mr Mandela and to the fact that the conflict will continue unless that happens. And at page 5 there is the passage which says:

"It is patently clear that there can be no peaceful solution to the problems of this country without taking the ANC and the recognised leaders of people into account." There it seems to be distinguishing between the ANC and recognised leaders of the people. (10)

"Because we in the UDF accept this reality it in no way implies that we are a front for the ANC." So what they are saying, there is also another statement to say that it is incorrect to say that the UDF has adopted the Freedom Charter. So what this document is saying is really a repetition of the arguments I have been advancing to your lordship. Any signals will be welcome. It is directed to the government, it says accept the realities, look for what we, you must construe it as being the perception of the people who have drafted it. What we perceive as the cause is apartheid (20) heid, what we perceive is the solution is the commitment to abandoning apartheid and settling down and talking with leaders who have the support of those people who have been affected by apartheid, including people who have been associated with the ANC and if you seek to solve the problems of the country by excluding them that will not happen. And that is not a statement which indicates that there shall be no negotiation, no discussion with the government. It is not a statement which is calling upon people to violent action and indeed it is not a statement which lots of other people have (30) not/....

not said as well. Now your lordship in the context of this argument will remember that there was in fact no response from the letter to the prime minister, that there is evidence of frequent attempts to influence people within the white community to bring their influence to bear upon the government and I will give your lordship some of the references later. That there were also references to influence people in the international community to bring their influence to bear upon the government and that it is in effect a direct plea to the government to negotiate on these issues. And the logical fallacy (10) in the state's argument is the thesis which it started with and which it continues to come through its arguments in different forms that any attempt to oppose the government's plan must necessarily lead to violence because the government will not change its plan. Therefore to oppose the reform plans of the government is to promote violence. That is the argument that is continually put forward. It denies the realities of political life, it assumes postures which will be adopted in the future without regard to how any change in any person's position may affect the dynamics of the situation. It is (20) in fact as his lordship Bekker, J., I think it was, it was either Bekker, J. or Rumpff, J., said an impossible task to know exactly how things will develop because so much depends upon government responses, so much depends upon here the UDF front's responses to government responses and you cannot tell from stage to stage what is going to happen and to say that clearly there was a long term plan to sweep the people into a violent revolution is in our submission quite wrong. Now the next passage cited is a passage from paragraph 7.3.1. It is the passage from the Krish Rabilal meeting. I have already (30)

dealt/....

dealt with that, it was not a UDF meeting. It was an emotional occasion but the passage cited was not a call to violence and one cannot elevate that extract from the speech referred to in paragraph 7.3.1, which is at the best some, an equivocal statement, into a statement of UDF policy of attitudes. Then the second part of paragraph 7.3.1 is the citation of a message by Oscar Mpheta at the SOYCO launch on 31 July 1983. And basically what it comes down to is that if you want to take part in the struggle for liberation you must be prepared to go to jail. That is the gist of that paragraph. Now (10) one would not say that that was inaccurate. We know, there has been a lot of evidence here - Mr Molefe himself gave evidence of he himself having been detained for a long period of time in 1976 and being released thereafter without any charges having been brought against him. We know that that is quite a frequent occurrence from the evidence in this case, that people who are actively involved in the struggle for liberation attract the attention of the security police. They are detained, they are questioned, sometimes they are prosecuted. (20)

COURT: What do you say to the argument that Mr Mpheta was out on bail at the time, having been convicted?

MR CHASKALSON: Yes he was out on bail at the time but I think that the, I do not know that we have had any evidence of the precise nature of what he had done other than that there had been a reference to a judgment. I seem to recollect that there was a reference to an appellate division judgment where the question was whether he should be subjected to a minimum sentence of five years ...

COURT: Was the conviction not under the Terrorism Act? (30)

MR CHASKALSON:/.....

MR CHASKALSON: Yes but under the Terrorism Act, as it then was I believe, it carried a multitude of activities which did not necessarily involve violence. The act is not in the form in which it is now. It was in a different form and I think it would have been wide enough to embrace non-violent activities. But whatever it is, whatever Mr Mpheta's, the first thing that your lordship will notice is that it was made on 31 July 1983 which was before the UDF had adopted its working principles and its declaration and had established its policy. Now the next passage is also from the SOYCO launch. It is from the (10) Reverend Mangaliswa Mkatshwa, it is an extract from the speech. I think the words which are taken of "Struggle is life, struggle is death", talks about the position of the church in relation to the struggle. Once again this was on 31 July. All that we know about this speaker is that in the following month he was elected as a patron of the UDF. So he subsequently was given as it were a position as a patron. But he is not, what he has, what he may or may not have said on this occasion cannot become UDF policy. Then there is a reference to the, there is a reference to the speech of Samson Ndou (20) in EXHIBIT A.1 where he draws attention to the children who took the lead in 1976 and he concludes - he is a union person:

"With the suffering of their children in mind workers threw themselves into the task of organising to smash this brutal system."

Now his, I think we have dealt with his speech before. He begins by saying:

"I am speaking as a trade unionist and a worker."

He talks about the workers struggle, about the workers, about how the struggle had progressed and he says: (30)

"After/...."

"After some sixty years of refusing to officially recognise the existence of black trade unions the government agreed to recognise them."

He then said:

"Those of us who had been hardened in the years of struggle saw these proposals for what they were, an attempt to impose new and stricter controls on the working classes. Workers stood firm and they were not fooled."

He asks how you could trust the bosses and the government. (10)

And then he says:

"Through our united refusals to accept the so-called new dispensations we will be able to counter a parliamentary sideshow which has convinced no one."

So really he is linking, insofar as there is a theme to his speech he gives the example of the workers struggle, having stood firm and having struggled. There the workers struggled. There is nothing to suggest anywhere that the workers struggle is a violent struggle and that he is suggesting to anybody that they do anything that the workers, other than stand firm and do not participate in this new dispensation. The next passage which is relied upon is at page 34 in paragraph 7.2.5. It is a speech of Dan Monsisi. It was the 16 June commemoration service. It was not a UDF meeting. It was arranged by the Ministers United for Co-Responsibility. It is, your lordship will find the evidence in Mr Molefe's evidence volume 253 page 13 527 line 20 to 13 528 line 10 and in the evidence of Mr Lekota in volume 285 page 15 701 lines 9 to 30. The text of the speech itself from which this is taken shows that the witness is referring to his own experiences. He (30)

says/....

says this is what happened - at page 11 he says:

"I remember in fact in my own school what we did was to address our own students on the 16th of June (it might have been - anyway the date is uncertain). After we had addressed our students our students were (something with placards). What we did was to move over from one school to the other collecting all the students that expected us in order to demonstrate peacefully against Afrikaans as a medium of instruction and at the same time the very same system of bantu education. Now (10) what we in fact did was to move over to Senwani Secondary School. Now the whole process of a demonstration was quite peaceful, disciplined and well conducted. What we did before we entered the gates of Senwani Secondary School, what we did was to let the students wait outside the gates and we went inside in order to talk to the principal. Now there in Pheni we actually find that now in our own side when we were charged with sedition, when we were charged with terrorism, riotous assembly and public violence there was a sergeant. In fact he (20) gave evidence in our trial."

And he mentions the sergeant, he says:

"I won't forget the name of that sergeant because what he said on that day during our trial was true. The sergeant said in his evidence-in-chief that when we arrived the students were happy, the students were singing, the students were chanting slogans, the students were dancing and this was the mood which the sergeant observed, this was the mood that prevailed on June the 16th at about 12 o'clock, this was the mood that actually (30) prevailed/....

"prevailed simply because the students had no violent intentions. They had actually meant to show in a symbolic way how they rejected bantu education and how they reject Afrikaans as a medium of instruction. What happened and what followed? The lieutenant in charge actually released a dog and after the dog had bitten one of the students the students decided it should disappear and he did disappear and when we were trying to disperse, when we were moving in different directions, overcome by gas, they started shooting' and when they started (10) shooting obviously students at that time were quite surprised. We were all shocked because we did not believe our eyes, we did not believe this was actually happening. Now what we actually saw was that now one of the lady students actually fell down and when we looked at her there was a gaping wound in the chest, there was blood flowing from her dress, there was blood flowing from her mouth and so on. Now a lot of these atrocities continued when we started dispersing, running in all directions and they started shooting." (20)

Now that is what precedes the passage which is cited. What has preceded it is an account of his own personal personal experiences showing again the perception of how, what happened, what 1976 means to some of the people who were involved in it. Then he says:

"What happened was that some of the students realised they could not be running forever and what they did in fact we can learn later from the experience of people like ..."

And then he mentions Moharane and Sotsobi(?) and so on, and (30)

then/....

then he says:

"They actually say themselves during their trial, Simon Moharane says 'My experience in 1976 had an effect of reinforcing the hatred I already had for the government. I thought that war had started and freedom was here. We decided it was pointless making placards because one will get shot while doing so. I decided to go out of the country, get myself a gun to fight these people.'"

And he then goes on to cite the evidence which they had given. And then he says, his own personal reminiscences (10) of them and he says:

"I used to sit with them at Komati where we used to eat quarter loaf of bread with Achaar at lunchtime. I knew he used to vet cakes."

And then he goes on talking about this and so on. So if one looks at the speech as a whole what he has done is he has, he is directing his speech to the incident which occurred to the events of June the 16th. He is recording why it is that people come together to mourn June the 16th. He is telling of his own personal experiences on June the 16th, he is telling of (20) the impact which those experiences had on other people and how it drove them out of the country and they came back and they had been executed, jailed and it is in that context that all this is being said, and there is nothing in this speech, in our submission to your lordship, which in any way amounts to a suggestion that the UDF is pursuing a policy of violence and that it should, it is engaged in some way in the violent overthrow of the struggle.

COURT: What is his status in the UDF, Monsisi?

MR CHASKALSON: I will have to find out. My recollection (30) is/....

is that he was a member of a youth organisation but I may be wrong. But I will establish that. Now the next passage relied upon is paragraph 7.3.6. It is a passage from a speech of someone called Kate Mboveni. It was made at an AZASO conference. Now it is a, it refers here to the introduction of a veteran in the struggle Dorothy Nyembe:

"She is a veteran in our struggle. She suffered a long, a sentence among women political prisoners. She joined the struggle at the age of 20 and I wish some of us here had joined at that stage to continue being in the (10) struggle and for actively participating until the end, until the old age and until we die. You must die in the struggle if liberation has not yet come."

All that she is saying there is you must remain in the struggle throughout your entire life. She cites as an example a woman who has been in, joined in the struggle at the age of 20 and after a long life is still in the struggle. So it is not a struggle, it is not, what she is saying is not that you must struggle violently and, but you must stay in the struggle for as long as you live. Now I have not been able to find any (20) evidence of the status of this speaker within the UDF. There may be some, if there is I will let your lordship know. The next passage cited is in paragraph 7.3.7. This is a passage which was dealt with in evidence, it was put to Mr Molefe in evidence at volume 265 page 14 248 line 8 to 14 249 line 13 and there were interruptions in the tapes and your lordship in fact intervened at one stage during the cross-examination in that volume at page 14 251 line 9 to 14 252 line 29 and the record reads as follows:

"Mr Jacobs how do we know what was left out in the (30)

inaudible/.....

"inaudible portion?

MR JACOBS: Well we do not know that.

COURT: Well if that was a very long portion then hopefully it may deal with that and not for the peace.

MR JACOBS: I want to go to the bottom there."

And then he carries on. Now again the difficulty of placing construction on political language is magnified where the only evidence of it consists of, well where the evidence, where there are parts which have been left out. And so this particular text or this particular extract from the speech is (10) subject to that defect. Also there is a passage that through this students came to learn that even though they might play a most important role, or even a militant role in the struggle, they are not in the vanguard of the struggle. Again that speech seems to be a statement which suggests that the students should see themselves as being subordinate to the working class and not as leading the struggle. Presumably that they should take their lead from the working class. Then at paragraph 7.3.8 there is the speech of Amanda Kwadi. It is also at the AZASO meeting. And again we find the reference here to the, (20) they were aware in their way that the militancy and unity of the oppressed and exploited masses, it is going to crush apartheid and its manifestations. Militancy and unity ...

COURT: It is militancy.

MR CHASKALSON: Militancy, yes.

COURT: I think it should be militancy.

MR CHASKALSON: It is what is written there, I have, if I have said something different I have made a mistake. Militancy is not the equivalent of violence and it should not be construed in that way. It is talking of militant action is (30)

part/....

part of ordinary political rhetoric and it does not really....

COURT: I do not think it is in the text "militancy" but I think one should read it that what was meant was "militancy" otherwise it does not make sense.

MR CHASKALSON: In what has been typed out in the "Betoog", it says:

"To strengthen it because they were aware in their way that the militancy and unity of the oppressed ..."

COURT: Well then we did in fact correct it because I have a note on top of the word "military" here. (10)

MR CHASKALSON: Well I am reading from the "Betoog" and not from the V.11. That is how they cite it.

COURT: Yes.

MR CHASKALSON: The submission is simply this that in that passage you cannot construe that as a call for violence or as a ... Then the next passage that they rely upon is in paragraph 7.3.9 and that is another two pages of Cedric Kekana and I do not want to add anything to what I have already said.

COURT: Cedric Kekana was a member of the UDF Education Charter Committee we heard. (20)

MR CHASKALSON: I will have to look at that ...

COURT: I have that sort of note.

MR CHASKALSON: I think that these things progressed through stages. He was certainly a member of the Saulsville/Attridgeville Youth Organisation at one stage. I will have to look at his connection with the charter, education charter. But I have already dealt with the Cedric Kekana speech. I addressed your lordship on it this morning and I do not want to add anything to what I have already said. Then in paragraph 7.3.10 we have the speeches of Oupa Monoreng, the black, white, (30)

yellow/....

yellow and green speech. I have dealt with that and I do not think there is any need to deal with that again. Then in 7.3.11 there is a reference to a statement on the release of Nelson Mandela saying that:

"As long as Mandela or any other anti-apartheid South Africans remain in prison the scale of conflict in our society must just widen. For this the blame will be at their door. But release under conditions of confinement to Bantustans amounts to a demand that political prisoners should abandon their opposition to apartheid and this (10) is impossible. Only the unconditional release of prisoners and the dismantling of apartheid structures will bring about stability and lasting peace in this country."

Now that is not a call for violence. That is a call for peace and stability and it suggests a method of achieving peace and stability, whether it is the correct method or the wrong method is not a concern of your lordship. Apparently the reference should be to AG.3 I am told and not AG.2. The statement is AG.3. Then the last of the citations here in this section is a speech made by accused no. 20 at the (20) funeral of one Bertie, as it is put there. Now again it is, it was not, apparently this person about whom the speech was made had been in jail on Robben Island but his death had occurred in circumstances which were not, they were unrelated to any political activities or political protest or anything like that. He had died apparently as a result of a quarrel with a neighbour. So it was not, it does not seem to have been a major political occasion. The passage, we cannot find the passage which is cited here as having been put to Mr Lekota in cross-examination, this particular passage. The speech (30) may/....

may have been raised with him but we could not find this particular passage that is relied upon as having been put to him. But in any event ...

COURT: We have two dates here on which it was discussed with, or taken up with accused no. 20. 26 August 1987 and 28 September 1987. I cannot see that it was on both dates taken up with accused no. 20. The first date is accused no. 19.

MR CHASKALSON: Well we just could not find this passage which is relied upon here as having been discussed with him but we will look again. But all that I want really to say about (10) it is that it is, if one looks at the speech it is not a speech which is calling for violence or anything. It is just talking about a man who had gone to Robben Island, who had died as a result of an incident.

ASSESSOR (MR KRUGEL): I think it was taken up. I do not know with which of the two but it was one of them, this particular passage.

MR CHASKALSON: This particular passage. Well then we need to look again. We could not find it when we looked.

ASSESSOR (MR KRUGEL): I did not mark it very well I must (20) admit.

MR CHASKALSON: It may have been. We tried to find it and we did not find it but I am not saying we are right. But the state does not give us references to anything in their argument so we have to start from scratch looking for it ourselves. We have our system and sometimes it works and sometimes it does not. But without knowing what the evidence may be and if the evidence casts a different light on it if I find it I may have to correct what I say but it seems in the context of the passage cited and the speech as a whole that this is merely (30)

a fairly straightforward funeral speech saying that whatever the faults of the person may have been he was a brave person, he had gone to jail and he had come out of jail and he was a freedom fighter in his own right. But that does not make him a person who has turned to violence, it does not make him a person who has emerged with the desire to achieve freedom or to fight for freedom by violent methods. So it is not clear to me, it is not clear to me how this advances the state case. Now the next part of the state's argument is a restatement of that same proposition. Put slightly differently but it is (10) really the same argument which we keep coming back to. This time it was introduced under the rubric:

"Die staat sal nie kapituleer."

And again the submission is made that the UDF leadership accepted that the government would not give in to its demands. There is a reference to the national convention conditions, to the fact that the UDF, with this knowledge engaged in planning and organisation to involve masses in direct action against the state and then there is the statement that the evidence was not rebutted by the defence. Now it then proceeds in (20) 8.1 to say:

"Dit is gemene saak dat UDF se deklarasie die basis vorm vir hulle bestaan, beplanning en organisering."

So that seems to be accepted by the state, that the declaration is the basis of the actions of the UDF and its planning and organisation. And then it goes on to say that:

"As basiese uitgangspunt bepaal die deklarasie dat UDF ten volle op hoogte is daarmee dat die regering nie bereid is om gehoor te gee aan UDF se eise nie en daarvolgens onderneem die UDF om alle toekomstige massa (30) aksie/....

"aksie te beplan en uit te voer vir verkryging van hulle vryheid."

Now that is simply a misunderstanding of the, what is said in the declaration and of the evidence which is being, and a failure to have regard to the evidence which has been given about it. It seems to perceive, though we are not drawn specifically to it but the declaration as set out at pages 4 and 5, the state apparently relies on everything that is said within it for this conclusion but the passage which seems to be relied upon seems to be the part after reciting the (10) impact of apartheid on page 5 where it is said:

"We know that apartheid will continue, that white domination and exploitation will continue, that forced removals of group areas and bantustans will continue."

And then they, and then it carries on:

"We know that there will be no end to an unequal distribution of the land wealth."

Etcetera. And then it says:

"Mindful of the fact that the new constitutional proposals and Koornhof laws will further entrench apartheid(20) and white domination we commit ourselves to uniting our people and then to struggle against it."

Now what was said at the launch, what the evidence makes clear is that the new constitution and the Koornhof bills were perceived as measures which would entrench apartheid and therefore what is being said is that under the new dispensation apartheid will continue, it will not change and therefore that is why we will struggle against the new dispensation. Now that much of course was said by lots of people at the launch and Mr Molefe initially, when he gave evidence, made it (30)

very/....

very clear that that was his perception of the new constitution and I will after lunch give you some references to the evidence which shows that to be so. But it was made clear in the evidence that this related to the situation under the new constitution and it was not the perception of the people associated with the UDF that the government could not be persuaded to change their position, and indeed quite a good deal of evidence was directed precisely to establish that the UDF believed that the political mobilisation and pressures to which the government would be subjected through non-violent (10) means could result in changes, important changes, in government policy which would lead ultimately to the abandonment of apartheid. And I will show your lordship a little later what that evidence is but I would like first of all to go through the other passages which are relied upon before I turn to that. In paragraph 8.2 we have a passage which we have already had before. It is an extract from the speech of Francis Baard. That, the same point is made in paragraph 4.3 and I dealt with it. It is simply political rhetoric and it does not in our submission advance the state case. In 8.3 we have the (20) reference to the National Convention. I have dealt with that already and I do not want to go over the ground that I have already covered. And then in 8.4 there is a reference to the, an extract from EXHIBIT W.13. Now that, EXHIBIT W.13 purports to be an AZASO national newsletter. It was found with one D. Sesing in Tumahole. We do not find any allegation made concerning D. Sesing, nor any admission made concerning D. Sesing. It that be right then the document is not admissible under the common law and it also would not meet the requirements of section 69(4). But if one turns to the document (30) itself/....

itself it needs to be put in a context. First of all, and possibly most importantly, it seems as if the document can be dated as being October 1983 because that is the date which I think it claims to be. Now if one then goes back to October 1983 it is talking about the fact that the UDF can expect repression to go hand in hand with reform and that both the UDF and AZASO are going to have to come to grips with this. Now it is at the top of page 41 of the "Betoog". That does not seem to be a statement which, it does not seem to be a statement which advances the state case at all. It is merely a (10) statement that after five months of activities - and your lordship knows that during those five months there is no suggestion at all of any violent activities - that after five months of activities the UDF and AZASO must expect, there are already signs of state harrassment and they must expect it will continue. So it does not, even if it were admissible it does not seem to take the state's case any further. Now then the next passage is in paragraph 8.5. Now that is put forward as a position of the NIC. The document I think was found with Ella Ramgoben. It, we can find no allegation or admission (20) concerning Ella Ramgoben. If that is so then the document would not be admissible either under common law or section 69(4). If one goes to the document itself and contextualises the passage relied upon in paragraph 4.1 and 4.3, it is under the heading "Why we reject the constitutional proposals" and what it comes down to is no more than a statement that under the constitutional proposals the foundations of apartheid remain intact and non-negotiable. The Land Act, the Group Areas Act, Bantustans, Population Registration Act, Internal Security Act, the Migratory labour system, and so on. So (30) even/....

even if it were admissible as a policy statement of the NIC it seems to say nothing other than that the new constitution retains, and what it is saying is that those are, well let me not say it is saying that but the government position at the time was that there would be separate residential areas, separate political structures and the like. So it comes down to this that it is a statement as to why whoever drafted this document, and assuming it for the moment to be an NIC document drafted with the authority of the NIC and put into circulation with that authority - and we have no evidence of that at (10) all - all that is being said here is that there is no intention to create a non-racial South Africa and that apartheid structures remain in place. Merely a criticism of the new dispensation and reasons given as to why the constitution should be rejected. Now there is a reference I see to an allegation concerning E. Ramgoben. There seems to be an allegation, she seems to be alleged to, there is an allegation concerning her. at page 25.

COURT: Of what?

MR CHASKALSON: Of the further particulars, I am sorry. But (20) we cannot find any admissions ever having been made concerning Ella Ramgoben.

COURT: What is alleged there?

MR CHASKALSON: I will have to look and see.

COURT: Yes well it was found with Mrs E. Ramgoben.

MR CHASKALSON: Yes, Mrs E.

COURT: Is there no address given in the admissions?

MR CHASKALSON: Just, I will have to look, I will look at that during the lunch break. But we can find no admissions that Mrs Ramgoben was, held any position. (30)

COURT ADJOURNS FOR LUNCH.

THE COURT RESUMES AFTER LUNCH

MR CHASKALSON: Your lordship asked me about Dan Monsisi.

COURT: Yes.

MR CHASKALSON: I have information from Mr Marcus and from Mr Fick about Dan Monsisi which I should communicate to your lordship.

COURT: Do you have to look at two pieces of paper?

MR CHASKALSON: No fortunately I - well, yes, I do. They are both in the same handwriting at the moment because I have correlated the two. Apparently he is referred to in (10 AA.6 - AAS.6, I am sorry, at page 8 as having gone on to the regional executive committee of the Transvaal region in March of 1985. That is at page - did I give your lordship the page?

COURT: Page 8.

MR CHASKALSON: Page 8 and it is said to be - I think it is paragraph 32, but page 8 should be I hope enough. Then there is another reference at AAS.6 page 19, paragraph 1.13 to the fact that he was the co-ordinator of the national youth organisation and IYY committee. And in AAS.6 page (20 20 there is a reference to the fact that he was a member of the organising committee of the Votes for All Convention. I am not sure if we have had any evidence about the Votes for All Convention?

COURT: I cannot recall any. I do not think so.

MR CHASKALSON: I also do not know but I think there was some evidence about the IYY committee.

COURT: Yes, we know about..

MR CHASKALSON: My recollection is it was round about 1985 but I speak under correction as far as that is concerned. (30

The REC your lordship knows. Mr Fick also says that your lordship will find mention of Dan Monsisi at Q.3, C.118 page 2 paragraph 4.4 and W.64 page 6.

COURT: And while we are busy with questions may I put another one? When you informed the court or your co-leader that you would finish by the end of the month, which month did you have in mind?

MR CHASKALSON: I shall have to ask Mr Bizos as he communicated the information to your lordship. It will go a little quicker because a lot - there tends to be some repetition and your (10 lordship will see that it took two days to do the first twenty pages. I think the next twenty pages will be much quicker and so on. I hesitate to make any forecast. I think it is going to go quicker, significantly quicker than we have been up until now and I do not know..a lot of the problem that your lordship will see is this interlocking of trying to trace these references, the evidence, the admissions, what has been said about it and to put documents into context. Once you have done it once you do not have to do it for the same document again and quite a lot of those documents come (20 up again. Apparently there was a vote, this Votes for All Convention was under discussion in June of 1984 and it was then that some committee was appointed by the Transvaal RGC and that what your lordship will find from Q.3. I do not think anybody spoke about it in evidence; we do not know what came of that.

Now if I could just complete the references in this section before I deal with what the defence case is on this issue. At paragraph 8.6 of the "betoog" your lordship will see that there is a reference to EXHIBIT AL.30 and that (30

two passages are cited. I think that first of all your lordship needs to get the geography of AL.30, I need to make that clear to your lordship. At the top of page 42 of the "betoog" your lordship will see that one passage, that there is an end to the passage and then below that it goes "Organisation". In fact there is about one and a half pages between the cite at the top of page 42 and organisation, but what happened was they took citation from pages 8 and 10 but the citation under "Organisation" comes from page 10; the other one comes from page 8 and in fact they are dealt with in - they are (10 dealing with different subject matters. It is really a different sub-chapter as it were. Now of one takes AL.30 page 8, that is where the first cite comes from under the heading "Introduction". It seems as if it was dealing with a time prior to the formation of the UDF. I am just trying to find the..

COURT: You mean AAL?

MR CHASKALSON: It is AL - the document is AL.30.

COURT: AL.30? Yes, but that is not prior to the formation because the Million Signature..Oh yes, it may well be. (20

MR CHASKALSON: Yes, it is in the history I think..

COURT: For the - in the "Introduction" for the declaration?

MR CHASKALSON: Yes, I actually was working off a different document which I had highlighted and I cannot find it now.

ASSESSOR: What we should have is the closing of inverted commas at the end of the first citing at page 42 and then new inverted commas before "Organisation".

MR CHASKALSON: Yes, that is separate. There is a page in between the "Introduction" and the "Organisation". I think if one goes back to that section which says "Introduction" (30

and / ..

and look at it in its context..(hesitates) I seem to have lost the page reference to this, the passage where it came in because..there is a reference to - I think I have got the wrong page reference here, I am sorry.

ASSESSOR: Which page are you looking for?

MR CHASKALSON: I have the wrong reference, sorry m'lord. I was look at the wrong page of the "betoog", at the wrong thing and I..now I have it. It is under "Organisation" at page 10 and we have seen the people rise is at page 8, but in the context that is.. (10

COURT: Where at page 8?

MR CHASKALSON: Well, that is what I am trying to find. I was looking at the wrong thing, somewhere..

ASSESSOR: It is in the middle of page 8, the first, second, third, fourth paragraph from the top.

COURT: Dead centre.

ASSESSOR: Dead centre, yes.

MR CHASKALSON: Yes, so it is really in the context of the period - immediately before that there was 1976 to 1980 and we have seen the people rising against housing and (20 transport problems and we witnessed South Africa being isolated from the world. All these factors led basically to the new constitution, is what is being said in paragraph 4, because there was a crisis and it came up with a new deal. So if one takes that passage without regard to the context it is not referring as it were to an uprising during the period of the UDF activities or consequent upon anything that the UDF had done. It is really dealing historically with the situation prior to the introduction of the new dispensation of the constitution and the Koornhof bills and if one then(30 goes / ..

goes to page 10, so after - at the top of page 42 there is really that gap of a page and a bit and it is then that in the context of what the United Democratic Front is and its formation, and an entirely new theme gets taken up at page 9. The idea of the UDF was first introduced by Dr Allan Boesak and it is then that in the context of the United Democratic - what the United Democratic Front is and its formation and an entirely new theme gets taken up at page 9: The idea of the United Democratic Front or UDF was first introduced by Dr Allan Boesak and then it talks about its short but (10 eventful history so it is dealing with the early part of the activities of the UDF through till - the latest date there seems to be 30 October and showing how at that stage the UDF won considerable support and then it says: Organisation, the only weapon is organisation. Reading that without regard to its context could create a totally erroneous impression.

Now what I now want to do is to go back to deal generally with the submission that the UDF, the proposition that the UDF knew that the government would not change its position (20 and I will give your lordship references to the record which should be read in this context. Some of them may already have been cited to your lordship for a different proposition but can I tell your lordship first of all the references there. Volume 250 page 13 345 line 2 to 16. That was where Mr Molefe made it clear that the UDF saw the white community as important and believed that nothing would take place unless the white people were convinced that there was a reason for change. And again in the same volume at page 13 347 line 27 to 13 348 line 8. He makes it clear that it was an (30 important / ..

important part of the UDF work to seek to influence the white community to change their attitude towards the policies of apartheid and towards the black community and it drew attention to the fact that meetings were held in white areas; that articles were written in media which would be accessible to the white community; that Mr Lekota had addressed, had spoken at the Rand Afrikaans University; that the Million Signature Campaign was going to be directed to the white community as well as to the black community, and other means of seeking to influence the government. Your lordship (10 will find that at volume 250 page 13 345 line 17 to 13 350 line 19. Your lordship will see too at volume 250 at page 13 357 line 16 to 29 and EXHIBIT DA.15, a specific statement to the effect that the UDF believed that they were dealing with a rational government that was capable of assessing the feelings of the people and responding correctly. And Mr Lekota's evidence, volume 283 page 15 505 lines 18 to 24. Mr Molefe also indicated that this was a view shared by his colleagues within the UDF. Your lordship will find that at volume 250 page 13 361 lines 21 to 28, and in volume 250 (20 at page 13 357 line 16 to 13 361 line 28 attention was drawn to what were perceived to be responses by the government to community protests. Reference is made to the stopping of forced removals at Euhudi, Daggaskraal, Driefontein and KwaNgema; to the apparent relaxation of the Group Areas Act following activities of Actstop; to the reprieve of Alexandra township consequent upon activities of Save Alexandra Committee; to the recognition of black trade unions and to the non-implementation of the Orderly Movement and Settlement of Black Persons Bill, and in fact the UDF saw the (30

withdrawal / ..

withdrawal of the Orderly Movement and Settlement of Black Persons Bill as being a direct result of their campaigning and there was a press statement about that and there was evidence about that. Mr Lekota's evidence at volume 283 page 15 506 lines 2 to 15 and the press statement is in EXHIBIT DA 64 where it was said that the UDF was formed partly to oppose this and the other two Koornhof bills and that the government had retreated on the bills because of the campaign run by the UDF and other progressive organisations. There was also a reference in Mr Molefe's evidence to (10 EXHIBIT W.55 which is a publication to which I have already referred and I am not going to read it to your lordship again other than to draw your lordship's attention to the fact that this is the publication which talks about the fact that non-violent - that extra-parliamentary activities does not connote violence and that in fact non-violent methods are effective and that the most - and it records that the extra-parliamentary organisations are an effective opposition to the government.

Then in regard to the suggestion that the government (20 would not accede to the demands there was evidence from Mr Molefe at volume 260, page 13 957 lines 16 to 30 where he said that there was no reason to believe that the government would not listen to the voice of the people if they had built a strong and effective voice and makes it clear in that passage that they thought that the use of non-violent methods and circumstances in which other people have opted for violent methods could be effective. He was cross-examined about that. Your lordship would find that at volume 265 page 14 318 line 13 to 14 319 line 11, where he again stressed that the UDF (30

sought / ..

sought to influence change and compared its activities with the advances which trade unions had made over the years, and how through various pressures that the trade unions had been recognised and some changes had been made for instance in policies relating to the admission of black persons to white universities. Matters such as that. And he also dealt specifically at volume 216 page 14 404 line 25 to 14 405 line 9 when he was cross-examination. He dealt with the fact that the UDF thought that a national convention was feasible and that the government would respond to it. There are also passages at volume 274 page 14 919 line 16 to 14 920 line 9 (10) and at volume 257 page 13 827 line 26 to 13 828 line 3.

Now the next section of the "betoog" is at page 42, and that is a section in which the state develops an argument concerning the role of the UDF in co-ordinating, planning and advancing the freedom struggle. Now I will give your lordship the reference to the evidence shortly but one thing I do want to make clear is that the UDF did see it self as having a co-ordinating role to play and that is not disputed. The precise nature of the co-ordinating role and how (20) effective it was and what it achieved is a different matter. Now as far as the documents were concerned, most of them we have seen before. There is in paragraph 9.1 the reference to EXHIBIT C.1, J.1 and J.3. There is EXHIBIT C.138 and there is a reference to a number of other documents which are cited in support of the co-ordinating role. I think it would be as well to give your lordship references to the evidence dealing with this.

COURT: Well, if it is common cause why give me the evidence?

MR CHASKALSON: Because the question is, it is cited in (30

a somewhat different context. It is common cause that there were co-ordinating attempts and that I do not dispute and I should - the passages I will give your lordship will deal with that, but the suggestion that the UDF was as it were in direct control of events which were taking place around the country directing everything that happened and directing activities of affiliates, that is simply not the case and I think it is relevant for your lordship to have references to the evidence which deal with that. Your lordship will find first of all the way that the UDF functions and Mr Molefe's (10 evidence volume 257 page 13 818 lines 1 to 10 and again on that page at 13 818 lines 24 to 27. He made it clear and here your lordship should see volume 251 page 13 452 lines 1 to 15, that the national office of the UDF did not deal directly with the affiliates and it would only be an exceptional circumstance which would warrant that type of contact. Its contact was largely with regions and when there were crucial decisions which had to be taken they would send off requests, recommendations or proposals to the regions and the matters would then be discussed locally through that process. He (20 also drew attention to the autonomy which is mentioned in volume 256 page 13 718 line 28 to 13 719 line 5 and there is a passage in the evidence of Mr Chikane in volume 305 at page 17 447 line 16 to 18.

The documents themselves show the problems of attempting to achieve co-ordination. Your lordship will realise that the infrastructure of the UDF was really quite slight. I mean the national office consisted of two full-time officials who were totally overextended and for material parts of the period under consideration were out of action, between (30

August / ..

August of 1984 and April of 1985 the national secretary and the publicity secretary spent a long period of time in detention and the rest of the time they were not able to devote their full time to the attention of the affairs of the United Democratic Front and they spent some part of that time in hiding. Your lordship will also realise that over this period from August through to April the top people in the United Democratic Front had been arrested, so it was indeed the August to April period - August 1984 to April 1985 period was a period when the senior members of the UDF were out (10 action and when their office was completely disrupted. Even before that we will find reference in the minutes to the fact that there was minimal co-ordination. For instance in the officers reports to the national executive committee meeting of June 1984 which is EXHIBIT G.2 there is a statement in paragraph 3.1 that minimal co-ordination between affiliates and the REC and amongst affiliates themselves and all this is reflected by performance in the MSC. There is a reference to the administration of the region being disturbing, to the lapse of contact between areas which (20 was observable and to the fact that relations with the union were periodically good and largely due to lack of participation by affiliates often poor. Mr Chikane gave evidence to the effect that communication between the Transvaal office and its affiliates was not good; that they have not worked well together on the Million Signature Campaign and that the Transvaal office really did not function properly and as he put it, was just not working. Now you will find that in Mr Chikane's evidence at volume 300, page 17 030 line 29 to 17 034 line 24. I can also refer your lordship to (30

volume 306 page 17 537 line 1 to 17 540 line 3. Your lordship will see in EXHIBIT P.1 of the Transvaal general council meeting of April 1984 reference to the fact that affiliates were not reporting properly. And there is some evidence about that in volume 304, page 17 335 lines 4 to 21. The same appeared in the report to the general council meeting on 10 December 1983 in EXHIBIT N.3 which is mentioned in the record at volume 304 page 17 337 lines 7 to 23 and where it appeared that most affiliates had once again failed to submit their reports on time. It was put to Mr Chikane that the (10 Transvaal - I assume it was about the Transvaal - that the UDF had to control the mobilisation and politicisation of the affiliates in the places mentioned in the indictment where unrest have occurred and his answer at volume 306 page 17 543 line 22 to 17 544 line 2. He rejected that, pointing to the fact that the affiliates retained their autonomy. It was put to him that the co-ordination by the national executive committee of the UDF and the general councils of the regions had achieved that and he said if councils - the passage there is immediately following what I have given to your lordship. It is at volume 306 page 17 544 lines 3 to 26. He said:

"Well, refer me to a single document which says that those areas were co-ordinated by the UDF."

and he said that they did not - he simply rejected that proposition. Your lordship will find too in the secretarial report EXHIBIT C.102 the difficulty which had been experienced, that is in paragraph 4.1 and 4.2, the difficulty which had been experienced in taking decisions and the difficulty of co-ordinating work. Under "Co-ordination" it says: (30

"One / ..

"One of the important aspects of the Front is co-ordination. With our present structure and the rate at which the Front has expanded and continued to expand we have not been co-ordinating effectively, especially where the state attacks us as it is doing at present." and then there is a suggestion that there should be a restructuring to solve some of these problems which had been experienced.

Now I have already referred your lordship on the question of the autonomy of the affiliates, to passages in the (10 record and to documents and I do not want to repeat that, but what is relevant is this and that is the state continually equates affiliates with the UDF and this proposition was always rejected by the witnesses to whom it was put. I will give your lordship an example. At volume 269 page 14 537 line 24 to 14 538 line 2.

ASSESSOR: Is that again no.19 or no.20?

MR CHASKALSON: I beg your lordship's pardon?

ASSESSOR: No.19 or no.20?

MR CHASKALSON: I think that is accused no.19 but I will (20 just check that. Accused no.19 I am told. And again as far as the documents which came from the affiliates were concerned it was stressed by Mr Lekota in volume 299 page 16 951 lines 13 to 25 that the UDF had no control over documents issued by affiliates. And as far as the UDF logo is concerned, he dealt with that. There is evidence about that in volume 305 page 17 518 line 19 to 17 519 line 12. That would be from the evidence of Mr Chikane.

Then the next section of the state's argument is at page 46 of the betoog. This is a reference to the (30 consequences/..

consequences as the state sees it of the actions of the United Democratic Front. The argument is that the defence talked about non-violent action but that the state has proved that violence occurred and in this section a great portion of the evidence consists of publications from community newspapers. Now the argument is dealt with in paragraph 10 and it is put forward in support of the proposition that the document confirm that the united action of the masses which they had in mind, which the UDF had in mind, was violent action. The first reference is to paragraph 10.1 to the secretarial (10 report from a passage which talks about the resignation of the - nationwide resignation of black local authorities and to the statement that "Our task is to extend our struggle between these apartheid structures and set up our alternative structures which will force the authorities to - I think it should be heed - the popular demands of the people. We must set up projects to meet some of the practical needs of our people without compromising our principles, for instance advice offices, mobile clinics etc could be set up." Now again there is nothing there to suggest that the UDF was (20 planning to set up structures through the use of violence or to use violence to bring the authorities into communication with them. We know when we see in the minutes, I have referred your lordship to this before and I might collect some of these references and give it to your lordship later about the concept of engaging the state, making the state react to them, making the state deal with them; making them the channel of communication with the state. They wanted to get that form of recognition and the sort of projects which they talk about, advice offices, mobile clinics and so on (30

are certainly not revolutionary structures.

Then there is a reference in paragraph 10.2 to EXHIBIT Z.12 which is work in progress. That is - work in progress is not an affiliate. We have not had much evidence about it other than the document itself. This document is said to have been found with E Mohine of Soweto. We cannot find any admission concerning E Mohine and we are not aware of that name in the particulars. The next paragraph 10.3, we have already dealt with this. This is the paper by Nqenqe Stofile. We have had a lot of argument on that and I do not (10 want to repeat what I have already said. In 10.4, there is the reference to EXHIBIT C.8; we have that one before. The passage cited is in relation to five months of eventful existence. The UDF has already established for itself a proud history of glorious victories against civic community councils and to an extent the new constitution. That is the first five months of activity, it is 1983. It was a time when violence, there was no violence m'lord, so one sees again the political rhetoric of "glorious victories against civic and community councils" which implies the boycott of (20 the vote.

Then the next one is in 10.5, it is EXHIBIT c.138. It is a reference to the Western Cape annual general meeting, secretarial report. There is a reference to the passage cited at page 7. It talks about the people not being able to wait until we believe we have adequately prepared the ground, that the anger exploding around the country shows testimony that the people is ready for mass action and we must be committed to taking this call. Two things emerge from that. The first is that the writer of this report (30 believes/..

believes that the anger to which he refers occurred not as a result of the UDF and the UDF was lagging behind what was happening in the community. It is also important in the context of the April meeting, the April 1985 meeting where this is referred to and I referred your lordship earlier today to the evidence concerning that, that it was because of the undisciplined action and the dangers consequent upon that that the UDF chose at its April meeting to stress the need for discipline, to stress the need for non-violent direct action and not random violence and to try to lead the (10 community in a disciplined rather than in an undisciplined fashion, so this really ties in with that. Next, there is a reference in paragraph 10.6 to a Speak of March 1985. It is at a time - it was found m'lord, this document was found with Amanda Kwadi of Soweto and it would meet the requirements of section 69(4); it would not be admissible under the common law and Speak is not an affiliate in March 1985. In EXHIBIT C.130 - 10.7 there is a reference again to the evidence, to the letter, the Nkhondo letter. I have addressed argument to your lordship on that already and there is no (20 need to repeat what I have said.

In paragraph 10.9 and 10.10 through to 10.13, the beginning of 10.13 there is reference to education. Now we intend to address your lordship separately on this issue when we address an argument to your lordship on the evidence which has been given, including Dr Hartshorne's evidence and we will look at the nature of the evidence in its totality, so I will deal with these particular documents then. I should tell your lordship when some of them were found as far as the question- would your lordship like me to deal with (30

that / ..

that when I pick up the documents in the education section?

COURT: Yes, please.

MR CHASKALSON: Then I will move forward, m'lord. Generally as far as the newspapers are concerned we make the submission to your lordship that they cannot be construed as declaring the policy of the United Democratic Front and that the purpose for which the state relies upon them is incorrect.

Then if we move on to the - there seems to be a whole lot of different themes which are brought together round about paragraph 10.18 at page 61 of the "betoog". Now as (10 far as people's power, people's government, the use of the word "people" is concerned which is referred to in paragraph 10.18, I think I have already referred your lordship to a number of passages in the evidence which deal with that and I do not want to repeat that. When I get the transcript I will check it and if there is anything I need to add to it, I will simply so by referring to the page of the transcript of the argument and any additional references which may be needed. Then we have in paragraph 10.18.2 a reference in the argument for the state to the document C.106. That (20 document is put forward as the key note address of Kernick and Slovo at the April 1965 meeting. Now in fact that simply ignores the evidence which has been given. There is nothing to show that these are the notes of Kernick and Slovo. There seem to be a number of different pieces of paper which have been put together, they are different handwritings and the pages do not always follow one on top of the other. There is simply no evidence that this is what Kernick and Slovo - that this is an address by Kernick and Slovo and the attempts to establish this in cross-examination met with denials. (30

nobody / ..

Nobody was able to - nobody confirmed that this was so, so that proposition ..

COURT: What was it? What was C.106?

MR CHASKALSON: It was a series of - it may have been drafts..

COURT: What does the evidence say was 106?

MR CHASKALSON: Well, the evidence says that they had not seen it before. Your lordship will see that it is a document with typing, with handwriting and with different handwriting. It is a composite document. The reason no doubt why the state attributes this to Kernick and Slovo is because it (10 says: "Comrades, I greet you on the occasion of the first NGC since the launching of the UDF in August 1983." Now what it seems to be is no more than some pieces of paper which may or may not have been early drafts of what somebody and we do not know who, was going to say and we do not know - we do not even know that this was Kernick and Slovo's notes. There is some evidence that he spoke on the Saturday morning but the conference opened on the Friday and we do not know when these notes were prepared, who prepared them or what they are. And your lordship will see there are parts of the document which just begin in mid-sentence, so they really are nothing - your lordship can draw no inference from those notes other than the fact that they record writings, possibly thoughts of different people possibly in preparation for what was to be said at the NGC. We do not even know which one because we do not know - it just simply has not been investigated. We do not know whether what was written was actually carried out, was implemented; we do not know what was said.

COURT: Were accused no.19 and 20 not at the opening and did they not listen to the key note address? (30

MR CHASKALSON: they gave evidence about it. Mr Lekota said he was actually the first person to speak, I think it was actually on the Friday.

COURT: Did anybody hear the key note address?

MR CHASKALSON: I will have to check the record about that.

COURT: Or were they just absent when it was delivered?

MR CHASKALSON: I will have to check the record on that before I answer that question. I will get your lordship - what I will do is I will get together all the references about that. But my recollection, if your lordship asks me (10 is that they did not know these notes and they were not able to say that that was - that anything such as that was said.

COURT: Yes, I remember the evidence. The one was not there and the other one was in and out. Is it not strange for a publicity secretary and the secretary of an organisation not to listen to the key note address?

MR CHASKALSON: Well, I would not - why should it be strange m'lord? Why should it be strange if you have got a lot of things to do and if you are in fact keeping out of the way (20 of the police? Why should it be strange to come in and out of the gathering at that time? Why must they be there and where is the evidence that they were there? There just simply is not any evidence that they were there and I think it is not at all uncommon for people who have got a lot of things to do and a lot to attend to - they after all are the only two paid officials of the whole organisation. They are the two paid officials whose job it is to deal with all sorts of practical arrangements which have to be made. I would not have thought that there was any particular reason(30

for / ..

for them to be present when a particular speech was being delivered and it still does not prove anything. I mean for your lordship to hold that both people were there, there should be some evidence that they were there to begin with. Nobody has given that evidence. There is no evidence of any state witness to say that they were there, there is no document to suggest they were there so one does not even begin to start with any evidence to show that they were present on an occasion when a speech - when what is said to be a speech was made. And without that evidence one (10 simply cannot infer that: well, I think they ought to be there, therefore they were there, therefore they heard this, therefore this is what was said. I mean, one cannot reason that way, m'lord.

Now we are going to deal, there is a passage at 10.18.2.3 which deals with the stay-away and I am going to deal with that separately in a different section of the argument where I will refer your lordship to the evidence and to the documents concerning it.

The passages relating to the COSAS campaigns which (20 are dealt with at page 64 we will deal with when we deal with the whole question of education. Then there are documents continuing with the education through to page 69 and then there are a number of documents which I should draw to your lordship's attention and indicate to your lordship what our argument is. If your lordship will go to page 77, it is a document which the state places great reliance upon. It is the key note address of Mr Sisulu at a conference of the national education crisis committee. As far as that is concerned, Mr Sisulu is not alleged to be a co-conspirator (30

and / ..

and there are no admissions concerning Mr Sisulu at all. The national education crisis committee is not alleged to be an affiliate, so nothing in that document is admissible against the accused for any purposes in this trial. Also it took place in 1986 at a time outside the period of the indictment and when the accused had all been in jail for some time. So the submission we make to your lordship is that it is not admissible either under common law or under the statute and that it cannot be used by the state.

Now there are two other documents that I want to deal (10 with. The first one is at page 71..

COURT: 71?

MR CHASKALSON: Page 71 of the "betoog". It is CA.1. CA.28 I am sorry, m'lord, I thought it was - CA.38. This document was introduced at a time when the defence witness Mr Skweyiya was giving evidence. He indicated that parts of what appeared - I am dealing now with the passage which is cited at page 72 of the betoog - parts of what was said there he said he did not agree with. He says that the person who wrote the article did not live in Lingahlele. His evidence is at (20 volume 412 page 24 037 line 4 to 24 038 line 10. He also dealt with the question of the type of problem taken up by street committees and indicated that they were concerned with matters such as problems of the bucket system and the damming up of water after rain. He dealt with that in volume 412 page 24 038 lines 18 and so on. An objection was taken to the production of the document and your lordship ruled that it was admissible in terms of section 69 and it was on that basis that the document came in. Now we make the submission to your lordship .. (30

COURT / ..

COURT: What is the reference to the ruling?

MR CHASKALSON: I think that - my note of it is that it should be at volume 425 - oh, sorry, then the reference should be wrong. I have a reference to..we may have the wrong reference. I can give your lordship the passage but it seems to be wrong. I will find it and I will let your lordship know. The number seems wrong to me from my note of reference. The submission that we make to your lordship is first of all that the document is not admissible at common law. Secondly, that as far as section 69 is concerned it was a document which (10 was produced after the accused are in custody, after this case against them had closed and it really cannot amount to more than that some time in 1986 an article was written by a person who according to Mr Skweyiya clearly did not live in the area and did not know everything that had happened there. Also there is - your lordship will see in the record at volume 412 page 24 040 line 25 to 24 041 line 5 that there was a discussion and that the document itself records that the views expressed in these papers are not the official views of the UDF or any section of the Front. They are designed (20 to encourage discussion debate and education amongst comrades.

I have run ahead of myself, m'lord. I have reached the end of that section of the "betoog" and Mr Bizos was going to continue. I thought that I would be a day and..

COURT: Well, what other subjects are you going to deal with personally?

MR CHASKALSON: I am going to deal, I will tell you what I am going to deal with m'lord, but I do not have my notes with me. I am going to deal with the state argument in regard to the campaigns; I am going to be looking at (30 education/..

education and certain of the other issues there. I will also be dealing with the legal issues which are applicable to the charges and I shall be dealing with the individual positions of certain of the accused.

COURT: Which of these subjects can you tackle now?

MR CHASKALSON: I cannot take on any of them now. I actually do not have any notes with me and have actually reached the end of what I have. Mr Bizos should have been here to continue but I told him I thought I would be the day and I must take responsibility for that. But I am not able to (10 continue. I neither have notes nor are they in a form in which I am going to present them to your lordship.

COURT: I would like to be addressed on the question whether I am entitled to limit your argument because it has been going on now for virtually a month and at some stage we must reach an end.

MR CHASKALSON: Yes well, if your lordship would tell me - to limit it to what?

COURT: Well, how much time do you need? I asked you this morning and you did not want to tell me.

MR CHASKALSON: I have difficulty because I am not sure how long these different sections.. What has been happening is we have been working in isolation to a large extent from each other. We do not have time for discussion with each other. I am not sure exactly how long Mr Bizos needs to finish what he has to do and I have not finished working up all the sections of the argument either, that I have to deal with. It takes a great deal of time to do what we have done. but if your lordship would indicate to me how your lordship feels that the argument could be limited or should be limited

perhaps / ..

perhaps I can respond to your lordship.

COURT: I am not going to prescribe for you or proscribe how you should argue your case, Mr Chaskalson.

MR CHASKALSON: But your lordship put a proposition to me as to whether you should limit the argument.

COURT: Yes, can I limit the argument in law? That is what I am asking you, not whether I can say well you end tomorrow morning; that of course I can do.

MR CHASKALSON: I am still not sure what your lordship is saying to me. Is your lordship saying to me: can you say (10 to me you can have two days or three days or five days or whatever it is to finish your argument?

COURT: Yes, yes. Yes well we will adjourn Mr Chaskalson. I think we are wasting our time.

THE COURT ADJOURNS UNTIL 30 AUGUST 1988

DELMAS TREASON TRIAL 1985-1989

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