

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

Ass

SAAKNOMMER: CC 482/85

PRETORIA

1987-08-04

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. 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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IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO. CC. 482/85

PRETORIA

1987-08-04

THE STATE

versus

PATRICK MABUYA BALEKA & 21 OTHERS

(10)

J U D G M E N T

VAN DIJKHORST, J.: Defence counsel applied for an order that the State make available for their inspection the witness statements in Docket MR 285/08/84. The State opposed this application.

This docket was opened on a complaint by accused no. 3 about events on 28 November 1984 at his residence. These events do not form part of the facts upon which the State relies in the indictment. When certain State witnesses were (20) cross-examined in this case these events, at which they were present, were dealt with and a dispute arose about the date thereof. At the time this docket was not in the possession of counsel for the State. Defence counsel informed me that the representatives of the accused had attempted to obtain insight in it in order to elicit possible material for cross-examination therefrom but, not having the number of the docket, had been unable to locate it. When accused no. 3 testified more than a year later, counsel for the State had obtained the docket and put the statement of accused no. 3 (30) to/....

to him in cross-examination. Defence counsel thereupon brought this application.

Upon my enquiry the State informed me that the prosecutor had refused to prosecute on that docket as long ago as 11 December 1984 and that the last entry in the docket was made on 28 December 1984. We were informed that the docket contains statements of persons who were involved in the events at the residence of accused no. 3. We were not informed of the names of these persons, whether their statements were taken as statements of witnesses or of suspects and whether (10) they testified before this court.

Defence counsel, probably foreseeing that a direct approach would come to grief, asked me to approach the matter on the assumption that a subpoena duces tecum had been issued and served on the station commander of the police station where the docket was opened and as if an objection to production was being dealt with. He described State counsel as mere custodians of the docket. Counsel for the State conceded that the matter could be dealt with on that basis but still contended that the docket with its contents now formed part of their (20) brief and was therefore privileged. This creates an anomalous situation. Possession of documents as part of a brief raises defences over and above those available to the station commander (and his mere custodian). In view of this conflict I am unable to deal with the matter on a hypothetical basis and have to deal with it factually.

The facts are that counsel for the State obtained this docket as part of their preparation for the cross-examination of accused no. 3 and, I presume, all other witnesses to be called by the defence and who may have made statements (30) relating/....

relating to the events in November 1984. The statements by witnesses, even though they or some of them may have been suspects at the time, are now held as part of the State's brief and as such they are privileged. R v STEYN 1954 (1) SA 324 (A) 332 A-C; S v ALEXANDER 1965 (2) SA 796 (A) 812 E. See also R v LEIBRANDT & OTHERS 1947 (3) SA 740 (Spec. Crim. Court) and INTERNATIONAL TOBACCO CO. S.A. LTD v UNITED TOBACCO CO (SOUTH) LIMITED 1953 (3) SA 879 (W) 881 D.

In EUROSHIPPING CORPORATION OF MONROVIA v MINISTER OF AGRICULTURAL ECONOMICS & MARKETING & OTHERS 1979 (1) SA 637 (C) 648 H FRIEDMAN, J. stated:

"Of course it is not the mere fact that a document is part of an attorney's brief that renders it immune from discovery as an attorney's brief can contain material which is not privileged. The description of a document as being part of the brief means that it is privileged, having come into existence for the purpose of advising the client in regard to litigation or as constituting a communication between a client and his legal advisers with regard to pending or contemplated litigation." (20)

I respectfully agree with the first sentence. Cf R v DAVIES & ANOTHER 1956 (3) SA 52 (A) 58 F-H and PHIPSON On Evidence 13th Edition paragraph 15.13. I however hold the view that the second proposition is too narrowly stated. Thus stated all notes made by attorneys and counsel of consultations with witnesses not for the purpose of advising the client but to enable them to lead their evidence would be subject to disclosure. So would all working papers of the legal team, witness statements and reports of expert witnesses created or obtained by the legal team to attain a successful end to (30)

pending/....

pending litigation. That the Learned Judge did not intend this result is clear from pages 650 D to 651 A of the report.

The ambit of the concept "brief of the legal adviser" is wider. It includes all documents brought into existence for the purpose of advising or assisting the client in regard to litigation or constituting confidential communications between a client and his legal adviser with regard to pending or contemplated litigation.

The problem in our case arises from the fact that the witness statements were obtained by the police not for the (10) purpose of this case but in the course of their investigation of an unrelated complaint. Nevertheless they were taken with a view to possible criminal litigation for use by the State. The fact that the State did not use the statements in the litigation originally envisaged by the police but now utilises them in this litigation does not make them any less part of the brief of the prosecutor. This applies equally to such statements as there may be of witnesses who have already given evidence. The possibility exists that they may be recalled in which event the statements might be useful to the State. (20)

The approach that the statements of witnesses in the docket form part of the State's brief despite the fact that the docket became part of the brief after some witnesses had given evidence about the events giving rise to its opening and that statements by those witnesses may form part of the docket, necessarily leads to the conclusion that an obligation rests upon the State to disclose to the Court any material discrepancy between such statements and the evidence in court.

R v STEYN 1954 (1) SA 324 (A) 337 A-B; EX PART MINISTER VAN JUSTISIE IN RE S v WAGNER 1965 (4) SA 507 (A) 515 B; (30)

S v/....

S v XABA 1983 (3) SA 717 (A) 728 E to 729 A.

The fact that the statements were taken in another case upon a complaint only obliquely related to the case before us and not for the purpose of our case does not alter the position. Counsel for the State's duty to disclose material differences exists nonetheless.

The fact that the said docket forms part of the State's brief is therefore a conclusive answer to the application. There is, however, further ground upon which the application has to fail. It was common cause that the docket, while the(10) matter was still being investigated by the police and considered by the prosecutor, was privileged. This privilege exists for reasons of public policy. R v STEYN supra 335; S v B & ANOTHER 1980 (2) SA 946 (A) 952 F; EX PARTE MINISTER VAN JUSTISIE IN RE S v WAGNER supra 515 (A); S v ALEXANDER & OTHERS supra 811 G.

The issue between State and Defence was, however, whether the closing of the docket after the certification nolle prosequi thereon by the public prosecutor terminated the privilege. There is no reason to distinguish in this respect(20) between witness statements taken by a client or his attorney for the purpose of civil or criminal litigation and statements taken by the police for the purpose of a contemplated criminal prosecution. S v B & ANOTHER supra 952F; R v STEYN supra 335 E. If the rule once privileged always privileged applies it is applicable to both.

In respect of communications between a legal adviser and his client the privilege commonly referred to as professional privilege has the requirement of confidentiality as its basis. This is not the case where witnesses are interviewed and (30) their/....

their statements taken, as in most cases the information is intended to become public knowledge through testimony in open court and as this privilege against disclosure exists even where there is no legal representative involved and the litigant acting in person takes witness statements for his use in court. R v STEYN supra 334 B.

The basis of the privilege against disclosure of witness statements is therefore not the confidential relationship between legal representative and client or the confidentiality of the statement. The privilege is founded on the fact that (10) to permit the enforced disclosure of witness statements would open the door to unscrupulous adversaries to tamper with their opponent's witnesses, to manufacture evidence or to create fictitious disputes on points not covered by the witness statements. This would clearly be against public policy.

All these considerations fall away after the final conclusion of the case. By this I mean the disposal of the matter on appeal as the possibility of a reopening exists up to that stage. In R v STEYN supra 335 A it was decided that the privilege exists until at least the conclusion of the appeal. (20) The question whether the privilege existed beyond that date was left open.

Prima facie public policy does not require that witness statements obtained in litigation which has been finally disposed of or abandoned should be kept under wrappers. Is the rule once privileged always privileged in conflict with this view or does it only have limited application? PHIPSON On Evidence 13th Edition paragraph 15.19, after stating the general rule once privileged always privileged, reports that it has been held that this principle only applies where the (30) parties/....

parties and the subject matter are the same or where the communications are between solicitor and client. The authority given by the learned author is THE COUNTRY COUNCIL OF KERRY v THE LIVERPOOL SALVAGE ASSOCIATION 38 Ir LT 7 (CA) a report not available to me. HOFFMANN & ZEFFERTT, South African Law of Evidence 3rd Edition, 207 note 13 state that there are no qualifications to the rule once privileged always privileged. Yet the statement is made in the section dealing with communications between legal adviser and client. SCHMIDT Bewysreg 2nd Edition 543 also states the rule unqualifiedly and in (10) the context of both legal adviser and client and statements by third parties. There is support for the view that the rule applies also to statements by third parties in ESTATE BLIDEN v SARIF 1933 CPD 271,274. In this case SUTTON, J. held the contrary view of WILLS On Evidence 202 and PHIPSON On Evidence 6th Edition 204 to be incorrect. In JACOBS v MINISTER VAN LANDBOU 1975 (1) SA 946 (T) 954 F BEKKER, J. quoted with approval a statement that privilege attaching to a document continues after the end of any litigation for which the document was brought into existence. A well reasoned (20) judgment on the extent of the rule once privileged always privileged is found in EUROSHIPPING CORPORATION OF MONROVIA v MINISTER OF AGRICULTURAL ECONOMICS & MARKETING & OTHERS supra 642 A to 644 G. The Learned Judge, after dealing with the English authorities, concluded that the rule is unlimited. One of the English cases dealt with was CALCRAFT v GUEST 1898 1 QBD 759 (CA). It was held in that case that proofs of witnesses and rough notes of evidence used in defence of an action which was disposed of more than a century before (and between different parties, of whom one was a predecessor (30) in/....

in title of the plaintiff) remained privileged.

A similar conclusion was reached in HASLAM FOUNDRY & ENGINEERING COMPANY v HALL 1887 3 Times Law Reports 776 (QBD) on the continuing privilege of confidential notes and reports by witnesses and scientific advisers of their proposed evidence in a previous action. See also HOBBS v HOBBS & COUSENS 1959 (3) AER 827; BULLOCK v CORRY 1878 (3) QBD 356; PEARCE v FOSTER 1885 15 QBD 115 at 119 on the general rule of once privileged always privileged as applied to materials for briefs in previous cases. (10)

I find no reason to differ from the authorities mentioned. My prima facie view on the necessity of such a rule in circumstances such as the present is therefore irrelevant. The law is that witness statements made for the purpose of litigation, whether civil or criminal, and therefore privileged retain that privilege despite the fact that that litigation is finally concluded or abandoned. The witness statements in docket Mr 285/08/84 are therefore privileged despite the fact that the prosecutor refused to prosecute thereon.

The application is dismissed. (20)

PAGES 13 210 TO 13 217 - AWAITING RETURN

OF REVISED JUDGMENT

POPO SIMON MOLEFE: d.s.s.

FURTHER EXAMINATION BY MR CHASKALSON: Mr Molefe we were dealing yesterday with EXHIBIT A1 which is the official UDF document concerning the launch and I would like to have that document placed in front of you please. We had dealt with the introductory section and I would like you please to turn to page 4 which contains the declaration. Is that the declaration which affiliates were required to adhere to when they joined the United Democratic Front and does it set out the policy? -- That is so. (10)

Now it is suggested by the State, it is an allegation that by adhering to this declaration affiliates committed themselves to a policy of violence. What do you say to that Mr Molefe? -- That allegation is devoid of any truth. Since its inception the foundation of the policy of the UDF has always been commitment to non-violence. It has at all material times made its position very clear that it would not seek to achieve its objectives by violent means and in this connection there has been a number of statements made by a number of officials of the UDF, including myself. (20)

Well as you mention now perhaps we should deal with that now in this context Mr Molefe. Can you tell us in what situation these statements have been made? First of all deal with yourself first. How have such statements been made by you? -- I gave statements, public statements through interviews with different newspapers and I also made such statements in big public meetings which were recorded widely in newspapers and similarly with big press conferences, including both local and international media, press, TV and everything, radios and so on. Those statements were made. (30)

Well/....

Well would people wishing to associate with the United Democratic Front... -- May I interrupt?

Yes please do. -- And add one point. I need to make this point that even at the national launch of the United Democratic Front it was made very clear in the course of the debate on policy of the UDF that the UDF would seek as a way of bringing about change would seek change in this country through a method of a national convention. That was seen as part of that non-violent strategy.

Alright. Are you talking about the conference which (10) preceded the rally? -- That is correct.

Well we will deal then both with your public statements and with your position in regard to the national convention. But you say that these statements have been made by you and by other officials of the UDF? -- That is so.

Anybody, you see, was that a position which was well known to the public? -- That is so.

I would like to, first of all to put before you a statement published in the Financial Mail of 25 November 1983.

COURT: The date again? (20)

MR CHASKALSON: 25 November 1983. My Lord we think that this will be EXHIBIT DA.15.

COURT: Yes it goes in as DA.15. Mr Molefe is this a report of an interview which you gave to the Financial Mail? -- That is so.

Would you look in the first column. There is a statement towards the bottom of the page, there is apparently a question and an answer. "It has been alleged that the UDF is an attempt to recreate the African National Congress"

COURT: May I just get clarity. Right at the outset I (30)
raised/....

raised this aspect of the photocopies. May I take it that where it is not disputed the State accepts that the photocopy is correct? I have not got the original and that the date on it is correct.

MNR JACOBS: Edele dit was nie so aanvaar gewees nie. Van die begin af het ons gesê dat die verdediging, ons is nie eers genader om te kom, dit word aan ons gegee vandag vir die eerste keer, ons sien hom vir die eerste keer. Ons kan nie op 'n losse basis net gaan sê goed handig in nie en die feit is ... (10)

COURT: Mr Chaskalson if there is no agreement on this I just cannot go on. I have been going on on this basis now for a year and a half and nobody has ever told me we have agreed or we have not agreed. The correct thing is to hand in the original.

MR CHASKALSON: Well perhaps My Learned Friend Mr Bizos, could I ask him to deal with it.

COURT: No doubt you can clear it up with Your Learned Friend but just, I must have clarity.

MR CHASKALSON: Yes well I can deal with a limited part (20) only My Lord. My Learned Friend Mr Bizos will be able to inform Your Lordship more fully than I am in a position to do. Can I tell Your Lordship two things. One is that the, of course Your Lordship will realise that it is not easy now to find original newspapers going back the many years at the time when one is looking for them. So one has to ...

COURT: Where does this emanate from?

MR CHASKALSON: I am not in a position on my feet to tell Your Lordship that now. I do know that what has happened is that people who have kept cuttings from time to time and (30) have/....

have cuttings, libraries have been approached. Certain cuttings have been found and if needs be those persons can be called to say that they kept the cuttings, that they dated the cuttings and that the original is no longer in their possession. They may even have the original for all I know. I am not in a position to tell Your Lordship whether they have the original cutting or not. This particular document may or may not be from such a source but I know that there are those sources. The defence is in an awkward position and that is that the records which may have existed in the United Democratic (10) Front's own offices, a lot of those have been depleted because they have been removed by the police from various parts of the country and they do not have access to their own records. People do not keep newspapers going back over a number of years and there is a great deal of work that has had to be undertaken to try and find people who have cuttings. And if needs be, if the State is not going to accept them then we will just simply have to go back to our sources and in due course prove them.

COURT: That is quite correct Mr Chaskalson but the proper (20) way to prove the thing is to prove it in the normal course or otherwise you approach the State and say well this is the document, let it go in by agreement. I would prefer it that way because I do not want a hassle about proving dates and proving correctness of copies but I cannot just let it run on.

MR CHASKALSON: It is always a question of the cart and the horse. If you call the person who is, the evidence becomes, the person from whom the cutting has been obtained that evidence in itself would not be admissible without the witness' evidence to say I gave the statement. So the question is do you call (30)

the/....

the witness first or do you call the person who made the cutting first. I understand what Your Lordship is saying but as My Learned Friend Mr Bizos has been dealing with this on a basis and he was much better placed than I am to inform Your Lordship.

COURT: I just do not want to run into the situation that at the end of this case I get a technical objection to about half the documentation in this case.

MR CHASKALSON: No I understand that My Lord. Perhaps I should ask My Learned Friend Mr Bizos who is far better placed (10) than me to answer Your Lordship, to tell Your Lordship.

MR BIZOS: My Lord we would like to recall to Your Lordship's memory that towards the end of the State case there was an admission that everything that had been put in cross-examination during the course of the State's case by way of cuttings was admitted. The only two cuttings that were left out temporarily and they related to a report that had related to meetings relevant to Mr Lekota and Sergeant Branders. I have no independent recollection whether those two were finally admitted. I think that My Learned Friends had some diffi- (20) culty about those two but Mr Tip informs me that even those two were admitted. So that part is covered by admission.

COURT: That slipped my mind Mr Bizos. Could you give me the reference later on. At some stage during today or tomorrow.

MR BIZOS: I respectfully suggest that if Your Lordship allows these copies to go in we will call upon the State to admit, and if they do not admit it, and that is the basis on which we have proceeded in relation to documents of this nature during the State case, then we will have to call a librarian in order to produce the original because generally speaking (30)

that/...

that is, those are the only people that have the whole document left. Our source is from a cutting service.

MR CHASKALSON: My Lord may I proceed on the basis that we undertake to prove the dates which we have?

COURT: Yes.

MR CHASKALSON: As Your Lordship pleases. Mr Molefe if you would look at this, first of all do you recollect being interviewed by the Financial Mail in regard to the United Democratic Front? -- I do.

Yes. And was your, was the interview reported in the (10) Financial Mail? -- That is so.

And that document in front of you which I think is AD.15 is the report which was made of the interview with you? -- I identify the document similar to the report of the interview that I read after the interview.

Now that report records the question that it has been alleged that the UDF is an attempt to recreate the African National Congress. Could you please read your answer to that as reported? -- "It is true that both the UDF and the ANC are groups opposed to apartheid in South Africa." (20)

COURT: I am sorry, where are you reading now?

MR CHASKALSON: It is in the first column, I think it is the very bottom of the first column.

COURT: Yes thank you. Thank you, continue.

MR CHASKALSON: Could you begin again to give your answer Mr Molefe? -- "It is true that both the UDF and the ANC are groups opposed to apartheid in South Africa but we must say categorically that we have no relationship with the ANC and do not envisage one because we are operating legally and it is banned. The methods we are using to oppose the State (30)

also/...

also differ fundamentally. The ANC uses violence, we are dedicated to non-violence."

Yes. If you would also look at the last, the third column, the last question and answer in that column. The question is "Do you think the UDF can actually succeed in opposing the passing of the two remaining Koornhof Bills, the Black Community Development Bill and the Orderly Movement Bill?" What was your answer there? -- It was as follows: "In opposing the Bills we are motivated by the assumption that we are dealing with a rational government that is capable of assess-(10) ing the feelings of the people and responding correctly. If government was able to reverse the Pension Preservation Bill in 1981 because of strikes and community protests it should equally heed the voice of the UDF today."

Now those two answers which you have read out do they correctly reflect your attitude at that time? -- That is correct.

And have you had any reason since then to change your attitude? -- I have never had any.

Do you know what in fact happened with the Orderly Move-(20) ment Bill? Did it proceed or what happened with it? -- I know that after a lot of protest coming from various quarters and levelled against the Orderly Movement and Settlement of Black Persons Bill it was referred to, I think on two occasions, to a Parliamentary Select Committee to look at how best to modify it to make it acceptable. But in the final analysis it ended up not accepted by Parliament, it was never passed as an Act.

Mr Molefe if you will just give me your own state of mind and opinion if legislation is proposed which is perceived by people not to be in their interests and nothing is said about(30)

it/....

it on the one hand and legislation is proposed and there is protest about it on the other hand what do you personally feel is the value of such protest? In other words what is the value of speaking out and expressing your objection as opposed to remaining silent? -- If I am allowed to start off by saying that South Africa is a very peculiar kind of a country with a society that is divided into two worlds but existing within the same borders. You have a situation therefore, because of these existing differences, where the perceptions of people from one world is different from the perception of the people(10) in the other. I mean here Black and White. We have a world for White people that sees things in a particular way and on the other hand we have this other world of Black people who see things in a particular way. The government that is in this country, when it formulates policies, it does so on the basis of how the White community see those things. In a sense it is really articulating the feelings of the White community and then it looks from that position over to another world of the Black people and it tries to rationalise in that other world to see if what we, if they are doing in the world of (20) the White people can be acceptable to the Black people. After rationalising on that then they come to a conclusion that we think this is acceptable to them. Now I think therefore in responding to this question that should be the basis from which one should move, that unless a situation develops where the Black people's views in respect of what the government is doing about them is put across publicly and in explicit of terms the likelihood - and in fact this has been the tendency - that the government would proceed and say look there is nothing wrong, this is acceptable to the people. In that (30) sense/....

sense therefore you run a risk of having a situation that would be simmering and can explode at any time when nobody is expecting it. But on the other hand when an organised and effective voice of the Black people is heard on a matter that affects them, I mean specifically this issue of this law that we are dealing with, when that voice is organised it gives a different perspective as to the issue and it allows those who have formulated that law to have the opportunity also to make a rethink on what they thought was acceptable to the people.

It also creates conditions for debates, reasoned out argu- (10)
ment and debates to take place within the ranks of the electorate, within the ranks of organisations that represent White people and all of them would now begin to reconcile their views with the views of the Black people. Thus you have a situation where the government says look you say this is not good, we are prepared to go and have a second look at it and in fact this is what happened with this Bill. Therefore I think it is very very important that there must be this kind of protest because it puts very clearly on record the position and the views of those about whom the legislation is formulated. (20)
I think that is the value really of this kind of protest.

And Mr Molefe while we are dealing with the value can you explain the difference in your perception between the value of one individual who makes his or her views known and the propagation of the views of a group representing many different interests? -- I would like clarity on the question. I do not think it is quite clear.

Alright, well let me try and formulate it a little more precisely. I would like to know whether, how you would assess the value of one individual's protest on the one hand and (30)

the/....

the value of a protest which is made on behalf of a number of organisations representing a large number of individuals? -- My experience is that when a decision is taken on a very crucial matter that affects a lot of people, that is if we go according to the principles of democracy, it is always done on the basis of how broad, how wide, how widespread is this kind of a feeling in regard to a particular issue. It is normally not decided on the basis of a view of an isolated individual from the main group. Therefore my view would be this that when people act as an organised group, when they (10) are organised and they come together in lots of organisations to deal with a matter, to express their protest on a matter that affects them, whoever is in power, who understand what democracy is, who understands that there is no way that you can do things when the majority of the people are not supportive of that, is persuaded to consider the views of the majority. The tendency is that if it is done by an individual these things are normally ignored and in fact the government has said on many occasions that this is not what the majority of the people think, you are just representing, (20) you know these people are not speaking for the majority, this is not a majority view. That is my response to that question. I think it is crucial that a thing is done in such a way that those in authority can be convinced that it is not the work of a single agitator who is manipulating people.

In that context can you say something about the purpose of the United Democratic Front in seeking to mobilise and organise people around the country? -- The purpose of the United Democratic Front, as I indicated yesterday, from the outset has always been to persuade the government to change (30)

from/....

from the course that it was taking. Now in organising and mobilising the people in the country the UDF sought to build as broad support as possible reflecting divergent interests in order to be able to persuade the government that the most popular voice of the people at this particular point in our history views the situation in this manner and to persuade the government to begin to look at things differently. I think my simplest answer is that one. I do not know if I understood the question properly.

No I, Mr Molefe I do not need to ask you any more on (10) that issue now. What I would want to proceed further with now is to ask you about an incident in August of 1984. Do you recollect that in August of 1984 certain leaders of the UDF were arrested? -- That is correct.

Do you happen to recall the date? -- Yes I do.

Can you tell His Lordship when it was? -- It was on 21 August 1984.

We know that Mr Lekota, who is accused no. 20 in the case, was a publicity secretary. Do you know what happened to him at that time? -- He was also detained at that time. (20)

At that time. Did you make a Press statement at that time? -- I did.

And did it receive widespread publicity? -- That is so.

I would like to ...

COURT: Were you arrested or not? -- I was not arrested at that stage.

MR CHASKALSON: I would like to show you a report. There will be evidence that this report of the Press, the one we are quoting from, was actually published in the Evening Post. It is an Eastern Cape paper. And that My Lord will be EXHIBIT (30)

DA.16/...

DA.16. Could you please look through that cutting from the Evening Post? The date we have noted is that it appeared in the Evening Post on 21 August 1984. Would that cutting reflect the gist of a Press statement which you made at the time? -- May I be given the opportunity to read the whole thing? There might be, you know newspapers have a tendency of reporting the things said by other people who were not part of that Press Conference. May I get the opportunity to read through the whole report.

Yes, please just look at it. -- I have read the state- (10)
ment.

Can you tell us whether or not that would reflect the gist of a statement which you made at the time in response to that event? -- It does reflect it.

The statement records you as having said: "Mr Molefe said it was not the UDF policy to organise disruptive action and that their organisation would not be intimidated by the government's allegations." Well the first part of that statement that it is not UDF policy to organise disruptive action, is that a correct statement? -- That is correct. (20)

Lower down in the second column "The UDF was a legal and non-violent body Mr Molefe said and yet the government was trying to project the UDF as a violent organisation. This is an act of frustration and panic strikeness. The government is hoping that through these allegations they will whittle away the support that the UDF is enjoying." The statement there that the UDF is a legal non-violent body, is that correct? -- That is correct.

Then in the third column "Referring to a statement by Mr Le Grange which linked the election boycott with the (30)
South/....

South African Communist Party and the African National congress Mr Molefe said this is part of a long standing and well orchestrated campaign to isolate the UDF and prepare the electorate for the harshest of actions that the State is preparing to take against the UDF." Was that statement made by you at that time? -- That is so.

Was that how you perceived that attack upon the UDF at that time? -- Yes.

Mr Molefe do you recollect the, again in this context of making known the UDF's attitude against violence do you (10) recollect an incident referred to as the Black Christmas? Or a campaign referred to as the Black Christmas? -- I remember it.

Could you explain to His Lordship what that was about? If you could just do it briefly? -- It is a bit of difficulty for me to do it briefly because I came into the campaign long after it had started.

I see, well then let me put it to you differently. If you came into the campaign after it started was there a time when there was an allegation made that, or that there was some suggestion that in regard to the methods ... (20)

COURT: You are making it difficult for me. What was the Black Christmas campaign? -- As I understood it My Lord it was an effort started by the Federation of South African Trade Unions, the Federation of Trade Unions of South Africa, FOSATU, of South African Trade Unions, Federation of South African Trade Unions, together with a number of other Unions and organisations. I cannot name them, I was not there at that stage. The purpose of that campaign as I understood it was to appeal for calm during the period of Christmas to demonstrate to the government that the people were not happy (30)

with/....

with what had happened in the Vaal Triangle and it was an appeal for solidarity with the families of people who had died and those who had been in detention and it also appealed to the residents not to be in a festive mood during the Christmas period, not to indulge in luxurious things, you know buying a lot of food, throwing parties and so on because the nation was mourning at that time. That is how I understood it.

MR CHASKALSON: When you say you were not around when the campaign started where were you when the campaign started? -- I was in detention. (10)

Yes. But did you, were you released from detention during, which month were you released from detention in 1984? -- In December.

In December. And after your release were you informed that you, did you establish that the United Democratic Front was associating itself with this campaign? -- That is so.

And did you yourself issue appeals in regard to the conduct of people in relation to that campaign? -- That is so.

May I show you a cutting from the City Press of 23 December 1984. Did you give a, according to this report (20) it is stated that the UDF National Secretary Popo Molefe also appealed to all UDF members and their affiliates not to molest or victimise people found ignoring this call. Did you say that at the time? -- I did.

It says "Mr Molefe said 'We want to assure the people that nothing will happen to them. In fact we will call upon our people to exercise a high level of dignity by not using force to persuade people to observe the Black Christmas.'" Did you make such a statement at the time? -- I did.

It says "Mr Molefe said people who have already made (30) preparations/....

preparations for Christmas, such as cultural and family gatherings should at least observe a moment of silence for ten minutes." Did you make such a statement? -- I did.

It says "The UDF and a number of other organisations have made a call for people to observe Black Christmas. However they emphasised that people would not be forced to obey the call." Was that the attitude of the UDF and the people with whom it associated in making that call? -- That is correct.

City Press is that a publication which circulates in, is that a newspaper? -- It is a newspaper. (10)

And is it directed to the Black population? -- That is so.

Incidentally just to complete something you told us that you were ...

COURT: Just a moment, do you want this to go in?

MR CHASKALSON: If I may My Lord.

COURT: It goes in as DA.17, and may we complete the rest of your examination after the tea adjournment?

COURT ADJOURNS FOR TEA. COURT RESUMES.

POPO SIMON MOLEFE: d.s.s. (20)

FURTHER EXAMINATION BY MR CHASKALSON: Mr Molefe I just wanted to make clear one part of your evidence. You told us that in, when the Black Christmas campaign was started you were in detention. Perhaps you could just give us now the date upon which you were taken into detention and when you were released from detention? -- I was detained on 2 October 1984 and I was released on 10 December 1984.

And having been released at that stage no charges were then brought against you? -- That is so.

Mr Molefe there has been evidence in this court (30)
concerning/....

concerning riots in Parys in July 1984. Do you recollect that incident in Parys in July of 1984 when there were riots? -- I do.

Following that incident was a meeting called by the United Democratic Front to deal with what had happened or to comment on what had happened in Parys? -- I am not quite sure whether that meeting was called by the United Democratic Front or it was called by the DPSC or it was called by the UDF jointly with the DPSC. I cannot remember precisely at this stage. All I could say is that that meeting did take place (10) and the UDF was involved.

And where was the meeting? -- That meeting was held at Khotso House.

Were speeches made on that occasion? -- That is so.

Was there an audience?

COURT: How long after the riots was this meeting held? -- My recollection is that this meeting was held four to five days after. I think in fact, I think it was four to five days after the riots. When I say the riots I mean after the day on which there was the demonstration or the march and the shooting (20) of people and so on, burning of shops, whatever happened. That is the Sunday, after the Sunday when this thing happened.

ASSESSOR (MR KRUGEL): That was now Tumahole? -- That is so.

MR CHASKALSON: And you were, and you say you were present at that meeting? -- I was.

Do you know whether people from Parys were there? -- I do know that they were there.

Were people from other areas there as well? -- That is so.

Did somebody, did anybody, did any UDF official speak (30)
at/....

at that meeting? -- That is so.

Who was that? -- That is the National Publicity Secretary of the UDF, Terror(?) Lekota, accused no. 20 in this matter.

Did he say anything about the use of violence, did he say anything on that occasion? -- He did.

Can you tell us what you recollect? -- He made a call to the public and the people of Tumahole in particular not to attack, to burn the properties, the shops and the houses of councillors. He called as an alternative action for the boycott of the shops and taxis of the councillors. That (10) is the essence of his message.

Was that consistent with UDF policy, not to use violence but to use boycott? -- That is so.

Do you know whether that speech received any publicity? -- It did receive publicity, wide publicity. But I need also to indicate here that before that meeting, before he went to speak in that meeting we sat together and discussed the matter and how we were going to deal with that kind of a situation. He had also indicated to me that he had discussed the matter with one of our Presidents Mr Archie Gumede and we thought (20) that that was the opportunity to once more present clearly the policy of the UDF in respect of the events of Tumahole.

You yourself Mr Molefe, while we are still dealing with this, you have told us that you have made statements and issued, made speeches and issued press statements. Can you tell us over the period say August 1983 until April 1985 when you were arrested in connection with this case how frequently would you say that you were called upon to make speeches? -- I would say once or twice a month on average.

And in addition to doing that would you on occasions (30)

be/....

be called upon to respond publicly to allegations which affected the UDF in some way? -- That is so.

Or to reaffirm UDF in some way? -- That is so.

Are you able now to recollect each instance upon which this happened? -- No, no, I am not in a position to do so. I may remember some of the instances but it is really difficult.

As far as you personally were concerned was there ever any occasion on which you personally called upon people to commit violence? -- I have never ever made that call for violence and it has simply not been my policy as an individual, neither was it the policy of the organisation that I belong to, the United Democratic Front, and it was not even the policy of the Soweto Civic Association. (10)

During those occasions were there ever occasions upon which you warned people not to use violence? -- That is so. I would not really say specifically that I said do not, except on, I remember this instance that we have already dealt with of the Black Christmas. I would not say that all the time I said do not use violence but when the occasion arose I did so.

Yes. When the occasion arose for me to say so I did so. (20)

Now Mr Molefe you rather took me away from where I was actually going to go this morning so could we go back to the declaration, in EXHIBIT A1 and I would just like you to go through the declaration and explain some of the provisions to us. The declaration commences with a statement that "We the freedom loving people of South Africa say with one voice to the whole world that we" and then two statements are then made and I would like to deal with each of the two statements which follow that. First there is a statement "Cherish the vision (30)
of/....

of a united democratic South Africa based on the will of the people." Very briefly can you explain what you personally understood that to mean? Try to keep it fairly short if you can. -- The present situation in this country is that the government that is ruling here is based on the will of the White people. Yet South Africa is a country of people who are Black and White. By Black I refer to Indians, Coloureds and Africans, and the African people in this country constitute the largest majority but they are not part of the government in this country and South Africa is divided as it is today (10) into a number of homelands which it is intended that over a period of time should become independent and in fact some of them have already become independent and in these homelands people are divided into ethnic groups with these little governments of homeland. Now what the UDF sought to present as a vision, a better vision for South Africa, is a South Africa that is united, that is not polarised, a South Africa that is not divided into homelands and a South Africa that would be ruled by a government that is based on the will of all the people who are citizens of this country, Black and (20) White. It really calls for a vote to all the people of South Africa under one government. I understood it to mean that.

Yes. The second statement there "We will strive for the unity of our people through united action against the evils of apartheid, economic and all other forms of exploitation." First of all you have explained already the importance of unity and united action. Is there anything which you would wish to add to what you have already said about that this morning in the context of the declaration? -- In pursuit of this unity we believed that we needed to pull together (30)

different/....

different organisations that existed at that time and new ones that would exist later of course, and to pull together people from different racial groups to begin to interact under the United Democratic Front and work towards a new order, an order whose objective, a new government whose objective would be to meet the interests of all the people on an equal basis. That would mean therefore that there would not be a people for whom certain jobs are reserved on the basis of their colours of their skins. The determination of wages for workers would not be based on whether you are (10) White or Black but it would be based on the individual merit of workers, irrespective of whether they were Black or White. That the system of migratory labour that creates the basis for the exploitation of workers, that creates the basis for low wages for people coming from rural areas would be ended and all other forms in which people who are operating in structures like the Black Local Authorities were, they find themselves in the situation where they do not have sources of enough revenue to provide to meet the needs of people, where they end up in a situation where we get a lot of reports that we had to (20) pay so and so money for a house, we had to pay this and that for a house and a lot of court cases that we read about in the newspapers. That kind of a situation we think that would be avoided if this kind of a South Africa is established.

You refer there to the evils of apartheid. You personally, did you hold the view that apartheid was evil? -- Yes I do. I do.

Do you want to say why? -- If I am required to say so I will.

Perhaps someone will ask you then Mr Molefe. Let us go (30)

on/....

on to the next ...

COURT: Before you go on to the next. The phrase "our people" what does that encompass in the context of the declaration?

-- Well in the context of the declaration it encompasses all the people of South Africa, although with an emphasis on those communities that are excluded from Parliament. But generally when we talk about "our people" we refer to Black and White people because the United Democratic Front is a non-racial organisation, it seeks to bring together all these people. But the majority of course of the people are those who are (10) oppressed and they are not enjoying the privileges that others are enjoying, White people are enjoying in this country.

MR CHASKALSON: The next section begins "And in our march to a free and just South Africa we are guided by these noble ideals" and then three propositions are made. First "We stand for the creation of a true democracy in which all South Africans will participate in the government of our country." I think you have already explained that this morning Mr Molefe, is that correct? -- That is so.

Then the next statement is made "We stand for a single (20) non-racial unfragmented South Africa, a South Africa free of bantustans and group areas." I think you have dealt with everything earlier this morning save for the mention of group areas. Could you say something about that? -- About the group areas?

Yes. Just try to keep it brief again but why you perceived the group areas as warranting, what you understood about the need for removal of group areas? -- Well presently the situation is that people are, live in certain areas according to the groups to which the government legislation has defined (30)

them/....

them as part of, that is Indians have their own areas, Whites and so on. It is part of the policy that separates, that divides people and it makes it impossible for people to move from area to another to get accommodation, to get a house or so on. In the simplest of terms really it simply means that that must go so that people must be free to move to where they want to move to and get homes or jobs where they want to get jobs.

As far as the division of land is concerned in group areas do you perceive any differences between, within the (10) allocation of land for housing and facilities? -- Yes I do.

Perhaps you should just indicate what you see and how you understood it? -- As I understand it those areas that are, firstly I think maybe we should start from the fact that the Black people in this country who constitute the majority, some people have said 75, 72 percent and so on, are confined to about 13, 14 percent of the land in this country and the rest of ...

COURT: When you say that does that encompass the homelands? And it encompasses the independent parts of South Africa? (20) -- I include the homelands. There would obviously be ...

You include the Transkei and the Ciskei and ... -- I do so. There would obviously be a difference in the sense that there has been some consolidation here and there. It means more land given to this and that homeland in a sense. It might have increased a little bit but all I am trying to, the point I am trying to make is that in that kind of a situation you have that kind of a situation and then the White people have got the rest of the country for themselves and they constitute a very small portion of the population of South Africa. (30)

The/....

The local authorities that operate in the townships did not have the power to control the land, you have a lot of overcrowding, there is very little space to build houses for people. This has been, there has been an outcry for more land over a period of time by these homelands. Now in a sense therefore the Group Areas Act that confines people to certain areas where when the population grows it cannot, people cannot be accommodated, becomes a problem. And in the meantime you would have for instance in a White area a lot of space for housing and in fact the newspapers reported, (10) I remember recently, that there were about 30 000 unoccupied houses in the White areas and on the other hand there were reports that there were close onto half a million shortage of houses for other racial groups. Now these are kind of the anomalies that such legislation brings. Because this exists it means those people who do not have homes in the Black areas cannot move to occupy those houses that exist there with no occupants in the White areas you see. So that really that statement was made, was based on the experiences of the people and the way in which the Group Areas Act was affecting the (20) people.

MR CHASKALSON: Then the next statement Mr Molefe is "We say all forms of oppression and exploitation must end." I think that really speaks for itself and you have explained that to us already. Then we continue, the declaration continues "In accordance with these noble ideals and on the 20th day of August 1983 at Rocklands Civic Centre, Mitchells Plain, we join hands as community, womens, students, religious, sporting and other organisations and trade unions to say no to apartheid." I think you have, can I ask you this were these (30) wide/...

wide ranges of different organisations represented at the launch? -- That is so.

And is the point here being made that they all come together to make this claim as you have described to us earlier a more powerful claim and on their own. I think you said that to us earlier. -- That is so.

Then the next statement "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." I think you explained that to us yesterday Mr Molefe, is (10) that correct, we did discuss that yesterday? -- That is so.

COURT: Well if it was discussed yesterday do not repeat it Mr Chaskalson.

MR CHASKALSON: Yes I was going not to My Lord.

COURT: I mean we did discuss it yesterday.

MR CHASKALSON: I was not going to repeat it, I was going to ask him to say nothing more. "We say no to the Koornhof Bills which will deprive more and more African people of their birthright." You referred to the Koornhof Bills yesterday? -- That is correct. (20)

"We say yes to the birth of the United Democratic Front on this historic day." I do think that speaks for itself. Then this declaration continues as follows: "We know that this government is determined to break the unity of our people, that our people will ..."

COURT: Could we just pause there. I asked you what "our people" means in the context of the declaration. Now reading that sentence does "our people" not mean a group of people that stands in opposition to the government at least? And to the government supporters? If that is correct then does (30)

"our/...."

"our people" not mean non-government supporters to put it as wide as possible? -- Well I think I must deal first with the first part of the question. I repeat the point I made that "our people" means the people of South Africa, Black and White because the new constitution itself was entrenching that division that apartheid has always been pursuing, that Whites would be one side, Blacks would be one side, and it was continuing to say Coloureds and Indians could not sit together with the White people. Now the UDF is a front that seeks to unite people from all racial groups, White people become (10) part of it, Coloureds become part of it, Indians and Africans.

Now "our people" in this context refers to all those people but no doubt that the effects of this division will affect especially those communities that are under privileged in this country, the Coloureds, Indians and Africans who had been working together were to oppose the government. But they had not been working together alone. There were certain White people who have always made their position clear, we have the Black Sash for instance, you have the National of Students of South Africa, you have, those are organisations that existed (20) at that time. You had church organisation like DIACONIA which had White people, you had organisations like South African council of Churches which were non-racial, all of them were saying we are not happy with the policies of apartheid and all those people, all the people who are South Africans are, when we talk of "our people" we are referring to people from all racial groups in line with the principles upon which the United Democratic Front was formed. The second part deals with whether this would not be people who are opposed to the government. Partly yes, partly no because even within (30)

those/....

those who are supportive of the government, there have always been people who have made it clear that they were not supportive of this situation continuing where the franchise is denied to the majority of the people. My recollection is that in fact people like Mr Mabuza, Chief Buthelezi, who were at that stage seen as supporters of the government were also stating their position that they were not supportive of these reforms. Similarly with Reverend Sam Mbuthi, these people had made their position clear and the constitution, if it was dividing the people, it was forcing a division even on (10) those who were supporting the government, it was pushing them away in a sense. That is how I understand it.

MR CHASKALSON: Then it continues, the next sentence, "That our people will face greater hardships, that our people living in racially segregated and relocated areas will be cut off from the welfare produced in the cities, that rent and other basic charges will increase and that our living standards will fall." Can you deal with the relocated areas. What is that? -- These are resettlement areas. These are places from which the government has taken people and settled them somewhere (20) else. The example of this would be a place like Pudomong in the Northern Cape.

COURT: Budumong? -- Pudomong, P-u-d-o-m-o-n-g. But I must hasten to say that there are people who sometimes spell it as P-u-d-u-m-o-e. Now I am not sure which of the two is correct. That is one of the areas. I think the other area would have been a place like Kwa Ndebele, I have just forgotten the name now. Anyway those places where the government has resettled people. That is what we meant.

MR CHASKALSON: Yes. The next statement, "Will be cut (30) off/...."

off from the wealth they produce in the cities. What is that a reference to? -- When looking at the kind of trend that was developing when people were being removed from areas it was becoming clear that an increasing number of these people who were being removed were sent to places which were either homelands or just rural places far away. But the intention was to make those people part of existing homelands and my recollection is that in Natal also there was a process of consolidating the KwaZulu homeland with certain townships being, the government suggesting that certain townships be (10) part of KwaZulu. I think this would include places like Hambanati and Lamontville.

How would you perceive ... -- Now once people are in those places, homelands, in terms of the policy of the government they no longer qualify to be, at that stage they would no longer qualify to be regarded as citizens of South Africa. This would have meant that if they wanted to seek jobs in the urban areas, industrial areas, in what is regarded as White South Africa they would have had to do it on, in accordance with the system of migrancy, on contract basis, and that (20) proscribes their freedom of movement in those areas and freedom of seeking jobs in those areas.

COURT: You mean though living next to the city they would be migrants? Let us take a concrete example. Are you saying that linking Soweto for example to a homeland would mean that a man living in Soweto would be a migrant as far as Johannesburg is concerned? Not that sort of example? -- I have not thought of that kind of an example but I think if it was to be decided that Soweto is part of Bophuthatswana and the overall policy is that citizens of Bophuthatswana can only (30) work/....

work on the basis of contract I cannot see how Soweto would be treated as an exception. But I think we are dealing with really hypothetical issues here. But I think the issues, the places that we had in mind at that time were places like Icingala(?), it is one of the thirty-one areas in this case, Icingala, next to KwaNdebele. Places like Mabopane which was made part of Bophuthatswana and places like Pudumong itself, and many others. Now those people had earlier on been people who were working in industry, producing the wealth of this country. Now they were being moved away and they are being(10) locked up in those places where they have got to rely on the mercy of authorities to decide whether they can get contracts to work in the cities or not. I understood it in that context.

MR CHASKALSON: And as far as the wealth which is created, where, how did you see that, did you see that wealth being distributed equally throughout the country or not? -- It was not.

It was not. Where did you perceive the wealth as being spent? -- I perceived the wealth as being spent in the White areas. Yesterday we made an example of the perceived (20) reality of, the perceived differences between a White suburb and a location for Black people. All those places are you know what one might consider to be glittering towns, very nice places, very attractive, good houses, decent houses, tarred roads and so on. That thing is not found in Soweto, the biggest and one of the oldest cities. It does not have that. Now that clearly indicates where the wealth of the country is going and that kind of a situation cuts across a whole range of aspects of the lives of the people, in education, in health, transport, etcetera, all those kinds of things. There is (30)

no/....

no development in the Black people. The development in the Black people is not on par with what is happening in the White areas.

Then the next statement made is that "Rents and other basic charges will increase". Do you know why that was said?

-- Yes.

Perhaps you would just tell His Lordship briefly why you thought at that time that rents and basic charges would increase?

-- At the time of the introduction of the Black Local Authorities the government had never responded to the question (10) as to how the Black Local Authorities were going to be financed and already at that stage there were experiences of struggles around the rent issue where people protested that they were unable to pay higher rentals. The Community Councils which were the predecessor of the Town Councils formed in terms of the Black Local Authorities Act had been repeatedly increasing rentals and we understood it to mean simply that if the government does not solve this problem of how it is going to finance the Black townships that situation is simply going to be exacerbated and I think it is also proper that we should (20) indicate that the Development Boards, the Administration Boards, which at that time were controlling the little business that existed in the townships were going away and there was no indication as to whether the Development Boards that were taking over would use that business to subsidise the Black Local Authorities. So it was in that context that we saw that the rent was going to continue to increase because there is more housing to build, the local authorities have got no money to build houses. There are services to provide, they are taking over the provision of services which had (30)

hitherto/...

hitherto been the responsibility of the Administration Boards, they were taking that responsibility over. They would need more money to be able to effect their tasks. They were employing their own staff now, the staff that had been employed by the Administration Board, part of that staff had to go to the Town Council. The Town Council had to pay those people. The Town Council was required to develop the township. All these things simply meant that the government, the local authorities would rely heavily on what the residents are able to pop out and this was in line with the policy of the(10) government that Black people must finance their own areas.

If we could go to the next paragraph. "That working people would be divided, race from race." You have explained that to us already I think Mr Molefe. "Urban from rural", you dealt with that yesterday. "Employed from unemployed, men from women, low wages, poor working conditions, attacks on our trade unions will continue." Can we just talk about the question of employment and unemployment. What was the state of the economy at that stage? Could you just, was unemployment a factor at that time or not? -- I am not an expert in that (20) regard but I could simply say that there was a lot of talk about unemployment at that stage, a lot of people were unemployed.

Yes. -- But I cannot say precisely what the situation was. Save to say that during that period there had been talks of retrenchment of workers from various factories, so on.

The attacks on our trade unions will continue. Had you yourself ever been a member of a trade union? -- Yes I was.

What union were you a member of? -- The General and Allied Workers Union. GAWU. (30)

COURT:/.....

COURT: What do they do? What line of people do they cater for? -- It is a general workers union.

All workers can join? -- Ja, in different industries.

MR CHASKALSON: Where was the General and Allied Workers, where were you employed when you became a member of the General and Allied Workers Union? -- I was employed by the Dorman Long Van der Bijl Engineering Corporation, Dorbyl.

Dorbyl. -- That is in Johannesburg, in Braamfontein.

Had you yourself had experience of working in conditions where unions were not organised, where the workers were (10) not unionised? -- That is so.

Did you yourself ever hold office in such a, in structures which were set up for groups which were not unionised? -- Yes whilst at Dorbyl the management then presented to us the idea of a liaison committee.

COURT: That is before or after the trade union ... -- Before I joined the trade union. It was some time during the period 1978 and 1980. That was in line with the liaison committees which were being formed in factories. I served in that committee and that system provided for representation of (20) management in that committee also. It meant that before a meeting takes place management must decide whether the agenda was acceptable to the company or not, to them or not. It was that kind of a situation. If we wanted to meet sometimes when management is not there, if we want to talk to the other workers we have got to report to management what we are going to talk to the workers about and they will decide whether they think we should proceed or not.

MR CHASKALSON: Did you see the unions as having an important role in improving the conditions of workers? -- Yes I did. (30)

Were/....

Were they, how did the United Democratic Front, what was its relationship with trade unions, how did it see itself in relation to trade unions? I would like you again to try and just keep it fairly briefly so His Lordship and the Learned Assessor can understand the reference to trade unions in this declaration? -- Well the United Democratic Front regarded the trade unions as a very very important organised, as one of the important organised sectors in the society, especially because the majority of the people in the constituencies that it was organising, including members of its affiliates, were part (10) of, some of them were part of trade unions or were working people. So it was crucial that all those people be brought together under the banner of the United Democratic Front to expand the number of organisations that were speaking through the UDF on crucial matters.

It refers to low wages and poor working conditions. Do you regard that as an accurate statement of the condition of workers at that time? -- There were workers who were getting low wages. There had been public protest about the low wages. Throughout it was commonly known. (20)

Working conditions, was that an issue at all? -- It was, it was an issue. It was an issue. I had had that experience myself.

And the reference to attacks on trade unions. What would that be a reference to? -- Around that period a lot of people were being detained by the government. They had SAWU, no it was not yet there, around that period anyway a lot of people were being attacked. In Ciskei in particular trade unions were on the run. Some of them had been detained. It was common knowledge that the government was not tolerating certain (30)

trade/....

trade unionists. I think I need to mention here that also this conference took place in the context in which a leading trade unionist like Neil Aggett had already died in detention so the workers here who were present were really talking about their experiences in their trade unions.

Yes. The next page deals with "Students will continue to suffer under unequal education." Did you perceive, what does that refer to Mr Molefe? -- This refers to segregated education in this country, with part one of the black people designed to be explicitly of an inferior nature in order (10) to achieve the objective of keeping people down so that they could only perform certain forms of labour. I do not want to go much on that but that was expressed very clearly in this policy by Dr Verwoerd around 1953.

Then there is a reference ...

COURT: Are you saying that that was still the policy in 1983? -- There was no policy of changing the segregated system of education and equalising the system of education under one department. Our contention was that even if the government had thought of equalising the system of education as long (20) as it is still separate it could not be equal, especially if it is kept separate by people who have a voting power, who control the economy of the country, who make laws at the exclusion of those whose education is intended to be equal with that of their children and yet they are not able to formulate the policies and they do not vote, they do not make legislation. I think our contention would still be that even if there was that attempt to equalise it it would not be equal for as long as it was separate.

MR CHASKALSON: Do you know about the spending on education, (30)

were/....

were equal amounts being spent on White education as upon Black education? Per child? -- I cannot give the figures offhand but there had been a lot of studies made by people to show the disparity in that regard. In the sense that a lot of money was spent on White children and very little on Black children, and I think it was something in the ratio of one is to six or one is to five. If you spend one Rand on a Black child you spend six Rand on a White child. If you spend R1 000 or R100 or R70 on a Black child you spent seventy times six on a White child. The education of a White child. (10)

Yes. The ... -- I think if I may just add also here is that even the training for teachers was unequal. There had been reports that indicated that at least round about that time over seventy percent of the teachers teaching in Black schools were under qualified and on the other side only about three percent of the White teachers was underqualified. That is an equation that is very clear to everybody to see, the balance between the two. It means the education of whites is far advanced and it has got better equipped people. This would also go for the period of training of teachers, especially (20) for high schools and so on. In our case people could just to high, teach in a high school after passing Matric. He can just go and do a two year diploma and teach at high school but in White schools they were required to go to the University and train especially to become teachers and if my recollection is correct that training would take a period of about four years or so before they qualified. Now these are the things that really show the inferiority of the difference in this education and the laboratories in our schools were ill-equipped, libraries there were no books. We had all these sorts of (30) problems./....

problems.

And is this ... -- And the new constitution was not indicating how it was going to fundamentally change that kind of a situation.

Was this issue of education a grievance within the Black community? -- For many many years now.

Then it continues that "Ethnic control..", well that is the issue of education. Then there is a reference to the religious and cultural life of our people will be harmed, the sins of apartheid will continue to be stamped on the (10) culture and religions of our families. Are you able to explain that? -- Yes it simply meant that practising Christians coming from different racial groups could not meet together even when they pray because of the Group Areas policy, they would still be separated in their own affairs and so on. In fact we have this kind of a situation, especially in the Dutch Reformed Church, that that situation of the church divided into a separate church for Indian, a separate church for Coloured people, a separate church for Africans and a separate church for the Afrikaans White people was there and the new con- (20) stitution was not laying the basis for pulling together of the believers for instance. While they believed in one God they had to pray him at different places despite the fact that they might have wanted to be together. So insofar as the religion is concerned that was still happening.

ASSESSOR (MR KRUGEL): But Mr Molefe do you then maintain that the government should prescribe to the religious people what they should do? -- Well I am not saying that the government should prescribe to religious people what they should do but I believe that the government policy, the way it is (30) formulated/....

formulated it would create a basis for a development of a particular inter-relationship between all the peoples of the country. If a government policy is that people are equal then you have a situation where you, it becomes difficult for people to say you cannot be part of my church because you are not like me, you are not White, or you are not Indian. You see if the government policy leaves that to people, leaves people to meet in group areas then people will worship together, they will work together, they will go to school together, they will work together in factories. That kind of situation lays the basis(10) for people to move towards a united and single community that develops a common culture, national culture. It is really in that context that I see it.

MR CHASKALSON: Do you think a country, do you personally feel that a country with a common culture and a common goal is to be preferred? -- That is so. Well I need to say also that it does not follow that if you have that kind of a set up, that for instance everybody would want to become a muslim for instance, but at least there is nothing that, the person is not given an education that tells him that he cannot be (20) part of that, he is given an education that allow for that person to make the choice that that person considers to be right and best on an individual basis, not as a group, a separate group.

Mr Molefe it continues "We know that apartheid will continue." What does that refer to? -- Well really it refers to the things that I have mentioned in respect of the new constitution and the Koornhof Bills. I do not know if I am required to delve into.

You mean that under the new constitution apartheid (30)

will/....

will continue? -- Yes, I dealt with that yesterday.

Okay. Then I think the next paragraph we can deal with quite quickly, "That White domination and exploitation will continue, that forced removals and Group Areas Act and bantustans will continue. We know that there will be no 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 harrass- (10) ment, bannings, detentions and death." I am going to ask you a little bit about the very last thing but do you see all this as you said, as how you described it yesterday, as part of the, of apartheid? -- That is correct.

And that the new constitution was not going to change any of that? -- That is so.

And I think it then concludes "Mindful of the fact that the new constitutional proposals and Koornhof measures will further entrench apartheid and White domination we commit ourselves to uniting our people wherever they may be, in the (20) cities and countryside, the factories and the mines, the schools, colleges and universities, houses and sportsfields, churches, mosques and temples to fight for our freedom. We therefore resolve to stand shoulder to shoulder in our common struggle and commit ourselves to work together to organise and mobilise all community workers, student, women, religious, sporting and other organisations under the banner of the United Democratic Front." Was that to be the opposition then to the apartheid as you have described it? -- That is so.

And then you go on, it goes on to say "Consult our (30) people/....

people regularly, honestly and bravely strive to represent their views and aspirations." As far as consultation was concerned how was that to be done? -- There were various methods to achieve, to effect consultations. These would range from consultations between, amongst organisations themselves and it would be consultations on the basis of door to door work where people go into houses, talking to people about matters which were affecting them and assessing the views of those people. I think briefly that is how it would take place.

And "bravely strive to represent their views and as- (10)
pirations." Do you know why the, have you any comment on the word "bravely"? -- All it means is that if the view of the people is a particular one in respect of a problem facing them the organisations gathered here under the banner of the UDF, of the UDF itself, would stick out its neck and speak publicly and openly about that problem even if it means that those in authority might not be pleased by that but we considered it to be crucial for us to make known the feelings of those that we represent, that our organisations represented.

And there is a statement a little earlier, a reference (20)
to "harrassment, bannings, detentions and death". What would that refer to? -- Well that was referring really to the situation as experienced in South Africa. There was continuous police harrassment in our homes, woken up very early in the morning by security police. Harrassed for not carrying passes in town. There were detentions of political activists and trade unionists. There were people dying in detention. I believe that by the time the UDF met in 1983 already no less than 50 people had died in detention in a period of I think about twenty years. (30)

Bannings/...

Bannings, what does that refer to? -- People were still banned at that time. Mrs Mandela was still banned amongst others Mrs Florence Mxise was banned at that time. Although there had of course been a lot of people who had recently been unbanned but the new constitution was not promising that these things will come to an end. The new constitution was not addressing the fundamental problems of the country. It therefore meant that those protests which led to people getting detained would still take place, people would still protest against the policies of apartheid and it means they would (10) be detained and it means that people will still die in detention. It meant that people might still be banned. All it means is that unless the fundamental issues that give rise to grievances, give rise to protests, are addressed the constitution could be seen as the surest way of perpetuating the situation that has existed before, if not even making it worser.

Then Mr Molefe the declaration continues "Educate all about the coming dangers and the need for unity, build and strengthen all organisations of the people, unite in action(20) against these Bills and other day to day problems affecting our people." You have explained to us I think the importance of organising and mobilising and strengthening organisations. You have explained to us how you perceived the need for unity. Can you say something about the importance of day to day problems? -- Any community, any individual, any organisation, worth its salt would seek to improve the immediate problems, improve the immediate conditions of life. Now when the United Democratic Front came together, they called together these organisations in conference, when these organisations(30) came/....

came together in conference to launch the United Democratic Front they were coming there as organisations that had been involved in the past in dealing, grappling with problems that were affecting them in a variety of ways. In education for organisations that had been dealing with those problems. There were those organisations that had been dealing with problems of housing, high rentals. There had been organisations, trade unions dealing with problems affecting them on the factory floor, there was a whole range of these organisations dealing with those kind of problems. These organisa- (10) tions were coming together. In coming together under the banner of the United Democratic Front this did not mean that their struggle to improve their problems on a day to day basis, the day to day issues affecting them was to come to an end and a broad organisation that was going to be formed in opposition to the new constitution had to understand the relationship between the new constitution that was coming up and the day to day problems of the people. We have already said that a whole range of problems that had existed would not be changed fundamentally by this new constitution. There- (20) fore it was only proper that on this day, at this conference these day to day problems of organisations, of communities, be seen as part of the overall problem that the people were experiencing.

Do you see, sorry. -- Now this was the view as expressed by organisations that came from communities affected by these things differently.

Is there any link that you see between day to day problems and the way political power is exercised in a country? -- Certainly. The exercise of political power would mean (30) that/....

that if all people are currently in this country, we know that we are not voting, this means that we have got no way of influencing policy in such a way that it can uplift the conditions, improve the conditions of the Black people in the Black areas. Now if all people in the country are voting there would be an even development as I said earlier on. The government would address the problems of the people equally or at least if there are problems with people in rural areas but those living in the urban areas when there is an urban development scheme it would be a scheme that helps to uplift(10) everybody in that area and when they deal with the rural community they will deal with that rural community, Black and White, equally. It would not be a separated issue that affects certain people. Now the day to day problems therefore have a direct link with the policy, the national policy that arises out of the vote because if people do not vote they cannot change the conditions effectively, their influence is a very limited one.

Do you think governments pay more attention to those who vote them into office than those who do not have a vote? (20)
-- That is so because it is important that they must ensure that when the next election comes they get the highest vote and that is not, they do not need the vote of the Black people and that is why they would find it easy to do things that please White people.

If Black people had the vote what do you think would happen insofar as educational problems and housing problems and other day to day issues are concerned? -- I actually think that a vote in a central government of the country is fundamental to the solution of all problems. I do not want (30)

to/....

to single out education. The education would not be inferior obviously and any other problem that is there, once you have a vote you have a power.

Mr Molefe I think one last thing in this long preamble to the pledge. There was a reference to using false leaders to become its junior partners. What is that a, can you comment on that? -- It was the view of the organisations gathered there that, and this view was accumulated over a period of time as a result of, was a product of an accumulation of experiences over a period of time under various (10) structures. It was clear that when the government moved away from the Community Councils system it had accepted the fact that that system was just unworkable, it was ineffectual. Thus it brought in another one. But the views of the people was that that was the same thing because this new one is not providing the, it was not a drastic departure from the previous one. Therefore these people who would go there would be people who are not leaders worth their salt in the communities who choose to go for ineffectual structures as those. Therefore if these are people who are not recognised by the communi- (20) ties they are, I just want to look for the word that describes it here ...

The words used in the declaration "false leaders". -- They would remain false leaders because what they tell the government is not what the people say and what the people feel in the townships. Similarly with the labour party, the NPP' and so on it shall be, I think I need to bring to the attention of this Court the fact that the SAIC, the South African Indian Council, was really initially started as a body to which people would just be nominated by the government and it lost (30) credibility./....

credibility. I think later on then the government decided that it would hold elections where people were elected into that body. But none of those people were, the majority of the Indian people did not accept that kind of a structure. Now when these elections were taking place, when the UDF was launched in 1983 those figures who had been part of the SAIC, I think among them Mr J.M. Reddy, I think he is a doctor, Dr Reddy, then there was Mr Rajbansi, all those people who had been rejected massively by the people, the Indian community in 1981 during the anti-SAIC campaign were seen again(10) as people who were going for these structures and as far as the people coming from those communities were concerned these were false leaders, they were not the real leaders of the people.

Mr Molefe then after that long ...

COURT: Now just a moment let me get clarity. Was the anti-SAIC campaign a campaign which was waged when the SAIC was an elected body or a nominated body? -- When there were to be elections.

Just before there were to be elections? -- I am not sure(20) if there had been any elections before but I seem to recall that the elections that I know of were those taking place in 1981. They might have been the first. I am not sure about that but in any event the campaign was against the elections into the ...

For that body? -- For that body.

So when it became representative there was a campaign against it? -- When it ...

Why was there not a campaign against it when it was unrepresentative? -- I am not conversant with what was (30)
happening/....

happening in the Indian community, the Indian areas at that stage. There might have been a lot of protest around this but I think when the protests started in 1981 it started because that structure itself was not a proper vote that could meaningfully help change the conditions of the people in affected community, it was not offering them a proper vote.

Yes, thank you.

MR CHASKALSON: Was the attitude that there should not be participation in structures which did not give recognition as it were in the lawmaking functions of the country through (10) Parliament and through the ordinary vote? -- That is so.

Now Mr Molefe there has been the long preamble containing a recitation and a recital and then it finishes up "And now therefore we pledge to come together and as United Democratic Front and fight side by side against the government's constitutional proposals and the Koornhof Bills." And that is the declaration? -- That is so.

So, and it was on that basis that people were asked to show, to join the United Democratic Front? -- That is so.

And the United Democratic Front itself, I think you (20) have told us, came into existence around the constitutional proposals and the Koornhof Bills? -- That is correct.

COURT: At the time were the Koornhof Bills still Bills? Some of them we know were Bills but were they all still Bills? -- My recollection is that one of them had become an Act. I am not sure as to at what stage the Black Communities Development Bill became an Act but my recollection is that one of them was an Act at that time, the BLA had already passed.

MR CHASKALSON: So the Black Local Authorities Act had been passed? -- Yes.

(30)

And/....

And you are not sure, the Orderly Movement and Settlement Bill you told us was never enacted and you are not sure at this stage of whether the Black Community Development Bill had been passed or not? -- Yes.

Now Mr Molefe I would just like to ask you some questions about the working principles which are included in that document A1. Could you turn to the Working Principles. Were these the working principles which were adopted at the launch of the United Democratic Front? -- That is so.

I would just like to have a look at the provisions (10) for membership in paragraph 5. "All organisations present at the first national conference, otherwise than as observers, shall be members of the UDF subject to

5.1.1 Their right of withdrawal.

5.1.2 Review by the national executive committee in consultation with regional councils or by the National General Council from time to time."

Was the Front then to consist of organisations? -- That is so.

And every, all the organisations represented at the first conference were to become members subject to their right (20) of withdrawal or the National Executive Council would have a right to review their membership? -- That is correct.

And then 5.2 makes provision for new organisations to come in. It provides:

"All organisations which are prepared to commit themselves to the Declaration policy and to the programme of action will be eligible to make an application for affiliation through the Regional Councils."

First of all the Declaration, that is the document we have just been through? -- That is correct. (30)

The/....

The programme of action is that the document you referred to in your evidence yesterday? -- That is so, that is the, in fact that is what we regarded as the guidelines for programme of action.

Yes and it says that application will be made for affiliation through the Regional Councils. What ...

COURT: Could I just get clarity now. The Declaration is what we dealt with this morning, is that correct? -- That is correct.

The policy, does that mean the policy set out in the (10) Declaration? -- In the Declaration and the, broadly in the Declaration yes. That would also be encompassed in the, it would also be encompassed in the resolutions of the conference.

So it is the Declaration, you subscribe to the Declaration and to the resolutions of the conference, that is the policy? -- That is so.

And then the programme of action, where is that to be found? -- The programme of action is the guidelines, it is contained in I think EXHIBIT V.1. But there it is not complete. We had a document here yesterday which ... (20)

MR CHASKALSON: I am told it is AL.3.

COURT: AL.3.

MR CHASKALSON: Is the document which Mr Molefe referred to yesterday I am told.

COURT: Is that the one we looked at? -- That is so.

So what one subscribes to is page 4, 5,4 and 5 of Al, is that correct? -- That is correct.

Then one subscribes to the resolutions of the conference, I think these are also found in Al somewhere, is that correct? The resolutions are set out at page 23. Are these the (30)

resolutions/....

resolutions you refer to? -- That is correct.

That runs from page 23 to page 33, is that correct? --
That is correct.

And then one subscribes to the programme of action? --
That is correct.

That is AL.3? -- That is correct. May I just make one observation here that although I have put together the Declaration of the United Democratic Front, the working principles and policy and I said that the declaration and the resolutions would form part of the policy I need also to (10) state here that whilst the resolutions are an important part of the United Democratic Front when an organisation affiliates to the UDF the approach has always been to present the declaration as the main document because we felt that that one was the one that sets out broadly the position of the UDF. It does not follow that if a person looks at the resolutions here and disagrees with four, two or one of the resolutions that would invalidate the affiliation to the UDF.

Well do you know of any affiliated body that did not subscribe to all the resolutions? -- If we talking we are (20) talking as at the time of the conference.

Well at the time of the conference they all subscribed I take it? -- My impression is that they all supported the resolutions.

But do you know of any body that later joined that did not subscribe to the resolutions? -- Well later on those organisations that joined the UDF, most of them really would have been mainly interested in the declaration but I do not think they would have problems with the resolutions because these resolutions are really reflecting what is happening in (30)

the/....

the community and the perceptions of organisations. But I cannot be sure that at each stage when an affiliate comes it gets A1 in the form in which it is now because these documents were typed and kept in separate forms, like the Declaration in one copy of its own, the working principles in one copy of its own. The two documents that one can be certain that each affiliate would have received is the Declaration and the working principles. The resolutions would have been available on request but the fundamental documents ...

Now when was this document A1 published then? These (10) are the proceedings then of the inaugural meeting? -- My recollection is that it was published towards the end of 1983.

I am not quite sure of that.

Yes, thank you.

MR CHASKALSON: Mr Molefe paragraph 5.3 "In terms of membership of national organisations which are not members of Regional Committees shall be decided from time to time by national Executive committees in consultation with Regional Councils." Were there some national organisations whom, does this, were there different sections of national organisa- (20) tions ... Well let me put it to you differently. Was it possible for a section of a national organisation to join a region? -- It was possible.

And did that happen?

COURT: Could I, just give me a moment please. What does 5.3 mean? -- This section really was included here to deal with a specific situation that had arisen with regard to certain organisations, the trade unions. I recall that at that time when we launched the UDF there had been a number of consultations with the trade unions and one of their objections (30)

to/....

to, their reservations was the fact that they were big organisations, national organisations with large membership and they felt that to allow them to provide a big membership using the same criterion as that which applies to civic associations, student organisations and other small groups would be incorrect. They felt that they deserved much more than that.

Well is the difficulty one has not this that a trade union is countrywide so you cannot put him under a region? -- They were saying so although other trade unions were (10) deciding that if they have a region, some of them were organised according to regions like the FOSATU itself and a number of them.

Did they join a region? -- Then they would join a region but the view from FOSATU in particular, if I recall well, was that they would not want to do it that way, they want to be clear how they would be part of the national structure at the top there, the National Executive and so on. So it was a situation that would be dealt with from time to time. It was a flexible position. (20)

But this was mainly aimed to get the trade unions to become members? -- That is so.

This paragraph, 5.3. -- Well mainly, although it would not preclude any other organisation that had similar problems or reservations.

MR CHASKALSON: If you look at page 60 of the list of organisations who had affiliated there seems to be an example of what His Lordship has just brought to your attention there. You will see Congress of South African Students, COSAS, under the Transvaal affiliates, well there is Soweto, Pretoria and (30) Alexandria./....

Alexandria. Do you have page 60? -- I have got page 60.

Do you see there that under student organisations there are three, COSAS Soweto, Pretoria, Alexandra listed, and you will see at the top AZASO at Turfloop, Burke's(?) Black Students, Medunsa and so on. -- That is correct.

So were there national organisations who at regional level, particular branches or particular parts of a national organisation would affiliate to that region? -- That is correct.

COURT ADJOURNS UNTIL 14h00.

(10)

C.808 COURT RESUMES AT 14h00.

POPO SIMON MOLEFE: d.s.s.

FURTHER EXAMINATION BY MR CHASKALSON: Mr Molefe we were dealing with the working principles and you had dealt with clause 5. If we could turn to clause 6, 6.1 provides:

"All Regional formations and member organisations shall have complete independence within the umbrella of the United Democratic Front provided that actions and policies of members are not inconsistent with the policy of the UDF."

(20)

Can you explain how that provision worked in practice? -- At the practical level this means that although organisations were coming together under the banner of the United Democratic Front, despite the fact that they were members of the United Democratic Front their independence would be guaranteed. This means that the UDF was not going to take decisions for those organisations. The UDF was not going to determine their day to day activities. They would continue to decide on their own programmes. It would be their members who actually decide the policies of those organisations and their day to day

activities./....

activities. It meant that the philosophies they were subscribing to or the political tendencies that they adhered to would be respected within the umbrella of the United Democratic Front. I think in the simplest of terms that is what it means.

Does it, do you see any difference between a front consisting of a number of organisations and a political organisation as a single entity? -- A political organisation is a tight structure whose policies once are made would determine the day to day activities of each organ that is part of that structure. At all levels organisations would have to be, (10) to go according to the instructions or the guidance as given by the National Executive Committee. One can take this example. If at any given point in time a political organisation of a tight structure, not a front, takes a decision that X should be done it becomes a duty of every organ of that organisation to carry out that kind of decision, there is no flexibility. It is simply like that. But within a front you have a situation where, especially a front of the nature of the UDF, where organisations that existed before they have got different ways at which they look, different ways of looking (20) at problems, they have got their own policies and programmes that have been operative before the UDF was formed as a front. If a front sought to keep these organisations together under its banner it would not have been able to do so without accepting the fact that they have to be independent, they have to carry out the programmes that they have been carrying out. It would simply not be in a position to decide for all those organisations. I think another factor that is crucial is that the very size of the United Democratic Front, the hundreds of organisations that were coming together under (30) this/....

this banner, simply meant that it was not going to be feasible to control every component of that front in terms of determining what they should do at what time. Besides that it would simply run counter to the whole concept of democracy because it is the members of those organisations who must decide at a local level as to the direction that they thought their organisation should take. So that it is really these factors that really were taken into account. So that ...

Carry on. -- I do not know how far to take it.

Well let me ask you a few questions then. You have (10) explained what is meant by it, was that made clear to organisations at the time that they were asked to affiliate? -- That is so.

In speeches was that, did you ever refer to that in speeches yourself? -- I have made speeches to that effect several times.

Do you remember making a speech in Port Elizabeth in October of 1983? -- I do.

Can you tell us what the occasion of that speech was? -- It was the occasion on which a newly formed interim (20) committee comprising of a number of organisations, representatives of a number of organisations which intended to form a region of the United Democratic Front in the Eastern Province was introduced to the public and I was invited to speak there about the United Democratic Front. This took place at New Brighton in Port Elizabeth.

Yes. I would like to show you a report in the Evening Post dated 24 October 1983 which reports a speech made by you on that occasion. My Lord I am told that this will be DA.18. The report is of a meeting held at the Rio Cinema (30)

in/....

in New Brighton to introduce the UDF interim committee for the Eastern Cape region. Is that the occasion you have been referring to? -- That is correct.

It says that about 1200 people attended the meeting there? -- That is so.

If you would look at the third column, perhaps I should take you back to the second column, "Mr Molefe said the UDF declaration wanted all freedom loving people of South Africa to say with one voice that they cherish the vision of a united democratic South Africa based on the will of the (10) people." Is that, would that correctly reflect your attitude? -- That is so.

"The UDF was a broad organisation, a broad alliance of different organisations with different ideologies and political affiliations." Would that be correct? - That is correct.

"Who had pledged themselves to fight side by side against the government's constitutional proposals, the Koornhof Bills and other day to day problems affecting the people." Would that be correct? -- That is correct.

"The UDF stands for a single non-racial unfragmented (20) South Africa, a South Africa free of bantustans and group areas and all forms of oppression he said." Would that be correct? -- That is so.

Mr Molefe said the UDF did not seek to usurp the autonomy of organisations that come together under its banner but aimed at strengthening those organisations. Would that be a correct statement of your position? -- Yes.

It then continues "The commercial press continues to project the UDF as another charterist movement. I want to point out that the UDF has its own declaration. We, however, (30)

do/....

do not deny that within the UDF there are those organisations that cherish the Freedom Charter and as autonomous organisations it is their right to cherish it." Would you have said that? -- That is so.

"I also want to point out that the UDF is not an extension of the African National Congress. It is simply a broad front opposed to apartheid, the evils of the P.W. Botha reforms." Would you have said something along those lines? -- That is so.

"Mr Molefe said there was need for trust and faith. (10) South Africa had to work out a constitution with a potential for maintaining peace for all the people of the country." Would that have been something you had said? -- That is correct.

"But this would also mean firstly the release of all political prisoners, the return of exiles, unbanning of organisations and people he said." I think you explained to us this morning why you hold that view. -- I think I did it yesterday.

Was it yesterday? -- I am not sure if I did it today but I recall very well that yesterday I did it. (20)

Well do not do it today again if you did it yesterday please Mr Molefe. And in DA.15, the Financial Mail article, you are recorded as having said "The UDF is a non-racial front dedicated to resist," - it is the first column of DA.15 - "dedicated to resisting the new constitution and the legislation known as the Koornhof Bills, the Black Local Authorities Act, the Black Communities Development Board and the Orderly Movement and Settlement of Black Persons Bill." Could I pause for a moment. The fact that the title Koornhof Bills was given to these bits of legislation, despite the fact (30) that/...

that one had become an act already, is that correct? -- That is correct. In fact at the national launch and conference of the UDF it was made very explicit that these Bills must be in, the Bills, the word "Bills" must be in inverted commas because one of them had already become an Act.

I see. And then it continues, that statement continues, "It is made up of numerous affiliate organisations which retain their autonomous identities although all subscribe to the UDF's overall aim. Would you have said that to the Financial Mail? -- Yes. . . . (10)

Now there is a provision in clause 8 for a National General Council. Is that, was that to be a meeting, it says "An NGC will comprise all affiliated organisations and regions. The NGC shall meet as and when necessary but at least once a year. Voting rights and representation at any conference or meeting of the NGC shall be determined by the National Executive Committee in consultation with the Regional Councils before the meeting or conference. The NGC will be the supreme body of the UDF." First of all apart from the launch on how many occasions, was there any other occasion(20) or occasions prior to your arrest in April of 1985 on which the UDF met on a national basis? -- Two occasions, yes.

Was, the first one was where? -- The first occasions was in December 1983 in Port Elizabeth.

Was there a specific reason why it was called, why that particular National General Council was called? -- Yes at that stage there had been raging debate within the UDF in respect of the referendum for the Coloured and Indian South Africans. There was a debate as to whether the UDF should make that kind of a call and if it made that kind of a call whether it (30) should/....

should participate and register a no vote or the UDF should not make a call for the referendum. When the referendum is called it must boycott the referendum. There were differences of opinions in that respect with certain regions believing that there was a need for a referendum and with a no vote to demonstrate that the majority of the people did not accept the, the Coloured and Indian people did not accept the government's constitutional proposals. The other view was that there must be a boycott and within certain regions really there were differences there, you know divisions even within one (10) region, where you found certain affiliates taking a particular line, others taking a different one. So it was necessary for the UDF to call for the National Executive to the United Democratic Front to call that kind of a conference to debate the issue at a national level, to determine precisely what position the front was to take vis a vis the issue of the referendum for the Coloureds and Indians.

And was that difference resolved at this particular National General Council meeting? -- The National General Council meeting was not able to resolve that issue. The (20) UDF was split almost in the middle with a little over 50 percent of the delegates attending the conference taking a position that there should be a call for a no vote, a call for the referendum with a no vote and a little over 40 percent taking the view that there must be a boycott. It was a very very serious matter, this one, and in a sense it was such that no consensus could be reached and the UDF felt that to put a matter of that nature to a vote where you have a difference of perhaps about five organisations in terms of a majority supporting the referendum, the position of the UDF, it (30) would/....

would have been an incorrect decision. So finally therefore a decision was taken that the matter, I must state here that again in the course of that debate the whole question of the autonomy of regions and affiliates arose and it was recommended by the final commission, because there have been several commissions, there have been commissions formed to debate the issue, when these commissions had failed to arrive at any conclusion another commission was appointed finally, of a limited number of people, to see if they could not arrive at a compromise position on the issue. At the end the commission (10 then recommended that tactical flexibility be applied to allow regions or affiliates, affiliates to take a position that best suited their conditions provided that kind of a position was not in conflict with the policy of the United Democratic Front and they agreed that that position must be debated by the regions of the United Democratic Front, starting first with the affiliates and then going to the Regional Councils to arrive at a position and once that position had been reached in different regions there are reports of what transpired in those debates, the common positions arrived at by each of (20) the regions, together with affiliates, that should be sent to the National Secretariat which would place it before the National Executive council meeting which was going to take place in January of the following year and the NEC was then to work out a final position. We left the conference in PE on the note that the regions and affiliates would abide by the compromise position that the NEC would arrive at. I do not know if I am required to carry, but I think that explains ...

Can you just tell us as far as regions were concerned whether regions had any flexibility in themselves, whether (30) there/....

there was any element of regional autonomy or not or whether the regions were simply to co-ordinate the work of the individual organisations within that region? -- Regions enjoyed that autonomy. They would deal with problems as they saw them, they saw best in the areas in which they were operating. The NEC from time to time would suggest guidelines but as to how that would be implemented depended on how the affiliates at regional level felt about the guidelines provided. Indeed even on this issue of the referendum when the NEC finally decided that it was allowing that tactical flexibility I (10) recall that the delegates from the Border region were very sceptical about that. They felt that the UDF should take a position that forces every region to toe the line and it was noted as a point of departure as taken by that region.

Yes. And the second NGC was that in April of 1985 just before you were arrested? -- That is so.

I will come to that a little bit later Mr Molefe but if we could carry on going through the working principles. Clause 9 deals with a National Executive Committee. It makes provision for a presidency consisting of three presidents and you (20) have explained to us already the origin of that. It makes provision for an Executive Chairperson appointed by the NEC from time to time. How did that function, was there a person who acted as the chairperson of each meeting or how did this from time to time provision function? -- What that in effect meant is that at each meeting of the NEC when members of the NEC came together they would decide amongst themselves as to who should chair that meeting of the NEC or a session of the NEC. It was not a permanent position, it changed from time to time such that you would probably find that maybe the (30) meeting/....

meeting in January is chaired by President Archie Gumede, the next meeting is chaired maybe by Professor Kuvadia(?) and so on. It was really something that was a flexible position, that was changing from time to time.

Then there is a provision for the membership in addition to the presidency and the Executive Chairperson. There were to be two Vice-Presidents appointed by each duly constituted region, two secretaries of each constituted region, two executive members elected by each constituted region and two national treasurers. And were meetings of the National Executive Committee held from time to time Mr Molefe? -- That is so. (10)

And are minutes of those National Executive Committee meetings, they have been produced as exhibits in this case? -- That is so.

Well I am going to deal with them later, I am not going to deal with them now. Then 9.3 provides that the NEC shall carry out the policy and programme of the UDF as determined by the NEC from time to time. How did that work in practice? -- What it meant is that in between the National General Councils the NEC would become a policy making body which policies would then be ratified by the NGC when it met. When it is said here that it would implement the policy that it made from time to time. It is in that context. But I need also to hasten to point out that whilst the NEC could make policy in the period intervening, in the intervening period between the NGCs the process of arriving at that was a bit of a complex one in the sense that the NEC could not just simply meet and formulate hard and fast rules for regions. It would sit and deal with an issue. Once that issue has been discussed/.... (30)

discussed it would then go to the regions to debate it. If regions were not happy with the position arrived at by the NEC they were free to say we are not happy with that kind of a position. Sometimes the discussions start from the regions, coming of course maybe from the affiliates or start from the regions, they go to the affiliates, they come back to the regions and then they go to the NEC and then the NEC synthesizes the views as presented by the regions and then they become policy of the UDF.

Yes. I think you referred to the actions of the NEC (10) between National General Councils. 8.4 records that the NGC will be the supreme body of the UDF. Does that reflect that position? -- Will you please repeat the question?

COURT: We have both missed your question.

MR CHASKALSON: Perhaps I should try it again. Mr Molefe you talked about the role of the NEC between National General Councils. -- Yes I did.

I wanted to draw your attention to clause 8.4 of the constitution which provides that the NGC will be the supreme body of the UDF. What does that mean or how did that work (20) out in practice? -- It means that the NGC is the policy making body of the UDF. When the NGC meets it puts together representatives either of regions or of affiliates. If we talk in terms of the position as at the time of the National launch right up to the PE conference we were really talking there in terms of delegates representing each organisation, they coming together to formulate policy, they constituted the NGC. But in addition to that of course you would have had the regional executives and the National Executive of the UDF. But later on if we, now we come back to the situation as it developed(30)

from/....

from April 1985. We were now talking in terms of regional representation rather than simply delegates from each affiliate. Now that also was a kind of development that attempted to meet the conditions, the material conditions that were obtaining at that time. The UDF had grown to a level where it was pretty difficult for us to find accommodation for all, for representatives of each affiliate at the level of the NGC so that before the NGC took place there would have had to be discussions at regional levels, positions arrived at by affiliates within the Regional General(10) Council and then affiliates electing a delegation from a region. That delegation would be in accordance with a quota that would have been recommended by the NEC. The NEC might say look we think that for purposes of convenience and so that we could have everybody accommodated and facilitate proper discussion we think that Natal must bring only 100 delegates, Western Cape only 100 delegates, Transvaal maybe 90 delegates and so on. It would all depend on how these things are worked out but affiliates should be given the opportunity to debate the issues within the General Council and arrive at posi- (20) tions that they think were acceptable to them. So now you have then this kind of a general council, either comprising or regional representation or representation of individual affiliates, formulating policy for the UDF. That is really the highest policy making body. But then you know the NGC, as was visualised at the time of the national launch, would only meet once after a year and in the interim important developments might take place which necessitated an important policy decision, that would then mean that the NEC would have to do something about that. But if, when the NGC meets, (30)

it/...

it feels that that position that was taken during that period was wrong it would reject it and make the position very clear.

Then we have the Clause 11 which provides for a general secretary and a publicity secretary and you became the general secretary and Mr Lekota, who is accused no. 20 in this case, became the publicity secretary? -- That is so.

And you both held those positions until you arrest in April? -- That is so.

And then it is provided that the general secretary (10) and the publicity secretary shall be members of the National Executive Committee. So did you in fact have a seat on the NEC yourself? -- That is so.

And you will be able to tell us about the NEC meetings? -- That is so.

Right. Now you have explained to us the, your understanding of the declaration and the working principles. I would just like to get clarity on one issue and that is how these documents came into existence. Was there, could you explain the process by which the Declaration emerged in (20) the form in which it ultimately emerged for adoption and how the working principles also came about? -- Really the first set of principles on which the United Democratic Front or a United Democratic Front would be formed, founded, were those which were adopted at the South African, the Anti South African Indian Council conference that was held in Johannesburg in January 1983. At that conference there had been representatives from a number of regions. Key amongst them the Western Cape, Natal and the Transvaal. After that conference that document was taken by delegates who came, people who (30) came/....

came from those regions to be discussed in their own regions and following the discussions that took place each of those regions formulated its own declaration. That was in line with the principles as adopted there at the anti-SAIC conference but not necessarily the same. So the Western Cape had its own, Transvaal had its own, Natal had its own declaration. When a decision was taken that we should go national, the UDF should go national, that all these regions must be brought together into a national front there existed then the necessity of finding a compromise document arising out of, which would(10) really be a synthesis of the declarations as adopted by each of the aforementioned regions. So that just before the national launching conference took place in Port Elizabeth a committee had been appointed to work on these declarations and the declaration that we therefore see before this Court is a synthesis, a compromise synthesis of the regional declarations and it also went ...

COURT: Now when was it formulated then, when was this one formulated? -- It was formulated, my recollection is that by 19 August representatives from regions will still working on(20) this declaration and then it was presented to the joint secretariat on the morning of the 20th to have a look at it.

MR CHASKALSON: Was there any debate at the conference itself concerning the contents of the declaration? -- There was a debate, there were a lot of amendments which were effected.

And concerning the working principles was there also a debate there concerning the working principles? -- There was a debate.

And were changes introduced during the course of the conference? -- That is so.

(30)

And/....

And would that explain why we then have a, each region has its own declaration the terms of which are not necessarily exactly the same as the, or each region has its own working principles the terms of which are not necessarily exactly the same as the working principles of the National ... -- That is so, it is in line with the principle of regional autonomy.

And does each region have its own declaration? -- No, not the declarations of regions were no longer used after the national launch.

After the national launch. You had to adhere to the (10) national declaration to become part of the United Democratic Front? -- That is so.

Now if you would still stay with EXHIBIT A1 there is published a series of messages from various persons and bodies. I would just like to establish something about this. Did you have it, it is page 12 of EXHIBIT A1, I see the first message comes from the United Nations Special Committee Against Apartheid. -- That is so.

At the bottom of the page in the first column there is a statement that the "United Nations and the international (20) community have repeatedly made it clear that a just and lasting solution requires the release of Nelson Mandela and all other political prisoners, amnesty to those restricted and exiled and to all repression and discussions by genuine representatives of all people on the establishment of a truly democratic state. They have offered all appropriate assistance in pursuit of such a solution." Do you know, are you able to comment at all about the position of the United Nations and the international community in regard to the release of Nelson Mandela and other political prisoners? Did you know of (30) that/....

that before you had received this message from the United Nations? -- The position of the United Nations in this connection was a well publicised one. I knew about it, I had read about it in the newspapers several times and I must also say that various organisations and governments in the western countries have made this kind of a call for the release of Mr Nelson Mandela. But I think it is also crucial that one must indicate that it was not simply a call made. This call had been accompanied by a lot of awards that were, a lot of honours awarded to Mr Nelson Mandela by various (10) countries. I think I should leave it at that. I do not know how far to go.

Yes, no there are really two separate issues. The one is that you say that the call for the release of Mr Mandela and other political prisoners, an amnesty to those restricted and exiled and to discussions by genuine representatives of the people, that had been a publicly stated position of many countries in the world prior to the launch of the UDF? -- That is so but perhaps at this point one must indicate also that even within this country there had been many individuals (20) and organisations which had made a similar call.

Yes I was going to ask you that next Mr Molefe. But in other words this, what I wanted to establish from you whether this call for the release of Mr Mandela, the release of political prisoners, the return of the exiles and discussions to establish a democratic state was something new introduced by the United Democratic Front or whether it had been a subject of debate, discussion, prior to the United Democratic Front? -- It had been a subject of debate for very many years.

I grew up and learnt politics whilst people were already (30)
talking/....

talking about these issues. And I, as I have indicated that a lot of organisations and important personalities have made this call. I read a lot about this long before the formation of the United Democratic Front.

Well there are exhibits, there are a number of such publications and exhibits, DA.1 to 10, DA.2(1) to (10), and there will be some more that I am going to put to you just now Mr Molefe. You also referred to the awards to Mr Nelson Mandela. I see that that is referred to in the letter from the United Nations as well, the statement being "Awards (10) to Nelson Mandela in recent years of more honours than anyone else has received from all over the world is a reflection of world opinion." Mr Mandela became one of the patrons of the United Democratic Front? -- That is so.

I would like you to say something about what you perceived his standing to be within the, shall we say for the moment the Black community in South Africa? -- He is a highly respected figure in the Black community. The vast majority of the Black people would welcome him as a leader. This is a kind of thing that is said at a number of places. In (20) homes ordinary people talk about that. I as a child, when I grew up as a young child I had heard a lot about Mr Nelson Mandela. I had heard elderly people talking about him. I had heard how they look at him as a symbol of hope and freedom. I do not simply know what one can say but he is a highly respected figure. I may just indicate also that a number of surveys have been conducted by newspapers in the past and I have had occasion to read newspapers carrying articles about Mr Nelson Mandela and at every point he had always been the most popular Black leader in South Africa. He had even in (30)
some/.....

some occasions been projected as being popular than the organisation that he had belonged to. I think all those things really reflect the perception and the attitude of the people regarding Mr Mandela.

Do you know whether this was a view which was expressed by people who worked within government structures as well as people who would not work within government structures? -- Oh yes that is the position.

Have you read of pleas for the release of Mr Mandela from people within government structures, homeland structure? (10)
-- I did.

Can you indicate who you are able to mention? -- May I just make sure that I understand, is it within the homeland structures strictly or within those plus other structures?

Take homeland structures, other government structures like the councils or any government created structure, people holding office within those structures. -- I know that the former President or Prime Minister, leader of Transkei, Chief Kaizer Matanzima, had made that call in the past. I know also that a similar call was made by Dr Cedric Phatudi of Lebowa. (20)
I also know that on very very several occasions in public statement and in speeches at meetings Chief Buthezi of the KwaZulu and leader of Inkhatha made a call for the release of Mr Mandela. I know also that other junior officials in the Inkhatha movement made that call. I recall that Mr Enos Mabuza of KanGwane also made that call in the past. These are some of the examples that I can remember as I stand here now.

Do you know anything of a Mr Norman Middleton? Do you know who he is? -- I know that he was a member of the Labour Party. I think if I am correct he was also a member of (30)

the/....

The South African Council of sport but I am certain that he was a member of the Labour Party up until 1983 at least.

Do you remember any statement made by him? -- I do.

Are you able to tell us what it was? -- I remember one statement that he made in connection with Mr Mandela. I might not be in a position to quote him verbatim and I do not intend to do so but the substance of that statement was that the Labour Party and Mr Norman Middleton himself regarded Mr Nelson Mandela as their natural leader, he said "He is our natural leader" and he indicated that the Labour Party had (10) issued an explicit call to all its members to support the campaign for the release of Mr Mandela. This statement was made some time before the UDF was launched.

I would like to show you a cutting from The Sowetan of 12 February 1985 dealing with a call by Chief Buthelezi and I would ask you to look at that. You have talked about statements. Is this the sort of statement to which you refer? -- That is so.

It says "Inkhatha respects Nelson Mandela as a leader. In fact our movement and constitution are founded on the (20) principles of the ANC before it waged the armed struggle. The time has come for the government to release all political leaders and recall those in exile so that all South Africans can choose leaders to run the country. Our President Chief Buthelezi has made this call a million times before but time is running out for South Africa, said the Regional Assistant Secretary Mr Steven Mbatha." That My Lord ...

COURT: DA.19.

MR CHASKALSON: DA.19. -- My Lord may I place on record here, just to make sure that there is no confusion, this is what (30)

I/....

I referred to when I said junior officials of Inkhatha also made similar calls. Junior in the sense that it is not the national executive or the central committee that is making this kind of a statement. It is a leader of the region.

Since you have been in custody has your attention been brought to publications in the paper concerning a call by the Mayors, the Black Mayors for the release of Mr Mandela and the holding of a national convention? Could I show you a publication from The Star of 12 August 1985. This will be DA.20 My Lord. (10)

COURT: Did you read it while in detention? -- I did. I must, I think I need to correct counsel, Mr Chaskalson, it was not brought to my attention. It came to my attention as I read it myself. It suggests that somebody came and said look what the Mayor is saying. I was reading the newspapers from time to time.

MR CHASKALSON: Yes. Alright now ...

COURT: That goes in as DA.20.

MR CHASKALSON: Then if we look at the messages which you received I see there is a message from Archbishop Hurley. (20) It is page 19. Do you have that? -- I do. Have we finished with the ...

For the moment I think yes, yes Mr Molefe. If we will just go to DA.19, no sorry not DA.19, page 19 of EXHIBIT A1. Sorry. It is a letter from Archbishop Hurley. It reads as follows:

"A warm and affectionate greeting to all of you in this important assembly. As I understand it you have come here to hold the inaugural meeting at national level of the United Democratic Front, the purpose of (30) which/....

which is to bring together all organisations opposed to certain legislative measures that bode ill for the future of our country. The new constitution and legislation designed to render influx control still more tyrannical. Your purpose I gather is not purely negative for included in it is the intention to educate and comprehendise all South Africans in the matter of human rights and political justice by every peaceful method available to you. Though I cannot be with you in this assembly I am happy to send you this message (10) expressing my wholehearted solidarity with the purpose that brings you together and a hope that animates you. In regard to constitutional reform the time has surely come to set South African firmly on the road towards the full participation of all its inhabitants in the political life of the country. Because the proposed new constitution does not do this it is unacceptable and must be opposed by every peaceful means. Concerning the projected influx control legislation merely to hear such measures suggested sends a shiver down one's (20) spine. Already influx control has reached tyrannical proportions. To aim at making the curbs still more oppressive is pushing inhumanity to horrifying lengths. May there be such united and vigorous opposition to the idea that not only will the legislation be stopped but the (it says by) whole trend reversed. Be assured of my close association with you in pursuits of these great purposes. Be assured of my heartfelt wishes and prayers for the success of the gathering. The rights that you plan to promote are God given and sacred. (30)

May/....

May the guidance and strength of the Almighty support and sustain you in your campaign."

Now who is Archbishop Hurley? -- Archbishop Hurley is the former President of the South African Catholic Bishops Conference but at the time when he wrote this message he was still the President.

So he was the President of the Catholic Bishops Conference when he sent this message? -- When he wrote this message.

Yes. There are a number of messages published here (10) as well. I do not think I need to go through them all. Can we take it that these were all received Mr Molefe? These messages that were published here in EXHIBIT A1 are they messages which were received at the time of the launch? -- Yes some of them.

COURT: How do you mean some of them? All of them? -- There were very many messages of support, it is not every ...

Oh you mean these are some of the messages which were received? -- Received yes.

MR CHASKALSON: I see that they include messages from the (20) General Workers Union. Was that an affiliate of the UDF? -- It was not an affiliate of the UDF.

Then the Food and Canning Workers Union, was that an affiliate of the UDF? -- It was not.

Are these big or small unions, are you able to tell us anything about them? -- They were fairly big unions. To say big it is a very broad term, I do not know bigger than what, but they were fairly big unions with membership exceeding 20 000.

Yes, right. Now there were a number of patrons (30) appointed./....

appointed. You have referred to Mr Mandela. -- That is so.

I would just like to draw your attention to some of the other patrons and ask you about them. They are listed at page 6. Listed there is Dr Allan Boesak. Do you know what office he held at the time of the launch of the United Democratic Front? -- He was the, my recollection is that he was the President of the World Alliance of Reformed Churches.

There is a name Sheik Nazim Mahommed. Do you know who he is, are you able to tell us about him? -- He was a leading figure. I do not know how they describe him but he is (10) sort of a priest in the, he is a muslim religious organisation. He was a leader of I think the Muslim Judicial Council. I think something like that.

We will get some evidence from somebody else about exactly what that status means. I see there is also the Reverend Beyers Naude. Did he become the secretary of the South African Council of Churches? -- Later, yes.

Do you know what churches are represented in the South African Council of Churches? -- I can remember a few.

Well mention some, some of the bigger ones. -- I know (20) the Anglican Church is part of the SACC, the NG Kerk in Africa, the Methodist Church, the Lutherans.

And did the Reverend Beyers Naude continue to hold office as a patron after taking up that office with the South African Council of Churches? -- I beg your pardon?

Did he continue to remain as a national patron after becoming secretary of the South African Council of Churches? -- That is so.

At a later stage was Bishop Tutu approached to become a patron of the South African Council of Churches? -- A (30) patron/.....

patron of the United Democratic Front not South African Council of Churches.

Of the United Democratic Front. -- Yes.

Is he now the Archbishop of Cape Town? -- That is so.

Is that the senior ...

COURT: Well did he become a patron?

MR CHASKALSON: Did he become a patron? -- He did.

And he was then the Bishop of Johannesburg was he? -- At that stage ...

COURT: Was he not the secretary of the SACC? -- No he was (10) simply the secretary of the SACC at that stage. That was towards the end of the year in 1983.

MR CHASKALSON: Did he later become Bishop of Johannesburg?

-- That is so.

And then Archbishop of Cape Town? -- That is so.

And is that the senior post, position of the Anglican Church in this country? -- Yes in Southern Africa, in Southern Africa.

Now the attention has been drawn to the fact that previous witnesses have been asked about ... -- No, no sorry (20) I am not certain if it is Southern Africa or South Africa. Maybe we should leave it at that. I might be making a commitment that I might not account for.

COURT: Southern Africa, which includes Mozambique? --

Includes Mozambique, Botswana, Lesotho, I think Swaziland as well.

MR CHASKALSON: Well you mentioned that Mr Mandela was to be a patron. I think attention has also been drawn to the fact that a number of persons who have been sentenced to prison for life imprisonment were appointed patrons. First of all (30)

could/....

could you tell us how it came about that the life prisoners became appointed as patrons? Of the UDF? -- If I understand the question correctly I would say that initially regions had recommended the acceptance of patronage of Mr Nelson Mandela but after the name was presented in conference somebody stood up from the floor and said that we should not have one person as a patron. I suggest that all the other Rivonia trialists must be accepted as patrons of the United Democratic Front and when that proposal was made it was accepted with acclamation by the delegates present there, it was how the other people (10) became patrons of the UDF. Otherwise the other people really most of them had already been nominated by various regions. They simply came there to say this is what we in the Transvaal suggest, this is what we in the Western Cape suggest, this is what we in the Natal, from the Natal region propose. Then this other person stood from the floor and suggested that and I need also mention just that there were really even suggestions that people who were dead should be appointed as patrons.

COURT: Now let us not get bizarre. Which of the national (20) patrons are Rivonia trialists? -- That would be Mr Dennis Goldberg, Mr Ahmed Katrada(?), Nelson Mandela, Goven Mbeki, Raymond Mhlaba, Andrew Mangene, Elias Motwaledi, and Walter Sisulu.

MR CHASKALSON: Now I would like to ask you a little bit about the Rivonia trialists. I think it was suggested to one of the witnesses or put to one of the witnesses that they were terrorists. What would your comment be on that Mr Molefe, do you see it that way? -- I am surprised as to what the basis is of referring to them as terrorists. As I understand it (30) that/....

that is not how the Black community perceived them as. They perceived them as people who were fighting for the freedom of the Black community. But apart from that as I understand it the charge or the charges upon which they were convicted were not charges on terrorism. So it is really difficult for me to understand the basis upon which that conclusion was arrived at. But secondly I think in the communities from which we Black people come these are generally regarded as highly respectable people in their own communities. They are seen as people who have sacrificed a great deal in pursuit (10) of the cause of freedom for the oppressed communities and they remain highly respected in those communities.

Do you know anything about their attitudes to, well perhaps I should just leave it at that at the moment Mr Molefe. Now there is another issue I would like to turn to and that concerns the question of a national convention. There was a call, did a call, I think it is common cause in this case that the United Democratic Front called for a national convention. Would you explain to His Lordship the purpose of such a call, the role that you saw it as playing in the (20) affairs of the United Democratic Front? -- The United Democratic Front believed that if a lasting solution, a solution that would guarantee lasting peace and the kind of solution that would be supported by the majority of the people of the country, Black and White, was to be found there was a need to bring together respected leaders of various communities in a national convention where there would be debated and arrived at a conclusion on how a new constitution for South Africa could be formulated. In other words there would then be an agreement on the nature of the South Africa that the people(30) want/...

want here and the constitution that would accommodate all those people. This call was made by the United Democratic Front in 1983. In the context in which there was a raging conflict in the country, violent conflict taking place in the country. It was of course a call that had previously been made by other people. The UDF was simply giving expression and echoing the views that had already been expressed in the past. But making this call in the context in which there was this conflict, violent conflict taking place in the country, a conflict that involved the government on one hand and (10) certain of South African citizens who had decided to pursue the noble goal of freedom, rightly or wrongly, through armed struggle, armed methods of struggle, and had become clear that in the course of that conflict there are casualties that are being suffered. Very talented and important young White South African were dying from time to time in that conflict that was taking place. There were other people who were not involved in, directly in taking up arms, who were also dying. There were those who were also dying from the side of those who had taken up arms to bring about change. The UDF saw (20) therefore the national convention, the call for a national convention as a very crucial issue that needed attention, that needed to be shouted as loudly as possible to convince the government of the need, and those who had taken up arms of the need to come together in a situation of negotiations where this conflict could be ended once and for all and we could bring an end to the loss of life that was taking place from each side and we could begin to lay the basis for proper reconciliation of different racial groups in this country and bring once and for all an end to apartheid. We believe (30) that/...

that if that kind of a national convention had to take place it certainly must include all representative people. It had to include those who were jailed for their political beliefs and were held as leaders in their own communities. It had to include those men and women who are respected by the South Africans, Black communities, who had left the country to take up arms in pursuit of ending the policies of apartheid. We felt that there was a need to create a climate in which there would be no need for anybody to pursue any violent methods and we honestly believed that there was no other (10) way of doing it except by way of calling this national convention and getting all those leaders to come together in that convention.

Do you know, I think you have mentioned it before, in this context whether there are other groups or bodies within South Africa or interested in South Africa who have made a similar call? -- Yes.

Are you able to mention some? -- Yes. I know that the Labour Party did make that call.

Is that the Coloured Labour Party? - - The Coloured (20) Labour Party, I am talking about the Coloured Labour Party, did make that call long before the formation of the UDF and I know that Chief Buthelezi made that call long before the formation of the UDF. I know also that the PFP made that call and recently we had initiatives taken to form what was called I think Convention alliance led by an advocate, Mr Jules Browde if my recollection is good. All that as I understood it was in the effort to convince the government and the public of the need for that national convention.

Now though it is going to take us a little bit forward(30)

in/....

in time it may be a convenient place to deal with a minute of the National Executive Committee. My Lord I propose to refer to a Minute dealing with the conditions for a national convention.

ASSESSOR (MR KRUGEL): Could we perhaps, just before you go onto that clarify one usage of Mr Molefe in the last bit of evidence that you gave. Mr Molefe you said that the UDF believed that a lasting solution could only be achieved if the majority of the people, White and Black, the majority of the people, White and Black, were brought together, their (10) leaders were brought together in a national convention. -- Yes perhaps I should say that, maybe I should not say only but we regarded that as the best method.

Yes but now -- That Black and White people should be brought together and those people would be people representing the majority in each constituency.

Do you mean in each constituency? -- Yes.

Voting constituency? -- Well if a decision was to be taken to appoint representatives to go to a national convention I would assume that there would have to be some (20) kind of a method that would be followed and one such method would be a vote of course.

So Mr Molefe the only unclarity in my own mind in regard to your statement that the majority of the people, Black and White, should send the delegates. Do you mean that the majority of the people as a whole, counted as a whole in South Africa whether that majority is constituted of say 99 percent of the Black people and one percent of the White people? -- No, no that is not how I look at it. I look at it in this way, as at present South Africa is divided really into a number (30)

of/....

of racial groups. If a solution has got to be found we have got to make sure that if we are talking about the African people a majority in that area, in that sector, support that view. If we talk about the White community we have got to get the White community majority in that community to support that view. Similarly with the other groups. Because if you have a situation where you have got the majority of Black people endorsing that and the White people are not accepting it then you are back at square one, you still have the situation as obtains now where one racial group might be enforcing its will upon the other. We want to persuade the communities to accept that there is a need. (10)

Yes thank you, you have clarified it.

MR CHASKALSON: Now Mr Molefe there has been some debate about the conditions ..

COURT: Could I just pause there a moment. So was a pre-condition for your national convention then that you would have to convince each ethnic group of the necessity therefor? -- Does that mean that we, I think yes it is necessary that if a national convention has got to be called that people have got to be persuaded to participate in it and send credible leaders to go there who are accepted by their own constituencies. It would obviously lead to that but I need to say here that although this call really was made the UDF had never sat down really to work out the mechanics of how it was going to handle this. We really did not deal with the nuts and bolts of the national convention. We were looking at the first instance at the possibility of first persuading the government and other groupings in the country that this method of resolving the problem of the country was the (20) (30)

best/....

best method and one would imagine that once that had been accepted then there would obviously be people coming together to work out the precise mechanics of how that should be effected. There would obviously be a whole range of factors to be taken into account which would have implications for the national convention itself.

MR CHASKALSON: Mr Molefe if we could, there has been reference to what have been stated as minimum demands or conditions for a national convention and while we are talking about it it might be convenient to look at some of the records dealing (10) with this. I think I would like to take you to EXHIBIT H.1 which contains a list of minimum demands and conditions for a national convention. Now first of all these are Minutes of a meeting of the National Executive Committee held on 21 and 22 July 1984. So this will be approximately a year after the foundation of the United Democratic Front, just under a year. It will be eleven months. Are you able at this stage to recollect whether the referendum on the new constitution was yet in, whether the new constitution was yet in force or not?
-- It had become law, it had become an Act. (20)

Do you know when that happened? -- My recollection is that it happened during the month of September 1983, around that time. That is when it became an Act.

Well under item 10 on page 5 there is a heading "Our Political Alternatives". Do you have that? It was noted that calling on people to boycott elections is not enough. The UDF has to offer alternatives. Now first of all does this record a discussion at the National Executive Committee of the UDF?
-- That is so.

Were these Minutes intended for publication to anyone (30)

other/...

other than members of the National Executive Committee? -- Yes in a sense they would be in the sense that once the delegates from various regions who are part of the NEC went back to their regions they would have had to present this in their regional Executive Committee meetings.

Yes. -- And the key issues of course raised here, those which necessitated consideration by REgional Councils, would have been discussed.

Yes. I see. -- But generally this would have been circulated amongst members of the NEC. (10)

So it was really an internal document which was intended to have an impact not only on the NEC but also on the regions? -- Yes on the Regional Executive structure, on the regions, yes.

Are you able now to, you were the General Secretary of the UDF, can you tell us how these particular Minutes were prepared? -- Well the notes regarding the proceedings of the NEC were taken down by me, by myself, and however the actual putting together of these minutes as in typing now was not done in my presence. I had given these to our then (20) administrative secretary to work out the Minutes as I had other duties to attend to and she put these things together. There are certain sections which I, if I had to do it, would have done it differently but because I was not there they were put in places where they were not supposed to be.

COURT: Were these Minutes approved? -- I do not know if they were approved because this was the, unfortunately the last National Executive Committee meeting that I attended before my arrest.

MR CHASKALSON: We are in July 1984? -- That is correct. (30)

That/....

That is correct, right. Now Mr Molefe if we could just, so there was then a debate was there on the National Executive Committee concerning the national convention? -- Yes there was.

And would this, I think you have told us a statement "It was noted that the calling on people to boycott elections is not enough. The UDF has to offer alternatives." Is the view of the National Executive at that meeting? -- That is so.

Now can we just look at these minimum demands for a moment. A non-racial democracy arising out of participation by all the people. You have already explained your attitude(10) to that today. -- I beg your pardon?

You have explained your attitude to the need for a non-racial democracy arising out of participation by all the people? -- Really that was the goal of the UDF.

Yes. Secondly a society based on justice, equality for all, health, education, etcetera? You said the first one was the goal. How would you describe that second proposition there? -- The second proposition is also tied to the first point I made. Once you have that non-racial democracy you would then have the society based on justice, equality (20) for all. This is what we sought to achieve under that non-racial democracy.

Now then we have discussed the release of political prisoners and the return of exiles and I think you have already explained why you felt that they were necessary for a national convention? -- Yes.

Then the next thing says a national convention. And then below that you have disarming of the armed forces. Can you just tell us what that refers to, disarming of the armed forces? -- If permissible may I just crisply deal with this question(30)

on/....

on the national convention. I just want to make a brief comment.

COURT: Go ahead. -- As I indicated earlier that the Minutes were done in my absence. Really this question of the national convention and other things should really fall under Methods because if you look at the point on non-racial democracy arising out of participation by all the people once you have that there is no need to call for a national convention. So really the question of the national convention simply means it is a way in which we thought that non-racial democracy (10) would be, could be realised. So I think it is placed in a sense where it is. May I then proceed to deal with the question of the disarming of the armed forces? The, this aspect, when this aspect was debated there were differences of opinion on the practicality of the issue, and I was one of those whose view was that the disbanding of the armed forces was not practicable suggestion. My view was that whether a national convention was called or not there was at all material times the need for peace keeping forces or law enforcement agents. However other people held different (20) views. But as I understood it whilst it was suggested that there should be this disbanding of the armed forces it did not mean that there would simply be nothing in their places. There was the talk of the need for a non-racial army and a non-racial police force.

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MR CHASKALSON: Can I pause there for a moment and ask you a question. Do you know whether in the proposals concerning a convention or a discussion in Namibia there had been any suggestions concerning peace keeping forces? -- May you repeat the question Mr Chaskalson? (30)

I/....

I want to know whether you know whether in the United Nations proposals for a solution of the problems in Namibia there was any proposals concerning peace keeping forces and what was to happen in Namibia? -- In the discussion of the national convention whether there was a reference made ...

No leave this aside for the moment. I want to ask you whether you yourself know anything about ...

COURT: Now how does that become relevant in this context?

MR CHASKALSON: Alright then perhaps I should leave that, I think, perhaps I should just let the witness go on then. (10)

COURT: Yes now, well you spoke about the disbanding of the armed forces. By the armed forces you meant the South African defence force and the police force? -- Yes.

Or anything else? -- No only those two?

Those two. Now was this a decision or was it not a decision of the meeting that a national convention would entail the disarming of the armed forces? -- I beg your pardon.

And apart from your personal view which you have expressed and the views of others which you have expressed was it a (20) decision of the meeting that this would be a minimum demand? -- Yes it was a decision. Although at the outset I think these minutes indicate very clearly that on those issues that there were differences. I think it was indicated that these NEC decisions would be presented to regions as recommendations. I was going to deal further with that question of the armed forces. Consequent upon the debate on the need, the argument that there was a need for peace keeping, for law enforcement agents irrespective of whether there was the national convention or not there was a view that if (30) that/....

that kind of a law enforcement agents must be set up that it must be something that would be neutral, something that is not seeing itself as defending the policies of apartheid. In that connection a suggestion was made that proposals could be made of some kind of a neutral force similar to the one suggested around the period 1978 in Namibia when Resolution 435 was discussed and the possibility of the independence of Namibia was debated both in the western countries and in the United Nations.

You mean an outside force? From outside, composed of (10) aliens? -- It would, well it would depend on what best is acceptable. If for instance it is a force that would include, yes I think ...

Well let us say consisting of Swedes and Englishmen and Irish and Russians and that sort of man? -- Well I do not know...

To keep peace in South Africa. -- I do not know if Russians would be there and so on but in any event a kind of a force that would be acceptable as a neutral peace keeping force. (20)

Now ... -- That would respect the whole issue of the national convention and ensure that nobody who wields power misused that power to disrupt the question of the national convention. I think this kind of a view of a neutral peace keeping force is not something that was imagined from nowhere as I understood it from the debates in that meeting. It is something that finds its genesis, its origin, from the daily experiences of the oppressed communities at the hands of the police force and the army. The police and the army are perceived as agents that although ordinarily were supposed to (30)

be/...

be peace keeping agents which are neutral which do not support a particular party but in the context of the South African situation is different, they are seen as agents that are pursuing the policies of apartheid and they take part in suppressing anything that is against the policies of apartheid. In a sense they are now being used as instruments that furthers the ideology of apartheid, they have been politicised. They are no longer part of the, they are not seeing themselves as part of the State, something that transcends party politics. Similarly with the army this is the invasion(10) of the townships, the shooting and all kinds of things which happened in the townships were given as reasons ...

Just a moment, in 19, when was this in 84 I think? Was there then an invasion of the townships by the army as you call it? -- Maybe I used too strong a word. However there had been the heavy presence of the army during the period 1976, 1980 and I think that places like Craddock had had similar problems, Lamontville had had similar problems with regard to the army. But I need also to hasten to say that in respect of areas affected by the removals the army was seen playing (20) of bull dozing the houses and actively forcing people to the resettlement areas. The case in point, the immediate case in point that comes to mind is that one of the community of Magopa, it was widely reported in newspapers and in fact some of the officials of the UDF had the opportunity to go there and they had observed what was happening there. So really it was in this context that it was taking place. But apart from the, whether there is this invasion or not the army in particular was seen to be taking an increasingly political role. Soldiers were now used as teachers in schools, there were (30) reports/....

reports of school children taken to army camps where the soldiers were giving them what one could say a political education of some kind, where they were told that certain people who are perceived as leaders in the Black community are not their leaders, Nelson Mandela is not your leader, Dr Motlana is not your leader, you must respect Chief Buthelezi, you must respect Chief Mangope, those are your leaders, those are merely terrorists, they are communists. These kind of things were done. I have received these kind of reports myself in the past. So that really I understood it to have (10) been something that people were talking from their own, the experiences of their own communities, the members of their own organisations. So that that kind of a situation would have created a situation where suspicions would remain, especially on the side of the oppressed communities, they would never ever believe, it would be difficult for them to accept that if you have that kind of an army it would respect the result of a national convention.

MR CHASKALSON: Well perhaps you could take that further. You said that there was a concern that if, there was a concern (20) about an army respecting the result of the national convention. What was the fear Mr Molefe? -- The fear was that if you have an army that is committed to an ideology that formed the foundation of the existing system of government and that army wields power it would have simply said that look we are not going to respect the decisions taken by that kind of a convention, we reject it and we have the guns, we go on with what we believe is correct for us. So when you call a national convention it becomes crucially important, very crucial, that the parties participating in that convention are in a (30) situation/....

situation where they would feel that there exists a climate conducive to negotiations, where there is absence of fear, absence of mistrust and that suggestion was seen as one that would help to allay those fears. These were some of the arguments, this was the argument as presented by some people.

COURT: Could I just get clarity Mr Molefe. Was it suggested that a draft constitution accepted by a national convention be confirmed, ratified and passed by the existing Parliament or not? -- I indicated earlier on that those details, the broad details of how this would work had not yet been discussed. Those mechanics had not been worked out but in any event what would happen would be decided by that national convention. I must also indicate that a lot of things really happened in the period whilst the discussion on this matter was taking place. I have already alluded to the detentions of senior officials of the UDF. That in a sense really affected the operations of the UDF.

MR CHASKALSON:

Was that in the following month? -- That is correct.

Yes? -- But I need also to indicate that again during that period of course there was that same month there were elections taking place. There were really all sorts of things that were taking place at that time.

Then after the disarming of the armed forces there is a reference to scrapping of bantustans and puppet local authorities, meeting of authentic leaders, end to GST and removals and relocations. Now how do those fit into the picture? -- I have lost track of ...

It is page 5 of EXHIBIT H.1. -- May counsel please repeat please.

COURT: Counsel wants to know whether paragraph 10.1, the last/....

last sentence before "methods", end to GST and removals and relocations, how this fits in with the general picture? -- I indicated earlier on that an atmosphere of trust must be created before such a convention takes place. It simply meant that the government must begin to move on these little things as a way of building the confidence of those who wanted to participate in the negotiations to indicate that it was serious also about these negotiations and it should end this thing, the GST and removals and relocations and it should also indicate, it might not have necessarily meant that the (10) bantustan and local authorities would have stopped immediately but once the principle of the national convention was accepted the government would obviously have also accepted that the kind of structures which were set up pursuant to the policies of apartheid had been unacceptable to the people, there was no need to pursue them and thus it would be persuaded to scrap them and look for better structures which would be proposed as something that would be acceptable by the national convention.

I can appreciate the removals and relocations aspect (20) of it but the GST, why an end to GST? -- The GST was seen as a heavy burden on the poor people, it was taxing those of us who earned pittance heavily. It is not that the other people were not paying the same amount of GST but if a person is earning R200 and the cost of living is more than what he earns or amounts to that R200 it effectively means exactly 12 percent of the entire salary is going away and it was the view that this GST really was amongst other things necessitated by the policies of apartheid because the government has got so many things to maintain financially because of the (30) policies/....

policies of apartheid so that had to find ways of getting money all the time from the people, whereas if those things were not there there would probably be no need for GST, or at least if it is there it would be used profitably to benefit the majority of the people.

Now how do you see the taxation system in a new South Africa? Will there not be any GST? -- Well that would be determined by the needs of the time. I cannot cross an imaginary bridge at this stage. That will be ...

You have crossed quite a number of imaginary bridges (10) in this minimum demand it seems to me. -- Obviously there might have been taxes but that would be decided upon on the basis of the needs as seen at that time. But obviously then it would be needs that are seen as meeting the aspirations of the majority.

MR CHASKALSON: Before we leave this subject I would just like to draw your attention to three, you have got minimum demand, methods and then conditions for a national convention. Now did I, I think earlier you said the minimum demands were ...

COURT: Could we deal with that tomorrow? (20)

MR CHASKALSON: As Your Lordship pleases.

COURT ADJOURNS UNTIL 5 AUGUST 1987.