

SAAKNOMMER: CC 482/85

DELMAS

1985-11-04

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSORE: MNR. W.F. KRUGEL

PROF. W.A. JOUBERT

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

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:

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HOF HERVAT OP 4 NOVEMBER 1985.

MNR. JACOBS : Voordat die saak in aanvang neem, wil ek net die Hof inlig dat beskuldigde nr. 17 is nie by die hof nie. Vrydagmiddag is ek kennis gestel dat hy is blykbaar siek en hy is na die hospitaal toe geneem vir toetse en twee geneeshere, ongelukkig het hulle nie vir ons 'n sertifikaat gegee nie, maar hulle weier om op hierdie stadium na die hof te kom, want hulle sê hulle doen vandag toetse op hom. Hulle is versigtig. Ek weet nie of die verdediging u miskien meer inligting kan gee nie. Dit is die inligting wat ek gekry het. Ek weet nie (10) wanneer sal die toetse afgehandel wees nie. Dit mag wees dat selfs die uitspraak wat vandag hier gegee moet word oor die vorige sitting, mag hom raak. Ek weet nie of die Hof in sy afwesigheid ... (Hof kom tussenbei)

HOF : Wat is u houding? Dat die saak uitgestel moet word?

MNR. JACOBS : Dit sal miskien wenslik wees dat al die gebeure in die teenwoordigheid van die beskuldigde voortgaan en alles wat mag gebeur in sy afwesigheid, mag miskien later gesê word dat hy nie kennis gedra het nie. Dit is eintlik 'n aspek wat by die verdediging tuis hoort of hulle wil voortgaan. Ek (20) kan net die Hof die inligting gee wat ek ontvang het hoekom hy nie hier is nie.

MR CHASKALSON : As far as I am aware there is a provision in the Criminal Procedure Act which permits proceedings to continue in the absence of an accused where the accused is too ill to attend the court.

COURT : Do you represent that accused?

MR CHASKALSON : I represent all the accused. I have no difficulty at all with the matters which we have to deal with today proceed in the absence of the accused. (30)

COURT : You are prepared to continue?

... / MR CHASKALSON

MR CHASKALSON : Oh, yes. We are looking for the Section.

I believe there is one.

COURT : There is a Section.

MNR. JACOBS : Ek is ook nie heeltemal seker nie. Ek weet nie of die Hof 'n uitspraak kan gee in sy afwesigheid nie.

HOF : Ons sal nog by die uitspraak kom. Before we continue I have with me as assessors Professor W.A. Joubert and Mr W.F. Krügel. Professor Joubert is a former dean of the Faculty of Law of the Unisa University. He has been that for ten years. Prior to that he was a dean of the Faculty of Law at Bloem-(10)fontein University for eight. He is wellknown in academic circles. Mr Krügel was appointed magistrate in 1953. He has been a magistrate eversince. At present he is the president of the Regional Court for the Northern Transvaal Region.

ASSESSORS SWORN IN.

COURT : It is understood, gentlemen, that the assessors will not have the decision on points of law and I take it that the matters which we will discuss pertaining to the particulars and the indictment will be matters of law, but I deem it advisable that they be present at this stage in order to become(20) conversant with all the issues in this matter. I believe that Mr Henning is here on the other matter that I reserved judgment on.

MNR. HENNING : Ek tree op namens Rapport Uitgewers (Eiendoms) Beperk en die twee betrokkenes wie se teenwoordigheid verlang word bygestaan deur My Geleerde Vriend, mnr. Eloff.

HCF : Mnr. Henning, by die vorige geleentheid het ek uitspraak voorbehou oor die vraag of daar minagting van die hof was in die berig van Rapport wat bespreek is. By daardie geleentheid is ek meegedeel deur mnr. Eloff dat hy hom berus by die (30) verslag in Rapport en hy het my toegesprek op daardie basis.

... /Ek

Ek verstaan van u in kamers dat u nie berus by die verslag in Rapport nie en dat u getuienis wil voorleë?

MNR. HENNING : Met eerbied is my houding en ons opdrag dat indien U Edele prima facie van mening is dat die berig minagting daarstel, dan sal ons graag wil aanbied - verwere wil aanbied ten aansien van die betrokkenes.

HOF : Hoeveel van hierdie Hof se tyd gaan in beslag geneem word met hierdie verwere en met die betoog daaromtrent, want ek het verlede keer al 'n hele betoog aangehoor hieromtrent?

MNR. HENNING : Ek verwag nie dat dit lang getuienis sal (10) wees nie. Ek dink die getuienis sal kort wees. Die betoog kan kort saamgevat word. Dit is in wese reeds vervat in die drie bundels wat in kamers aan U Edele oorhandig is, maar ek kan vir U Edele met eerbied geen akkurate tydsduur gee nie.

HOF : Wel, ek is nie bereid om hierdie Hof se tyd onnodiglik in beslag te neem met hierdie sysake nie. Ek dink die raadsaamste sal wees dat ek die hele saak verwys na die Prokureur-generaal, dan kan hy besluit of hy afsonderlik wil vervolg vir hierdie saak of nie.

MNR. HENNING : Wat prosedure betref is dit in elk geval (20) wat ons aan die hand sou wou doen. Dat hierdie nie 'n gepaste geval is, in die besondere omstandighede, vir 'n summiere verhoornie, maar dat dit 'n aangeleentheid is wat na die Prokureur-generaal verwys behoort te word vir die normale beregting in die normale loop van sake.

HOF : Ek beslis dat hierdie saak voortspruitend uit die berig in Rapport van 22 September verwys word na die Prokureur-generaal vir sy ondersoek en indien hy so besluit, 'n vervolging. Die saak is wat my betref daarmee afgehandel. Have you got the Section, Mr Chaskalson? (30)

... / MR CHASKALSON

MR CHASKALSON: It is Section 159(2) which provides that if two or more accused appear jointly at criminal proceedings and (a) the Court is at any time after the commencement of the proceedings satisfied, upon application made to it by any accused in person or by his representative, (1) that the physical condition of that accused is such that he is unable to attend the proceedings or that it is undesirable that he should attend the proceedings, or (2) that circumstances relating to the illness or death of a member of the family of that accused make his absence from the proceedings (10) necessary, or (b) any of the accused is absent from the proceedings whether under the provisions of sub-section (1) or without leave of the Court the Court, if it is of the opinion that the proceedings cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend may, in the case of sub-paragraph (a) authorise the absence of the accused concerned from the proceedings for a period determined by the Court and on the conditions which the Court may deem fit to impose and (b) direct that the (20) proceedings be proceeded with in the absence of the accused concerned." And then there seem to be some related provisions to that. I was not aware this morning that one of the accused was ill but the matter that we have to deal with does not really require his attendance in court. We know, and I am told by My Learned Friends who have seen him in consultation recently, that he has been ill during consultations and we assume that what has happened is that the doctors have decided that he needs treatment. We would be very glad if the matter would proceed today and we would ask Your Lordship to deal (30) with it on that basis.

COURT: /.....

COURT: There should be an application by the accused in person or by his representative, so I take this to be an application by you on his behalf?

MR CHASKALSON: Yes My Lord.

COURT: In terms of Section 159(2)?

MR CHASKALSON: Yes. I regret I cannot put any more information before Your Lordship than I have now.

COURT: Well it seems to be common cause between the defence and the prosecution. Yes I authorise in terms of Section 159(2)(aa) that the accused be absent from these proceedings (10) for the duration of the argument upon the indictment and I direct then that the proceedings be proceeded with in his absence.

MR CHASKALSON: We have lodged a notice of objection to the indictment and we have, in the very limited time available, prepared brief heads of argument which we will use in the course of our argument. I must tell Your Lordship immediately I am going to go beyond the heads, they are merely the main heads of the argument and I will have to go outside of them. I would like to hand up, though I appreciate that the two (20) assessors do not take part in these proceedings I do have three copies of the heads.

COURT: Yes, would you have any objections if the Assessors ask questions if they deem it advisable to do so?

MR CHASKALSON: My Lord I would have no objections to that because it may be of assistance to all of us. If Your Lordship feels that the Assessors should ask such questions

COURT: Not necessarily that I feel that they should ask them, they may be inclined to ask questions and I want to know whether I have to stop them or not. (30)

MR CHASKALSON: I think that will be for Your Lordship, I will/.....

will not object to a question coming from the Assessors, and I have also sat for days not asking questions when I have wanted to. I think that there is a very natural instinct to ask for information. It is a very tiring thing to sit all day sometimes and not do that. I would have no objection to questions being asked. If Your Lordship, I think in the end Your Lordship must decide that one.

MNR JACOBS: Kan ek net voordat My Geleerde Vriend - ek dink dit is net gepas. Daar het 'n paar tikfoute en ook 'n ander aansoek wat ons wil bring oor die wysiging van die klagstaat(10) wat nie verband hou, hier nie, maar ek dink dit is net wenslik dat ons dit voor die Hof plaas voor My Geleerde Vriend begin met sy argument.

HOF: Is daar al kennis van gegee aan die verdediging?

MNR. JACOBS: Nog nie. Met u verlof sal My Geleerde Vriend, mnr. Fick, dit behartig.

MNR. FICK: Ek wil u graag verwys na pagina 11 van die klagstaat.

HCF: Van die aanhangsel of die akte?

MNR. FICK: Volume 1. (20)

HOF: Ja, van die aanhangsel of van die akte self?

MNR. FICK: Van die akte self. U sal vind op pagina 11 word daar bo gemeld 'n derde klagte van terrorisme en alternatiewelik tot die drie alternatiewe aanklagte is sewe afsonderlike aanklagte: Aanklag 1 subversie, aanklag 2 subversie. Die Staat wil die akte van beskuldiging wysig in die opsig dat die Staat daar 'n alternatief tot hierdie aanklagte 1 en 2 invoeg.

HOF: Dit is nou tussen aanklag 1 en 2 en die aanklag 3 wat moord is?

MNR. FICK: Dit is korrek. (30)

HOF: 'n Nuwe alternatiewe aanklag byvoeg?

... / MNR. FICK

MNR. FICK : 'n Alternatief tot aanklagte 1 en 2.

HOF : Waarom kom u op so 'n laat stadium so skielik daarmee?

MNR. FICK : Die aanklag is eers oor die naweek voltooi as gevolg van die ander aansoeke waar die Staat by betrokke was en kon ons hierdie aanklag nog nooit voltooi het nie.

HOF : Verduidelik nou maar waaroor dit gaan?

MNR. FICK : Dit is oortreding van artikel 13(1)(v), dit is die bevordering van 'n onwettige organisasie se oogmerke.

HOF : Waar staan dit in die alternatief?

MNR. FICK : Heel laaste op pagina 10. Dit is artikel (10) 13(1)(a)(v) gelees met artikels 1, 6, 50, 67, 69 van Wet 74 van 1982, oortree het.

HOF : Sal u dit vir ons deurlees sodat almal dit kan hoor?

MNR. FICK : "Nademaal die ANC kragtens proklamasie 119 van 8 April 1960, soos gewysig deur artikel 22 van Wet 93 van 1963 en Umkhonto we Sizwe kragtens proklamasie 93 van 10 Mei 1963 verklaar was inderdaad die ANC te wees en die SAKP (dit is die Suid-Afrikaanse Kommuniste Party) kragtens artikel 2 van Wet 44 van 1950, gelees met proklamasie R305 van 13 November 1964 en verder gelees (20) met proklamasie R38 van 4 Februarie 1966 tot onwettige organisasies verklaar is en welke onwettigverklarings gelees moet word met die bepalinge van artikel 1(15)(a) en 73 van Wet 74 van 1982.

En nademaal die ANC en die SAKP hulle dit ten doel gestel het om die oogmerke soos uiteengesit in die aanhef van die akte van beskuldiging en ook een of meer of al die volgende oogmerke in die RSA te verwesenlik :

(a) dat 'n kampanje gevoer word teen die regering se beleid ten aansien van die nuwe grondwet en die (30) drie-kamer parlementêre stelsel;

... / (b) dat

- (b) dat kampanjes gevoer word teen die regering se beleid en wetgewing ten aansien van Swart plaaslike besture en die sogenaamde Koornhof wette;
- (c) dat 'n kampanje gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van verskuiwings en hervestiging van bevolkingsgroepe en die Groepsgebiede Wet;
- (d) dat 'n kampanje gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van behuising vir anders kleuriges; (10)
- (e) dat 'n kampanje gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van arbeidsaangeleenthede van anders kleuriges;
- (f) dat kampanjes gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van algemene verkoopsbelasting en die eskalاسie van lewenskoste;
- (g) dat kampanjes gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van Swartonderwys; (20)
- (h) dat kampanjes gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van afsonderlike ontwikkeling, Swarttuislande en gebeure in byvoorbeeld die Ciskei;
- (i) dat kampanjes gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van militêre optrede, die Suid-Afrikaanse Weermag en nasionale diensplig;
- (j) dat kampanjes gevoer word in die Republiek teen die Regering se beleid en wetgewing ten aansien van (30) militêre optrede en Suidwes-Afrika, Namibië;

... / (k) dat

- (k) dat kampanjes gevoer word teen sogenaamde imperia-
lisme deur lande soos Amerika, Engeland en Israel
en die politieke isolasie in die RSA;
- (l) dat kampanjes gevoer word in die Republiek teen die
Regering se beleid en wetgewing ten aansien van
aanhoudings kragtens veiligheidswetgewing, politieke
gevangenes en politieke vlugteling;e;
- (m) dat kampanjes gevoer word in die Republiek teen die
Regering, die Blankebevolking, die geregshoue en
ander veiligheidsmagte weens sogenaamde treitering(10)
en onderdrukking;
- (n) dat kampanjes gevoer word in die Republiek om die
Freedom Charter onder die Swartmassas se populari-
seer;
- (o) dat kampanjes gevoer word in die RSA om die ANC in
die Republiek onder die Swartmassas te populariseer;
- (p) dat kampanjes gevoer word in die Republiek om die
leiers van die ANC, politieke vlugteling;e en poli-
tieke gevangenes onder die Swartmassas in die RSA
te populariseer; (20)
- (q) dat terreur, geweldpleging en rewolusie in die
Republiek veral onder die Swartmassas gepopulariseer
word;
- (r) dat sogenaamde helde van die ANC en SAKP in die Repu-
bliek veral onder die Swartmassas gepopulariseer
word;
- (s) dat 'n sogenaamde nasionale konvensie in die Republiek
gepopulariseer word veral onder die Swartmassas.

Derhalwe het die beskuldigdes, synde lede van die bestuur-
strukture en/of amptenary van die UDF en/of die (30)
bestuurstrukture van organisasies wat met UDF geaffilieer

... / en/of

en/of UDF aktief ondersteun op of omtrent die datums of tye en te of naby die plekke soos uiteengesit in dade nrs. 1 tot 77 van die aanhangsel tot die akte van beskuldiging en in die uitvoering van hul gemeenskaplike opset en/of ter bevordering en/of uitvoering van bogenoemde sameswerings, wederregtelik die verwesenliking van enige van bogenoemde oogmerke van die ANC en die SAKP of oogmerke wat soortgelyk is aan oogmerke van genoemde organisasies, bepleit, aangeraai, verdedig, aangemoedig of enige ander handeling van welke aard ook al verrig het(10) wat bereken is om die verwesenliking van genoemde oogmerke te bevorder, te wete een of meer of al die dade genommer 1 tot 77 van die aanhangsel tot die akte van beskuldiging en sodoende het die beskuldigdes artikel 13(1)(a)(5) geles met artikels 1, 56, 67, 68 en 69 van Wet 74 van 1982 oortree."

Dan wil ek u verwys na pagina van die akte self. U sal vind net voor aanklag 3 begin op bladsy 16, die paragraaf net voor paragraaf 3 eindig "Oortreding van artikel 1, 54(7)"- daar is iets uitgelaat. Dit moet wees "oortreding artikel 54(1) (20) ... "(Hof kom tussenbei)

HOF : Is die eerste een artikel 1 of is die eerste een artikel 54(1)?

MNR. JACOBS : "Artikel 54(1)(ii) geles met artikels 1" dan gaan die sin verder aan. Dan wil ek u verwys na pagina 22 van die akte self, net voor aanklag 3. Daar moet hierdie dokument wat ek aan u oorhandig het, ingelees word net voor aanklag 3.

HOF : Net 'n oomblik. Ek begryp dit nie mooi nie. Ek het verstaan dat wat u vir my voorgelees het ingevoeg moet word op bladsy 11. (30)

MNR. JACOBS : Dit is net die verwysing na die artikels wat

... / op

op bladsy 11 inkom.

HCF : Wat presies moet op bladsy 11 ingelees word? Die presiese bewoording?

MNR. FICK : Die presiese bewoording is "Alternatief tot aanklag 1 en 2 bevordering van die oogmerke van onwettige organisasies deur oortreding van (die artikel) artikel 13(1)(a)(v) gelees met artikels 1, 56, 67, 68 en 69 van Wet 74 van 1982." Dan op pagina 22 moet hierdie dokument ingevoeg word voor aanklag 3.

COURT : What is your attitude, Mr Chaskalson? (10)

MR CHASKALSON : One of some considerable surprise. I May tell Your Lordship the first I have heard of it is today as My Learned Friend stood up. There is not a reason being given for this. I do not even know in terms of what section of the Code he claims the right to amend this indictment. There are provisions in the Code which permit the charge to be amended when some essentials of the charge have been left out, where a charge is defective for want of essential averment. We have no explanation from the State. I myself am not one who frequently appears in the criminal court and there may well be provisions which permit this, but I am told nothing. No explanation as to why a year after the arrest of the accused for the first time the State laconically stands up and introduces a totally new charge. If the State wishes to withdraw the indictment and start from the beginning again, I suppose I cannot stop that. I do not know, but I know of no basis upon which at this stage the accused who have been in custody for a year can suddenly be brought to court and to be told that there is an entirely new case which is going to be brought against them. I would like to hear from My Learned Friend what the reason for this is, why it has not been done before

... / and

and on what basis they are asking Your Lordships to amend. Until that happens I really am at a total loss. I do not know how to respond, other than to say we certainly do not consent to this, and suggest that it would be highly prejudicial to the accused after being in custody for more than a year suddenly to be told that an entirely new basis of legal liability is being laid against them, and that to be happen without any prior warning to us, without any so much as a telephone call to tell us that this might even happen, or any explanation as to why it was omitted originally, or any reason (10) as to why it is now considered necessary. I do not think I can say any more than that.

HCF : Mnr. Fick, daar is besware geopper en sal u vir my die artikel kan aandui waaronder u die aansoek rig?

MNR. FICK : Artikel 81 van die Strafkode :

"Enige getal aanklagte kan in dieselfde verrigting teen 'n beskuldigde saamgevoeg word te enige tyd voordat enige getuienis ten opsigte van enige bepaalde aanklag gelei is."

Sub-artikel (1). Ek kan nie met My Geleerde Vriend saam- (20) stem as hy sê dit is 'n "entirely new charge" nie. Van die begin af was daar die aanklag in die akte van beskuldiging dat daar 'n sameswering was tussen die beskuldigdes en die ANC, dat hulle sekere kampanjes uitgevoer het. Daar is 77 dade uiteengesit in die akte van beskuldiging. Al wat die Staat gedoen het is om 'n alternatief by te voeg en te sê dat hierdie spesifieke dade, wat die verdediging oor beskik het, is in ooreenstemming en ter bevordering van die oogmerke van die ANC. Daar is geen nuwe kampanjes bygevoeg of iets nuuts beweer nie. Dit is dieselfde kampanjes wat in die hoofaan-(30) klag staan. Dit is maar net 'n laaste alternatief indien 'n

... / sameswering

sameswering nie bewys kan word nie. Dit word aangevoer dat hierdie in elk geval ter uitvoering en ter bevordering van die ANC se oogmerke is. Daar is met respek niks nuuts in die hele alternatief nie.

HOF : Nou is die volgende vraag, waarom is daar nie vroeër kennis gegee hiervan nie?

MNR. FICK : Ek kan aan u meld dat die dokument wat ons ontvang het was, as ek reg onthou Donderdag, waarin beswaar gemaak is teen die akte van beskuldiging. Ons het dit deurgewerk saam met die besonderhede ook weer en ons het toe tot die gevolg(10) trekking gekom dat dit raadsaam sal wees om hierdie aanklag wel by te voeg en ek kan net meld ek het hierdie akte van beskuldiging voltooi oor die naweek.

... / COURT

COURT: Yes Mr Chaskalson? Would you like time to prepare on this aspect?

MR CHASKALSON: I think we do need time to consider the implications of Section 81. I do say that it is a different case. What previously had been put forward as acts of treason from which inferences of hostile intent were to be inferred are now to be put forward on an entirely different basis which would involve a consideration of the implications of the statutes which are referred to which we have not considered at all, and it would also involve a new factual enquiry which has not (10) been investigated.

COURT: Well could a possible approach to this problem be the following, that you reserve your rights as far as this application for amendment is concerned and you address me on that at a later stage and that you continue with your present attack on the indictment and on the particulars already given?

MR CHASKALSON: Yes, I would be happy if Your Lordship ...

COURT: And if we continue tomorrow morning on this case then you can address me tomorrow morning on your attitude on this application for amendment of the indictment. (20)

MR CHASKALSON: Yes. I would be very glad to follow that procedure, if it is satisfactory to Your Lordship.

COURT: It is so ruled then. You may continue.

MR CHASKALSON: The heads of argument we start off by looking at the framework of the charge brought against the accused. Now the main charge against the accused is a charge of treason and the allegation in the indictment is that the accused, under the name of the United Democratic Front, referred to in the papers as the UDF, conspired with each other and with members of the management structures and officials of the UDF (30) and members of the management structures of organisations and bodies/.....

bodies affiliated to the UDF or which actively supported the UDF to achieve the goal of the UDF which is alleged to be the overthrow of the government of the Republic of South Africa by violence and/or threats of violence and/or other means which include the use of violence. Now that is basically what we have referred to in our request for particulars as "the UDF conspiracy". And then in the alternative it was alleged that the accused and the co-conspirators from the UDF conspired with each other under the name of the UDF with the African National Congress and the South African Communist Party (10) to achieve the goals of the ANC and the SACP or the goals of the UDF which are alleged to be the same, namely the overthrow of the government of the Republic of South Africa by violence and/or threats of violence and/or other means which include the use of violence. And that we have referred to in the request for further particulars as "the UDF-ANC conspiracy". Now it appears from the further particulars which have been furnished that the State does not intend to rely on an agreement stated in express terms as constituting the conspiracy but it will seek to infer the conspiracy from circumstances in which (20) the UDF was established and the manner in which the UDF carried out its activities. I am going to come back to paragraph 1.4 a little later in the argument but at page 27 of the State's further particulars the following is said: "Die Staat..." in paragraph 1.4.1:

"Die Staat steun nie op 'n uitdruklike bewoorde sameswering nie nogtans is die sameswering uitdruklik vergestalt gedurende die stigting van UDF op 20 August 1983 te Kaapstad."

I am going to look at that again but it starts off with the (30) statement that there is no reliance on an express agreement and/.....

and then in paragraph 1.5 at page 28 we are told that:

"Die bestaan van die sameswering word afgelei van onder andere die feit dat vir die ontstaan van UDF georganiseer was; dat dit tot stand gekom het met spesifieke doelstellings en projekte; dat 'n bestuurstruktuur en amptenary ontstaan het wat verantwoordelik is vir die beleidsbepaling en koördinerings en uitvoering van kampanjes en besluite; deur aan te sluit by UDF as geaffilieerde; deur UDF aktief te ondersteun en mee te doen aan die uitvoering van kampanjes en besluite (10) deur UDF geneem en aanvaar; deur aktief te organiseer en mee te doen aan die mobilisering, organisering, politisering en aktivering van veral die Swart massas."

So we have the situation in which the State says that it does not rely on the, a specific agreement for the conspiracy and it actually repeats that in paragraph 1.6 of the particulars at page 28:

"Die Staat steun nie op 'n uitdruklik bewoorde sameswering nie. Presies wanneer, waar en hoe die sameswering tot stand gekom het is aan die Staat onbekend. Persone (20) wat deelgeneem het aan die organisering van die stigting van UDF, the stigting self, deel geword het van die bestuurstruktuur en besluitneming van UDF en na die stigting van UDF by UDF deur 'n organisasie geaffilieer het of UDF aktief ondersteun het en UDF besluite en kampanjes opgeneem en uitgevoer het ter verwesenliking van UDF beleid het deel geword van die sameswering."

And then we are referred back to certain names. I am going to come back to that too. So Your Lordship will see that the main charge is based on a course of conduct involving the (30) accused and other persons and that course of conduct is set out/.....

out in the indictment and it covers a period of some 28 months and there are 22 accused whose guilt is sought to be inferred from the conduct of themselves and the alleged co-conspirators committed during this 28 month period and in the further particulars the State has indicated that the co-conspirators include the management and officials of the National Executive of the UDF and seven regions of the UDF and members of committees of, and at some stage we are told members also, of thirteen community organisations, nine student organisations, seven political organisations, two women's organisations, six (10) media groups, nine trade unions and five other organisations, and it is added that they are also members and active supporters of the ANC as well as in addition to that members and active supports of the ANC and the SACP. So Your Lordship will see that the case will be concerned with the affairs of the UDF, the ANC, the SACP and 51 other organisations. The names of the persons in the 51 other organisations who are alleged to be party to the conspiracy cover some 25 pages of the further particulars. Now the State also places reliance on hundreds of documents which are contained in the volumes (20) of documents which form part of the further particulars. Now we have not actually had time to read all those documents nor to count the pages but we estimate that there are between some five and six thousand pages of documents upon which the State says it is relying for the inference. Now then in addition to the main charge of treason the accused are required to meet three charges of terrorism, which constitutes the first alternative to the main charge, two charges of subversion and five charges of murder, which constitute the second alternative to the main charge, and these alternative charges are (30) apparently based on precisely the same course of conduct involving/.....

involving the same co-conspirators as are mentioned in the main charge. Now the method of charging the accused on the basis of a course of conduct committed over a long period of time and involving actions of many alleged co-conspirators is competent but it is an exception to the ordinary method of charging accused persons and it is potentially prejudicial to the accused persons who are made subject to such a charge and for that reason we submit that the State is under a duty to particularise its case with precision in this type of case and to provide the accused with all particulars which they (10) reasonably require for the purpose of preparing their case, even if this were to involve the disclosure of evidence. Now this was dealt with fully in the case of ADAMS, that was the 1956 treason trial which came before the special court consisting of RUMPF, KENNEDY and BEKKER, JJJ. We do have an extra copy of the judgment. I do not know what books are available here today but if Your Lordship would like the extra report we would put it up to you. Now Your Lordship will see that in the ADAMS case, and indeed ADAMS' case the extent of the documentation seems to have been ... (20)

COURT: Yes please continue.

MR CHASKALSON: In ADAMS' case it seems as if the extent of the documentation may have been heavier than the documentation in this case so the degree of particularity was much more precise because schedules had been provided indicating precisely what the documents were, what was relied upon insofar as each accused was concerned, and much more detail was given to the accused and the way the matter was dealt with by the special court was this, there are two passages in which reference is made to the question of fairness to the accused and the need for (30) great particularity in this type of a charge. The one is at
page/.....

page 669. The Court says:

"In the result it seems to us that the present case is not a case where the Crown has simply made no effort of advising the accused of the extent of their participation in the alleged course of conduct. Insofar as it has furnished the accused with information on which it will seek to rely to prove the conspiracy, the accused's adherence to it and of the individual overt acts said to have been performed by each of the accused it cannot be said that the Crown has not complied with its duty. (10) But in our opinion that is not enough. Its duty in the circumstances of this case does not end there but on the contrary goes even further. In being obliged to inform the accused of the extent of their participation in the alleged course of conduct the requirement of fairness to the accused renders it imperative, in the circumstances of this case, that each accused should be informed in addition to the information which has already been furnished, of the speech or document or portion thereof on which the Crown relies for any particular (20) allegation it has seen fit to prefer against the accused in the indictment. In our view of the matter a joinder of persons on the basis of participation in a course of conduct, not for the same periods, constitutes a departure from the usual or general rule. Such a departure is only to be permitted by the Court if the Crown is made to comply with its duties in the strict sense of the word."

And then the Court, at an earlier passage at page 656F had said this:

"It seems to us that the accused will not be in a (30) position to prepare their case unless the Crown

particularises/....

particularises the speeches and documents upon which it relies. It is a well known principle in our law that an accused person is entitled to such particulars as he properly requires for the purpose of preparing his case before he is called upon to plead and enter upon his defence and he is entitled to such particulars even if it entails a disclosure of Crown evidence."

Now the approach in the ADAMS case was that the question was ultimately one of fairness to the accused. That I have already mentioned a passage in which fairness is referred to and it (10) appears in two other passages. At 668 the approach of the Court is really set out, and that is the approach which we ask Your Lordship to adopt in this case:

"The question whether an accused has been sufficiently advised of the extent of his participation in a criminal course of conduct seems to us to be one of degree, depending naturally on the circumstances of each case but which ultimately reduces itself into one of fairness to the accused."

And again at page 670 to 671 in relation to the question of (20) joinder and joinder of charges and joinders of persons the Court said that they were not at that stage:

"We are not presently prepared to interfere with the Attorney General's right to have joined the accused but should it transpire at any stage of the proceedings that any one of the accused will suffer prejudice or undue hardship or inconvenience solely by virtue of the fact of a joint trial the possibility of a separation of trials being ordered is of course not excluded."

So the approach is, we submit, that this is a departure, (30) this form of charging is a departure from the ordinary rule, that/.....

that it is potentially prejudicial and to avoid prejudice, and in order to ensure that the accused are treated fairly the State should be made to comply strictly with its responsibility of informing the accused of the way they need to prepare themselves for the trial.

Now at page 5 of our heads of argument we deal with the way in which the particulars are being furnished by the State. It is in paragraph 8, we draw attention to the fact that the State has provided the accused with a large number of documents and that it has also set out in the schedule to the indictment the scope of the course of conduct on which it relies. (10) But the way in which the information has been put before the Court and the accused is, in our submission, confusing on occasions and that there are also important aspects of the charge in which the particulars given are inadequate. Now we have endeavoured in this notice to confine this application to those issues which are of particular importance to the preparation of the defence and we have not dealt with everything in the further particulars which seems to us to offend against some of the statements in the ADAMS case. We have (20) tried to keep it to matters which seem to us to be important to those concerned with the presentation of the defence and the preparation of the defence. Now in paragraph 9 we draw attention to the, I do not think it is necessary for me to refer to those passages but the structure of the Code now is somewhat different to what it was at the time of the ADAMS case, though it is really in regard to the objection to the charge that the main difference arises. Now it appears that an exception to an indictment should not be taken in the way it used to be taken, as a matter raised initially as an excep- (30) tion but that the objection should be identified and that the Court, /.....

Court, on hearing the objections, will itself either amend the charge and presumably in amending the charge it might delete charges which it sees to be objectionable for any reason and directly state to delete that charge, or to provide the sort of particularity which it considers would be appropriate if the charge were to stand. But it does not seem as if there is any other material difference. It seems to be more one of procedure. But it is not of moment now because we are not asking Your Lordship to quash the indictment, we are asking for information and clarification, and so the difference (10) in regard to the procedure to be followed is, at this stage, not relevant. If we were not to get the information, or if the information when produced were to present problems then we may have to follow that procedure and seek a quashing at that stage. But at the moment our object is to seek clarification of the charge and a putting together of an information in a way which will be manageable, both for us and for the Court we think, and which will make the running of this case much easier and speedier.

Now the first objection is given at pages 2 to 4 of the (20) notice. I do not at this stage need to read the notice, I will come to it shortly but the principal complaints here relate to the method by which the State has placed information before the Court. What the State has done is to provide the accused with volumes of documents which it says form part of the further particulars and it has told the accused to read those documents and to extract the information themselves from the documents, sometimes identifying the documents by their alphabetical and numerical codes and sometimes by referring to the nature of the document without providing the coding. It says "Minutes (30) are annexed hereto and we will rely on them" but it does not
tell/.....

tell you that they are AB10 or AB32 or whatever it is. So you are told that you must look for some minutes but the coding of the particular document is not referred to. Now if I could just show Your Lordship some of the problems which arise here and perhaps I could ask Your Lordship now to look at the notice. Your Lordship will see in the notice that we say that on a number of occasions the State does not answer directly the questions asked in the request for particulars but refers to documents, sometimes making the reservations that there may be other documents on which it will rely as containing the (10) information sought in the request for particulars and it invites the accused to extract the information themselves from the document, and then more particularly in answer to the accused's request in relation to the identity of the co-conspirators, and that is paragraph 1.1.1 and 1.1.2 of the request, and I will read them to Your Lordship shortly, the State refers the accused to a series of documents which it says is not exhaustive. It seems therefore that the information may not be complete and also an examination of the documents does not show clearly who the co-conspirators are alleged to be or what particular (20) management structures they are alleged to belong to. If I could just go down the objection and then look at some of the instances to show Your Lordship what our problems are because we say that in answer to the question as to which officials of the UDF are party to the conspiracy which is contained in paragraph 1.2 of the request the State again refers to a series of documents. And then what happens later is the answers given by the State in reply to paragraph 1.1 and 1.2 of the request for particulars are repeated in answers given by it to other questions. In other words you are referred back to (30) this part of the indictment and so the same objection really applies/.....

applies there as well. Now can I just ask Your Lordship to look at the request for particulars, paragraph 1.1.1 and 1.1.2. Page 1 of the particulars, and there the question asked is that "Insofar as the accused are charged with having committed the said offence pursuant to a conspiracy between members of the management structures and officials of the UDF and members of the management structures of the organisations or bodies affiliated to or actively supporting the UDF, the UDF conspiracy, the following particulars are required: The names of the members of the management structure of the UDF who are (10) alleged to have been party to the conspiracy, indicating in respect of each such person, 1.1.2 the particular management structure to which he or she is alleged to belong, 1.1.3 when where and in what manner he or she is alleged to have joined the conspiracy." And then that was repeated in regard to the other people who are alleged to be co-conspirators. Now that is obviously a matter of some considerable importance in a charge of treason because the accused are sought to be made liable for the acts of other people and it is important that they should know from what time they are going to be made (20) liable for the acts of other people, it is important that they should know who those people are and actually what periods of time they need to concentrate on and people they need to concentrate on. Now the way in which that information has been given, Your Lordship will see that in answering the further particulars at page 1, 1.1.1. and 1.1.2 the State says this:

"Die name van die lede van die bestuurstrukture van UDF en die strukture is soos onderandere per dokumente, gemerk..."

and then there are a number of documents given and it is (30) finished up "soos UDF self uiteengesit". So we are told two things./....

things. First of all that it is onderandere per dokumente. Now if those words are to have any meaning, and they should either be taken out or if they are to be given any meaning it means that there are really other documents which may set out this information upon which new names may be introduced. And then if we were to come to the information itself the first document we are referred to is document A1. Now it so happens that A1 comes in three parts. A1 is in three parts, it is A1, A1(1), A1(2), A1(3) and those, that volume which you have got marked A1 that is the document to which we are referred. Now it (10) consists of some 70 pages or more and we are told read that document and find the information that you have asked for. Now there are parts where you will find some information. For instance if one reads as far as page 6 you will see set out there onpage 6 "National patrons and the National Executive". We are not told whether the national patrons are said to be part of the management structures or persons who are alleged to have been in any way party to the co-conspiracy. Are we to be concerned with the actions of Dr Alan Boesak and the Reverend Beyers Naude and others or not? Or are we to (20) guess whether that is to be the case. We are told that if we read this far that there is a national executive and presumably the State may wish to rely on that. But if one looks through this does the State seriously expect us to read 70 pages to find the names of the persons whom it says are alleged to be the co-conspirators? If one looks at page 10 for instance you will see a structure, the structure tells you that there is the National UDF Executive, a General Council and Executive and then trade unions, civic, womens, youth, students, religious, sports. We do not see the patrons mentioned. Does (30) that mean that we can ignore the national patrons?

COURT:/.....

COURT: Just a moment. Yes please continue.

MR CHASKALSON: Does that mean that we should, though the national patrons are set out at A1 that we must now read page 10 and decide for ourselves that we should ignore the national patrons? Must we read all these pages to find out names? Now you will find many other names mentioned. If I could just ask Your Lordship to turn for instance to page 57, there are names of people set out there. One name for instance is the name given Samson Ndou. He does not appear amongst the National Executive or the National Patrons but his name is there. We (10) are told a little bit about him. If we look at one of the maps we will see that Mr Ndou may possibly belong to one of these particular groups identified at page 10 but we do not know what the State intends to make of it. So really what the State is saying to us is read document A1, find some names there and decide for yourself whom we are going to hold you liable, for whose acts we are going to hold you liable. That is not the way in which particulars should be given. Further particulars are not a treasure hunt. There is no reason at all, the State knows who it intends to allege the co-con- (20) spirators are, there is no reason why if the State wishes to confine itself to for instance the National Executive at A1 page 6 it cannot just provide that list of names in the ordinary way. There are other names that you will see, I have given you Mr Ndou but there is a name for instance at page 58 of those bundle of papers of somebody called George Blauws, he is on the next page. George Blauws was a member of the Franchise Action Committee and the Coloured Peoples Congress. Is he meant to be a co-conspirator or not? Now that is how the State proceeds. The next document it refers (30) to is a document called C17. At page C17 you will see a
letter/.....

letter which purports to come from the United Democratic Front and it says "Border".

COURT: Just a moment, let me get it.

MR CHASKALSON: C17, it is volume 2 of all of those. If you look at the front cover. Does Your Lordship have C?

COURT: I have C1 to 143, Volume 2.

MR CHASKALSON: If Your Lordship looks at C17 you will see a letter there from United Democratic Front Border to the Secretary of the United Democratic Front.

COURT: Yes. (10)

C4

MR CHASKALSON: It says "Kindly receive the results of the elections carried out during our A.G.M. held in East London on the 18th of November 1984. Other documents enclosed are a copy of the secretarial report submitted to all delegates to the said A.G.M. and also an update on issues on the situation in this regard." And then some names are set out. So presumably if we were to draft our own schedule we would be told there is a date mentioned there and there are some office bearers mentioned there on page 1. Now we could say 18.11.84 we would assume if the State refers us to this document that (20) it is saying that these are the names of some of the people but then we are told that other people were elected to represent the region at N.E.C. meeting, and then names are set out. Those names do not appear, some of those names do not appear in the list of offices bearers. You will see T. Gweta, L. Myers, H. Suwiza. Those names are not alleged to be office bearers. Now what are we to do with those names? Are they to appear somewhere as co-conspirators or are they not?

COURT: No L.L. Myers is under additional members of the executive and Suwiza is the treasurer. (30)

MR CHASKALSON: Suwiza the treasurer.

COURT: /.....

COURT: Gweta I cannot find.

MR CHASKALSON: I do not see Gweta there. And then if Your Lordship looks through it Your Lordship will see that on page 2 there is a reference to people under "Repression and its subsidiaries" Your Lordship will see there being references to people who were ex-members of our regional executive. Does that mean we have got to read each page to see if names suddenly appear in the body of somebody who is alleged to be a co-conspirator? Or does the State not rely on that? Then if one turns to the third document, C81. That is, I can (10) tell Your Lordship it is in volume 5 of the volume marked C1 to 143. Now this is all in answer to the 1.1.1 and 1.1.2 where we are concerned with the management structures of UDF and here we are given a list of the names, C81 there are thirteen, we are told that they are names of publicity secretaries, thirteen names of publicity secretaries are set out. But they are attached to different organisations and they do not appear on the face of them to be on the UDF management structure, they are names of particular groupings which some of the names I recognise as names mentioned by the State as (20) affiliates of the UDF. And then one starts looking through the document and you see names of affiliates of the UDF, there are some 42 affiliates. Then you are taken further through that document, you get into names, another 167 names of organisations supporting the UDF declaration. Now what management structure are the persons whose names appear on page C81 alleged to belong to or are they alleged to belong to a management structure or not? And when did they get there? And are we really meant to read documents running into dozens, hundreds of pages, to look for names when the State must (30) know what its case is and can simply put it out on a piece

of/.....

of paper itself and say these are the people. What is its problem? Why must we be told to go and find out for yourself. Then the next document is C88, that too is in Volume 5. I am not sure whether Your Lordship intends taking a mid-morning adjournment or not and if so at what time.

COURT: When the arrangements have been made we will adjourn. Please continue in the meantime.

MR CHASKALSON: Yes, Your Lordship will see now here is a document BEWYSSTUK C88, EXHIBIT C 88, the UDF signature campaign in the Transvaal, Report from the Transvaal UDF (10) Signature Committee 10/3/83. And if one reads it, you look through the first page, the first column on the first page and you do not see any names yet, the second column of the second page I see that there is a name mentioned but that that is collection after an SACVC mass and the priest's name is mentioned.

COURT: Where do you see it?

MR CHASKALSON: I see the priest's name being mentioned in paragraph 4 under B, Collection after SACV mass, paragraph, the right-hand column B, Chronology of Campaign in the Trans- (20) vaal. You will see under paragraph 4 a priest's name is mentioned. Then I see in paragraph 11 there is JODAC(?) Press Conference with prominent people (e.g. Beyers Naude). I do not know whether we are being told that these people are co-conspirators or what structures they belong to. And then "See forthcoming plans, book launch by Albertina Sesulu of two UDF signature campaign books." And then if one goes onto the next page something to do with the Media Committee Report and silk screening and evaluation and finance but I do not, at a fairly cursory reading, see any names mentioned. The (30) third page, then we have Programme for UDF Million Signature Campaign/.....

Campaign workshop, and then some names are given, first names, to registration Temba, 2.16 welcome and explanation of the programme and purpose of the workshop Pat. 2.30 Group discussions, Tom. And so it goes. And then if one reads through it, that is really what that document seems to be, occasionally names are mentioned, pamphlets are attached to it. I do not know My Lord, does the State expect Your Lordship and us to read right through this document to find names in it, and to know that we must look for for those names that they may be co-conspirators and they may belong to particular management structures and then to identify them? Then at document C89, this is a summary of the Minutes of the Joint National Secretariat and Treasury held on 28 April. We are told of a number of people who are present. Does Your Lordship, it is in Volume 5, C89, and you see Summary of the Minutes of the Joint National Secretariat and Treasury held on 28 April 1984. Now does that mean that the State intends to allege that one of the management structures of the UDF is the Joint National Secretariat and Treasury? Does it intend to allege that these are the people who were members of it, does it (20) intend to allege that the apologies recorded are apologies from people who were members of it? And then if one looks through it again it is a document consisting of a number of pages which we are told to read and occasionally names are mentioned in the document. So it has really been left to us to start building up what the State says the management structures are by identifying the different names which get mentioned in some of the documents, as it were drawing up schedules, allocating names to them, guessing dates. Then if one looks at C92, that is the next of the documents referred to, we are told that it is (30) the Minutes of the Launching Conference of the UDF Western

Cape/.....

Cape Region held at the St. George's Cathedral. Present, well I would guess looking at some of the names of present that what is referred to is organisations and that those are not intended to be the initials or the names of individuals. I say so because I see AZASO and NUSAS and MUWASA, all of which are acronyms which are familiar to me. But apparently it is a meeting or organisations. Then at page 2 we are told that there has been an election, that the following people were elected as patrons of the UDF. Then at page 3 we are told that a number of people who were elected to posts in (10) the Western Cape region ...

COURT: Just a moment.

MR CHASKALSON: Your Lordship will see that the first page of C92 is "Present: CAYCO, CAHAC and so on, those are I think probably intended to be organisations. Then Your Lordship will see that a list of names, then you see a list of names, you see elections at page 2, the following people were elected as patrons, the date of the proceedings was apparently July 1983. Does the State allege that these people had joined the conspiracy by July 1983 and at that stage were planning (20) to, planning treason against the State? We see names of people who have been nominated for additional executive members and whose names, who apparently decline nomination. What are we to make of them? And if I could ask Your Lordship to look at page 4 Your Lordship will see a number of names of people who are nominated for additional members and then we are told that seven people were declared elected. There were ten and I think that some people withdrew, yes I see that, that Lacket, Blous and Essau declined, I do not know what we are meant to make of that. (30)

COURT: Are you turning onto a different document?

MR CHASKALSON:

MR CHASKALSON: I was going to look at another document.

COURT ADJOURNS FOR TEA. COURT RESUMES.

MR CHASKALSON: Your Lordship will see on document C95, no not C95 I am sorry, it is C92, Your Lordship will there see that under the heading "Publicity Secretary" Jonathan de Vries proposed, Jonathan de Vries declines".

COURT: At which page?

MR CHASKALSON: Page 3 My Lord. If Your Lordship would then turn to C95, which is another document to which we are referred, Your Lordship will there see that, again the list of national(10) patrons and national executive is furnished to presumably it does not add anything to the first document, there must be something else in the document. A series of names are then given. That we have already been given from another document. Bu then a series of names is given and if one were to look at the second page of the Western Cape UDF Executive Profile to get the Publicity Secretary and you see Mr J. de Vries, a student at the University of Western Cape as a former chair person. So you are referred to one document in which it says that he did not accept the position and you are referred to (20) another document in which it says he did accept the position. Presumably this, I do not know whether anything turns on it by all I am trying to show Your Lordship is the utter confusion which arises from giving particulars in this sort of fashion and the unnecessary burden that everybody is placed under as a result of that procedure having been adopted. Then if one turns to document C121. Now here we are, we are referred to this as an answer to a question dealing with the management structures of the UDF and the document, as far as I can make out it starts off C121 saying "Working Principles"(30) and it then sets out some aims and objects. Incidentally,

while/.....

while we are looking at this document on aims and objects you will see later that there are a number of documents which set out aims and objects, not always in the same terms. Never I may say as an aim or object being the violent overthrow of the government by force, which is what is pleaded as the aim and object. But you do get aims and objects expressed in different terms at different times. And then ultimately one gets to the end of the document, and I think that is the first time one gets any names, you get UDF Border Schedule A and there seem to be a number of organisations with names of representatives. (10) Now again that is a particular given to us as to a management structure of the UDF and names of persons on the management structure and when they joined. Again I am not sure what one, does it mean that the State case is that the organisations listed in column 1 are actually not independent organisations but are in some way management structures of the UDF and does it mean that the representatives listed in column 2 are the members of the management structures? Or is there something else which we actually missed in document C121 which did not come to our attention? Then we are referred to a document (20) C129. There is both a typewritten and handwritten document, one of those strange cases where actually the handwriting is better than the typing.

COURT: Is it in the same volume Mr Chaskalson?

MR CHASKALSON: It is in volume 8 of C1 to 143. You will see that there is the typewritten document and there is the handwritten document. Your Lordship might find the handwriting easier to read than the typing. I do not know what is to be made of this document other than that it bears the signature "Yours sincerely, Chairman, Curtis Nkondo, Publicity Secre- (30) tary", Treasurer seems to be blank. Perhaps he holds all

the/.....

the offices, but of what, of the Release Mandela Campaign? And is that now a management structure of the UDF or is it a different organisation? Then there are some other documents which are marked K1, N3, Q2, they are all in answer to the same request. Now here are Minutes of the General Council Meeting held on 17 September. Your Lordship will again see a reference to the names of organisations. Now this is the General Council meeting. I see if one looks at the front page, where it has got stapled to it, it says "United Democratic Front" and then it says "(Transvaal)" and it says "Re notice (10) of General Council meeting" and if one were to apply that to the next page I assume, but I do not know, that the General Council is meant to be the General Council of the UDF in the Transvaal.

COURT: Yes the heading is "United Democratic Front (Transvaal)".

MR CHASKALSON: Yes, at the top, yes. And then going down it you will find names of people who have been appointed to particular offices, programme of action, so that again presumably we are meant to take out the names from here and put them up on some sort of a chart. Then you will see also that (20) the name of Bishop Tutu is mentioned, invited to be a patron. Does that make him a co-conspirator? Or not? Then document N3. You will see it is a secretarial report and the contents of the document reveal that it is probably for the Eastern Cape region of the UDF. There seem to be two names mentioned in the document. One is the name Nassim Pachad, paragraph 5. "Mr Nassim Pachad has been appointed to assist the treasurers." And the only other name that we could find in this document was the Reverend Sam Buthi, about whom there was some query. And a plan to challenge the Reverend Sam Buthi on statements (30) he had made about the UDF. So I assume that the Reverend Sam

Buthi/.....

Buthi is not meant to be part of the management structures but possibly he was a member of a management structure who said something out of line and was to be challenged with it. I do not know. Q2 is another one of these documents in which a number of names appear. And this is the General Council of the United Democratic Front. See people who are there. It says R.E.C. members, possibly Regional Executive Committee, I do not know. R.E.C. members, some names are given, apologies are recorded, names are mentioned in the Minutes. A lot of the names have been mentioned before in other documents. (10)

Then the same observation can be made basically with document A5 which contains a number of names which have been given in previous documents and also has a list of organisations which are said to be provisional. Then document C102. That is a report of the National General Council which seems to run to over 40 pages and contains names again, you will find names which have been mentioned in other documents. It is not dated but it contains resolutions which were apparently taken on 7 April 1985. It is in April 1985, the last act alleged to have been committed by any accused is November 1984. And (20)

then document C61 is a series of press statements issued by the UDF. It is Volume 4 of C1 to 143. I do not know, I mean there is a quote, "I can safely say to the Nationalist government that the past is theirs but the future is ours, Oscar and Petter veteran trade unionist and community leader after his election as President of the United Democratic Front in the Western Cape, Sunday July the 24th." Then we are referred on page 2 to patrons, we are referred to other executive members elected were Christmas Tinto and Joe Marx, whose names have been mentioned before. If one reads through the document we (30)

do not see any other names. So there seem to be three names mentioned/.....

mentioned here which have appeared in other documents previously. Then we get a document which is listed AB2. What happens here is there are now references to the UDF, it seems as if it is, the document says it is a report from UDF Transvaal Education Committee to UDF Transvaal Executive, and numbers of names are mentioned there. It has the bottom of the page, quite appropriately the bottom of page 2 there is a little heading which says "Where do we go from here". It is not an inappropriate question to ask in regard to the reader when he is trying to find his particulars because I see on page 4 there (10) are signatures, two, four, five people apparently signed for the UDF Education Committee. Then there is a, those are the questions which we were asked about the members, the question there asked was the names of the members of the management structures of the UDF who are alleged to have been party to the conspiracy, that is management structures, particular management structure to which he or she is alleged to have belonged and when, where and in what manner he or she is alleged to have joined the conspiracy. Then the second question is, we ask now, because we are following the indictment, (20) because we are told we are in conspiracy with members of the management structures, officials and other people. So the next question we look at are who are the officials, and the question is "The names of the officials of the UDF who are alleged to have been party to the conspiracy" and here the answer is again to a series of documents but those documents, if one looks at page 1 of the State's further particulars, all but two of those documents are documents to which we have already been referred to in answer to 1.1.1 and 1.1.2. So it seems that the same document we must find the officials as (30) the members of the management structures. There are only two documents/.....

documents, according to my audit, and I hope it is right, I did it quite late last night and I think I am probably right, the only two documents which I noted which were not in 1.1.1 and 1.1.2 are document C32 and a document C118. C32 is in Volume 3. It is headed "Interview Kit" and its first question is again possibly not in appropriate "Who is seeing which affiliates". And then one looks at it, we are told to go through it, it is very difficult to know what this document is doing because one does not easily find names in it. What you do find is that another copy of the document that then (10) follows it, a second interview kit with the same series, and this one seems to have some things written into it which are really illegible on our document and I do not know whether Your Lordship has two, I think we have three interview kits in ours. But some of them have things written in in hand which are largely illegible, but certainly do not seem to give us the people who are the officers who are not members of the structures. It is very difficult to see what they all mean, and in the last of those documents, C118, this, that is in Volume 7. There, all that we are told there, it is called (20) an Emergency UDF Working document, it comes from the Transvaal Regional Office and the names mentioned on page 2 under secretariate and organisers, that Murphy assumes the role of Acting Secretary assisted by possibly William Smith, that the voluntary services of Barbara Keshler and Fazzil, to provide a back up system to the administration work of Esther and Pat be continued, the ban handle of Vaal with the help of Acting Secretary. Now again, are these people mentioned there alleged to be officials of the UDF who are co-conspirators and about whom we need concern ourselves or not? So the submission (30) to Your Lordship is that if one looks at a way, then if one carries/.....

carries on with the State's particulars, it says "Die name soos in die volgende dokumente", 1.2. 1.3 we ask for the names of the officials and members of the organisations or bodies alleged to be affiliates or active supporters of the UDF indicating in respect of each such person the name of the organisation or body to which he or she belonged, whether such organisation or body is alleged to be an affiliate or an active supporter of the UDF and when where and in what manner he or she is alleged to have joined the conspiracy. Now here we are first of all referred, on page 2 under A to certain (10) documents and then under B we get the names and the organisations. Now of course as it has been done on page 3 of the particulars is the way it should have been done everywhere. We are told who is on the S.C.A., who is on the V.C.A., everything is set out, names are mentioned and there just seems no reason why all the particulars should not have been provided in that form, which is the normal way of doing it, subject of course to the fact that dates are important in this case and dates are not mentioned. So if I could ask Your Lordship then to look at the Notice of Objection under (20) paragraph 1.3 and there we, the grounds of objection there are that the answers given by the State in reply to paragraph 1.1 and 1.2 of the Request for Particulars are repeated in answers given by it to other questions and the objections raised in paragraph 1.1 and 1.2 apply mutatis mutandis to these paragraphs. Now if one would look at the questions one will see the sort of information we were asking for. We are now asking about the second conspiracy, it is the UDF-ANC conspiracy. The first one is purely the UDF conspiracy. And when we ask about, for information about that in 1.6 we (30) say well we want mutatis mutandis the same information that

we/.....

we asked you for the UDF conspiracy and we are referred back to the same answers which have already been given. The State in its reply goes back. 1.6.1 on page 28 of the State's Further Particulars it says, again it says "Die Staat steen nie op 'n uitdruklike bewoorde sameswering nie." So that is the UDF-ANC conspiracy. "Presies wanneer, waar en hoe die sameswering tot stand gekom het is aan die Staat onbekend. Persone wat deel geneem het aan die organisering vir die stigting van UDF, the stigting self, deel geword het van die bestuurstruktuur en besluitneming van UDF en aan die stig- (10) ting van UDF by UDF deur 'n organisasie geaffilieer het of UDF aktief ondersteun het en UDF besluite en kampanjes opgeneem en uitgevoer het te verwesenlikking van UDF beleid het deel geword van die sameswering. Sien ook verder die name verskaf onder paragraaf 1 supra." So it seems that the State case is that again it has no information to suggest that there was a specific conspiracy involving the ANC but exactly the same persons who are involved in conspiracy no. 1 which we have called the UDF conspiracy are involved in conspiracy no. 2 which was the UDF-ANC conspiracy and we are referred (20) back to these documents to find out when and where and how they joined that conspiracy. Then the next series of questions where there is a reference back, which we mentioned in 1.3 of the objection is in 10.2.1. Perhaps I should show Your Lordship here the form of the indictment. If Your Lordship would turn to page 8 of Volume 1 of the indictment, it is the last preamble, if one were to take it up on the last line of page 7, "Nademaal UDF en/of sy lede, synde organisasies en/of liggame verteenwoordig deur lede van organisasies en/of liggame geaffilieer met UDF en/of organisasies en/of liggame ver- (30) teenwoordig deur lede van organisasies en/of liggame wat UDF aktief/.....

aktief ondersteun en/of persone wat deel vorm van die bestuur-
struktuur en amptenary van UDF". So there is a whole series
of and/or's encompassing a wide area and then they say that
these people "besef, aanvaar en verklaar". So there is an
averment of an acceptance and a declaration in regard to
certain matters which are clearly of importance in the con-
text of the case because it would seem that they grow because
what is "besef, aanvaar en verklaar" is essentially in short-
hand to promote violence and to make the country ungovernable,
and to develop into a violent revolution. So we are told (10)
that the State case is that all these unidentified people,
covering a very wide sphere, both accepted and declared
certain goals. So particulars were asked about that and a
series of particulars are given in paragraph 10.1 of the
State's further particulars and I am going to look at them in
a different context. What I am concerned about now for the
moment is who the people are whom the State says are the
people whom it is going to show accepted each of the proposi-
tions and "verklaar", declared or stated each of the propo-
sitions. And when we ask that we are asked, we ask for the (20)
details and we are told that, on page 48 of the further par-
ticulars, "Elke organisasie wat met UDF geaffilieer het het
die beginsels uiteengesit in die deklarasie en sogenoemde
'Working Principles' aanvaar en hul daarmee vereenselwig met
die doelstellings en aktiwiteite van die UDF. Die name van
die organisasies wat met UDF geaffilieer is is in paragraaf
1 supra uiteengesit." Now there are two things which come
from this. First of all there are, to get the names we are
told to go back to paragraph 1 and read all those documents
again. But the, I will show you later that the acceptance, (30)
that neither the declaration nor the working principles could
in/.....

in any conceivable sense be said to contain either an acceptance or a declaration of what is set out in these paragraphs. So presumably there is something else, and we will come to that later in the troubles which we have with the indictment. But for the moment I am particularly troubled by the fact that the people who are alleged to be the people with whom the accused have conspired and who are alleged to have accepted and declared that the country should be made ungovernable and that a violent revolution should be promoted are by name the people somewhere set out in all these documents. Then at paragraph 49 it is (10) really the same point again because we are told in 10.2.3, at page 49 of the State's Further Particulars, "Die persone wat deel vorm van die bestuurstrukture en amptenary het die beginsels aanvaar en hulself daarmee vereenselwig deur hul poste en ampte in UDF te aanvaar en ook vanwee die feit dat hul as verteenwoordigers van organisasies op die nasionale loodsing van UDF op 20 Augustus en op die loodsing van die onderskeie streke van UDF die deklarasie en sogenaamde 'Working Principles' aanvaar en/of deel gehad het aan die aanvaarding daarvan. Die name van die persone in die (20) bestuurstruktuur en amptenary word reeds in paragraph 1 supra uiteengesit. So again these are the people who accepted and declared these propositions which lie at the heart of the State case. And the last reference back comes through paragraph 15.1 and again there is a reference to activists in the indictment and there is a question who are the activists to whom you refer and on 1.51 the answer we get "Die aktiviste waarna verwys word is al die aktiviste wat deel vorm van die UDF se bestuurstrukture en amptenary sowel as die bestuurstrukture van die organisasies wat met UDF geaffilieer het of organi- (30) sies wat UDF aktief ondersteun en deel vorm van die UDF sameswering./.....

sameswering. Die name wat aan die Staat bekend is word verskaf in paragraaf 1 supra en in paragraaf 30 tot 29 en 67 tot 77 van die aanhangsel tot die Akte van Beskuldiging." So again we are told to go back and find the names from the documents which have been annexed in those series in paragraph 1. Now paragraph 15.1 are charges of murder. An allegation there is that certain people realised that deaths were going to result and it seems, if we are to understand the State case, that everybody who is in any way associated with the UDF is being held liable for the deaths of certain people in the Vaal (10) Triangle, whether they were there or not. But be that as it may what we are asking for at the moment is a clear identification of the names so that we know for whose conduct we are to be held liable and we know what investigations we have got to make and we know where we have got to look for statements and how to take statements. Then the next problem which we raised in paragraph 1.4 of the Objection is that the State refers to documents in general terms without specifically identifying the documents on which it will rely or the particular passages in such documents which are alleged to (20) support the averments made and we point out that this has been done in its answer to a whole series of questions. Now there are really two separate complaints tied up with this. The one complaint is simply that on a number of occasions we are told that the documents are attached, without being given their coding. Now I accept that if one looks for the documents you will find them. Or let me put it differently, if one looks for the documents one will find documents which correspond with that. For instance you are told, and it is not a case where we have not been given a lot of information, here we (30) have been given the information. We have asked for the meetings, minutes/.....

minutes of meetings and we have been given them but we are told, we are not told where they are and we are not told therefore whether there is not possibly some other document which falls into that category which may be used at some other stage as coming there. We have got to identify each one of these categories and then there is a different complaint in regard to propositions relied upon by the State where we are referred to a general body of documents without having the particular passages identified. Perhaps I should take Your Lordship through these paragraphs, 16.5 through to 27.5 where (10) some of it, some of these problems will emerge. Really what has happened is a whole bundle of information has been put before us and I do not object to the information being given. It is helpful to ...

COURT: It seems to me you ask too many questions?

MR CHASKALSON: Well My Lord it is the way they have been answered. I would be very happy with this information properly identified and properly given and it is really, it is no answer to an accused standing charged on a course of conduct over all these years to say read through all the documents (20) and when you have read through all the documents you will know what the case is against you.

COURT: Now could one conceivably differentiate between a request for identification of the documents and a request for identification of the particular paragraph in a particular document? Could not the State conceivably say well this is document A10, taking the document as a whole I say that this means the following. Now if you pin the State down to say that the State must refer you to paragraph 3(b) it means that it excludes a reference to the rest of the document which (30) should in fact be used to interpret paragraph 3(a) etcetera.

MR CHASKALSON: /.....

MR CHASKALSON: My Lord I think when we look at the particular objections Your Lordship will understand what the problems are. I do accept that there is a difference between identifying the document and also identifying the passage in the document. There will be circumstances in which the identification of the document itself will be all that is necessary. But as in the ADAMS case there are going to be circumstances, we suggest, where the State needs to go a little bit further. Some of the documents are long and some of the very specific propositions for which they are relied upon need to be identified. (10) But I understand that and I accept that there will be a number of cases in which the State will meet its duty by simply saying this is the document and I rely on all of it. But can I show Your Lordship what some of our problems are? Now then let me start with the first one of the numbered paragraphs, it is 16.5. Now the question we ask is this, "Is the policy of the UDF alleged to be contained in any constitution or written document? If so a copy thereof is required." And the answer we got is this "Tydens die stigting van die UDF op 20 Augustus - it is page 52 of the - Tydens die (20) stigting van UDF op 20 August 1983 te Kaapstad het UDF 'n deklarasie tesame met sogenaamde 'Working Principles' aanvaar. Volgens die 'Working Principles' is die Nasionale Algemene Raad en Nasionale Uitvoerende Komitee die beleidmakers van UDF. Die Nasionale Uitvoerende Komitee het op 'n gereelde basis vergader en beleidsbeslissings geneem en 'n groot hoeveelheid dokumente is versprei waarin die beleidsbeslissing vervat is. Ook het die verskillende streke van UDF se Algemene Rade en Uitvoerende Komitees sowel as UDF se Secretariat beleidsbesluite geneem binne die raamwerk van UDF se (30) deklarasie en 'Working Principles'. Welke beleidsbeslissings

op/....

op 'n gereelde basis geneem en versprei is. Dokumente waarin hierdie beleidsbeslissings vervat is en waaroor die Staat beskik word verskaf." Now Your Lordship will see immediately two problems. One we are referred to 5000 pages of documents, I may be wrong in 5000 but that is our estimate of the paper contained, and no attempt has been made to identify by coding what is said to be "n beleidsbeslissing". Now of course it is a very important issue in this case since everything is pushed back into the UDF conspiracy and the UDF agreement. So this would be an occasion where, if something in a docu- (10) ment is said to be a "beleidsbeslissing" the accused are entitled to be told the State regards that as a "beleidsbeslissing". And then the accused would know that that is really what they are concerned with and not the other 40 pages of the document. It does not mean if the State says a beleidsbeslissing is X or Y or whatever it may be that one would then not read it in its context but one would want to know what the beleidsbeslissing is. Now Your Lordship will see that there is a reference to the declaration and the working principles and if I could ask Your Lordship at this stage (20) to look at Volum A1 which contains the Declaration and the Working Principles Your Lordship will, I hope, then understand some of the problems which confront us in getting the type of particularity that we have asked for. Let me read first the Declaration and then the Working Principles, because this is, there is a reference back here to the policy, we are told that this is where the policy is, it is contained in these two documents plus a number of unidentified "beleidsbeslissings", and the declaration says:

"We, the freedom loving people of South Africa, say (30)
with one voice to the whole world that we cherish the
vision/.....

vision of a united democratic South Africa based on the will of the people, will strive for the unity of our people through united action against the evils of apartheid, economic and all other forms of exploitation and in our march to a free and just South Africa we are guided by these noble ideals. 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 (10) say all forms of oppression and exploitation must end. In accordance with these noble ideals and on the 20th day of August 1983 at Rocklands Civic Centre, Mitchells Plain we join hands as a community, women, students, religious, sporting and other organisations, and trade unions to say no to apartheid. We say no to the Republic of South Africa Constitution Bill, a Bill which will create yet another undemocratic constitution in the country of our birth. We say no to the Koornhof Bills which will deprive more and more African people of (20) their birthright. We say yes to the birth of a United Democratic Front on this historic day. We know that this government is determined to break the unity of our people, that our people will face greater hardships, that our people living in racially segregated and relocated areas will be cut off from the welfare produce in the cities, that rents and other basic charges will increase and that our living standards will fall, that working people will be divided, race from race, urban from rural, employed from unemployed, men from women. Low wages, poor (30) working conditions, a tax on trade unions, will continue.

Students/.....

Students will continue to suffer under unequal education created to supply a reservoir of cheap labour. Ethnic control and unequal facilities will remain. Apartheid will still be felt in our classrooms. The religious and cultural life of our people will be harmed. The signs of apartheid will continue to be stamped on the culture and religions of our families. Non-racial sport will suffer, there will be less money for the building of sports facilities and forced separation will deal non-racial sport a further blow. We know that apartheid (10) will continue, that White domination and exploitation will continue, that forced removals, the Group Areas Act and the Bantustans will remain, we know that there will not be an end to the unequal distribution of the land, wealth and resources of the country, that the migratory labour system will live on to destroy family life. We know that the government will always use false leaders to become its junior partners and to control us. Our lives will still be filled with fears of harrassment, bannings, detentions and death. Mindful of the fact that the new(20) Constitutional proposals and Koornhof measures will further entrench apartheid and White domination we commit ourselves to uniting all our people, wherever they may be, in the cities and countryside, the factories and mines, schools, colleges and universities, houses and sports fields, churches, mosques and temples, to fight for our freedom. We therefore resolve to stand shoulder to shoulder in our common struggle and to commit ourselves to work together to organise and mobilise all - this is now what the commitment is to - To organise and mobilise all commu- (30) nity workers, student, women, religious, sporting and other/.....

other organisations under the banner of the United Democratic Front, consult our people regularly honestly and bravely strive to represent their views and aspirations, educate all about the coming dangers and the need for unity, build and strengthen all organisations of the people, unite in action against these Bills and other day to day problems affecting our people. And now therefore we pledge to come together in this United Democratic Front and fight side by side against the government's constitutional proposals and the Koornhof Bills." (10)

Now that is the Declaration and the Principles, Working Principles which you see set out in the document two or three pages later in that volume, it is page 6, really consists of the structural organisation. There is a very brief statement of aims and objectives. So the conspiracy pleaded is that by joining the UDF and by joining its support structures you made yourself party to the conspiracy to overthrow the State by violence and when we asked is the policy, in paragraph 16.5 is the policy of the UDF alleged to be contained in any constitution or written document and if so a copy is required, (20) we are referred back to the declaration, to the working principles and then to these statements, "Die beleidsbeslissings geneem deur die Nasionale Uitvoerende Komitee" and the other committees. Now clearly the policy to overthrow the State by violence cannot be contained in the working documents, in the working principles and the declaration. So if it is to be found it is going to be found in the "beleidsbeslissings". So they now become absolutely fundamental to the State case, and it is in our submission just no answer in a case such as this to say to the accused that you will find these beleids- (30) beslissings contained in the 5000 pages of documents which we have/.....

have attached. I may say that I have not read all the 5000 pages yet myself. Some of My Learned Friends have been reading but so far nobody has found anything which to them seems to be a beleidsbeslissing to overthrow the State by violence. But be that as it may there may be other evidence to be taken with it. All that we are asking for at the moment is for the State not to tell us to read these 5000 pages but for the State to tell us what the beleidsbeslissings are and where we will find them. There we would like to be told not only of the coding of the documents but also where the beleids- (10) beslissing is, where we will find it in that document, the passage that it relies on for the beleidsbeslissing, and we suggest to Your Lordship that in the light of the ADAMS case that that is a particular to which we are entitled. Then again in paragraph 16.7 we ask "Do you rely on specific resolutions?" and the answer given at page 53 "Minstens ten aansien van al die kampanjes wat deur die UDF en sy geaffilieerders of aktiewe ondersteuners gevoer was was resolusies aangeneem op 20 August te Kaap Stad deur die geaffilieerdes afgevaardigers. Die presies inhoud van hierdie resolusies word (20) verskaf in dokumente soos in paragraaf 16.5 uiteengesit." Now 16.5 of course is the paragraph I have just read to Your Lordship where it says "Dokumente word verskaf". So again it is a general reference to all the documents. And then we are told "Verder was n menigte beslissings gëneem oor die uitvoering van die kampanjes wat ook onder the genoemde dokumente ingesluit is." Now really what we want to be told is is the State's case simply that you conducted a campaign and nothing more or is the State's case that there was a beleidsbeslissing which somehow made that campaign to be something other than (30) what it appeared to be or purported to be. And we are told
that/.....

that there are lots of beleidsbeslissings, we are told that there are "menigte beslissings" and we are told you will find them in all the documents. Now again we say that that is not good enough, that the State must tell us what its decisions are and if it does not want to lead evidence of specific decisions so be it, then we will be at a much shorter case. But if it intends to lead evidence, to rely on documents to show particular decisions then it must tell us what they are, where we will find them and what we must prepare ourselves for. Now the next series of documents I have no problem (10) with other than the identification. It would be quite proper for the State here in 18.1, where we have asked for certain documents if they would just give us the coding. They say they "word verskaf" and all that we want to make sure of is that they, and I do not believe that there will be any misunderstanding between us but there should be no need for us today to start a case without the case, the State telling Your Lordship and us what the particular documents are and all we want here in 18.1 and 18.2 and 18.3 and 19.1 and 19.2, just to make sure that there is no misunderstanding(20) between us and no room for misunderstanding in regard to what documents have been provided, simply the coding. It is not a difficult thing and if that were the only problem I doubt whether we would be here today. While the particulars have been furnished we ask that they be given to us in the ordinary and usual way so that we can all find our way through these documents easily.

Then if I could come to paragraph 26 because here again we get confronted with the way the State has pleaded. And can I ask Your Lordship to turn first of all to the indict-(30) ment. I think it is in Volume 4, Volume 4 of the indictment

page/.....

page, it is Volume 3, I made a mistake I am sorry. Volume 3 page 216. And it is paragraph, if one begins at paragraph 50:

"Gedurende die tydperk 20 Augustus tot einde April 1985 en op verskeie plekke in die RSA het UDF en/of organisasies of liggame wat UDF aktief ondersteun ter bevordering en/of uitvoering van bogenoemde sameswering/s en ter bevordering en/of uitvoering van bogenoemde doelstellings van die ANC en SAKP, of van UDF, of van albei bogenoemde doelstellings in die uitvoering van UDF en/of die ANC en SAKP se kampanje om die Regering (10) in die RSA se beleid en wetgewing ten opsigte van verskuiwings en hervestiging van bevolkingsgroepe en Groepsgebiede, te gebruik om die massas en veral die Swart massas in die RSA te organiseer, te mobiliseer, polities op te sweep en te indoktrineer en/of te aktiveer om deel te neem aan geweldpleging en/of handelingte te verrig waardeur die RSA onregeerbaar gemaak moes word en wat moes uitloop op 'n geweldadige rewolusie deur die massas in die RSA, publikasies, pamflette, plakkate en plakkers uitgegee en versprei.."(20)

Then a whole series of consequences are attributable to those publications, pamphlets, placards and so on. And we are given a number of sub-paragraphs. Now, so now of course Your Lordship will realise here that the accused are being held liable not only for their own actions but for the actions of other people and so the placards and pamphlets, documents and stickers which are going to be produced in court are not necessarily documents which any of the accused will ever have seen at any time before. There may be some which they have, there may be documents for which some of the individual (30) accused are responsible, and that, if that should be the case the/.....

the accused would know what is there. But they are told, and it goes right through from paragraphs 50 to 65 there are a whole series of averments saying that we are going to rely on these documents to say really that you were promoting a violent revolution through your own acts and through your association with other people, and since these now become the important bits of evidence they are now saying that we are going to hold you responsible for particular posters and particular stickers and we asked "Well tell us what they are" and they have now, within these documents, provided the (10) paragraphs and stickers and posters and the like on which they intend to rely. But once again they do so in the way that they have done previously. They say:

"Afskrifte van die - page 71 of the further particulars - publikasies, pamflette, plakkate en plakkers ten aansien van elke kampanje word hiermee verskaf."

So again we are not given codings.

"Die Staat steun nie net op sekere passasies nie maar in elke geval op die geheel van die dokument, en dit is selfverduidelikend waar hul verwys na die (20) verskillende kampanjes soos aangepak en uitgegee. Die naam van die organisasie wat verantwoordelik is vir die betrokke dokument, blyk uit die dokument, en hul verbondenheid aan die UDF word hierbo uiteengesit in paragraaf 1."

So we are again, we are now referred to the body of documentation, we are referred back to paragraph 1 for some information, and I have already indicated our complaints in regard to that, and now if it were simply to identify the campaigns then one could understand that if they said that we were (30) going to say that you ran a campaign against forced removals,

that/.....

that the documents which we rely upon are A13, C11, P21, and so on, put them all together, as they must have done if they were going to bring the case on this basis. They must know what their case is. If they had done it that way and all that was needed was the campaigns then I would have thought that once they had coded it and identified it that that would be enough. But they have gone further than that, they have alleged specific, if one looks through these paragraphs of the indictment they are alleged to have, if one goes back to page 216 of the indictment after the reference (10) to these publications and pamphlets and placards and stickers we are told:

"Waar n propaganda veldtog gevoer word en waarin onder andere .."

And then we are told six propositions which the State is going to prove and what we are asking for really relates to that. They must tell us what part of this body of documentation you are going to rely on for sub (1), what for sub (2), what for sub (3) and if it is not clear from that then tell us the passages and it is only when we have got that information (20) that we will know how adequate it is and we will have an understanding of the case which is going to be made. Now Your Lordship will see that that goes right through the whole section of the indictment, that documentation has been put up for different purposes. It is done under paragraphs 50 to 65 but these are the documents paragraphs. Now in a treason trial, if one looks at that judgment, the ADAMS case, Your Lordship will see that there the State had prepared some very detailed schedules of the documents, of the particular accused, when the documents were issued, by whom the documents were issued and what the documents dealt with. And even then/.....

then the special court felt that in the circumstances of that case it was necessary in certain circumstances for the accused to have their attention drawn to particular paragraphs. Now we of course do not even have that here. What we have is a series of very, a series of allegations from which specific consequences are, to which specific consequences are attributed and we are told go and read all the documents, having read the documents you will find out the ones we intend to rely on in each one of these paragraphs, you will be able for yourself to understand which of the sub-paragraphs we are (10) going to use each document in support of and if you read the documents carefully enough you will also find out who issued them and what their connection with the UDF is. Now our submission to Your Lordship is that in a case such as this that does not meet the requirements of fairness on which accused people are expected to stand trial for treason. So here too we are asking Your Lordship to give us in paragraph 26 the particular document, we want the coding, we have asked for the coding, we asked for the, to relate the documents to the averments and where appropriate to give us the passages (20) that are relied on. The State will know itself, when it furnishes it, those particulars. Where, obviously if it is a very short document and it is relied on for a specific proposition it might be read as a whole but if it is a 40 page document like some of these documents are then in our submission we are entitled to be told where appropriate what part of that document is being relied upon. I am about to move onto another point and I see that it is approximately 13h00.

COURT ADJOURNS UNTIL 14h00.

(30)

COURT RESUMES AT 14h00.

ADDRESS/.....

ADDRESS BY MR CHASKALSON CONTINUED: My Lord at page 8 of our heads of argument we deal with the objection no. 2 which is the second objection. It relates really to the alleged co-conspirators. The question asked in paragraph 1.3.3 was "When, where and in what manner the co-conspirators, being the persons referred to earlier, are alleged to have joined the conspiracy?" and that question just has not been answered. We submit that it is an important bit of information since the accused are being held liable for the conduct of co-conspirators and that evidence of their statements and (10) conduct will be admissible against the accused only after and for so long as they are alleged to be party to the conspiracy.

COURT: Would it not be adequate to answer that question by saying "Well we do not know when they joined but at least as from this date they were members of so and so"?

MR CHASKALSON: Yes. As long as we know the periods of time when people are alleged to be there, and if the State says it does not know when it joined then we know that it is going, that it is not going to, we know the case that we are going to meet. Then objection no. 3, there is an element of con- (20) fusion, possibly more in the reading than in the actuality, I do not know, but the, in paragraph 1.4 of the request, where we ask whether the State is going to rely upon a specific, an express agreement or an implied agreement, and I have not brought along the cases which talk about the obligation to give this sort of a particular. It does not seem to be disputed, it is the answer which creates a problem. At page 27, perhaps I should go to the question, the question is at page 3 of the request and we ask in paragraph 1.4 "Does the State rely on an express agreement between the said persons as constitut- (30) ing the conspiracy or does the State rely upon an implied agreement/.....

agreement between the said persons as constituting the conspiracy, and then in 1.4.1 we say "Insofar as the State relies on an express agreement it is required to indicate" and then asks for certain information. Now the answer we get at page 27 is "Die Staat steun nie op 'n uitdruklike bewoorde sameswering nie." Well if it had ended there there would not have been any problem but then it goes further and it says this, "Nogtans is die sameswering uitdruklik vergestalt gedurende die stigting van UDF op 20 Augustus te Kaapstad waar van die beskuldigdes deel geword het van die bestuurstruktuur. Wanneer, waar en hoe (10) die lede van die sameswering voor die stigting van UDF deel van die sameswering geword het is aan die Staat onbekend. Na die stigting van die UDF het samesweerders deel van die sameswering geword deur aan te sluit by UDF, hulle met die doelstellings van UDF te vereenselwig en/of aktief deel te neem aan die aktiwiteite van die UDF ter verwesenlikking van die doelstellings van UDF. Die presiese datums, tye en plekke is aan die Staat onbekend." So the confusion which now arises is that when the State is asked whether it relies upon an express agreement the answer is "Dit steun nie op 'n uitdruk-(20) like bewoorde sameswering nie" and then we are provided with information which is asked for only if there is such an agreement because paragraphs 1.4.1 through to 4 say "Insofar as the State relies upon an express agreement it is required to indicate." Now the confusion which now is introduced is is the State averring that the agreement, that there was somehow a consensus at Cape Town, that though the conspiracy had started earlier and it does not know about the details of that is it saying that there was an agreement at Cape Town that the parties should overthrow the State by violence? Because (30) that is the conspiracy that is alleged, to overthrow the State

by/.....

by violence. And the confusion seems to be is the State saying that everybody agreed to overthrow the State by violence or means involving violence and that you then, having made that agreement, went ahead and joined the UDF or is it simply saying that if you joined the UDF then per se you are taken to have agreed to overthrow the State by violence? And later on, I will show Your Lordship in answer to the question the next question about the implied agreement where the problems are, but at the moment we would like to know really whether the State is intending to prove some express agreement or not. (10) Because this seems to be answering it two ways. It says it does not rely on an "uitdruklike bewoorde sameswering, nogtans is die sameswering uitdruklik vergestalt gedurende die stigting" and we have difficulty in understanding that and the order that we have asked for is to

COURT: What do you understand under the word "vergestalt"?

MR CHASKALSON: Well My Lord I do have some difficulty. I thought that it meant got under way, got substance, got under way.

COURT: It might also mean that it appears from, it has (20) become conspicuous by.

MR CHASKALSON: Uitdruklik vergestalt gedurende die stigting.

COURT: Yes.

MR CHASKALSON: Well that.....

COURT: It got form.

MR CHASKALSON: It got form during, well, but does that mean that it got form in the sense that

COURT: You should not ask me questions, you must ask Mr Jacobs.

MR CHASKALSON: Well I have, and I have not got the answers(30) which tell me and that is really what I am asking for now.

And/.....

And it also says "uitdruilik vergestalt" so ... I am just, we are just confused and the order we seek to clarify that. Then the next objection we deal with at page 9. Now it is page 9 of our heads and it is pages 6 to 7 of the Notice of Objection and this involves paragraph 1.5 of the, page 28 of the Particulars and, right now question 1.5 was "If the State relies on an implied agreement or intends to establish the existence of the alleged conspiracy not by direct evidence but by inference from facts then it is required to indicate the facts and circumstances from which the agreement will (10) be inferred." And the answer given is at paragraph 1.5 on page 28, "Die bestaan van die sameswering word afgelei van onder andere die feit dat vir die ontstaan van UDF georganiseer was, dat dit tot stand gekom het met spesifieke doelstellings en projekte, dat h bestuurstruktuur en amptenary bestaan het wat verantwoordelik is vir die besleidsbepaling, koördinering en uitvoering van kampanjes en besluite, deur aan te sluit by UDF as geaffileerde, deur UDF aktief te ondersteun en mee te doen aan die uitvoering van kampanjes en besluite deur UDF geneem en aanvaar, deur aktief te (20) organiseer en mee te doen aan die mobilisering, organisering, politisering en aktivering van veral die Swart massas." Now of course if we are concerned with a conspiracy to overthrow the State by violence it would seem that the key statement in that paragraph is "Dat dit tot stand gekom het met spesifieke doelstellings". Now we are told elsewhere in the indictment that a "doelstelling" of the UDF or the UDF conspiracy as opposed necessarily to the UDF is the violent overthrow of the State, treason in that form. But now we are told about "spesifieke doelstellings" here and really this goes to the (30) heart of the case because as we point out in paragraph 20 at

page/.....

page 9 that the objects specifically adopted by the UDF at its formation, according to the averments made in the Further Particulars, and that is the Declaration and the Working Principles to which we have referred and we are referred back to them, and I have already referred Your Lordship to them, do not include the violent overthrow of the government. Now the averment made in paragraph 1.5 of the Further Particulars do not prima facie therefore support a conspiracy to commit treason unless there was some additional consensus at the time that this should be the objective. Yet when we ask the State (10) whether there was any other consensus that it relies upon it disavows any intention of doing so and refers us back again to the, we say in our heads the Working Principles, it should be the Declaration and the Working Principles. At page 9 of our heads we left out the Declaration, it says and specifies the Declaration and Working Principles as constituting the only specific statement of UDF policy at the time it was launched. Now if I could show Your Lordship the passages in the Request for Particulars, paragraphs 16.1 and 16.5. In 16.1 we as "Whenever it is alleged in the annexure that any (20) act was performed or any statement was made in pursuance of or in furtherance of or in execution of and for the achievement of the said "genoemde or bogenoemde doelstellingen" does the State intend to allege a consensus other than that particularised in response to the request contained in paragraph 1 hereof. And that was the formation of the conspiracy. And the answer we get to that is "Hierdie vraag - it is at page 52 - Hierdie vraag is sinneloos, vaag en verwarrend aangesien die Staat gevra word omtrent doelstellingen en terug gewys word na paragraaf 1 van die aanheg en die paragraaf slegs na same- (30) swerings verwys. In elk geval waar verwys word in die

aanhangsels/.....

aanhangsels na genoemde of bogenoemde doelstellings word verwys na die doelstellings soos uiteengesit in die aanhef tot die Akte van Beskuldiging. Ook waar die Staat in die aanhangsel tot die Akte van Beskuldiging verwys na genoemde of bogenoemde sameswering word verwys na die sameswerings in die aanhef tot die Akte van Beskuldiging belig al." So it seems from that that there is no intention to allege any other consensus than the formation and the joining of the UDF. We are told that the goal of the UDF is the violent overthrow but there is no specific agreement averred that this should be so, no document put up to show that this is so and when we are referred to documents you will see, and I have already taken Your Lordship through paragraph 16.5 of the Request and the answer in another context, that is there where we ask whether, we ask in 16.5 whether the policy of the UDF is alleged to be contained in any Constitution or written document and the reply that we got from that was to refer us back to the acceptance of the Working Principles, the Declaration and the "beleidsbeslissings". Now in the context of the answer which is now given in 16.5 about "spesifieke doelstellings" it is our submission, and we make that in paragraph 21 at page 9, that is important that the State should give particulars of the "spesifieke doelstellings" referred to in paragraph 1.5 and provide the accused with the particulars sought in paragraph D of the notice, and the particulars which we asked for there in the order sought:

"The State is required to furnish the accused with particulars of the "spesifieke doelstellings" referred to, indicating what the "spesifieke Doelstellings" of the UDF are referred to in paragraph 1.5. If the "doelstellings" were adopted in a Constitution or any resolution/.....

resolution of the UDF the State is required to identify the passages in the Constitution or the particular resolutions relied upon. If not the State is directed to inform the accused of the manner in which and whom on behalf of the UDF these "doelstellings" were adopted, indicating when, where and in what manner this was done." Then our next objection is referred to at page 7 of the Notice and at page 10 of our heads of argument. The question, it all arises out of paragraph 3.1 of the Request for Particulars and the question is formulated as follows: (10)

"In regard to the allegation that the ANC realises, accepts and advocates that its alleged aim can only be realised if the masses, and above all the Black masses, in the Republic are persuaded to participate in a violent revolution ..."

Then we ask certain particulars in regard to specific decisions and again we have the use of words about "verkondig" and "beroep doen op" and so on. Now the answer which we got to those particulars is at page 30 of the State's Further Particulars: (20)

"Ten aansien van die bewering wat die Staat in paragraaf 2, bladsy 5 van die Akte van Beskuldiging maak is die Staat van voorneme om te steun op die amptelike beleidsverklarings soos uiteengesit in amptelike ANC en SAKP publikasies. Presies wanneer, deur wie en hoe die beginsels in genoemde stelling aanvaar is, is aan die Staat onbekend. Amptelike ANC en SAKP publikasies kan nie op hierdie stadium aan die beskuldigdes beskikbaar gestel word nie, maar sal by die verhoor beskikbaar gestel word aan die beskuldigdes." (30)

So the objection taken is that the State, and we ask for the order/.....

order in paragraph 7, the State must either furnish the accused with the publications referred to, identifying the policy statements on which it relies. Alternatively it should inform the accused of the terms of the statements and the particular publications in which they appear. Apparently what it is going to say is that we will put our publications and when we produce them you will see what they are. Our submission is that if it is going to rely on them it should tell the accused in advance what it intends to do.

Now in paragraph 6 we have two problems arising out of (10) the particulars which have been given. The question in paragraph 4, we ask for details of certain conduct on the part of the ANC and the answer that we get is at page 30 again. And then a whole series of events are set out in regard to the activities of the ANC. Two problems arise. First of all if one looks at the way the particulars are given we are told that "Die organisering omsluit onder andere die volgende" and we again have trouble with those words "onder andere". If the State intends to rely on something else it should tell us. If it does not it should take out the words "onder andere". (20) But then in the actual particulars which are given Your Lordship will see that for the first time certain averments are made which are of considerable importance to this case. At the bottom of page 30 there is a statement in sub-paragraph (f):

"Sedert 1983 en op 'n voortdurende grondslag, word deur middel van koeriers deur die ANC geskakel met UDF se Geaffilieerde Organisasies, en in besonder in die Vaal Driehoek, waar geldelike hulp, advies, opdragte, pamflette, publikasies en plakkate verskaf is." (30)

Now that of course is of considerable importance. It emerges
for/.....

for the first time in the Further Particulars and what we are asking for now, again Your Lordship will realise that the accused are now being held responsible for organisations of which they may not be part at all, we are now asking, we do so in paragraph 8, we say well which are the affiliated organisations referred to in this sub-paragraph, that is paragraph 8 of the Notice. We say which are the affiliated organisations, sub-paragraph (2) at the top of page 9 we ask for details of each occasion on which a communication between the ANC and the UDF is alleged to have taken place and for details of that. (10) We want details of the alleged financial aid provided to the UDF in the Vaal Triangle, indicating the name of the affiliate and when and where and to whom on behalf of the affiliate and by whom on behalf of the ANC such aid was provided, we want details of the alleged advice giving, we want details of the pamphlets and so on. What has happened here is that the State has now introduced, through its Particulars, in very very general terms averments which the accused cannot possibly hope to prepare for unless they are told what to do. Let us take the financial help. If the State is going to rely on finan- (20) cial help it will know who is alleged to have brought in the money, how much the money is, to whom it came. If those averments are made it then becomes possible for the accused to conduct enquiries and to prepare for their defence. If that information is not given then the accused face an impossible task, if any evidence relating to these specific allegations is led because at the time it is led the accused will then have to start their preparation at that stage and it may take them some time to establish what their position is and how they intend to deal with it. The only way they can really (30) prepare for what is foreshadowed in this little (f) is to
provide/.....

provide the particulars which we have asked for, and we do the same really in relation to the other, because from sub-paragraph (f) on page 32 to sub-paragraph (o) on page 32 of the State's particulars there are a series of averments introduced in regard to what the ANC is said to have done in regard to the UDF affiliated organisations, and so the submission we make to Your Lordship is that the accused are reasonably entitled to those particulars that are asked for because the information furnished in these pages of the particulars has not been furnished with the particularity necessary to enable accused (10) persons to prepare themselves for trial.

Now if we could then look at the next problem which has arisen. In paragraph 8 of the Particulars we have asked two series of questions. The first question:

"Is it intended to allege that all bodies and organisations affiliated to the UDF as members were aware of and accepted the alleged aim of the UDF to overthrow or endanger the government by violence or threats of violence or means which included or contemplated violence."

Page 11 of the request, and the answer given is "Yes". Page (20) 37 of the Further Particulars the State answers "Yes" to each of these questions. Now there are a very large number of affiliates and the State's answer in 2.1 is again to refer one back to the UDF, to the organisations and what the UDF affiliated organisations are alleged to have done. And then when we ask the similar questions in regard to the accused, paragraph 8.4 on page 12:

"Is it intended to allege that any of the accused was aware of and accepted the alleged aim of the UDF to overthrow or endanger the government. If so when, (30) where and in what manner did the accused become aware

of/.....

of such aim and when, where and in what manner did each accused accept such aim."

The answer given is again "Yes" and "Yes". And at page 38 accused nos. 1, 2 and 3 are told that

"Hulle het minstens in die Vaal Driehoek hul aktief vereenselwig met hierdie doel deur aktief deel te neem aan die uitvoering van UDF kampanjies teen die Regering en Swart Plaaslike Besture om die Swart Plaaslike Besture in ten minste die Vaal Driehoek te vernietig en dié gebied onregeerbaar te maak, en (10) aktief daar te organiseer en deel te neem soos infra in die Akte van Beskuldiging uiteengesit is. Dit was in ooreenstemming met 'n ooreenkoms tussen AZAPO and UDF om saam te werk in die Vaal Driehoek teen die Regering se Swart Plaaslike Besture. Beskuldigdes 4 tot 18 en 22 was minstens bewus van, en het hul vereenselwig met dié doel deur hul samewerking met die UDF, en as lede van liggame wat met die UDF geaffilieer is en aktief saam gewerk het in die Vaal Driehoek teen die Regering en Swart Plaaslike Besture en om die Swart Plaaslike (20) Besture in die Vaal Driehoek ten minste, te vernietig soos meer in besonder in die Akte van Beskuldiging infra uiteengesit word."

And then accused 19, 20 and 21 are told that they are part of "die bestuurstrukture" and therefore knew. Now the problem of course is that the, it is apparent that there is again, there does not seem to be any constitution or document recording this goal, nor does there, is there alleged to be any consensus outside of the joining the UDF which is alleged, as it were some form of secret consensus that though your (30) organisation is on the face of it a lawful organisation

engaged/.....

engaged in lawful pursuits you have got together and agreed that you will overthrow the State by violence. Nothing like that seems to be alleged though it is almost implicit in the State allegations. Now everything then is going to turn on the State showing that the individual accused knew that the purported goal of the UDF was not its real goal, because only if they had such knowledge could it be suggested that by joining the UDF they adhered to the conspiracy. Now if one then looks at the sort of particulars which have been furnished, and we make this point in a number of different ways, if (10) one could look at the treason for instance. The treason as pleaded in the indictment, page 12, it is in Volume 1 page 12.

It says:

"Nademaal die genoemde beskuldigdes en ander persone verbonde aan UDF en organisasies geaffilieer met UDF en/of persone en organisasies wat UDF aktief ondersteun het op of omtrent die datums en/of gedurende die tydperke en te of naby die plekke, soos uiteengesit in die aanhangsel wat hierby aangeheg word en deel hiervan vorm, handelende met 'n gemeenskaplike opset en ter (20) uitvoering en/of bevordering van bogenoemde sameswering/s en/of ter uitvoering en/of bevordering van bogenoemde doelstelling of doelstellings van die ANC en SAKP en/of UDF gesamentlik en/of afsonderlik, wederregtelik en met vyandige opset teenoor die Republiek van Suid-Afrika en met die opset om die Regering van die Republiek van Suid-Afrika omver te werp of in gevaar te stel, een of meer, of al die dae uiteengesit in die genoemde aanhangsel, gepleeg het en/of kennis gedra het dat een of meer of al die genoemde dae gepleeg sou word of (30) gepleeg was, en versuim het om dit aan die owerhede in die/.....

die RSA te rapporteer."

Now if one goes to the first item in the Charge Sheet, the first item in the Charge Sheet in Volume 2 is the acceptance of the broad guide lines:

"Het UDF breë riglyne vir 'n program van aksie aanvaar..."

COURT: What is your page?

MR CHASKALSON: Page 1 of Volume 2.

COURT: Yes, our volumes do not run the same as yours. We have got only two volumes. What is the page number?

MR CHASKALSON: My Lord we have got four volumes. (10)

COURT: Yes we have only got two.

MR CHASKALSON: Well ours are numbered, it must be page 1 of the annexure then. Now page 1 is really the acceptance of the broad guidelines of the programme of action. Now it is treasonable, so the indictment says, not to have reported that to the authorities, though it was a public occasion, it is quite clear from all the documents put up that there was no secrecy attached to it. So what must the complaint be is not that you did not report the acceptance of the broad guidelines but what you did not report was presumably the (20) treasonable conspiracy that you were aware of. Now right the way through the indictment the same problems arise, that the, if one looks at the conduct attributable to the individual accused and let me take as an example two accused against whom there are really very few allegations in the indictment. The first of the two accused is accused no. 6. Now he, the allegation against accused no. 6, the only allegation against him in the indictment is at page 333.

COURT: You might start at 331.

MR CHASKALSON: 331, that is where he gets identified, at (30) 333. Yes well at 331 we are told that activists attached to
the/.....

the VCA and UDF in accordance with the and in pursuance with the conspiracy, with the goal of people "Polities op te sweep en/of te indoktrineer om aktief deel te neem aan onluste, oproer en/of geweldpleging in die Swart woonburte in die Vaal Driehoek ten einde die wettige gesagstrukture, regerings instellings en mense se lewens in die gebied in gevaar te stel en/of te vernietig as deel van die doelstelling om die RSA onregeerbaar te maak en wat moes ontwikkel in 'n geweldadige revolusie deur die massas in die RSA." Then a whole series of averments take place and accused no. 6's name is(10) mentioned at page 333. At 333, sub-paragraph (3):

"Lede van VCA en ERPA op 8 Julie 'n gesamentlike vergadering gehou in die huis van beskuldigde Morake Petrus Mokoena synde sekretaris van ERPA en was deur onder andere die volgende aktiviste bygewoon".

And then a lot of names are mentioned and then the discussions are set out. Now if one looks at sub-paragraph (3) at page 333 to 334 there is nothing there from which one could infer that attendance of that meeting carried with it knowledge that the goal of the UDF was a violent overthrow of the (20) government. Now in the indictment that is the only charge laid against accused no. 6, the only act laid against accused no. 6, apart from conspiring, and in the Further Particulars we are told two additional matters, that he is alleged to have been the secretary of the Evaton Ratepayers Association, that is at page 7 of the Further Particulars and at page 104 we are told that he was present on an occasion when a decision was taken to boycott a celebration feast for somebody. Now so the problem arises really this way that the State says we can only infer, we cannot tell you anything more about the (30) conspiracy than that we are going to infer it from certain

facts,/.....

facts, but it is clear that the facts from which the State seeks to infer the conspiracy are not facts to which the individual accused are alleged to be party. So the problem which then arises is the State says we will infer the conspiracy from a series of acts but the accused are not alleged to be party to those acts. When you come to the accused they say well we will infer your participation because you have knowledge that that was the real aim of the UDF. And when you ask why do you say that we had that knowledge, if you have not got a consensus, they then refer us back to the acts set (10) out in the indictment and when you look at the position of a number of the accused one cannot reasonably infer from that that they had knowledge. Now the position in which the accused then find themselves with this trial is that they are called upon to face a charge, and every count is founded upon the same alleged conspiracy. Right the way through, the murders, the subversion, the terrorism and the treason. And if I have read correctly today, even the new alternative count which application has been made to introduce. It is the same factual basis, an alleged conspiracy particulars of which we cannot (20) give you because we do not say that we have any evidence to suggest you sat down and agreed upon it. We are going to infer that there was such an agreement but you were not necessarily party to those facts upon which we will rely for the agreement but when we come to you we will say you joined a management structure, or party in some way to the UDF, therefore you are guilty. Now if one looks at what the people are alleged to have done you cannot make that connection. There is no reasonable way in which you can. So that the problem which the accused are now faced is that they are asked to stand (30) trial on the basis of their knowledge of an alleged object.

Because/.....

Because without that there is nothing against them. So they are asked to stand trial on the basis of their knowledge of an alleged object or purpose, and when the State is asked well how are you going to prove our knowledge, what must we be ready to deal with, what have we got to listen to during the days, the years of hearing, they are just told in very general terms what I have drawn your attention to and if one goes back to the indictment there is nothing there which you can reasonably, from which you could reasonably infer knowledge. So one of two things then arises. Either there is (10) other information which the State has in which event it in fairness to the accused must tell them, you must be prepared to deal with your own knowledge on this basis, or it has not got that information, it has not got that information and those people should not be brought to trial. So it is really of very great importance and because of the nature and the convoluted nature of this indictment which goes round in a somewhat circular form, as it were lifting itself up by its boot straps and the only thing one can say is according to the State if anybody joined the UDF they were party to treason. (20) Though there is no avowed goal of treason on the part of the UDF and we have got to find it from some other way, and then you start going round in the circle again. So it is very important for the accused that their attention should be brought to this. What are they supposed to have known of, what act should accused no. 6 have reported? Should accused no. 6 have gone off to the authorities on 20 August 1983 when the launch took place in Cape Town and said "I am reporting to you that treason is being committed today"? Because that is what the indictment means. Now how could he possibly have known. (30) There is actually no way, from this indictment, that you can suggest/.....

suggest that he had any knowledge and, so we ask, we have asked in the Notice of Objection that the State should inform the accused when, where and in what manner it is alleged that each of the accused became aware of the alleged aim of the UDF to overthrow or endanger the government by violence, threats of violence or means which include or contemplate violence. I can show Your Lordship again another accused, if I give Your Lordship just one more example. If one takes the case of accused no. 12 averments are made against him appear at page 278 of the indictment and the averment there is that (10) he was one of the people who worked to establish the Vaal Action Committee and to, and that he took an active part, at page 278, 280 and 285. You will see that the averments directly involving him are alleged to be concerned with events which took place in September 1983 and October 1983. Now the State has specifically disavowed any supplementary consensus because we have asked them when you make this averment that your goal was "om die mense op te sweep en te aktiveer om deel te neem aan geweldpleging, oproer en/of onluste waardeur die R.S.A. onregeerbaar gemaak moet word" we are told no (20) there is no separate consensus which we are relying on there, we are going back to the original UDF conspiracy. So the accused are really in a hopeless position at the moment, they are told to stand trial for acts which they have not committed themselves but which other people have committed based on their alleged knowledge that by joining in an affiliate of the UDF, the Vaal Civic Association, by joining in that in its campaign against Black Local Authorities you intended to, you have knowledge that it was part of a treasonable plot. And that, the foundation for that is totally lacking. So we (30) make the submission to Your Lordship that the State really

must/.....

must tell us where, how it is going to show this knowledge, how it is going to impute it, and if it cannot then it should not proceed against a particular accused to whom it cannot furnish those particulars. It is really again going back to the ADAMS case, it is a question of fairness depending upon the facts of each case. This is a very unusual case because everthing is alleged to be dependent upon adhering to an organisation on the face of it a lawful organisation, on the face of it a perfectly proper organisation and doing something, at some stage years before the events which form the cul- (10) mination of the charge, and being told well you are guilty of treason. Now the State may be in a position to particularise it and if it can then it should just tell the accused how it is going to do this. But at the end of the day if at the end of the year these accused stand trial here, and at the end of the year or two years all that stands against them is what is in the indictment then they have wasted two years of their lives. Something more should be told them. If the State has got it it can tell them and if it has not got it it should stop now. (20)

The next of our objections is dealt with at paragraph 12 of our heads of argument. It is really, you will find more use I think in looking at Projection no. 8 at pages 12 and 13 of the heads of argument. Notice, sorry. In paragraph 9.3 of the further particulars in sub-paragraph 10 one of the facts relied upon to establish that the purpose of the UDF is, as stated in that paragraph was the violent overthrow of the government. Page 40:

"UDF verklaar uitdruklik in UDF publikasies en propageer en organiseer die UDF om die R.S.A. onregeerbaar te (30) maak deur die georganiseerde en gemobiliseerde Swart massas."/. . . .

massas."

Now that is an allegation about that there are publications in which it is "uitdruklik verklaar". That allegation is made for the first time in the particulars and there is no indication at all as to which publication it relied upon in support of that. Now that of course is an important averment and one which we submit the accused are entitled to particulars of. And in paragraph 8.2 of the further particulars, sorry in sub-paragraph 13, for the first time again in the further particulars there appears an important averment at page 40:(10)

"UDF verleen hulp aan die ANC veral deur sy geaffilieerde organisasies wat onder andere insluit die hulpverlening aan ANC opgeleide terroriste deur skuiling te bied en inligting te verskaf."

So there is an averment now that some of the affiliates of the UDF have provided assistance to trained terrorists, provided them with hiding places and with information. Now that is an important allegation but it is not one which the accused can do anything about unless they are told who the organisations are, who the people are who have provided these (20) hiding places and information and it can then make investigations. It may be, if there were such averments, that it will be necessary to establish whether this was an act of an organisation authorised by that particular affiliate or whether it was a frolic of an individual who happened to be a member of that affiliate. But at the moment nobody can do anything because nothing is identified, it is a generalisation, it is an important averment and our submission is that we are entitled to the particulars and in the order sought we ask that those particulars be given. (30)

Now the next averment deals with the objection at page

9,/.....

9, page 13 paragraph 9. In answer to the question in paragraph 10 of the request for further particulars the State says that it will rely on the evidence as a whole and on documentation, speeches and writings of UDF activists without setting out the pertinent facts as are distinct from this generalised statement and without identifying the documents, speeches, writings and more particularly the portions on which it intends to rely. Now this is the, deals with the important allegation that the UDF or persons associated with the UDF "besef, aanvaar en verklaar" certain propositions. And (10) then there is a gradual, in pages 41 through Your Lordship will see that a number of particulars are given but a problem arises with the opening paragraph where it says:

"Dit blyk uit die totaliteit van die getuienis soos beliggaam in dokumentasie, toesprake en geskrifte dat hulle in die naam van die UDF daarna streef of werk om die genoemde doel te bereik."

Now we again say that in terms of the ADAMS case that the State should identify the particular documents and particular passages on which it relies for that averment. (20)

Now the next objection relates to pages 14 to 15 of the Notice of Objection and it is again the form of pleading. I have read it to Your Lordship before but in the preamble to the indictment and in the formulation of the charges the State alleges, take page 10, if one looks at the formula it is alleged that a whole lot of people associated with the UDF "waaronder die beskuldigdes met mekaar saamgesweer het onder die naam van UDF om en/of onder die naam van die UDF met die ANC en sy lede 'n aktiewe ondersteuner saamgesweer het om (30) bovermelde doelstellings van die ANC en SAKP of van UDF of van/.....

beide genoemde doelstellingen uit te voer en/of te vorder en uitvoering daarvan en/of ter uitvoering van een of ter albei genoemde sameswerings het die genoemde beskuldigde en ander persone gesamentlik of afsonderlik as deel van die sameswering" and then we have another "en/of", "en/of in persoonlike hoedanigheid een of meer of al die dae en handelingte uiteengesit in die aanklagte hieronder gepleeg of verrig." So the accused apparently are being told that they are being sought to be held liable because they performed certain actions as part of a conspiracy "en/of in 'n persoonlike hoedanigheid". Now presumably then something is intended by that averment as being additional. And then at paragraph 11 of the request for particulars a series of questions were asked about that:

"Is it intended to allege by the inclusion of the phrase 'persoonlike hoedanigheid' that the accused are liable in their 'persoonlike hoedanigheid' for all the acts set out in the charges even if such acts were not performed as part of either or both of the said conspiracies? If so on what basis is it sought to hold (20) the accused liable for acts which they did not perform themselves? If not what is intended by the averment that the acts were committed in a 'persoonlike hoedanigheid?'"

And the answer to that is at page 49:

"Die Akte van Beskuldiging is duidelik."

Now does that mean that accused no. 6 is to be held guilty of murder because he attended a meeting or the meeting was held at his house in 1983 or in 1984 at which matters totally unrelated and irrelevant were discussed? Is accused no. 12 (30) to be held guilty of murder "in persoonlike hoedanigheid"

for/.....

for something done in 1983, a year and a bit before the murder, though he is not party to the conspiracy? Now we have a problem. We do not understand what the State is seeking to introduce by these words "en/of in 'n persoonlike hoedanigheid". We tried to get clarification from it and we cannot. And so we ask again for an order for the State to clarify, to tell the accused what it means by saying that it seeks to hold them liable for acts done in their personal capacity as distinct from holding them liable for acts alleged to have been committed in furtherance of the conspiracy. (10)

Then the next objection is really following much the same problem which arises out of this indictment. It is almost as if the pleader is afraid to tell in, he wants to throw everything into the melting pot. There are a series of en/of's, there are hundreds of documents, there are every conceivable basis of relationship set out in the indictment and somewhere you are going to be caught up in the net. Now the eleventh objection relates to the pleading of the common purpose because Your Lordship will recollect that what has happened is that the State has pleaded both the conspiracy and common (20) purpose and the question that is asked is a simple one. Right the way through in all the accounts we get this conspiracy, common purpose, and we ask the question:

"Does the State intend to rely upon the doctrine of common purposes as distinct from the conspiracies alleged by it? If so all particulars are required of all the facts from which the State seeks to infer such common purpose, together with particulars of the precise difference between the terms of the conspiracy or conspiracies on the one hand and the common purpose (30) on the other, as well as the manner in which such
difference/....

difference affects the liability of each of the accused?
 If not in what way does the common purpose as distinct
 from the conspiracy or conspiracies affect the guilt
 of the accused?"

And the answer which we got to that was, that is at page 49
 paragraph 12:

"Die Staat is van voorneme om uit die toepassing van
 die regsbeginsels wat betrekking het op sameswering en
 gemeenskaplike opset te steun om die beskuldigde se
 regs aanspreeklikheid te bepaal. Aangesien die ver- (10)
 dediging van die Staat vereis om 'n uitleg van 'n regs-
 beginsel te gee is die vraag onverstaanbaar en vaag
 en verwarrend."

Now we have not asked the State to provide us with an inter-
 pretation of legal principles. We will be happy to do that
 for ourselves. What we do want to know is whether there is
 just one set of facts or whether the conspiracy is in some
 way different from the common purpose or the common purpose
 is in some way different from the conspiracy. Now this was
 in fact a problem which cropped up in the treason trial (20)
 in the ADAMS case and in ADAMS at page 654 the Court dealt with
 the problem as follows, 654 A-H:

"We do not think that the answers given by the Crown give
 rise to any real embarrassment. What present appears to
 us as a possibly cause of embarrassment is the introduc-
 tion by the Crown of the allegation of concerted common
 purpose as an alternative to the alleged conspiracy."

Your Lordship will see it at page 654, "We do not think that
 the answers given by the Crown", right at the top of the page,

"give rise to any real embarrassment. What presently (30)
 appears to us as a possible cause of embarrassment is

the/.....

the introduction by the Crown of the allegation concert and common purpose as an alternative to the alleged conspiracy. The further particulars clearly show that the Crown intends to prove both the conspiracy and the common purpose by inference from the same facts. As far as the expression 'acting in concert and with common purpose is concerned' and however much one may criticise the use of the word 'mandate' in connection therewith the law is clear that persons may be held liable for the acts of each other if they act in pursuance of the (10) same purpose and have agreed or are deemed to have agreed to share that purpose. Although persons may pursue the same purpose it is not a common purpose unless there has been an agreement. In R v KAHN ST LIVERS C.J. said:

'The words "common purpose" are well known in the criminal law and connote that there is a purpose shared by two or more persons who act in concert to do something. There may be an express agreement between such persons to achieve some object or (20) there may be an implied agreement with the same end.'

From a perusal of the question asked by the defence and the answers given it is apparent that the Crown did not disavow an agreement as such."

And then the question and answer is set out.

"This answer, read with the answer given in paragraph 12(d)(i) does not purport to deny an agreement as such. It intended to state that each accused was acting in concert and with common purpose with such of the other(30) accused as had up to that date specified in Schedule C

in/.....

in respect of each accused formed the said common purpose. As the further particulars suggest that the conspiracy alleged in Part B of the main charge is an implied agreement and that the alleged concert and common purpose in paragraphs C, D and E of the main charge is also an implied agreement, both being sought to be inferred from the same facts the Crown was ordered to inform the accused what it avers the difference to be between the conspiracy and the concert and common purpose and in what manner such difference affects the liability of each accused." (10)

Now that is precisely what we ask for here. Is there any difference? Or is it merely just surplus? Why are those words there? And so we ask, on the basis of ADAMS that a similar order be made in this case.

Our next objection is in paragraph 12 and it really relates to the charges of murder. Now the method of pleading the murder charge is a little confusing. If one looks at page 24, the first of the murder charges, murder is really pleaded as the culmination of everything that has gone before (20) and that is the organising around South Africa from the launch of the UDF right the way through with all the campaigns and all. That is all produced at the beginning. The averment at page 25 is made that

"Nademaal die een, die ander of almal van genoemde beskuldigdes gewheet, voorsien of besef het dat genoemde massas of enige lede daarvan, wanneer hulle soos vermeld, georganiseer, gemobiliseer, opgesweep, geïndoktrineer, geïntimideer, aangestig en/of gekondisioneer is wel tot oproer, daade en aktiwiteite van geweld en/of doodslag (30) sal kan oorgaan."

And/.....

And then we are told that on 3 September a group assembled and went over and killed somebody. Now the State was asked, the State avers that one or other or all the accused had knowledge and foresaw that this was going to happen. Now it is quite clear from the indictment, and that point is made at paragraph 15 of our heads, that not all the accused, or that most of the accused were not present on the occasion when a crowd became violent and is alleged to have killed a number of people. And when we asked well what do you mean by all this, particularly the "one or other or all" and specifi- (10)
cally the question was at page 20 in paragraph 15.4 of the request, we say:

"By the inclusion of the phrase 'die een, die ander of almal' does the State intend to imply that all the accused can be held liable not because of their own knowledge, foresight or appreciation but because of the knowledge, foresight or appreciation of others?"
And they say "No." And then we say well if not what do you, if so on what basis do you seek to hold thos accused liable, and they say well that is not applicable any more. If not (20)
what does the State intend by the use of the phrase "the one, the other or all", that is 15.6, and the answer is:

"Presies wat die Staat hier beweer te wete dat een van die beskuldigdes of meer van die beskuldigdes of al die beskuldigdes geweet, voorsien of besef het."
And then when we say "Insofar as the phrase implies that some of the accused had such knowledge, foresight or appreciation and that others did not have such knowledge, foresight or appreciation precisely which accused is alleged to have such knowledge, foresight or appreciation? And the answer is: (30)

"Op hierdie stadium beweer die Staat dat al die
beskuldigdes/.....

beskuldigdes aan al die aanklagtes van moord skuldig is." That is 15.7 at the bottom of page 51. Now one wonders what all this means. There were some of the accused who had not been in the Vaal Triangle for months before this happened. A large number of the accused who ex facie the particulars were not around on the occasion of the murders. And the averment at this stage the State alleges everybody is guilty of murder. Is that to justify a joinder? Is that really what this is about? Because of course the State cannot enjoin some accused with murder, it could not join, it could not charge 22 accused(10) with treason and five or six or seven accused with murder. And it is this strange way of pleading, very strange type of murder charge, really designed to enable the State to join everybody on some form of averment saying at this stage we will say that you are all guilty of murder, or not? We ask the State to indicate clearly what it intends by all this and why it is seeking to hold people liable for murder who proximately had no connection with these incidents at the time that they occurred. And that is what we ask for in the order which is sought here. (20)

The last objection which we pursue is objection 13, it is at page 15 to 16 of the notice. I have really been through this before. We make the point that in paragraph 25.1 the accused asked to be told what passages in the speeches will be relied upon, that there are numerous speeches made by the accused and co-conspirators in twenty volumes covering hundreds of pages and that the failure to identify

the speeches is in our submission prejudicial. I see that the documentation has been put up by reference really to another trial. They are no doubt the same documents, because the accused have different numbers, but that does not matter. That is not really the point. That is presumably just a document taken from another trial and not from this trial. So, those then are our objections. We are not pursuing the 14th objection. We submit that the accused in fairness are entitled to the particularisation which they are asking for and we ask Your Lordship to make an order in terms of the notice(10) of objection.

MNR. JACOBS : Ek het die hoofde van My Geleerde Vriend wat hy hier ingehandig het, vanmôre vir die eerste keer eers gesien toe dit ingehandig is by die hof. Ek het nog nie eers kans gehad om dit behoorlik deur te gaan voor die tyd om 'n bietjie navorsing te doen en terug te gaan op die goed nie. Ek wil vra dat ons afstaan op hierdie saak tot môre toe, dat ek geleentheid kry om vanaand net te korreleer. Ek sal 'n verwarrende betoog moet lewer as ek op hierdie stadium dit moet doen.

HOF VERDAAG TOT 5 NOVEMBER 1985. (20)

HOF HERVAT OP 5 NOVEMBER 1985.

CCURT : You were to answer this morning, Mr Chaskalson?

MR CHASKALSON : So, My Lord. I thought I should deal with the issue Your Lordship suggested should stand down until this morning as far as the amendment is concerned. We did have a chance of giving some consideration to that last night. The section relied upon by the State is Section 81 of the Code, which provides that any number of charges may be joined in the same proceedings against an accused at any time before any evidence is being led in respect of any particular charge, (30) and where several charges are so joined, each charge shall be

... / numbered

numbered consecutively. That section therefore does permit the joinder at any time before evidence is led. After that, once evidence has been led, the joinder ceases to be permissible. Of course, evidence has not been led in the present case and so the situation is one in which the joinder of an additional charge would be competent and the question then is whether it should be permitted. We have been unable in the time available to us to find any case dealing directly with this issue. There is a case in which a joinder which took place after evidence had been led or after the Court held (10) that the proceedings in effect constituted the leading of evidence because the accused had been asked - had been questioned by the Court. It was there held that that joinder was not competent, because that constituted the leading of evidence or the eliciting of evidence. We have been able to find nothing which is directly in point and the submission that we would make to you is this, that once the indictment is before the Court, the Court has control over the proceedings for as long as those proceedings are pending. If the indictment is withdrawn, obviously a different situation arises, but as (20) long as the indictment is before you, then changes to the indictment, once it has been presented to the Court, we would submit should only and can only be made with leave of the Court and that the Court, in deciding whether or not to grant that leave, will apply the ordinary principles. That will involve the interests of justice, the reasons for the change and the prejudice to the, or the potential prejudice to the accused. The present case is a most unusual case and there are some very unusual circumstances which should influence, in our submission, the decision to be taken. Some of the (30) accused have already been in custody for over a year. All of

... / them

them have been in custody for a very long time. They have been denied bail because of the opposition of the Attorney-General. In those circumstances we suggest that the duty of the Attorney-General is to act promptly to bring the accused to trial as rapidly as possible and to formulate a new charge at this stage, not on the basis of any new information which has recently been obtained, but on the basis of information which has been in possession of the State all this time, is in effect, if not an intent, oppressive. It will delay proceedings which are already running behind schedule. It (10) will prolong a trial which is already going to be a very long and difficult trial concerned with two conspiracies and eleven separate counts already, each concerned with a course of conduct involving many people over a long period of time. The counts involved treason and murder. There was a time when murder was regarded in our law as so serious a charge that no other offence could be joined with it. It was considered prejudicial to the accused to do this, but since 1963 I am told this has not been the case, but the prejudice in multiple charge to an accused is clear and the charge now sought to (20) be introduced actually opens up an entirely new field. It is not as was suggested yesterday something which is going to be an issue any way. It is correct. as was said yesterday, that the accused are alleged to have conspired with the ANC but the conspiracy to which they are alleged to have been party, is to overthrow the State by violence and if that conspiracy is proved, then the accused will stand guilty on the main charge of treason or possibly on some of the alternative counts of terrorism and subversion. What the alternative charge which the State now seeks to introduce is intended (30) to do is really to widen the scope of the trial and to examine

... / not

not only the allegation that the accused intended to overthrow the government or to permit acts of subversion and terrorism and murder, but to look at what they did and to say that that constituted the furthering of the objects of the ANC, objects clearly other than the overthrow of the State, because if the overthrow of the State is established, you do not need the alternative charge. So, one is now going to look at a whole lot of other objects which the ANC is said to stand for and if one looks at the indictment it has been cast very wide. We are going to have to look at the opposition to the tri- (10) cameral parliament, to the opposition to the Group Areas Act, to the housing policy, to the labour policy, to the homeland policy. There are objects which run from A to S, between ten and twenty separate objects and it involves a completely new investigation. We will now have to be concerned with this trial with really the whole political spectrum of this country. We are going to have to look at what other political groups and parties are saying about housing and group areas, and labour and homelands. There is another problem too. Everybody knows and that is not really going to be an issue, I think, (20) in this case, it is reasonable to say that the object of the ANC to overthrow the State by violence is reasonably wellknown, but very little is known in this country about the other aspects of ANC policy and so, what is now going to happen is that those charged with the defence of the accused are going to have to make a study of ANC policy and that may in fact be quite difficult to do in this country. It may involve having to travel overseas. It may be possible to do it here, but a whole new factual and legal issue is opening up and the submission which we make to Your Lordship is that that will (30) prolong the case, it will prejudice the accused, it will in

... / effect

effect be oppressive and the State which had chosen not to indict on this basis, should not at this late stage be given the leave of this Court to introduce this new charge into what is already an overburdened and complexed case and which, with additional charges, may become an exceptionally difficult case for the accused to prepare themselves for and for those associated with it. So, we do object to the introduction of the charge.

MNR. FICK : Met respek wil ek aan die hand doen dat My Geleerde Vriend nie korrek kan wees waar hy sê dat die Staat het die (10) verlof nodig van die Hof om 'n aanklag by te voeg op hierdie stadium nie, want die argument gaan die Hof is in beheer van die akte van beskuldiging die oomblik wat hy ingehandig word. As dit so is, is dit natuurlik duidelik dat die Staat die Hof se verlof nodig het as hy 'n aanklag wil terugtrek ook, wat met respek onsinnig is. Die feit van die saak, soos My Geleerde Vriend aandui, dat dit 'n moeilike aanklag is om hom op te verweer, met respek, gaan nie op nie. As die Staat die aanklag aan die begin ingebring het, het hy met dieselfde moeilikheid gesit. Is dit 'n rede waarom die aanklag nie bygevoeg moet (20) word nie? Sou die verdediging voel dat hulle benadeel word op hierdie stadium, kan hulle vra vir 'n uitstel om die posisie reg te stel. Dit kan met 'n uitstel reggestel word. Soos dit op hierdie stadium die posisie is, is een van die beskuldigdes nog steeds nie hier nie en getuienis kan in elk geval nie gelei word op hierdie stadium nie. Met respek wil ek u verwys na die tweede daad in die aanhangsel tot die akte van beskuldiging. Daar word al hierdie kampanjes uiteengesit reeds in die akte van beskuldiging. Dit is niks nuut nie.

HOF: Watter bladsy? Bladsy 2? (30)

MNR. FICK : Dit is korrek en die Staat wil weer eens daarop

... / wys

wys dat van die begin af is hier 'n bewering van 'n sameswering tussen die ANC en die beskuldigdes en die UDF. Dit is met ander woorde niks nuut waarmee die Staat hier kom in wese nie, behalwe om nou te sê dit is 'n aparte aanklag.

... / JUDGMENT

IN THE SUPREME COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

*Ass. 2*CASE NO. CC 482/85DELMAS

1985-11-05

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

J U D G M E N T

VAN DIJKHORST, J.: At this stage I have before me an application for the amendment of the indictment. This entails the inclusion of an alternative charge to charges 1 and 2 which is an alternative charge based on the provisions of Section 13(1)(a)(v) of Act 74 of 1982. There is an objection to this amendment which is not based upon an allegation that it is not competent to amend the indictment by the inclusion of this alternative charge as it is (20) conceded that in terms of Section 81(1) of the Code it is competent for the Court to do so. The argument of the defence is, however, that the amendment would be prejudicial to the accused and that for that reason it should not be allowed. It is stated that once an indictment is before the Court the Court has control over the proceedings and that changes to the indictment can only be brought about with leave of the Court. It is further argued that in considering this matter one should apply the interests of justice and delve into the reasons for the change and bear in mind the interests (30)

of/.....

of the accused, and it is further pointed out that some of the accused have been in custody for more than a year, that there is a duty upon the Attorney General to act promptly and that in fact the information has been in the possession of the Attorney General all along and that at this stage to include this alternative charge will lead to delay in the proceedings and in fact be oppressive. It is further argued that the new charge will open up an entirely new field as it brings into consideration objects of the ANC which are not as well known as its object to overthrow the government by (10) violent means. These objects will then have to be investigated which will prolong the case. On that basis the defence objects to the introduction of this alternative charge.

I have a difficulty with the objection by the defence and that is that in my view at this stage, before the accused have pleaded, the Court is not in control of the indictment and that at this stage the State will be free to amend the indictment by the inclusion of a further charge. This is evidenced also by the fact that the State is entitled to withdraw, for example, a charge at this stage without the leave of the (20) Court. It should be borne in mind further that the campaigns set out as objects of the ANC and the SACP in the alternative charge which is to be included by the amendment are also set out in the indictment. So in fact it is not new matter although concededly the matter will have to be approached from a different angle. In view of these considerations I feel that the amendment has to be granted and I order accordingly that the following amendments are brought about to the indictment:

After "Aanklag 2" at page 11 the following is inserted:

"Alternatief tot Aanklag 1 en 2 bevordering van die (30)

oogmerke/.....

oogmerke van onwettige organisasies deur oortreding van Artikel 13(1)(a)(v) gelees met Artikels 1, 56, 67, 68 en 69 van Wet 74 van 1982."

At page 16 an amendment is brought about where a typing error seems to have crept in by the insertion after the word "Artikel" of the following:

"54(1)(ii) gelees met Artikels".

At page 22 of the indictment at the end of "Aanklag 2" and just before "Aanklag 3" the typed amendment is inserted. That is the amendment which was read out to (10) the accused in court and interpreted to them.
