

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA
(TRANSVAALSE PROVINSIALE AFDELING)

A

SAAKNOMMER: CC 482/85

PRETORIA

1988-09-05

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 455

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THE COURT RESUMES AFTER LUNCH

MR CHASKALSON: May it please your lordship. I understand that the document has been made available to your lordship's registrar. I believe copies are available now.

COURT: Thank you.

MR CHASKALSON: I think it demonstrates something which we put to your lordship earlier and that is the danger of dealing with a part of a document. It actually demonstrates the part of the argument which we addressed to your lordship when we were dealing with admissibility of documents, that it (10 must be a complete document, because we have just seen that a partial document could be totally misleading and it is only now that we have the full document that it in fact does come into a different context particularly the statement or the purpose for which the document is issued. I have already dealt with our submissions in regard to the CA.46 and I do not want to say anything more other than again to draw attention to the fact that it is well outside the period of the indictment and deals with matters which have not been investigated, apart from the question of admissibility because we make the sub-(20 mission that it is not admissible at all. But even if it were admissible..

COURT: But we have dealt with that.

MR CHASKALSON: Yes, I have dealt with it on the grounds of admissibility. All I am saying is that even if it were admissible it is well outside the period of the indictment and deals with matters which have not been investigated and about which we really know nothing in this case. That will complete our submissions to your lordship in regard to the state argument on the freedom struggle and I want now to turn to (30
deal / ..

deal with the submissions which we are going to make to your lordship in regard to what the state refers to as the campaigns of the UDF.

In the indictment the state devote some sixty or more pages to what it refers to as campaigns and what we intend to do is make some general submissions to your lordship in regard to the approach to this part of the state's case and we are then going to ask your lordship to look at the evidence concerned with one of the campaigns in some detail. We won't have time for more. So what we will do is make these general submissions to your lordship and then we will deal with education which seems to us to be a fairly important campaign. As far as the general position is concerned, the state makes the allegation that these campaigns as it describes them.. (10

COURT: At what page is it?

MR CHASKALSON: Well, it is covered from page 216 to 277 of the indictment, but each campaign is introduced in a similar fashion. Each campaign is said to have been introduced as being integrally connected and as part of the violent conspiracy to overthrow the state and so they are charged as it were as overt acts, undertaken in terms of the treasonable conspiracy with the object of making the country ungovernable and leading to a violent revolution. Now that prefaces each one of the allegations concerning the campaign and they are also characterised by the state as being ANC - sometimes it says ANC, SACP but let me just call them ANC campaigns bearing in mind that the state make a broader allegation. The state did tell your lordship and it is a passage I may have mentioned previously, but it is in the record at volume C page 143, line 21 to page 144 line 3. It did tell your lordship/.. (30

lordship what it intended to do was to try and link each one of these campaigns to an ANC decision and to show that in some form of chronological sequence that a decision was made that the UDF then implemented the campaign and as it were carried out instructions or decisions of the ANC. That it said it was going to do. Well, it did not really make any attempt to do that. What it did was to produce a large number of Seshabas and to pick out of those Seshabas articles or statements which indicated that the ANC was taking up or was opposed to matters which the UDF was opposed to. Now we (10 have made submissions to your lordship in regard to the admissibility of these Seshabas. If indeed they are not admissible then there is really no evidence at all to support this part of the state's case. If they are admissible then a different set of criteria arise. I think perhaps first and fundamentally the ANC publications relied upon by the state start in 1982 and what we attempted to do through our evidence was to show that prior to 1982 the issues, the central issues with which the UDF expressed concern such as housing, group areas, removals, education and the like, those were all (20 issues which were of sufficiently long standing to be issues with which the black community itself was concerned and involved and have been struggling against. The state seems to suggest that we call witnesses as experts on the UDF. We did not call witnesses as experts on UDF; that was not the purpose for which the evidence was called. They were called to give evidence to show that these were issues within the black community; they were issues of long standing and they were issues which any anti-apartheid grouping one would expect would be concerned with. And that evidence has not really (30

been / ..

been challenged. Indeed the state seems to accept at the end of its argument that these were issues, that these were grievances and that they in effect did predate the UDF and the dates with which it has been concerned in this indictment. Now insofar as the state seeks to derive any linkage from the publications your lordship will bear in mind what we have already argued to your lordship in that regard, that these publications are not generally available in South Africa, that we have had no evidence at all of the distribution of any one of them in South Africa. We do not know (10 whether any one of those A-exhibits was distributed in South Africa, that there has been direct evidence from the accused and other persons who have given evidence, who have been connected with the United Democratic Front, that the ANC's attitude to these issues was never a factor under consideration at UDF meetings. That the - it was never discussed that they were not aware of these documents, that they were not available to them and they did not know about them.

Now it is not disputed that within those pages of the indictment, I think there are seventeen which I would like (20 to call issues for the moment which are identified in that part of the indictment. There is no doubt, we do not dispute that in respect of some of them nationally co-ordinated campaigns were taken up. In respect of others there was really nothing more than either a passing of a resolution or an expression of concern. So we have to look separately at them. Some as I say go no further than the resolution really but the evidence and this is the case that we put to your lordship, is that the evidence shows that the issues were pursued independently by the UDF and not at the instance (30

of / ..

of the ANC. That the issues constituted matters of genuine concern to the UDF and its affiliates. That they were in the main connected with grievances within the black communities of long standing, that they were concerned with issues which in the main predated the UDF - perhaps I should not say in the main because the opposition to the constitution and the black local authorities so it could predate the UDF in some sense was of more recent origin than the others. Most of the others have been issues of many years. The evidence also shows that many of these issues had been pursued by affiliates before they joined the UDF. In other words that they were existing affiliates who have taken up such matters and as it were when they affiliated to the UDF they continued to do what they had been doing before affiliation so they were not initiated by the UDF, they were not things which the UDF set in train. They were things which were observed into the Front when the people affiliated. Also that they were concerned with the issues which other organisations and other political tendencies which were not part of the UDF have themselves taken up before and during the time of the UDF, (20 including also organisations which were ideologically opposed to the UDF. And finally the general submission is that the state, the UDF did not have a policy, as a matter of policy to use these issues to promote violence or to pursue them through violence. There has really been no evidence at all to show that that is what the UDF did or promoted or encouraged. Now the state in its cross-examination of the UDF witnesses did not seem to suggest that these issues have in fact been taken up on instructions of the ANC. Rather what it did was a tentative point to the similarity between the issues (30

taken / ..

taken up by the UDF and certain issues taken up by the ANC. So the sort of cross-examination you will see would be that the UDF was concerned with education and the person would say yes, the accused would say yes. And then the next question would be well, the ANC is concerned with education and the answer would be well I do not know exactly what the ANC's concerns were but if you tell me I accept it. Different varieties but it was basically - that was the sort of cross-examination which was directed to the accused.

Now a passage which was put to Mr Molefe at volume (10 267, page 14 468 line 29 to 14 469 line 14, it was put to him that the UDF identified and accepted a lot of issues around which campaigns could be run in order to mobilise and politicise the masses and Mr Molefe's answer was: it is true that those were identified but those were issues around which affiliates of the UDF had been organising themselves and they were simply carried into the UDF by those organisations. And it was then put to him, well the same applies to the ANC, they also identified a lot of issues around which campaigns could be run in order to organise participation in the (10 freedom struggle and his answer was: I cannot dispute that. Similarly with AZAPO, the national forum; I know of those organisations. We identified with those issues, we organised around them long before the UDF. And your lordship will remember that Mr Molefe was once a member of AZAPO. And if the issues were indeed issues relevant to the black community it is likely not only that the UDF would wish to take them up and that its affiliates who came into the UDF would be concerned with them. It is likely also that the ANC would also be concerned with him because the ANC was concerned (30 at / ..

at watching events and developments within South Africa and we have had a lot of evidence about that and I will give your lordship some of the references later. We will remind your lordship of them in this context because I think I have previously mentioned some of them.

Now we do need to distinguish between the activities of the UDF to which a lot of time was devoted and which could properly be characterised as campaigns and to issues which are really of passing concern to it. Either a passing concern in the sense that it did not have the time or the (10 inclination to do anything about it then, or that it was something which it was going to look to, to the future. And Mr Molefe makes that point in volume 260 page 13 999 line 21 and onwards. The point that he makes in that passage is that there was a difference, there were some matters which the UDF took up, which it sought to organise and to which it devoted a great deal of time and there were other matters which were simply issues which arose and which the UDF might have believed warranted some kind of attention and which might have been commented upon in speeches or in documents, (20 but did not form the subject matter of a concerted campaign. Now if we are talking in the terms of campaigns, there were really four issues to which the UDF devoted in the period of the indictment at any rate, time, energy and endeavours to co-ordinate action. They were the new constitution. The Koornhof laws if I may call them that, the coloured management committee elections and the million signature campaign and the references I think in the record which will underline that would be to Mr Molefe's evidence in volume 250, page 13 362; that page has got a little (f) attached to it (30 because / ..

because there are a lot of pages numbered 13 362, so it is 13 362(f) line 8 to 13 362(h) line 5. And then there is a passage at page 13 809 line 18 to 13 810 line 23. That is volume 257. And in volume 261 at page 14 015 line 29 to 14 017 line 24.

The other aspect of this part of the case is that though the state called five former members of the ANC, it really did not seek through them to explore these campaigns which are said to be ANC campaigns or to draw any linkage between the UDF and the ANC in regard to the campaigns. What did emerge from their evidence is the proposition that I put to your lordship earlier and that is that the ANC keeps a very close contact with developments. If it sees grass roots protests developing it will take up the issues itself. It might send in cadres to get involved in them, and it would make propaganda around those matters if it identifies them as occurring here. I do not want to repeat all those references m'lord, your lordship has them already in my argument. Now against that background I want to ask your lordship to look at one of the campaigns and here very fortunately we have been able to complete all our research in time to let your lordship have something in writing, and I would like to take your lordship through this and draw attention to the more important issues. Now we are concerned here with education and that is at page 230 of the indictment and we show your lordship that the allegations are really tied - the case is tied to general allegations. First that the UDF took up an ANC campaign against the government's black education policy with the object of organising, mobilising and so forth and secondly that the campaign was conducted through the (30
distribution/..

distribution of publications, pamphlets, placards, stickers designed to achieve particular goals which is set out. So the case that the state set out to establish was first that the UDF conducted the campaigns in pursuit of the ANC's goals and secondly, that it conducted them in a very specific manner which is by these publications and that they were designed to achieve very specific purposes. Now that is the case it set out to prove. Then the first point that we make is that really no direct oral evidence was led by the state in support of these allegations, nor was any serious attempt (10 made to justify them in the cross-examination of accused no.19, 20 and 21. My lord, the point is made in the next paragraph that these were taken up by the UDF because they were important issues within the black community. As far as black education was concerned it was an important issue within the black community and it had nothing whatsoever to do with the ANC. And we called a number of witnesses to show that there have been protest and action against the black education system long before the publications of the ANC on which the state relied. (20

And the evidence also showed that education was a long standing and legitimate grievance within the black community and it was an issue which any anti-apartheid grouping could be expected to express an opinion, pass resolutions and do something. Dr Hartshorne, that was really the purpose of Dr Hartshorne's evidence, to show your lordship the nature of this grievance, the long-standing grievance and the legitimate nature of the grievance. It was not a manufactured issue, it was something about which feelings were very deep and it was a legitimate grievance which anybody (30 concerned / ..

concerned with anti-apartheid activity would take up. Your lordship will see at the bottom of page 3, that according to this evidence, that the education policy has been used to discriminate against people on the grounds of colour alone; against the poor, the weak and the oppressed, and that it still does, and that instead of being used to throw open the doors of opportunity, it has been more concerned with protecting those with power, whether political or economic and having the benefits of education in an open and democratic society, and that education had divided the children so that (10 they are estranged from one another and live in two worlds. And it was put forward by Dr Hartshorne saying whatever excuses we make, whatever reasons we find in history and cultural difference or on scientific analysis, what has happened has been unchristian, immoral, humanly sinful and self-destructive.

And now m'lord, that is evidence supporting a long standing, legitimate grievance concerning education and it is evidence which supports the taking of action and the identification with protest against the education policy. (20 Attention was drawn in the next paragraph, at the bottom of the page, to the fragmentation of the control and process of education under 18 separate systems and the concomitant discriminatory hierarchy of financing, resources, facilities and outcome with the white system faring best and the black the worst. And if you turn to page 6, at the bottom of the page your lordship will see there another reference to the fact that these inequalities or disparities that are indicated here by the statistics are obviously indefensible. If you believe in treating children equally, giving them equal (30 opportunity/..

opportunity then one cannot defend this kind of disparity. And Dr Hartshorne pointed out that although there was an improvement between 1984 and 1986, and that was after the foundation of the UDF - the UDF was 1983, although there was an improvement over this period the disparity still remained large and he says that the real issue was the inferior quality of black education and he pointed to the fact that the people within the department themselves had not been helped by state policies and that they had been constrained and unable to do the things that they could have done if (10 resources had been made available to them.

Now another exercise that Dr Hartshorne undertook was referred to at page 10, where he was asked to compare the sentiments expressed in the UDF resolution on education, the educational clause in the Freedom Charter, the document entitled Towards an Education Charter and the report of the De Lange Committee. And he was asked to look at these documents from the point of view of an educationist, using the report of the De Lange Committee as a basis for comparison and then he put in an exhibit which showed the result and (20 what emerged was a remarkable degree of similarity and consensus on fundamental issues. Yet during the period of the indictment those differences were not addressed and remained. So what we can show your lordship from this, is that it is not a fictitious or false issue of no relevance to the community. It is about as fundamental a grievance as any group within a community could have, a grievance relating to inferior, inadequate education, as a result of which black children are placed at a great disadvantage compared to white children, all as a result of an organised policy; all as a result of (30 the / ..

the way in which resources are allocated to that end. Now any political figure worthy of his or her salt would be concerned with that. Anybody would direct attention to it and to say simply, as the state says, the ANC complains about education, you complain about education; therefore you are part of the ANC - is simply not only logically fallacious, it really is not an argument of any moment at all.

We have also shown your lordship through the evidence that other anti-apartheid groupings took up the same issue. that is why we called people like Mr Dangle and Mrs Duncan. (10 Mr Dangle shows, as he does in the passages which we refer to at page 11, he shows that the Labour Party at conference in 1976 adopted an express agreement with the black students manifesto in which racist education was rejected and he explains what that was at 7.2 at the bottom of the page, he said basically what it was talking about was that the disparity that was being spent upon the white child and what was being spent on the black child in education, the attitude that was coming through and I remember the talk of Dr Verwoerd saying that the purpose of education should be for the (20 black child, that there should be - and that has been put in brackets m'lord, because the record has a quite extraordinary conjunction of words..

COURT: Yes well you have an extra-ordinary sentence here too It should be hewer of wood and drawers of water.

MR CHASKALSON: Yes, it should be.

COURT: Not hewer of water.

MR CHASKALSON: It should be, I think the person who - I think the hewer of wood was left out and I think what the record says, "use of" instead of hewer and drawers - yes, it is (30

use / ..

use of and drawers. I think it is hewers of wood and drawers of water, and the contents of education as to incalcate a certain kind of thinking within both the white and the black child. Also that the historical context should be set correctly as to what had happened in the southern continent of Africa since the arrival of Jan van Riebeeck, that the content that was being taught in the history books was not correct. Now we have had evidence here where the accused have drawn attention to these facts. One cannot say that those are not views which they genuinely hold, one cannot say that those are (10 indeed not accurate views on the evidence which has been put before this court and one cannot say that they did it in order to ferment revolution. The Labour Party according to Dangle continually pass resolutions directed to the quality of education and we draw attention in paragraph 7.4 to the resolution in which the labour party allies itself with the call from enlightened opinion that bantu education be abolished and that one educational system to all South African students be established in its place. And then there is quite a long resolution which I do not need to read to your lordship (20 but it is concerned with compulsory education, it is concerned with discriminatory procedures in the allocation of finances; it is concerned with teachers, teachers council and it is concerned with the inferior school accommodation. All that is set out and then it finished up with the resolution confirming on page 14, a racially differential - that the two evils affecting education in this country are the racially differentiated education system and the racially differentiated funding of this education. And then we called Mrs Duncan and she testified amongst other issues that her evidence (30 dealt / ..

dealt with, with the fact that the UDF resolution on education was not substantially different with what the Black Sash was saying and doing before and after the formation of the United Democratic Front. And she referred to the decisions in 1980 and 1981 which is two years before we have the ANC publications upon which the state relies, dealing with the inequalities and exploitation. That the education reflects the inequalities and exploitation of its society and how the Black Sash itself took a decision to observe 16 June as a day of mourning, because of the events with which it (10) was associated. It is predominantly associated with the struggle for education and the disaster which occurred and the children who died as a result of that struggle. There is also a passage which I would ask your lordship to insert. I think it could conveniently be inserted at page 16, at the end of paragraph 8. It is a passage from Bishop Buthelezi's evidence. It is in volume 402 page 23 480 line 9..

COURT: Just a moment, could you give me the whole of that reference again?

MR CHASKALSON: Yes. Volume 402, page 23 480 line 9 to (20) 23 481 line 8. Bishop Buthelezi draws attention to the inextricable link which exists between the problems of education and the politics of the country, that education he says has been made a political issue precisely because there was political differentiation and precisely because those who had control over the political process determined what the education policy should be. And the fact really is that education was not politicised in 1985 or 1986, it has long been a political issue. It had long been the subject of conflict and the conflict arose out of both the subject matter of (30) the / ..

the education, the quality of the education and the financial resources which are made available for that purpose and there were long ongoing issues. It is not as if something suddenly cropped up one day and the demand was made that it be altered tomorrow. It was a demand which had been pursued for years and years.

Now in paragraph 9.1 on page 16 we draw attention to the fact that in his evidence-in-chief, accused no.19 said that the student organisations which joined the UDF had been involved with education issues prior to the launch of the (10 UDF and that they continued to do so after affiliation to the UDF, but they did so he said on their own initiative and pursuant of their own policies and not on instructions from the UDF. And he also referred to the background, how there had been protests over really a very long period of time before the coming into existence of the UDF and he stated that the UDF regarded education as a very, very important matter and that it placed a high premium on education. But he said it did not have a national campaign around the issue of education, but insofar as specific problems arose at (20 various times the UDF was involved in trying to normalise the situation by getting students back to school and by calling on the governing to address the problems that were being faced by the students. He said that the UDF also encouraged communities to form parents' committees which would include the teachers, ordinary parents and the students to ensure that there was a working relationship between those people and that those committees could serve as a negotiating body from time to time between the community and the education authorities. The state put to him EXHIBIT T.15 which was an (30
extract / ..

extract from minutes of the national secretariat meeting held at January of 1985, and the minute records that the UDF must seek to get involved in the education crisis, the national offices of the Transvaal secretaries must set up a meeting with the national edecutive of COSAS to seek clarity on positions of COSAS on boycotts. A meeting of UDF and COSAS and parents' committees must be called, the national office must compile information on education and especially the COSAS congress resolutions. Now there are a number of things that emerge from that. The first is that by as late(10 as January 1985 the UDF was so far behind addressing this issue that it needed to meet with COSAS to seek clarity on the position of COSAS on boycotts and it needed actually to get the COSAS resolutions. So quite clearly it has not been as it were, calling the tune which is the state case. It had not been saying to COSAS: this is what you must do, this is what you should be doing in directing the operations. It did not even have the resolutions of COSAS and did not even know or did not even have clarity on COSAS' position on boycotts and that is as late as January 1985. (20

And he then in his evidence went on to explain that up until then UDF involvement in education had not been systematic that it is important for the UDF as a front to address itself to the issue of education and that in order to do so it would be necessary to meet with organisations operating in the area of education especially COSAS and then there is also attention to the parents' committees which had a very important function particularly in view of the tension which existed between the department and COSAS; the parents' committees could be the go-between. And he says that at that time there were (30 school/..

school boycotts, that it was difficult for the parents or teachers to resolve the situation, that the UDF saw that as a crisis situation, that it sought to end that boycott because it believed that the continuous disruption of classes was not the best way of addressing the issue of education and that it was really looking for a way of normalising that kind of situation and it wanted to go and look for ways and means of addressing the problem.

Now again we realise that by January of 1985 the main issues to which the UDF had directed its attention and the (10 greater weight of its energies, I have in mind here the million signature campaign, the campaign against the constitution, the campaign against the black local authorities and the campaign against the management committees, those were all behind it. So it is really - its energies went there first and now at this stage it was giving consideration to what other issues should now be taken up, where could it best direct its energies but so far behind was it, that it was really by January 1985 nowhere near the stage of launching a campaign. There was a reference by the state to EXHIBIT (20 D1 in which a decision had been recorded that Curtis Nkhondo be approached to create a commission on education. His evidence was to the effect that Nkhondo had been approached but a commission was not set up. That evidence was confirmed by both accused nos.20 and 21 and accused no.21 gave the details. He said that Mr Nkhondo was asked to set up such a commission but did nothing, then stopped attending meetings and the result was that the matter fell away. So somehow the state sought to extract from that one entry in EXHIBIT D.1 a suggestion that the UDF was deeply involved in education (30 and / ..

and in some way was organising matters connected with education. There is really no evidence to support that and we see nothing more about this commission on education really after that and the evidence given cannot be seriously disputed. And there was a reference in his cross-examination to paragraph F. which was the NEC meeting of January of 1984. That was in the cross-examination of accused no.19. There was there reference to a petition campaign which was unfolding in the Eastern Cape for the reinstatement of teachers who were transferred. Mr Molefe said that he was not certain as (10 to what this referred to but he thought it was probably concerned with the transfer of Mr of Cradock. Now the question of Cradock was taken up and it is dealt with really in the evidence of accused no.20 which we bring to your lordship's attention in paragraph 9.8 on page 20. He made the point that the complaint against the - the education issue in Cradock did not come from the UDF, it came from the people of Cradock. Mathew was the only mathematics teacher in the school in which he was teaching and he was being transferred at a time when there was nobody who was going (20 to take his position as a mathematics master in the school, the students complained that they were now losing a mathematics master but they had no substitute and there was no discernible reason why. He himself was willing to serve the community so the initial protest came from the people of Cradock. We came onto the scene much, much later. When I went there and drafted the report for the NEC it was about May or so of 1984 and the issue had already been debated in the Eastern Cape and the petition had been running from the beginning of the year. Now the state sought in paragraph 10.10 of (30
its / ..

its "betoog" to link EXHIBIT AD.19 to the situation in Cradock and the contention advanced in the state's argument was that UDF or accused no.19 and other UDF accused met the..

COURT: Can you recall on what page 10.10 is?

MR CHASKALSON: I seem to have left it out of this, but I will find it in a moment m'lord. It is page 34. It says:

"Beskuldigde 19 en ander UDF beskuldigde.."

COURT: Sorry, 34?

MR CHASKALSON: 54. Five four. It says that:

"Beskuldigde 19 en ander UDF beskuldigde het op 'n (10
gesamentlike vergadering met lede van die uitvoerende
bestuur van COSAS hierdie aksie in Cradock bespreek."

And they then cite paragraphs 5 to 9 of EXHIBIT AB.19 as a decision taken in regard to the Cradock boycott. Now first of all that is not what the document says; secondly it is not supported by the evidence given in relation to the document.

EXHIBIT AD.19 is a document which according to the evidence was prepared as a proposal for discussions on the education crisis. It was sent to the regions of the UDF and it was contemplated that the document would be discussed by (20
parent committees which had been formed and also leading personalities such as Bishop Tutu, Arch Bishop Hurley and Dr Boesak. And there is a reference to that. Your lordship will see at page 55 of the "betoog" in paragraph 7, to say that there is a need to expand the campaign by involving other forces such as the churches, unions, prominent personalities like Bishop Tutu, Allan Boesak, Arch Bishop Hurley SACC, SACBC etc and to provide a clear direction in this regard and the evidence was that this was motivated by the concern that if the demands of the students which were (30
perceived/..

perceived to be reasonable, were not met by the DET, that trouble - I think it is put more strongly than we have it, I think it was probably that trouble was likely to flare up again, and to lead to violence on a larger scale and it was seen - the attitude of the DET was seen to be crucial and if the DET agreed to the demands then the cause of the conflict would be removed. If it did not, the conflict was likely to continue. Now apparently the DET had been close at one stage to coming to an agreement with students, and if it could be persuaded to do so again that might solve the (10 problem, and it was felt that there was a need to expand the campaign by involving other forces such as the churches, the unions, prominent personalities and to provide this clear direction. The danger was that violence would intensify if the DET did not meet the demands and the question to be considered was how the campaign to persuade them to meet the demands could be intensified and given clear direction in the event of a refusal by the DET. The purpose was not to promote violence, it was to find the surest way of normalising the situation in the schools which would be for the DET to (20 meet the demands and the idea was to put as much pressure on the government to meet those demands which were possible to meet.

It is important that we look at some of the other evidence to see that round about this time there were in fact negotiations with different people who were going to see the deputy minister of education. I think we have reference to it later, I will give your lordship it later. Certainly there was a reference to it in the evidence of Dr Nkomo and there is also reference to it in the evidence of Bishop Buthelezi. (30

So / ..

So we know that people were trying in the second half of 1984 to do something to normalise the schools and so we see that actually what happened is in accordance with what Mr Molefe's evidence was.

Then in paragraph 10.9 of the "betoog" there is a reference to a press statement. That is at page 54. Unfortunately only half the press statement was cited and it needs the other half, which is the first paragraph of it, to put it into its context. Because what has been left out is the issue is not whether the students and pupils were (10 returning to school or not, it is whether the DET has and will continue to actually address those grievances which led to the disruption of classes last year, and then it carries on:

"If in the long run students are not satisfied that they have..then we can expect even worse disruptions before the year is over. Our fear is that many young lives will once be lost in running street battles in which armed police and soldiers will confront unarmed and defenceless pupils in the townships." (20

So what he was saying and that really does tie in with the other bits of evidence to which we have referred your lordship, what the body was saying was that if the grievances are not adequately addressed, there is likely to be trouble and the best way to solve all this is to address the grievances.

Now then in paragraphs 10.12 to 10.17 passages are cited out of context from various publications. Now these are not publications of the UDF and they cannot be treated as such. They are on the whole publications such as Speak and SASPU and others. We have already addressed argument to your (30 lordship / ..

lordship as to how such publications should or should not be used. I do not want to repeat that, but insofar as any use can be made of the description of events contained in these publications, then we suggest that regard must be had to everything that is said and not only to the extracts cited by the state. I will give your lordship just one example. In paragraph 10.13 which is the first time we get any extract, it is :

"The rumblings of student anger were heard from the first day of school this year." (10

Well, if we look at the context it was preceded by an introductory paragraph which said the government was not in the mood for listening, it was only interested in stopping the boycott; facing determined students with firm demands, the DET chose to bring in the police. They poured into the townships in Hippos and Landrovers. Peaceful student meetings in school grounds and marches were violently broken up as the police invaded, baton charging students and firing teargas buck shot and bullets. Hundreds of students were injured, arrested, detained and charged and jailed, some killed. If (20 you are going to, if the state is going to cite the rumblings of student anger as prima facie proof of some fact then it must cite what went before it, and contextualise it. If what went before it is a fact, then the rumblings of student anger are understandable. If it is merely the account by some unknown writer which may or may not be accurate then it is of no use to anybody at all. We draw attention in paragraph 9.12 to the fact that EXHIBIT W.62 which is relied upon, was found in possession of a person about which there appears to be no admission and EXHIBIT W.56 was apparently found (30 according / ..

according to the schedule only in Grahamstown. There is a reference there to events in Grahamstown and that reference omits the evidence of Dr Muller who gave evidence concerning steps taken by the local COSAS branch to disassociate itself from any violence that had occurred in that area, and that a public meeting was held at which violence was condemned and that evidence was not seriously challenged either. Then in paragraph 10.18.2.7 of the "betoog" the contention is advanced that identical grievances were raised wherever protests occurred. Now that also was not supported by the (10 evidence. It is apparent that, from the evidence, that there was a similarity of issues in certain areas and that there was a similarity in the demands which were being made but local school boycotts according to the evidence were usually precipitated by local factors. For instance in Cradock the focus of the boycott was the transfer of - I am not sure whether he was the principal or the mathematics teacher or both but it was the transfer of Mr Goniwe and we know from the other evidence that it is always local issues which precipitate it. Now no attempt was made during the cross- (20 examination to establish the averment that the UDF laid down principles and gave directions to activists in regard to the use of education as an instrument through which the present system could be destroyed and the freedom struggle advanced. That is the allegation made, but there is just no evidence to support it and it was not even suggested to them seriously in cross-examination that these principles were laid and instructions were given. Nor is any attempt made to show that the UDF itself had control over or even knowledge of the details of the activities of campaigns, if we call them (30 that / ..

that, conducted by some of its affiliates in relation to education issues.

We have tried to identify the issues which were taken up in cross-examination, how they had been dealt with. It seems that the main issues were these. First we draw attention to the questions that were asked about the education crisis and which were referred to in the resolution on education which was adopted at the national launch. The evidence was to the effect that the affiliates of the UDF like COSAS, AZASO NUSAS and others, had taken up this issue and that the UDF (10 supported them in doing so. There was no suggestion and no evidence that these discussions concerning the education charter were related in any way to any of the violence which occurred or that the UDF support of its affiliates in relation to the education charter was connected in any way with such violence. The goals of the education charter are discussed in EXHIBIT AD.28 and we give your lordship the references to the record where that is dealt with and there is really nothing, absolutely nothing to show that that is connected in any way with violence or disorder or any of (20 the matters which the state pushes to the foreground of its submissions. Accused no.19 was questioned about the kind of syllabus in education that the UDF aspired to and he said we in the UDF did not really see education as a matter that we could directly address as a front. We did not go into those nitty-gritties. It would obviously been a matter for professional people, maybe teachers' organisations, academics who knew about that, but we in the UDF had not dealt with that. I believe that the education charter campaign amongst others was intended to get the views from communities as to what (30 kind / ..

kind of education they thought would be best, would best suit South Africa. At the time of my arrest those views had not been collected yet, the demands had not been collected yet. So the education charter was essentially a method of trying to establish the views and attitudes of people within the community to the type of education that they would like to have for their children, to collect them and on the basis of that, with professional advice to try to formulate some policy in regard to such matters.

Then it was also put that the question of student (10 representative councils was of importance to the UDF, and Mr Molefe indicated that the UDF supported the establishment of SRCs because it was felt that once the students had a body that could liaise with the authorities there would be less room for misunderstandings and fewer problems. The state's cross-examination seemed intent on showing that although the government had agreed to SRCs being appointed at the schools the constitution of SRCs was unacceptable to the UDF and its affiliates and accused no.19 gave evidence about a discussion which he had had with accused no.20 and that (20 his attitude was that it would be best to get people back to school even if the constitutions were not totally acceptable and then it was put that after the government had agreed to SRCs the UDF still supported the idea of going against what the government had agreed to, and his answer to all that was show me a document which says that the government had agreed to the SRCs but the UDF does not accept that. He says we could not call for SRCs and then when the government agrees go against that, we cannot do that. Well, no document was ever put to him. Nothing was ever put to him as coming (30 from / ..

from the UDF, or indeed no other evidence was ever put to him, to refute his evidence on that issue. It is also not apparent to us why the state chose to pursue this line of cross-examination because Mr Chikane gave evidence about this and his evidence on education was not challenged by the state at all. His evidence where he deals with the attitudes of the UDF to education and the education crisis in Atteridgeville was left totally unchallenged. He first of all, his evidence proves that the UDF in fact welcomed the government's decision to allow the formation of SRCs and went so (10 far as to issue a press statement about it, saying that the UDF welcomes the announcement that the government allowed a democratically elected SRC in Pretoria. This move should permit better student/teacher relationship in future and help prevent the misunderstandings which led to myriads of student arrests since June 16, 1976 events. At the same time the UDF deplores the assaults by the police on the students on Thursday. It is quite clear now that the demand for a SRC by the students was quite legitimate hence the concession by the government that the SRCs may be formed. Accused (20 no.20 made it clear that the anxiety at the time was to try to normalise the education system and that it was wanted - what they wanted was to alleviate the situation by persuading the government to move towards a system of education that would be more satisfactory, more acceptable and would eliminate those aspects of the education system that were unacceptable to our people. And we give your lordship the references to different parts of the record. Now the state called Warrant Officer Du Toit and Captain Loots to testify to the fact that the UDF was in favour of school boycotts as they put it, to(30

force / ..

force the government to meet the students' demands. Now the first of these gentlemen to give evidence was Warrant Officer Du Toit. He gave evidence to the effect that he had called in Mr Chikane for an interview because of unrest in the schools and he says that Mr Chikane told him that he, Mr Chikane, had been appointed as an organiser of the UDF in Pretoria and that as an organiser he would encourage pupils to boycott classes until their demands were satisfied. According to W/O Du Toit this interview was in 1983, he says it had been conducted in the course of 1983 after the formation of the UDF. He could not give a date but it towards the end of the year, it could have been September. He says that Mr Chikane came along voluntarily, he was not arrested; he, Du Toit, had never made a written report regarding his interview with Mr Chikane. Captain Loots who was called after the cross-examination of Du Toit to corroborate Du Toit said that in the presence of Chikane Du Toit reported to him that Mr Chikane had said that he was an organiser of the UDF concentrating on black education and that through the medium of class or school boycotts the UDF would attempt to compel government to look at the education system. Now he says at that stage no action was being contemplated against Mr Chikane, but he kept no notes of the interview and that he left Mr Chikane on the basis that he had unconfirmed information but should it turn out to be correct, that Chikane could expect to hear from him if he broke any law or placed order in jeopardy. Now he says that the admission was not made to him, it was made to Du Toit and conveyed to him in Chikane's presence. He said also that though he monitored UDF publications as part of his duties, he never saw UDF publication

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in which UDF threatened government with class boycott nor could he point to anything to support that thesis. He said that although he knew about Mr Chikane's trial he did not bother to communicate this information to the authorities, to the prosecutor. He kept it to himself and it had only come up at the last moment. When he was asked why he had not done anything he first said that he wishes to protect his sources of information and when that was pointed out to him that it was not a question of protect an informer since he himself could have deposed to the admission, he could not give any (10 reasons as to why he had done nothing. Now Mr Chikane disputed this evidence and if we look at the other evidence surrounding Mr Chikane's own conduct it becomes apparent that his version has much more credence than that of Loots and Du Toit.

First of all we make the submission to your lordship that it is inherently improbable that this discussion took place. It seems inconceivable that a serious allegation concerning the incitement of pupils to boycott schools in order to force the government to force its policy did not (20 warrant any further intention. The failure by Loots as a senior security policeman to take any notes of this admission and his failure to pursue the matter when he knew Chikane was being charged with treason is inexplicable. But there is another matter which I think I may come to later, but it is best referred to here, and that is Loots said that he did not make a report to anybody. Now here is a senior security policeman and he is told on his version that the UDF are planning a campaign and that a senior official of the UDF makes an admission to that effect to him. It really cannot (30
be / ..

be accepted that he would not have communicated that information elsewhere. At the very least, even if he did not choose to take action, isn't it something which his colleagues in the security police, his superiors, which people elsewhere in the country should know. If the UDF was planning this campaign and they actually had reliable information from one of its officers that this was what was going to happen, surely one would have expected him to inform people and say look, the UDF is planning to do this; I have been told that this is what they are planning to do, we must take some action; we (10 must be on the alert. None of that happens and that is inherently improbable.

There is also 'really an important discrepancy between the evidence of Loots and Du Toit because Loots' testimony was that the admission was reported to him by Du Toit in the presence of Chikane, yet when Du Toit gave evidence he made no mention of this having happened, although he was quite closely questioned on the issue as to whether anybody could confirm that the admission had been made. Now he as a policeman must have known of the importance of a report (20 made by him to Loots in Chikane's presence. If in fact that had happened, he could not have left it out. There is no real explanation as to why Loots, why Du Toit should take Chikane to Loots and if it was to take him to confirm and to get verification of the admission which had been made one would then have expected him to testify to that effect. But indeed W/O Du Toit did not mention Loots' presence at all. It was only later on that it came out in cross-examination that their offices were adjoining and that people walked in and out, that he first made mention of Loots' name, and (30 when / ..

when he was asked whether there was any other person who was present when the admission was made, he said he could not remember anyone being present but it was possible that one of the officers on duty could have been there. He said that he did not know what questions Loots had asked Chikane and it might have been different questions to those asked by him, but the one thing he did not say was that he repeated the whole conversation in Loots' presence and Chikane did not dispute it. Also there seems to be no reason as to why when one is considering the probabilities and we make this (10 submission at the bottom of page 38, there seems to be no reason why Mr Chikane should have said this to Loots and Du Toit, because it is really an inherently improbable thing. Why should someone come along and for no reason at all, no apparent reason at all say I want to tell you that this is what I am going to do. Added to the improbabilities is the undisputed evidence concerning the UDF's attitude in fact to the school boycott in Pretoria which is wholly inconsistent with any plan to encourage students to boycott classes. And we deal with that at the bottom of page 39 where we say (20 that Chikane's evidence as to his conduct in relation to the school boycott in Pretoria, which is corroborated in material respects by press cuttings as well as the evidence of Dr Nkomo is inconsistent with the policy of promoting school boycotts. Now all of this was put to Loots and Du Toit in cross-examination and they could not dispute anything that was put to them, but that is possibly understandable. But what is possibly more important is that the state was unable to produce any evidence to contradict what had been put to them and when it came to Chikane giving evidence, they (30

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did not dispute his own evidence, so they leave unchallenged and accept his version of the events. Now material facts which were put and which are subsequently supported by the evidence was first that Mr Chikane was appointed master of ceremonies at the funeral of Emma Sasekgi. That was a funeral arising out of somebody who had been killed by a police vehicle I believe. It was right at a crucial stage of events, it was a matter over which feelings ran high. Apparently there was a big crowd at the funeral and it was put that Mr Chikane called at that funeral for the pupils (10 to return to schools. If Loots and Du Toit are to be believed he should have been urging them to stay out. There was evidence of a peace committee about which Loots and Du Toit could not - which Loots and Du Toit could not dispute. There was a liaison committee of school principals and community organisations which had been set up in 1984 to deal with these and all that Loots could say about some of these was that he had heard, from hearsay, that the Mamelodi Parents' Association was trying to get the boycotting children back to school. (20

Now the direct evidence given by accused no.21 we deal with at the bottom of page 41. He testified that in February of 1984 he received a mandate to find out the facts concerning the school boycotts in Pretoria and to try to bring peace between students and teachers and that this had followed the death of a student at whose funeral he subsequently presided. Dr Nkomo gave evidence that he himself had become involved in the schools problem in Atteridgeville two or three days before the funeral of Emma Sasekgi which was on 18 February 1984 and that he had attended a peace meeting at the (30

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Roman Catholic church which had been called by the UDF. So the meeting was called to try and restore peace in the area, to resolve the conflict, not to promote the boycott which is the state's case; that their meeting was addressed by Prof Mohamed who called upon the students to return to school and he indicated that they should be aware that if they disrupted their own education, then they place the future of our people into dire straits because we would then find that we would only do manual forms of labour and nothing other than that; and Dr Nkomo's evidence also was not challenged on this. (10

And indeed the evidence is that the decision taken at that meeting was that the children would go back to school, that it was a public meeting to which teachers, parents, pupils and the community organisations had been asked to come and were represented and it is referred to at the time in newspaper publicity which is being confirmed, about the outrage at the death of a 15 year old student at the urgent meeting which had been called, to avert a recurrence of the 1976 unrest. That Bishop Tutu had sent a telegram to the minister of education and training; that Mr Molefe of the United (20

Democratic Front would be sending invitations to various individuals and organisations to a meeting to discuss the incident. Now that meeting according to the evidence in fact took place on 15 February. It was attended by some 400 to 500 people. It was addressed by accused no.21 and accused no.19 was present. The evidence was that accused no.21 appealed to the community to be calm especially after an attack which had been launched on the house of the school principal and that he said even genuine grievances do not justify the violence because I believe that violence breeds (30

more / ..

more violence in most of the cases. That was left unchallenged. The evidence was that some of the COSAS leaders who spoke dissociated themselves from the acts that had been committed at the principal's house and said it was not the work of their organisation but that it was possibly the work of undisciplined youth. This ties back again to the attempts in April 1985 to try and get people into organisations to instill discipline. There was evidence that later in the week on 17 February there was another meeting convened by Bishop Tutu which was attended by representatives of the department of (10 education and training, and that accused no.21 spoke at this meeting and that he dealt with a statement by one of the teachers that they were not prepared to be dictated to by students and that his response had been that that was not really the purpose of the meeting. The purpose of the meeting was to try to create calm and communication between students and parents and teachers. It was not that one group dictate to the other, and that they then decided to continue to hold meetings, to try and resolve the tension in the community of Atteridgeville as quickly as they possibly can and that (20 a peace committee was formed, composed of teachers, of students of parents and of members of local organisations and that meeting decided that Mr Chikane should be the master of ceremonies at the funeral and that one of the first tasks that he had was to go to the bereaved family in the company of one of the teachers and to appeal to the people that were gathered there to allow a teacher to speak obviously to try and have a teacher identify with the death, identify and sympathise with the family so that the hostility which might exist and then existed between students and teachers could be partly (30

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defused.

Dr Nkomo was also at that meeting. He said that he had attended the meeting at the request of Mr Felsted who was the regional director of the department of education and training, that the meeting had been held with the authority of the minister of education who had consulted with Bishop Tutu and the Rev Stanley Magobo about it; that Mr Chikane has been present at that meeting and that there was great concern that the funeral should take place peacefully and Bishop Tutu had made an impassioned plea that this should (10 happen, and that Mr Chikane had taken on the role of master of ceremonies because he was seen to be a person who could do that well. He had a high profile in the area, he was the Transvaal secretary of the UDF and that his participation would be important in trying to get the schools to operate normally. And ultimately there was reference to the fact that the conduct - that all these meetings and in particular the role of Bishop Tutu was praised by the minister of education and training to the efforts which had been made to politically and emotionally defuse the Atteridgeville (20 school boycott. The direct evidence was that accused no.21 spoke at the funeral, that he appealed to the students to go back to school, that he appealed to the parents who tried to resolve the problem first of the people affected in the area of Atteridgeville and then to try and look at the grievances of the students and those that needed to be taken up with the department and then to take them up with the department. Now that runs precisely contrary to the state's thesis that the UDF never wanted to bring anything to the attention of the state, never wanted to negotiate with the (30 state/..

state. It simply was urging people to be confrontational. When we investigate the matter we see that indeed something very different takes place and the evidence - it is submitted that after the funeral pupils went back to school and that the peace committee which had been formed continued to meet, made press statements that it wanted to resolve the problems as peacefully as they possibly could to try to bring reconciliation between the teachers and students in the community and there was a reference to a press statement issued by Mr Chikane which was published and which he identified and (10 which referred to the invitation to schools and teachers and students to a meeting which was intended to create the spirit of co-operation and understanding and then to another press statement issued in April to the effect that the UDF had hoped, had got involved in the hope of bringing the Atteridgeville people together to solve their problems; that much had been achieved and that it was deploring violence which had broken out and said that it would pull out if there was violence. And then there was further evidence that the Mamelodi parents association held an inaugural (20 meeting in January of 1985 and that the purpose of that meeting was to try and bring calm in the location because another boycott had broken out around August of 1984. They were trying to get the students to get back to school and to try to find solutions to the problems that had been created, to boycotts in Mamelodi.

And then finally there is a statement issued by Mr Chikane in April of 1984 which is dealt with in this last paragraph. Now in paragraph 14 we make the point that the entire body of evidence by Mr Chikane was not challenged (30

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in cross-examination. This was confirmed in material respects by the evidence of Dr Nkomo, whose evidence on that issue was also not challenged in cross-examination and we ask your lordship here to have regard to the evidence of Bishop Buthelezi in volume 401 page 23 402 line 28 to 23 410 line 20.

ASSESSOR: Did you say 401?

MR CHASKALSON: That is my note, I hope it is right. Apparently we do go to 401. Page 23 402 line 28 to 23 410 line 20. Now what we see from all this is that there were school boycotts and I think.. (10

ASSESSOR: You did say page 410..

MR CHASKALSON: No; I am sorry, it is volume 401 page 23 402 line 28 to page 23 410 line 20. I do not want to read to your lordship that long extract of Bishop Buthelezi's evidence but basically what Bishop Buthelezi says is that there were school boycotts intermittently through 1984 to 1986. (Switch-over to next cassette) I believe we can continue.

K1539

Basically what Bishop Buthelezi's evidence shows is that there were these intermittent school boycotts and that meetings of members of the community, of parents and of students were convened in order to discuss the question of the return to school. He took up the story at round about October 1984 and he said that these meetings included members of UDF affiliates such as the Rev Chikane and Mrs Kwadi. He says that at 23 403. What he says that nobody, nobody who took part in this was in favour of continuing the boycott and that their primary concern was how best to get the children back to school and he describes a delegation which was sent to see the deputy minister, Mr De Beer. Apparently at that stage the issue, one of the issues, at any rate a key issue (20
that / .. (30

that was holding up the negotiation was the date of the exams. If the exams were going to be held at the normal date then the scholars' attitude was that there was no purpose in going back because it would just be a waste of time to do so. They wanted the exams postponed and apparently the department of education took up the attitude that there were administrative difficulties in postponing the exams. There were other issues but that apparently was one of the central ones. He also made clear in his evidence, Bishop Buthelezi, that none of the UDF people involved spoke at any time in favour of boy-cotts, that they all wanted the schools to re-open and he says indeed he never met anybody in a leadership position at that time who said that they wanted the boycotts to continue and really what all the adults in the community were attempting to do then was to get themselves together to try to encourage the school children to get back to school. So the evidence, the evidence which has been given in the case - not only does the state not prove the allegations that it makes in regard to education and the UDF's attitude to it, the evidence which was called by the defence and which was (20 not in any serious respect disputed because although Bishop Butheleze was cross-examined his evidence with all due respect cannot be rejected. All the evidence points to precisely the opposite attitude. Far from using education to promote, far from using school boycotts to promote revolution as it were the UDF was trying to get people to go back to school and the one incident which is referred to in evidence which we investigated in detail, the Atteridgeville incident is proof quite conclusively that the UDF not only adopted a peace-making role through its representative in the community (30 there /..

there, but it actually succeeded in getting the children to go back to school at that stage.

Now we chose education as one of the campaigns, one of the seventeen issues. We chose it party because the state has made some - seeks to make more of education I think practically than anything else and so we thought that that would be an important matter to deal with and I now want to turn to make submissions to your lordship in regard to what crops up in the different parts of the state's argument concerned with, really concerned with freedom songs. We find it (10 not treated in any systematic fashion but it is referred to from time to time in different parts of the argument and I am not going to attempt to pick up every part where it has been referred to. I want to make some general submissions to your lordship in this regard. The first is that evidence has been called by the defence to show that singing is very deeply interwoven with all aspects of African cultural, social and political life. Now your lordship will remember that a good deal of the evidence given by Bishop Buthelezi was concerned with this, but in addition to what Bishop (20 Buthelezi has said your lordship could refer to the evidence of Mr Lekota in volume - well, could I refer your lordship possibly as far as Bishop Buthelezi on the interwovenness of singing with cultural, social and political life, is in volume 401 page 23 348 to 23 358. It is also mentioned by Mr Lekota in volume 286 page 15 757 line 5 to 7; by Mr Nkopane who is accused no.8, in volume 170 page 8 760 lines 23 to 27 and by Mr Molefe in volume 251 page 13 456 lines 11 to 22 and 13 457 line 25 to 13 458 line 2. Really m'lord, according to Bishop Buthelezi the singing provides a sense (30 of / ..

of community and he points to that in volume 401, page 23 384 lines 5 to 14 and in the same volume at page 23 418 lines 3 to 21. And the evidence is that the singing of freedom songs takes place at all sorts of meetings and gatherings and not only at political gatherings and that indeed it would be regarded as quite unusual if freedom songs were not sung at commemoration services and that one would expect, and it has for some time been accepted that this is what happens. Mr Khuzwayo gave that evidence in volume 357 page 20 494 lines 24 to 30; Bishop Butheleze at volume 401, page (10 23 416 line 30 to 23 417 line 5 and 23 444 lines 5 to 15. Mr Lekota in various places at volume 286 page 15 765 line 9 to 15 766 line 9, page 16 712 - it is volume 297, page 16 712 lines 11 to 16; volume 298 at page 16 816 lines 3 to 21 and there is also the evidence of Mr Ratebisi in volume 306, page 17 566 lines 18 to 30, page 17 563 line 3 to 14 and by Mr Namane in volume 318 page 18 202 lines 1 to 6. And what this cluster of evidence comes down to is that freedom songs including virtually all categories of songs, looking at the examples that I have, were sung all around the place, sung (20 in the townships, sung at community halls, sung at funerals, sung at commemorations and that children in the streets are singing "Siyaya ePitoli".

The evidence also has been that the freedom songs are often set to old and traditional tunes, that words are made up by poets or individuals and sometimes they are made up spontaneously at meetings; that the persons would take these popular tunes, that they would create their own lyrics and that they would on occasions convert a hymn or a folk tune into a freedom song. And one of the state witnesses, (30

IC.15 in cross-examination agreed that the townships were full of poets who put new words to old tunes and turn up at a meeting and sing the song with new words. He said that in volume 91, page 4 502 lines 19 to 25 and that sometimes the songs would incorporate events and that a particular event would be dropped and a new event would be put in its place. That again in IC.15's evidence at volume 91, page 4 507 lines 18 to 21. And Mr Molefe pointed out that on occasions people would make up the lyrics on the spot, page 13 456 volume 251 page 13 456 line 23 to 13 457 line 5. And Mrs Khuzwayo (10 said that the new words to the new songs would sometimes represent the climate of a community. She mentions that at volume 357, page 20 531 lines 3 to 15. On occasions the evidence goes that leaders, a lead singer would make up a new song and the group surrounding the singer would repeat what the leader sang and there are a number of references in the evidence to that. What I would try to do is I would try to collect these references to avoid having to read them out to your lordship and I will hand the references in later. There is a whole host of them dealing with this. (20

What also emerged from the evidence was that these songs, freedom songs either the same songs or songs of a similar nature had been sung and were being sung long before the UDF came into existence. Mr Molefe testified to the fact that freedom songs have existed since his childhood and that since his childhood he was accustomed to hearing the singing of songs which he would describe as being of a militant character, that choruses were sung at township funerals, chants and slogans would come out at funerals and that political songs have been sung at - or freedom songs (30
had / ..

had been sung at political meetings well before the inception of the UDF. Thus we have a state witness, Father McCamel and here I think I should give your lordship the reference, it is volume 36, page 1 623 line 20 to 1 624 line 8, where his evidence was to the effect that freedom songs had been sung for years before the formation of the VCA; that he had heard such songs being sung at meetings commemorating the death of Steve Biko and as far as he was concerned there was nothing unusual and did not come as anything of a surprise to him to hear these songs being (10 sung at VCA meetings. Dr Nkomo gave evidence that in the first part of 1983 when he described the singing of freedom songs at meetings which he had attended and which he refers to in his evidence. And there are other references in the evidence of Mr Molefe and Mr Lekota to the fact that the songs pre-existed the UDF and they pre-existed it by quite a long period of time. And we can give your lordship many references to particular individual songs as having been shown to have been in existence and to have been sung more than ten years, longer than that, before the UDF came into (20 existence.

So the singing of freedom songs is not something which was introduced by the UDF, it is not something which stemmed from the UDF activities. It was the culture into which the UDF emerged, it was the environment within which it existed and we have seen also on the video tapes how the singing serves a function at meetings, how it sometimes enables the chairman, sometimes enable order to be restored. It helps people to let off a little bit of steam and to calm down and to concentrate. Its function seems from the actual (30 watching / ..

watching of the videos to be that. Certainly looking at the videos there is nothing to suggest that the people singing the songs are fostering violent thoughts and there has been absolutely no evidence at all to suggest that the UDF meetings were followed by violence of any sort. Indeed the evidence goes the other way, that there was no violence following any of these meetings. These songs frequently are started spontaneously at meetings, that somebody starts a refrain and then everybody joins in. There has been evidence that one would not try to stop songs once that had happened (10 that it would be divisive, it would lead to conflict and that the songs were never perceived by anybody as being anything other than harmless.

The other important strand of evidence is that these songs were not meant to be taken literally and were not understood in the literal sense either by the singers or by the audience. There was evidence that the effect of the songs is in fact to release tension and that they never end up in violence at all. That evidence is also supported by state witnesses, for instance IC.24 says that the song about the (20 killing of the women in Pretoria; he says there are many songs which have different meanings and in practice you will find that that meaning does not take place, it is not carried out. His evidence is at volume 147, page 7 430 line 12 to 20. He says there are a lot of songs that are sung by the UDF but in practical terms we are not going to do that. Page 7 431 line 2 to 5. There are a host of references to the songs not being taken literally, to the analogy between different types of freedom songs, to the impact that the songs have on the audience; from a whole variety of people (30 who / ..

who either are at meetings or join in the singing or have heard it, that it is not understood as conveying violence or communicating incitement to violent acts. I have here probably 50 to 60 references to different parts of the record and I am not going to read them.

COURT: Hand them to a typist.

MR CHASKALSON: I will m'lord, as soon as we get them together we will do that, and I will let your lordship have them. But there is another important factor and that is this, that there is a good deal of evidence to show that (10 the police have been in attendance at meetings over a long period of time at which freedom songs were sung and that they never complained about them and they never did anything about it, and that has been going on for a very long time. Here too I am not going to read out all the references that I have to that. We will collate them and let your lordship have them but what it shows is that the police presumably understood the songs in the same way as the witnesses have described the songs to your lordship. They are presumably aware of the - knew of this, knew it was part of the cul- (20 ture and accepted that that is what would happen. Now the evidence is important because there is nothing to suggest no evidence has really been brought to us to suggest that the singing has ever incited anybody to violence, that over the years that these songs had been sung that there has ever been any connection between violence and the singing, and it also reflects what the accused told you and that is that they actually saw nothing wrong in the singing of these songs. It did not cross their minds that there was anything wrong, they have been going on for years and years and years and (30

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as far as they were concerned it was perfectly normal. Certainly there would be nothing which would lead them to think that they were doing wrong in all the circumstances by participating in the songs. And I would like to say one more thing about the singing of songs m'lord. One cannot really stop people singing. It is not something that can ever be done. People sing of fantasy, words get substituted for other words, a hopeless task to attempt to do it. The history of nursery rhymes would show that to your lordship. It is something which is - it is really a harmless way of (10 fantasising, it is actually not unimportant that it should take place and to silence people who have been singing even if the contents of the songs seems undesirable, is really to drive feelings inwards and that can have quite serious repercussions.

So I suggest to your lordship that in the light of all the evidence that the singing takes the case - the singing really shows no more than that as the environment into which the UDF came, that that is what the culture of political meetings in townships was like and community gatherings in (20 the townships were like and that it indicates no guilty mind nor guilty intent and that indeed it is far better that the feelings should be expressed in that way rather than in other ways. Now we will get together the very detailed references that we have collected in regard to the songs. We will put it together in a document and in time see that it gets to your lordship and that is really the end of that section dealing with songs.

COURT: We will take the adjournment.

THE COURT ADJOURNS UNTIL 6 SEPTEMBER 1988

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