

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

SAAKNOMMER: CC 482/85

PRETORIA

1987-08-31

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:

LUBBE OPNAMES

VOLUME 273

(Bladsye 14 814 - 14 897)

HOF HERVAT OP 31 AUGUSTUS 1987.

MNR. JACOBS : U Edele, ek dink ek wil eers die argument vir die toelating van die dokument wat ek aan die getuie wil stel miskien aan die Hof rig.

My respekvolle submitisie aan die Hof is dat die verdediging se argument kom daarop neer dat h strafverhoor dan opgedeel word in kompartemente en die effek daarvan is dat solank as die Staat se saak duur, kan die Staat getuienis voor die Hof lê en glad nie daarna nie. Die effek is ook dat gedurende die verdediging se saak is die Staat dan verbied(10) om enige getuienis of nuwe getuienis voor die Hof te kry.

My submitisie is dat dit is h totaal foutiewe benadering, want dan sou dit kruisondervraging eintlik nutteloos maak, behalwe om te bewys dat h persoon h leuenaar is. Die aanvaarde en algemeen toegepaste geldende reg in Suid-Afrika is dat die Staat die Staatsgetuienis kan aanvul deur getuienis gedurende die verdediging se saak. Dit kan geskied op twee wyse, is my respekvolle submitisie. Die eerste een is dit kan gedoen word deur erkennings te ontlok tydens kruisondervraging van die verdediging se getuienis en dan is (20) my submitisie ook dat dit ook kan geskied deur dokumente aan h verdedigingsgetuie te stel en sodoende die inhoud daarvan as getuienis voor die Hof te kry.

Die geldende gemeenregtelike beginsel is dat so h dokument behoorlik geïdentifiseer moet word en dit kan gedoen word deur h getuie van die verdediging. Die beginsel geld dan ook verder as h getuie dit ontken, dan het die Staat moeilikheid, dan kan hy nie daarop steun nie, maar die feit bly dit kan gedoen word gedurende kruisondervraging.

Nou is dit my submitisie dat artikel 69 van Wet 74 van(30)

1982/...

1982 het 'n pertinente verandering in die gemene reg in hierdie opsig gebring en weggedoen met die vereiste dat die dokument deur die getuie geïdentifiseer moet word. My submitisie is dat die voorskrifte van die artikel is wyd gestel en solank daaraan voldoen word, kan dit bloot ingehandig word gedurende die kruisondervraging.

As 'n mens kyk na artikel 69(4)(c) dan lees die artikel soos volg :

"By 'n vervolging weens 'n misdryf ingevolge hierdie Wet of by siviele verrigtinge wat by die toepassing van (10) die bepalings van hierdie Wet ontstaan, is enige dokument, boek, rekord, pamflet of ander publikasie of geskrif :

- (c) wat oënskynlik deur of namens 'n organisasie waarvan die beskuldigde of bedoelde party beweër word 'n ampsdraer, beamppte lid of aktiewe ondersteuner te wees of te gewees het of deur of namens 'n persoon met 'n naam wat wesenlik met dié van die beskuldigde of bedoelde party ooreenstem, opgestel, aangehou, in stand gehou, gebruik, uitgereik of gepubliseer (20) is en enige reproduksie van so 'n dokument, boek, rekord, pamflet, ander publikasie of geskrif as getuienis teen die beskuldigde of na gelang van die geval bedoelde party by die geding toelaatbaar as prima facie bewys van die inhoud daarvan."

My submitisie is dat die beskuldigde en die getuie aan wie die stuk gestel moet word is na bewering 'n lid van die UDF, 'n ampsdraer van UDF en dit is eintlik gemeensaak.

Die betrokke dokument self wat die Staat voor die Hof wil kry, dra UDF se kenteken, dit dra 'n spesifieke UDF (30) naam/...

naam, naamlik "UDF Up Date". Dit stel dit duidelik dat dit 'n UDF informasiestuk is "UDF Information Bulletin". Die inhoud van die stuk is vanselfsprekend, dat dit spesifiek handel met UDF aktiwiteite. Die UDF Up Date is 'n dokument wat beskuldigde nr. 19 beskryf het dat daar besluit was om so 'n dokument uit te bring en dit is ook 'n feit dat die beskuldigde self het na 'n soortgelyke eksemplaar van die UDF Up Date verwys onder dieselfde naam. Dit is BEWYSSTUK AAD2.

My respekvolle submissie is dan dat waar die gemeenregtelike voorskrifte voorheen gegeld het dat 'n gewraakte dokument (10) geïdentifiseer moes word as outentiek, is dit nou verander deur die Wet dat die dokument vir homself spreek en as sulks aan die getuie gestel kan word.

Die doel van artikel 69 is klaarblyklik om 'n baie moeilik toepasbare gemeenregtelike bewysreël te vergemaklik en nie om 'n totale omwenteling en dus 'n strafregtelike reël daar te stel nie en my submissie is ook dat die artikel doen dit ook nie en bepaal nie uitdruklik wanneer dit aangebied moet word nie en is trouens so wyd gestel dat dit te enige tyd voor uitspraak aangebied kan word. (20)

My submissie is dat die Staat is selfs geregtig om by die Hof aansoek te doen vir die heropening van die Staat se saak om hierdie dokument by die Hof in te dien as bewysmateriaal.

In hierdie besondere geval het hierdie betrokke stukkie bewysmateriaal tot die Staat se kennis gekom en in die Staat se besit gekom nadat die Staat se saak reeds gesluit was. Die dokument is deur UDF uitgereik op 3 November 1986. Die Staat se saak was reeds gesluit op 22 Oktober 1986 en dit kom voor in Volume 156 op bladsy 7 625 van die oorkonde. (30)

Dit/...

Dit is ons respekvolle submitisie ook dat hierdie dokument bevat getuienis van 'n wesenlike aard rakende die tydperk gemeld in die akte van beskuldiging oor die aard en die opset van UDF ten aansien van die vryheidstryd en ten aansien van die aanslag teen die Regering.

Op hierdie stadium wil die Staat die dokument aan beskuldigde nr. 19 stel en aan hom die geleentheid bied om daaroor te getuig of 'n verduideliking te gee en dit kan latere tydverspilling voorkom, dat hy weer miskien herroep sal moet word as die Staat later sou aansoek doen vir die (10) heropening van die Staat se saak en toelating van getuienis.

Ek wil dit aan die Hof baie duidelik stel dat die Staat is van voornemens as dit nie op hierdie wyse kan ingaan as 'n bewysstuk nie, dat die Staat gaan aansoek doen vir die heropening van die Staat se saak vir die toelating van hierdie dokument as bewysmateriaal, maar my submitisie is dat dit eintlik onnodig is in die lig van die uitspraak wat met alle respek van die Staat se kant heeltemal korrek is wat voorheen gegee is oor die wydheid van die artikel en dat in beginsel is die Staat geregtig om hierdie dokument te (20) stel gelees met artikel 69(4) (c) en dat daar eintlik nie 'n beswaar daarteen kan wees nie.

My respekvolle submitisie is dat daar kan ook geen benadeling vir die beskuldigdes wees nie deur die uitleg wat uit artikel 69(4) (c) voortvloei nie. Daar is geen nodigheid om 'n getuie te roep om die dokument te identifiseer en wat gekruisverhoor moet word ten aansien van hierdie dokument nie.

So, my submitisie is dat hierdie dokument is op hierdie stadium toelaatbaar as 'n bewysstuk en as 'n bewysstuk, as (30)

dit/...

dit aan die getuie gestel word, wat ook dan die inhoud daarvan bewys.

My respekvolle submitisie en versoek aan die Hof is dat die beswaar van die verdediging van die hand gewys sal word en dat die dokument toegelaat gaan word op hierdie stadium reeds as 'n bewysstuk in ooreenstemming met artikel 69(4).

MR BIZOS : My Lord, let me make something clear, with respect. We do not contend as a general principle that the State is not entitled to put evidence to an accused (10) person or a defence witness during the defence case. I thought that we made that very clear when I argued by way of analogy with a letter which is identified by the witness. So, that to put up a skittle and knock it down in the manner in which Our Learned Friend has done, does not advance the argument any further.

The fundamental question before Your Lordship is when is the sub-section (4)(c) of Section 69 available to the State. The State says right up to the time of judgment they can hand in documents. That is a submission which (20) Your Lordship has to consider. We can have a situation that an accused person is charged with being a member of an unlawful organisation. He has gone into the witness-box to answer the case against him. He is obliged to deal with the case that has been led against him and if the State argument is correct, even whilst he is in the witness-box or does not even go as far as that, it goes even further, or does not stay as near as that, it goes even further. Any time before judgment Your Lordship can be presented with a document purporting to be a document of the organisation (30) he/...

he is said to have been a member of, that says this person was a member from such and such a period to such and such a period and Your Lordship would have to receive it.

Sub-section 69(4)(c) we submit is an aid to the State in relation to the limited purposes that are expressly prescribed within the section and not an intention to amend the Criminal Procedure Act in regard to the conduct of trials. The conduct of a trial is well set out. The State will lead its evidence, the accused will lead his evidence. There may be circumstances in which either party may be entitled(10) to reopen the case, but this is not before Your Lordship at this stage. The question is whether this document is admissible in the absence of any knowledge which, having regard to the fact that he was under arrest for over a year at the time of its production, may be inferred.

There is nothing which expressly or by necessary implication amends the Criminal Procedure Act in this sub-section and a judgment to the contrary will do away with enumerable cases and practice and what has been accepted as axiomatic. I am reminded of a judgment of HIEMSTRA, J. which was not(20) reported. The State case was closed, the accused was in the witness-box, the prosecutor produced a statement signed by the accused which said something contrary to what his evidence was. The accused said that that statement was not freely and voluntarily made. The State sought to try and prove that the statement was freely and voluntarily made. His Lordship, and I submit correctly, ruled that you are bound by the witness's answer in regard to this. If you had the statement in your possession and you intended to use it as part of the State case, you had to prove it as(30) part/...

part of the State case. It may well be that the accused may have not given evidence. If that was an issue which he had to face, he made a deliberate choice. I know that it does not apply here, because the document is said to have come into the possession of the State after the close of the State case, but I submit on the question of admissibility this does not apply. It may well be that an application - if an application is made in order to prove the statement, other considerations would have to be taken into account. Such as the probative value or otherwise of a document (10) produced some eighteen months after the accused's detention, as to whether it is in the interest of justice to prove it or not, but that would be another factor, but on the question of admissibility, a judgment that the State can on their theory produce a document which is said to have been produced by the UDF yesterday and put it to the witness and say well, what do you say about this? Look wat the UDF is saying. That is not a way in which the Criminal Procedure Act envisaged trials to be conducted and I submit that there is nothing which expressly or by necessary implication (20) changes that position in Section 69(4)(c).

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

1987-08-31

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

JUDGMENT ON ADMISSIBILITY OF DOCUMENT

VAN DIJKHORST, J. On 5 February 1987 I ruled that EXHIBIT CA1 a publication called UDF Update, the UDF Information Bulletin, Volume 2 no. 3 of November 1986, could be put to accused no. 10 in cross-examination. My reasons are set out at pages 8 678 to 8 680 of the record.

When Mr Jacobs attempted to cross-examine accused no. 19 on EXHIBIT CA1 Mr Bizos again raised an objection. He approached the matter from a different angle. As the previous ruling was interlocutory, the matter will be looked at afresh.

The new argument is that the State can rely on Section 69(4)(c) of the Internal Security Act, 74 of 1982, only (20) during the course of the case for the prosecution and not during the case for the defence, unless the document is otherwise admissible. For example, if the witness identifies the document and makes it his own. The argument is that
on/...

on the strength of Section 69(4)(c) the document proves itself and that can only be done during the State case. Reference is made to Section 150 and Section 151 of the Criminal Procedure Act, 51 of 1977, which determine the conduct of proceedings in criminal cases. The prosecution must lead its evidence first.

In support of his argument that Section 69(4)(c) can only assist the State during the case for the prosecution, Mr Bizos argued that otherwise the State might still hand in documents during its reply at the end of the case and in (10) fact at any stage up to judgment.

I will first give some background and thereafter set out what I see as the correct approach.

The State case was closed on 22 October 1986. EXHIBIT CA1 was only published thereafter in November 1986 and could therefore not have been produced by the State before its case was closed. This fact indicates the distance in time between the period covered by the indictment and the date of the said publication and immediately the question arises how this can then be relevant. Matters put to a witness in (20) cross-examination should be relevant. This means that they must tend to prove or disprove the case of one of the parties. This may, inter alia, be done indirectly by impeaching the testimony of the witness by confronting him with a document which casts doubt on his version of the facts. A document can do that if a nexus is shown to exist between it and the witness. That nexus exists if the document is authentic and relates to the witness. Its authenticity can be proved through identification thereof by the witness or it may be accepted as authentic by reason of a statutory provision. (30)

Its/...

Its relationship to the witness may be admitted by the witness or may be statutorily created. An example of the former is a previous inconsistent statement which the witness identifies as his own. Where there is no nexus, as in the case of statements by third parties for which the witness cannot be held vicariously responsible, the document is irrelevant and cross-examination thereon will not be allowed.

Examples of instances where documents need not be identified by a witness or proved to be authentic prior to their use in court, are documents discovered by the adversary (10) in a civil case (Supreme Court rule 35(10)), documents of which a Court may take judicial notice, for example Government Gazettes, when such documents are admitted by the adversary, and where such documents are by statute made admissible upon their mere production. Of the latter class there are a number apart from those found in the Internal Security Act, 74 of 1982. (See Schmidt Bewysreg second edition page 323 and 362, HOWARD AND DECKER WITKOPPEN AGENCIES AND FOURWAYS ESTATES (PTY.) LTD. v DE SOUZA 1971 (3) SA 937 T 940))

In the ordinary course of events the UDF Update of (20) November 1986 for the publication of which accused no. 19 is not responsible and which came into being long after his arrest, would have no nexus at all with this accused and would therefore be irrelevant and cross-examination thereon would be inadmissible.

Section 69(4)(c) of the Internal Security Act, 74 of 1982, has, however, created such a nexus between publications of a certain type and accused persons of a certain class in respect of offences in terms of that Act. Such documents are clearly no longer irrelevant when an accused person (30)

of/...

of that class is cross-examined. Should the contents, prima facie deemed to be correct against such an accused, tend to prove or disprove the matter in issue, an accused person of that class may be cross-examined thereon. For that purpose the document may be placed before the Court, as no. 19 falls in the class of persons mentioned and EXHIBIT CA1 is a type of document referred to in the Section.

What weight, if any, such document will have at the conclusion of the case, need not and cannot now be decided. As this ruling is of an interlocutory nature, the parties are (10) at liberty to argue the interpretation of the said section and the effect of this document afresh at the conclusion of the case.

Cross-examination of accused no. 19 on EXHIBIT CA1 is allowed.

POPO SIMON MOLEFE, still under oath

FURTHER CROSS-EXAMINATION BY MR JACOBS : Mr Molefe, this document, EXHIBIT CA1, is a UDF publication and UDF Information Bulletin to give out information which the UDF regards as important and must be conveyed as such to the people in the freedom struggle. Do you agree to that?-- Well, on the face of it, it is a UDF document, but I cannot testify as to whether if it is a UDF document, how the UDF regards the information in this document. I do not know the document.

And I put to you that the underlying principles (10)
for the unity of the people across broad sections of the community has been the establishment of street committees, block, zone and area committees? -- That was not the policy of the UDF prior to my arrest. I do not know if it has been subsequently adopted.

This was done and in order to make it possible to draw the entire community into taking part in all activities of the UDF and to build leadership? -- I do not know about that.

Will you have a look at page 4 and it states in this (20)
document in the third column "Underlying this unity across broad sections of the community has been the establishment of street committees, block, zone and area committees."
I put it to you, that was the underlying principle when the UDF was launched in 1983? -- That is not so. May be I should also read the section, to try to understand it in context. (Witness reads section.) Well, having read that section, nothing tells me that that was the policy of the UDF, but I can state clearly that at the time of my arrest this was not the policy of the UDF. (30)

I/...

I put it to you it was all the time the policy of the UDF and that the street committees, the forming of street committees was done in order to make it possible to draw the entire community into taking part in all activities of the UDF and to build up leadership in the communities? -- That is not so.

I would like to read further on page 4 "The street committees make it possible for the entire community to take part (then it goes on on page 19 and not 18 last column last part of it from page 4, community stands behind rent(10) boycotts) in democratic decision making. The government has tried many strategies to prevent our people from meeting to discuss their grievances and problems. Democratic street committees are able to withstand repression and communicate information quickly and if community leaders are detained street committees have developed many others to take their place." What do you say to that? -- I am saying that is not UDF policy. That was not UDF policy. I am not disputing whether it is possible for people to communicate easily, but I am saying that was not UDF policy. (20)

I put it to you further when organisations were restricted or banned, the UDF had found new ones and adopted the old ways of working and that is the creation of street committees and defence committees in order to deepen mass participation against the State? -- That was not the policy of the UDF.

Will you turn to page 8 of the exhibit under the heading "Update comment and in the middle of that "Despite all its efforts the regime's attempt to reverse the tide of history has been a dismal failure. When our organisations are restricted or banned, we have formed new ones and have (30) adopted/...

adopted our old ways of working to the new conditions we face. In townships through South Africa for example we have seen the emergence of street committees and defence committees in order to deepen mass participation and protect ourselves from the agents of the State." What do you say then to this? -- That is the analysis or the comment that is made by this person, but that was not the policy of the UDF.

I put it to you that this is a UDF document, a document that is issued in order to inform the people of the information of the activities of the UDF? -- At the time of my (10) arrest the UDF did not have this document. It was not producing this document.

It was planned at the time of your arrest. Is that not so? -- The NEC had never had a policy on this document at the time of my arrest.

Is it so that it was planned already at the time of your arrest to bring out a UDF Update and Information Bulletin? -- There was a recommendation by the media committee given to accused no. 10, Mr Lekota, and then he made this known to a meeting of the National Secretariate. (20)

COURT : To do what? What was the recommendation? -- That the UDF should consider producing a publication. They suggested a whole range of names. I think UDF Update was one of the names, but the NEC had never taken a decision on that.

MR JACOBS : I put it to you further, that it is clearly the perception and accepted principle in the UDF that in order to dismantle apartheid and in order to counter the measures taken by the government, that the people have declared war against the government? -- That is not the perception.

All I can say is, that we have been opposed to the policies (30)

of/...

of apartheid for many, many decades.

And I put it to you that what is meant by this is ... -- May be counsel should show me specifically which section he is reading, because I have not read the whole thing and I think it is proper that whatever he is putting to me, must be - he must draw my attention to a specific section.

COURT : He will get to that.

MR JACOBS : I put it to you that this means that violence was adopted a means to engage the State and that was adopted by the UDF? -- What was adopted? (10)

Violence as a means to engage the State? -- That is simply out of question. The UDF has never adopted a violent policy.

And I put it to you further that this warfare, in this warfare the UDF National, Regional and the affiliates were leading the masses in participating in violence? -- I reject the proposition.

And I put it further to you that when you launched the UDF in August 1983 your aims were to campaign for the massive rejection of the tri-cameral parliament and Black Local (20) Authorities? -- That is correct.

And also to build unity amongst the people? -- That is correct. To achieve that objective we had unite organisations and therefore people who supported those organisations.

And to set up organisations where none existed and build existing organisations into more powerful weapons in the struggle? -- I do not know whether we had used the word weapon in the past, but it is true that we thought to strengthen organisations that existed and we encouraged communities to take up their own problems by way of (30) setting/...

setting up their own organisations.

I put it to you that the UDF claimed a lot of achievements for the past three years for the existence of the UDF since its launch? -- Well, I do not know about that. I cannot confirm nor dispute that.

One achievement, I put it to you, the UDF claimed to be an achievement of the UDF since its launch, is the uprising in the Vaal Triangle in September 1984 which is regarded by the UDF as the beginning of the end of Black Local Authorities throughout the country? -- To my know-(10) ledge the UDF had not claimed that, but I cannot testify as to what the UDF might or might not have said since my arrest.

Another achievement that the UDF claimed for itself is that the launch of the UDF made possible large scale of national co-ordinated opposition to apartheid and UDF initiated national days of action and spearheaded - that the UDF spearheaded national campaigns? -- The UDF spearheaded national campaigns. That I testified to in the course of my evidence, but I do not know if subsequent to my arrest there were any national days of action initiated by the UDF.(20) I cannot testify to that.

I put it to you that the achievements of the UDF since its launch was also that since the launch the growing militancy of the people combined with heightened organisation and unity has increased the scope for national action? -- What is the UDF claiming in that regard? I do not understand what is put to me.

An achievement of the UDF was that since the launch the growing militancy of the people combined with heightened organisation and unity has increased the scope for (30) national/...

national action. Do you agree to that? -- That sounds to me like an analysis made by an individual not a claim really.

And I put it to you that another achievement claimed by the UDF since its launch in 1983 is that it has sowed doubts in the minds of many Whites about the ability of the State to resolve the present crisis and to acknowledge the inevitability of majority rule and the importance of the ANC. Do you agree to that? -- I do not know about that. But it is true that an uncreasing number of people have begun to accept that the policies of apartheid are un- (10) workable if it refers to that. That is so. One may also say, I do not know, if it relates to the fact that an increasing number of people, professionals, business men and so on have begun to argue that the government must negotiate must begin to lay the basis for talks with the ANC. That is I think public knowledge. You have read a lot about these things. Several trips that people have taken to talk to the ANC in Lusaka and so on. If it is intended to say that, that is so, but I cannot say that it is to the credit of the UDF.

I put it to you that another very important achieve-(20) ment that the UDF claimed for itself since its launch in 1983 is the move from ungovernability to people's power? -- It has never been the UDF policy to make the country ungovernable.

The UDF claimed that it achieved the resignation of so-called apartheid functionaries like Bantustan chiefs and town councillors and that in their place civic youth and student congresses have formed organs of people's power to take control of local administration? -- The concept of people's power was not the policy of the UDF and it is (30) true/...

true that a number of councillors have resigned over a period of time. Even before I was arrested, there were councillors that had resigned, but I have - the UDF policy documents set out clearly the attitude in that respect and I have testified to that effect in this evidence. It has never been the policy of the UDF to establish what is called organs of people's power by way of establishing UDF local administrations.

The first important point is that the UDF claimed as a success of the UDF that it achieved the resignation of (10) so-called apartheid functionaries, like Bantustan chiefs town councillors? -- I do not even see anything on this being the claim of, because also when one looks at the beginning of this document, it deals really with three things. The first one says the UDF achieved a great deal in its three year history and it goes on to say "Here we assess our achievement and analyse the current situation to point the way forward."

COURT : At what page are you looking? -- I am looking at page - it is not numbered. (20)

The way in which CA1 had been composed, the last page is a "Unity pledge", it is unnumbered. Prior to that we find page 19. It goes straight back to page 11 and then between page 11 and page - I find in my copy the UDF Update Special Focus, which may be a loose section inserted in the document. -- Does Your Lordship have below that one three years of united action?

Yes, that is the special focus? -- Yes, that was the page I was looking at.

You were looking at Update Special Focus three years (30)
of/...

of united action? -- That is so.

(Pages are numbered). -- I am referring to 10(a) to the letter really after the three years of united action. "The UDF has achieve a great deal in its three year history. Here we assess our achievements and analyse the current situation to point the way forward." When one looks at this document, there is this section that says "Achievements". I do not see a separate section that deals with the general analysis of the situation. So, that I am saying is that in respect of the point that counsel was putting to me, I do(10) not see this directly claimed as a UDF effort. The one coming immediately after that, that is - I am not looking at "From ungovernability to people's power." Before that you "Weakening the unity of apartheid forces" and there it becomes clear that there was the UDF call to Whites.

That is at page 20(b)? -- That is so, but in respect of this ungovernability and so on, there is nothing that tells me that this was done by the UDF. It is true that we know that the UDF made a call on the councillors to resign, but I do not see where it tells me that the UDF set up what it(20) calls the organs of people's power.

MR JACOBS : Can we go back to page 10(a) under the heading three years of united action. Is it correct that what is said there is that the UDF has achieve a great deal in the three years history. Here we assess our achievements" that is again the UDF "and analyse the current situation to point the way forward." I put it to you that this is a clear message for everybody who reads this document that what is stated here is the achievement of the UDF? Is it correct? -- On the face of it, that is how it appears. (30)

And/...

And then a number of achievements of the UDF under different headings are enumerated in this special update focus of the UDF? Is it correct? -- It appears like that.

And under the heading "Defeating the new deal", what is said under that heading is an achievement of the UDF and its affiliates? -- That is so.

The second one that is enumerated is under the heading "The collapse of bodies of minority rule." That is an achievement of the UDF under that heading? -- Not really. I think it has got a number of things really, this one. (10) May be I should just quickly read it.

Under achievements, what have been the achievements of three years of united action, there it is clearly stated and under that a lot of achievements are enumerated? -- I think, although this thing is written as what we have achieved, it encompasses things that had nothing to do with the UDF as I see it. Perhaps it could be interpreted as a result of what they call united action.

Do you say that the UDF had nothing to do with the downfall of Black Local Authorities system and other puppet bodies? -- Well, insofar as discrediting them politically and persuading certain people to refuse to take part in them and others may be resigning, we could say we have influenced them in that respect.

And that is an achievement claimed by the UDF under that heading? -- May I just read the whole thing?

COURT : Yes, read it. -- (Witness reads section) When I read column 2 at page 10(a) under the "Collapse of bodies of minority rule", I do not understand the UDF to be saying that we are responsible for what happened everywhere. (30)

They/...

They say the seige of the downfall of the Black Local Authorities system (witness reads further) By the end of the 1985 a few town councils remained." This I understand to be really saying that the increase on rentals and the inability to meet promises which were made during the election period resulted in the collapse of those councils and I do not see it to mean that the UDF was involved in any way in that situation, especially in the Vaal Triangle.

Do you say that the heading of that article "The UDF has achieved a great deal" and the enumeration of its (10) achievements is not correct then? -- I am saying so in respect of this. It may be correct in certain respects, but I cannot accept it wholly as it is.

I put it to you that the third achievement enumerated in this document is fighting Bantustans and structures and what was achieved in that line by the UDF, that is an achievement? -- That seems to be claim yes by the UDF, but what I can say is that up until the time of my arrest I had known of no UDF program in this respect.

I put it to you that the next achievement claimed by (20) the UDF is under the heading of building organisation. -- Yes, I see that.

The next achievement is on page 10(b). That is the building of national unity. That is an achievement claimed by the UDF since its launch? -- Yes, I see that.

The next achievement claimed by the UDF is in the next column under the heading "Weakening the unity of apartheid forces." -- I see that.

And the next achievement claimed by the UDF is under the heading "From ungovernability to people's power"? -- (30)

What/...

What is it that the UDF is claiming? Does it claim that it made the country ungovernable?

It is stated here in this article that an achievement of the UDF is the move from ungovernability to people's power as part and parcel of the UDF's policy and successes? -- All I can say is that it has never been - it was never a policy of the UDF to make the country ungovernable. If by people's power it means here that the decisions on matters which are then affecting the community are canvassed with the community, I would understand it. But if it is (10) intended to say that the UDF sought to establish its own local government, I do not accept that.

I put it to you that what the UDF is claiming under this heading "From ungovernability to people's power", that the UDF is claiming that it achieved the resignation of so-called apartheid functionaries like Bantustan chiefs and the town councillors and that in their places civic youth student congresses have formed, organs of people's power to take control of the local administration. -- If that refers to these organisations liaising with the autho-(20) rities that are in control with the local situation, I have got no problem with that. If it means something else, I would state clearly here that it has never been the UDF policy. I cannot testify to things that happened after my arrest. It was never the policy of the UDF to create an ungovernable situation to take control of administration.

I put it to you you are wrong in that, you are not telling the Court the truth, because it was part of the policy of the UDF to have organs of people's power to take control of local administration? -- That is not so. (30)

I/...

I would challenge counsel to produce a single document that was produced at the time, during my time in the UDF that says the UDF sought to establish organs of people's power to take control of local government.

Is it not so that from - in the move from protest to challenge we already have got a clear indication that people's organisations must be formed, to take over power in the townships? -- That is not so. I had explained fully that question in my evidence previously.

I would like to put it to you that another achievement(10) claimed by the UDF under this heading "From ungovernability to people's power" is that the UDF achieved tribal authorities to resign and are replaced by village councils, also again a tribunal of people's power? -- Where is that tribunal of people's power?

I put it to you that it is a tribunal of people's power? -- Which one is that? Where is it written in this document?

What do you say to my question? -- I do not know about the tribunal of people's power. I know nothing about that and I can only say that it is not UDF policy. (20)

And another achievement claimed by the UDF in the three years since its launch is that the UDF was instrumental to the collapse of Black Local Authorities and the collapse of the Black Local Authorities was accompanied by new forms of mass organisations such as street and area committees. That is also an achievement of the UDF? -- The formation of street committees was not the policy of the UDF. I have read about those things during my stay in jail here that there were street committees.

And another achievement claimed by the UDF is that (30)
these/...

these structures, you can call them alternative structures have involved entire communities in collective decision making and helped to build unity. That is also an achievement claimed by the UDF? -- Well, I suppose it is set out here possibly. I am not sure.

WITNESS STANDS DOWN.

COURT ADJOURNS.

COURT RESUMES.

POPO SIMON MOLEFE, still under oath

FURTHER CROSS-EXAMINATION BY MR JACOBS : Mr Molefe, I put it to you that another achievement claimed by the UDF is (10) that since the formation of the UDF and these alternative structures, that these alternative structures brought uncontrolled elements in the townships, under the control of the people and their organisations? -- That is what is written in this document.

I put it to you that that means that all the activities in the townships were controlled? -- What does that mean? I do not understand. All I understand here is that undisciplined elements were brought under control of the people and their organisations. (20)

I put it to you that that means you cannot say that where violence broke out, it was by uncontrolled elements? It was controlled? -- Well, I do not accept that, because this document was produced in 1986. I do not know to what period it is referring to and in fact it does indicate I think at page 10(d), that is the page on the left column which has got "The way forward" and the first column of that page ... (Court intervenes)

COURT : The right column is "The way forward". -- No, I am just interested in the left column. The left column, I (30) think/...

think it is really paragraph 5 or 6, the one that starts with "The regime has failed to prevent the growth of people's power." There it says street committees were set up after 12 June for the first time in many places like Soweto and it does seem like this person is saying that undisciplined elements came under control only after street committees had been formed and so on. So that one may assume then that this document is really dealing with the situation after the formation of the street committees and in my evidence I could only testify about the period before my arrest. (10) I cannot testify to things that took place after my arrest. All I can say is that this is not UDF policy. This was not UDF policy and I do not agree with what is set out.

MR JACOBS : You must agree that this document under the heading "Update Special Focus" did mention a period from the launch of the UDF up till that date? The date of the document? -- Well, it talks about the three years of united action. Different things took place at different points in time and different structures were set up at different points in time. Different decisions would have been taken at (20) different points in the development of our history. So, I cannot be tied to the things that happened in 1986 and 1985 after my arrest.

I put it to you that these achievements of the UDF could only be achievements after planning by the UDF since its launch? -- All I am saying is that at the time of the launch of the UDF, the whole question of people's power and the organs, all sorts of things that are mentioned here were not policy of the UDF up until the time of my arrest. I do not know if indeed what is written here is the policy (30) of/...

of the UDF or it is the analysis of the individual who things that all those things must be claimed by the UDF.

You did not answer my question. I put it to you that to be achievements of the UDF it must have been an achievement after planning of the UDF since its launch? All the achievements enumerated here? -- Are we saying the planning as at the time of the launch or are we saying different plans as made in the period that we are talking about? I think there is a difference about what might have been planned after my arrest and what was planned before my (10) arrest.

I will put it again to you. You can answer as you like. I put it to you that to be achievements of the UDF since its launch, it must be achievements on planning done by the UDF since its launch? -- It may well be that, but it may well also mean that different plannings took place in that period.

I put it to you that another important achievement of the UDF since its launch is the fact that it succeeded to get the local population to engage the army and the police (20) and are fighting against them? -- Where is that? That is not the policy of the UDF. It was not the policy of the UDF to get the local population to engage the police and the army. I have dealt at length with those issues in my evidence previously.

And I put it to you that an achievement claimed by the UDF is that the UDF has achieved the growth of the people's power. Meetings are held right under the noses of the troops and Casspirs, street committees were set up in many places like Soweto and other places, schools, students, (30)

used/...

used a variety of tactics to resist attempts to break the development of people's power in schools, for example students occupy schools and use class rooms to teach people's education. -- What section is counsel referring me to?

I will refer you later on to it. What do you say to that? -- Well, that was not the policy of the UDF. I do not know about that. I seem to be seeing this as part of the analysis of dealing with different sorts of things.

And I put it to you a very important achievement of the UDF claimed over the last three years of the existence of (10) the UDF is that it defeated the State's endeavour to crush the ANC and defeat the army, the armed struggle of the ANC. -- The UDF has defeated that?

Has achieved that? -- That is not so and I contend that the section that counsel is reading and keeps on saying its achievement is something different or altogether and I think the section that deals with achievements really goes only up to the point that deals with international solidarity. Then from there, that is at page 10(c), we have the State's response and then we have June, 12 national emergencies (20) imposed and then you have State has little success in aims. It continues up to the point that counsel is putting and I see this as merely an analysis that is made by a person on the development of the time.

I put it to you that actually what happened was that -- How can the UDF claim that it has made the government declare a state of emergency? How can the UDF claim the state of emergency for instance? How can the UDF claim the State's response? How can the UDF claim the State has little success in aims? (30)

I/...

I put it to you that the opposite was achieved by the UDF and the armed struggle of the ANC has intensified, that the ANC's plan to move from armed propagande to people's war, has been announced to a reality with increasing incidents of armed conflict between the people and the security forces in the townships? And that the UDF was the instrument to organise the people and lead them in the conflict with the security forces in the townships? -- I disagree with that proposition. In fact, this person states very clearly here, he says if anything the opposite has occurred and then (10) this person says political scientists say the armed struggle has intensified and the ANC'S plan to move from armed propaganda to people's war has become a growing reality. This is what political scientists were saying. My impression is that this person had read may be newspapers or had heard over the radio news what political scientists were saying, analysts were saying.

I put it to you quite clearly that this is not the person's meaning that we got in this, but that that is what the UDF had propagated and sent out to the people in a (20) bulletin of information? -- I have given my comment on that.

I would just like to refer you to the places you asked me in the beginning where I found that. -- I can no longer remember what question I asked counsel previously. I do not know to what specific question it relates. It may well be that we found it in the course of ... (Mr Jacobs intervenes)

I want you also to have a look at this unity pledge page 20 and the heading of that unity pledge - it is clearly stated there "Unity Pledge to be read in all church services, ceremonies and in our homes." -- I see that. (30)

So/...

So, the idea was that this document was to be read by the people in the township on a general basis? -- Yes, well, from what is written here, that is what appears. I may also say that this something that developed long after my arrest and I also know that it became a subject of investigation and the attorney-general of I think the Witwatersrand division took a decision, advertising a call for the unbanning of the ANC was not an offence and he could not prosecute anybody on that basis.

I think the portion you asked me to refer you to is (10) that on "The people declaring war on the State" and that is at page 12. I would like to refer you to page 12 of this document. The heading of the article is "State lashes out at democratic movement. UDF bears the brunt." In the first column the last paragraph "1985 and 1986 saw the government declaring openly war against our people. The people answered in clear - the people's answer is clear. Recognising that the dismantling of apartheid and the genuine transfer of power to the people has become a historic necessity. The people have declared their own war. The (20) determined resistance of the people has sent the government into a blind panic. It has now launched the systematic attack against the UDF and other democratic forces." -- I can only say that the UDF was not a violent organisation and it may well simply mean that by the people have declared their own war, that it may well relate to things like consumer boycotts, stayaways and so on. I do not know. I do not know what the writer had in mind here.

What is referred to here is violence in the townships where the people engaged the government and government (30) forces/...

forces in violence? -- I do not know. I do not see it here. I can neither confirm nor dispute it. All I can say is that it was not UDF policy.

After having read through this and having gone through these three years, do you still say that the UDF is not a violent organisation? -- I am still satisfied that the UDF is not a violent organisation.

Even if it is proved before your eyes what the UDF has achieved? -- Where does the UDF say that it has committed any violence even in this document - even in terms of this(10) document?

Are you still saying there is no violence mentioned in this document? -- Well, I do not know if counsel is referring to the whole document generally, because I have not studied the entire document and as far as I am concerned, this document, in a number of respects, does not reflect the UDF policy.

Do you still say that the UDF is not trying to make the country ungovernable and to go over to people's power or achieving people's power? -- That was not the policy (20) of the UDF up until the time of my arrest. I cannot testify to what might have happened subsequent to my arrest. Only people who were there taking those decisions can testify.

Do you still say according to this document of the achievements of the UDF that it did not pursue a policy of making this country ungovernable and to achieving people's power, something other than a mere vote? -- I am still satisfied that it was never UDF policy to make the country ungovernable.

You are not answering my question. I asked you, at (30)
the/...

the present moment, at the moment of this document on 3 November 1986? -- I cannot testify about the UDF activities as at November 1986. I was not there. I had been in jail for well over eighteen months at that time.

I would like to put it to you that what is said in this document corresponds with what you have said in your secretarial report to the Annual National Congress of 5 April 1985 EXHIBIT C102 in paragraph 8.4 page 11. "Secretarial Report. Annual National Conference 5 April 1985." 8.4 "In the townships the Black Local Authorities are (10) inoperative. They are no longer able to dictate to the masses and already over sixty of the councillors have resigned countrywide. Some townships like Cradock and Uitenhage have no local government structures. Now our task is to extent our struggle beyond these apartheid structures and set up our alternative structures which will force the authorities to heed the popular demands of the people. We must set up projects to meet some of the practical needs of our people without compromising our principles. For example advice offices, mobile clinics, et (20) cetera could be set up." -- With what section is it being compared in terms of the UDF Update?

I beg your pardon? -- What is it being compared with in terms of the UDF Update?

Will you go again to the UDF Update CA1 under the heading "From ungovernability to people's power", page 10(b). It reads "In many areas apartheid functionaries like Bantustan chiefs and town councillors have resigned. In their place civic youth and student congresses have formed organs of people's power to take control of the (30) local/...

local administration" and I put it to you that this in agreement with what you have said in paragraph 8.4 in the secretarial report? -- I disagree that it means the same thing. This position is very clear. What it means is that the stage must be reached where the authorities would no longer take decisions on the basis of what they get from the Black Local Authorities, but they must liaise directly with the popularly established organisations in those communities. In other words, these organisations would liaise with the local structures of government. In this instance it would have(10) been things like development boards and the alternative structures that are referred to here, are things like advice offices, mobile clinics, et cetera. We never sought to establish a local government of the UDF called the people's power and I think in the course of my evidence I did also refer to where it is explained much better in the document. It may well be AAA series where it says our organisations must liaise with the authorities.

K876

What is meant by the phrase here "Now our task is to extend our struggle beyond these apartheid structures and(20) set up our own alternative structures"? -- Well, what it means is that ... (Mr Jacobs intervenes)

"Which would force the authorities to heed the popular demands of the people?"-- It means that organisations must allow provision for popularly adopted decisions by residents and those decisions would then be communicated to the government through organisations as liaisons for the government at that level.

I put it to you that these alternative structures were all the time part of the policy of the UDF to bring them (30) into/...

into operation? -- That is not so in the sense that it is set out in this document, the UDF Update.

I would also like to go to EXHIBIT C110 and I put it to you that EXHIBIT C110 was a document issued by the UDF? -- My evidence has not changed in respect of that document.

And I put it to you that the appendix to that document is part of the document as can be seen from page 1 the last paragraph "This report was divided into the following sections. Structures of local government in African areas, the aims of the Black Local Authorities, the Anti-Black Local (10) Authorities campaign, the rent increases, the state of Black Local Authorities in the Transvaal, the state of community organisations in Transvaal, the way forward and appendix." This appendix is what is attached to this document? -- Well, I have testified previously that I had not had the opportunity to look at this document. I do not know if that appendix was or was not part of this document.

And I put it to you that what was set out in the appendix is also claimed by the UDF as achievements of the UDF and as victories of the front? -- I do not know where the UDF (20) is claiming these things.

Will you have a look at page 8 of that document under the heading in the middle, just below the middle of the page "The state of Black Local Authorities in the Transvaal." "The resignation of councillors and the suspensions of the rent increases have been - I think it is another important victory for the front and its affiliates in local areas. Popular resistance has further discredited the councils but they remained in nominal control of the townships and where they have resigned, administration has been handed back (30) to/...

to the boards. Residence are as yet in no position to democratically run their own areas." I put it to you further that you also get an idea of the alternative structures as part of the plan of the UDF that at that moment they were as yet not in a position to run the townships on their own? -- This is not a UDF policy document and the UDF never intended that it should set up its own local government structures. This section does not tell us what democratically means. Whether it means that residents' decisions would be in a position to influence how they would have to be (10) governed at local level or whether it means that they must set up their own local government. It does not tell us that. It may well mean that we have not reached the stage where the Administration Boards' decisions are influenced by the popular views of the residents.

I put it to you that the idea of what is a democratic organisation in the language of the UDF means an alternative structure chosen by the people and it does not refer here to discussions with the government bodies? -- It does not refer to local government structures. It may well be (20) when we talk about democratic alternatives, it may well refer to organisations which allow for popular participation in the decision making, not insofar as the actual local government is concerned.

I would like you to have a look at page 9 of EXHIBIT C110 at the top. "The current nature of the councillors themselves ... (Court intervenes)"

COURT : Corrupt.

MR JACOBS : "The corrupt nature of the councillors themselves and the campaigns against the rent increases mean that (30)

the/...

the councillors have lost what little credibility they may once had. At this stage government plans to salvage the councils by creating its informal non-statutory forum to debate constitutional issues affecting Africans, has little chance of undermining the call for national political representation of African people. The challenge it presents to the UDF and its affiliates lies not in its acceptability but in its ability to co-ordinate, strengthen and support individual councils isolated by mass resistance. The recent attempts by the Urban Council Association of South(10) Africa UCASA, to prevent the resignation of Atteridgeville mayor Z.Z. Mashao. Because of the way this would be exploited by opposition groupings, is an indication that leading councillors realised the need to strengthen their organisation." This also, I put it to you, is an indication that there was no idea of talking with the government bodies or talking with the councillors? -- There is no question about it that we never supported the view of negotiations with the councillors, we none the less encouraged negotiations with the Development Board of the government. (20)

But I do not know what that conclusion, how council is coming about that conclusion here. To me, the sentence that we have just read, does not make sense. It says the challenge its presents to the UDF and its affiliates lies not in its acceptability but in its ability to co-ordinate, strengthen and support individual councils, isolated by mass resistance. I think it is really giving a contrary meaning altogether. It is saying that the UDF must co-ordinate those councils which have been isolated. It does not make sense, that sentence. (30)

I/...

I put it further to you that violence broke out in the 22 areas mentioned in the charge-sheet after a series of mass meetings or house meetings or during campaigns run by the UDF or its affiliates in those areas? -- That is not so. I have testified. I have given my version in respect of that. I would not like to go over it again.

And I put it to you it is all of a plan to achieve people's power in the Black townships? -- That is not so.

And then I would also like to refer you to AAD5 on page 4 paragraph 6. The heading is "From challenge to (10) alternative". The second paragraph "The present in the sense that our organisations have to become living and viable alternative organs of people's power, therefore for example insituations where the apartheid puppets are no longer able to effectively function in the township, a stage could be reached that the people's organisation assumed responsibility for organising the community to govern itself in a variety of ways from setting up health clinics to crime prevention." That is also in conformity with what you said in your statement - your secretarial report that I have referred you (20) to and it is also in conformity with CA1 and setting up of organs of people's power? -- I have not got the exhibit referred to.

Page 4 paragraph 6. -- This does not change my evidence that the UDF did not seek to replace the local government by its own local government structures.

I put it to you, this document, EXHIBIT AAD5, the idea and the ideas contained in this document emanated from the National Executive of the UDF according to the first paragraph on page 1 of AAD5? -- I do not know this document. I cannot (30) testify/...

testify to that. I have made my position clear previously on that document.

I put it to you that in the beginning for security reasons the UDF did not openly declare its intentions and plans because they wanted to get the UDF off the ground and they were afraid of being banned by the government, but later on, when we get the other stuff, they are not so afraid any more? -- That is not true. The UDF still remained a non-violent organisation.

I put it to you that the UDF was the organisation (10) carrying out the policy of the ANC in getting the people highly organised, mobilised and politicised and to activate them into mass action and violent mass action against the government? -- I reject the proposition.

I put it to you that the UDF in actual fact is an internal extension of the ANC? -- I would describe that as an untruthful statement.

RE-EXAMINATION BY MR BIZOS : Mr Molefe, I want to take you back to 10 August, the first day of your cross-examination when a number of questions were asked of you in relation (20) to the relationship of the UDF to AZAPO. At that time the method of referring to documents had not yet been coming in operation and you spoke from memory. I want to have a look at a couple of documents in relation to the matters that you have said. Will you please have a look at EXHIBIT D1 the minutes of the UDF National Executive Committee held on 10 November 1983 and more particularly in paragraph 14 of that document. -- I have got the document.

Do you recall that you said that the National Executive Committee decided that they should be referred to Transvaal, (30) is/...

is that a minute confirming that statement that you made under cross-examination? -- That is correct.

Will you please have a look at EXHIBIT T3 the minutes of the Transvaal Regional Committee dated 21 January 1984 paragraph 5 of that document at the bottom of the page in which the following appears "AZAPO: A meeting was held between UDF - Transvaal and AZAPO on 11 November 1983. AZAPO said that they have decided not to affiliate to UDF. They will, however, co-operate with the UDF on issues which did not compromise their principles." Will you please (10) have a look at EXHIBIT T5, the minutes of the Transvaal Regional Committee dated 10 November - 10 and 11 March 1984 ... (Court intervenes)

COURT : T5 is the National Secretariate. Is that correct? -- That is correct. T5 is the minutes of the National Secretariate.

MR BIZOS : On page 3 of the minutes under the heading "AZAPO" the following is written "Transvaal motivated against invitation." That is (1). "(2) Matter referred back to the Regional Executive Committee." The other document (20) that I would like you please to refer to is EXHIBIT C3 which is a letter from you to Mr Twete, dated 13 September 1984 and more particularly page 2 (b) in which the following is written "Why does the UDF take a soft line in the face of attacks by the Black Consciousness organisations like AZAPO?" In view of those entries and statements in the documents of the UDF, what do you say about the allegation that there was a conspiracy at high level between the UDF and AZAPO? -- Such a statement is without substance. Conspiracy would simply not be possible with AZAPO. (30)

Conspiracy/...

Conspiracy has an element of criminality in it. Was the atmosphere such that there could be an agreement on anything with AZAPO at that time? -- It was not possible.

I would like you to please look at EXHIBIT A1 and more particularly the speech of Reverend Frank Chikane on page 37 in which it was put to you or you were asked whether the 20 year period referred to by the Reverend Chikane referred back to the ANC or the Umkhonto we Sizwe as an organisation to try and get the people together some 20 years ago. Do you recall that passage? -- I cannot (10) recall the passage. I remember the 20 - I thought it was 22 years or so. I just want to quickly look through it.

COURT : Left-hand top of the page. -- (Witness reads passage)

MR BIZOS : "The idea of the front, therefore, was a new concept in the struggle of the people for the last 20 years about and it was understood to be standing for unity in action, excepting the fact that all the organisations coming together have got differences" et cetera. Do you remember that you were asked about that? -- I remember the question. (20)

What I want to ask you is to please have a look at the reference to the all in conference.

COURT : Where is that to be found?

MR BIZOS : In C18 entitled "Some notes on the call for a national convention. This is the printed document of doubtful origin or of unknown origin, but it does deal with the history of the call for a national convention 1908 to 1909, but a reference is made to the all in conference which was held on 25 and 26 of March 1961 in Pietermaritzburg. Your Lordship will find that on the first page, page 6. (30)

"This/...

"This demand became particularly important in 1961 when for the second time a new constitution was drawn up for South Africa. This was the Nationalist Party's Republican constitution which once again excluded the Black majority. At this time the ANC and PAC had just been banned. An all in conference was called in Pietermaritzburg at which the National Liberation Movement demanded the immediate calling of a national convention. The national convention had to be sovereign. It had to be made up of elected representatives with all adult South Africans, Black and (10) White, having the vote." I may say that for Your Lordship's convenience Your Lordship may find this in the law reports in S v NOKWE AND OTHERS 1962 (3) 71 and if it shows anything, is that prosecutors think alike. I will say nothing more about that. In 1961 and 1987 and liberation movements.

COURT : It does show consistency?

MR BIZOS : And liberation movements. Do you know whether the Reverend Frank Chikane referred to that convention as the one of 20 years ago?

MNR. JACOBS : Ek wil net vra dat My Geleerde Vriend nie (20) die vrae so leidend aan die getuie stel nie. Dat hy 'n geleentheid kry om sy eie getuienis te gee.

MR BIZOS : I placed information before Your Lordship. I will try and change it. I do not know that it is leading, but I do not want to argue about it.

Do you yourself know anything about the all in convention of 1961.

COURT : The all in conference?

MR BIZOS : The all in conference. -- Yes, I have read about it.

(30)

Do/...

Do you know whether or not that conference was being referred to by the Reverend Chikane? -- I understood it to refer to that conference. In fact he was tracing the history of the exclusion of the African people in constitutional affairs of the country and the most recent indicating that at each point really there had been protest, there had been calls for inclusion in the constitution of the country. The last of such a call really was in 1961 when the last constitution, before the 1983 one was drafted.

COURT : Of what organisations or groups of people did (10) the conference consist? -- As I understand it, it had consisted of people who had been in the Congress of SACTU, South African Congress of Trade Unions. That comprised of people who had been in the ANC previously. People who had been in the PAC and a lot other small organisations took part in that conference. The similarity with the UDF is that when we launched the UDF it was really a call for the inclusion of all in the constitution of the country and at that time a similar call was really made that a constitution should include all. One may also indicate that both (20) conferences really called for a national convention.

MR BIZOS : Does its name "All in" convey any meaning to you? The name of the conference the All In Conference? --

COURT : It can mean different things to different people.

MR BIZOS : Your Lordship will see it in the judgment of TROLLIP, J. I think he actually sets out the very numerous organisations which were called. On that same day you were asked a number of questions and you spoke of the concern of the UDF to use legal methods in persuading the people to boycott the elections and to further the campaign against (30) the/...

the tri-cameral system and the Black Local Authorities.

I want to show you a document dated 21 August 1984. It is a letter on the masked head of the United Democratic Front. Do you know anything about this letter?

COURT : Is it a new document?

MR BIZOS : It is a new document. It will be in the DA series. DA28. I would like to draw your attention that it has the Western Cape Region on the masked head. Do you know whether this letter was confined - do you know whether this was used generally? -- This was used generally. It actually arose (10) out of the discussions of the National Secretariate. I think the meeting was held in July 1984.

"Circular monitoring of polling stations. We have consulted our attorneys for advice on the conduct of persons monitoring polling stations. After studying the Electoral Act number 45 of 1979, the following points emerge as a appropriate conduct" and then you set out how people should behave themselves in terms of the Act and what the penalties are if you commit any offences. Did you or anyone in the UDF at that time want to perform or rather to stay clear of any unlawful (20) act? -- That is so.

And was that the purpose for circulating the letter? -- That is so. We actually sought to have people monitoring the polling stations. They would have to stand nearby and see what happens with the voters when they got there, how many people went through the polling stations and so on.

MNR. JACOBS : Ek maak weer beswaar teen die leidende vrae wat gestel word. As mnr. Bizos by hom wou geweet het wat is die doel wat hulle wou bereik het, kon hy vir hom gevra het wat is die doel en dan kon hy self geantwoord het dit (30)

was/...

was om moeilikheid te vermy of nie te vermy nie. Elke keer lei mnr. Bizos die antwoord so, dan is dit net 'n blote ja antwoord en dan kom die ander antwoord. Ek vra dat mnr. Bizos - ek maak beswaar en vra dat hy die vrae sal stel op so 'n wyse dat die getuie sy getuienis gee en nie mnr. Bizos nie.

COURT : This is a Western Cape Region UDF document. Did you have anything to do with the document? -- The contents of the document?

Yes, the contents of the document? -- Not the actual(10) document, although I did receive a copy later on after it was produced.

Did you draft the contents? -- We agreed on the contents. Yes, I drafted the contents and sent it to each region.

MR BIZOS : Please look at the document headed "Legal Advice Sheet."

COURT : DA29.

MR BIZOS : Do you know anything about this document? -- I do.

What do you know about it? -- It is a document that(20) was produced just before what we call the people's weekend, people's rallies to be held at the end of October and it related to the distribution of pamphlets advertising that rally and a lot of other activities which were to take place in relation to that people's weekend, things like motorcades and so on. We sent a delegation to go and consult lawyers to advise us on what was or was not possible.

And for what purpose did you need this advice? -- We needed the advice because we sought to ensure that we did not contravene the law in terms - in the course of our (30) activities/...

activities.

And what campaign were you busy with on 23 September 1983? -- At this stage really we were concerned with the Black Local Authorities campaign. The campaign to boycott the elections for the Black Local Authorities and we had adopt the weekend, the end of October as a people's weekend.

This apparent respect for legality that you speak of, what do you say to the suggestion that you were actually conducting these campaigns in an unlawful and violent manner in order to disrupt the elections? -- That allegation has(10) got no substance.

You told His Lordship that you approached the courts for relief from time to time and sometimes relief was granted to you. I want you to have a look at a press release on "Successful court order" dated 16 December 1984. Do you know anything about this document? -- That is so. I actually issued this statement.

That would be DA30. It is headed "Press release on successful court order. The announcement that the weekend ban on UDF meetings were set aside by the Johannesburg (20) Supreme Court this afternoon, is certainly a major success for human rights in South Africa. We believe that the Court could in reality only decide in this way because the arbitrary nature of the ban could not stand the challenge based on hard facts. It is clear too that this ban was imposed to confuse and disorganise us. The UDF will continue to challenge every State initiative aimed at disrupting the voice of democracy. This is but another milestone passed in that process." Does that represent the attitude of the UDF in relation to legality? -- That is so. (30)

It/...

It was put to you on the second day of your cross-examination, 11 August 1987 that the call for the release of political prisoners and the return of exiles and the unbanning of political organisations was really an ultimatum and it was made for the - it was made with the full knowledge that the government would not agree. That is what was put to you. Part of your answer in relation to that was that the UDF was not the only organisation calling for a national convention at that time and not the only one which was setting out what the preconditions were. Do you recall (10) that? -- That is so.

I want to show you an article from the Star newspaper dated Friday, February 5, 1985 and I want you to please have a look at it and tell His Lordship before we ask you any further questions about it, whether you remember seeing it at the time of its publication? -- (Witness reads through article) I remember reading a similar statement.

COURT : DA31.

MR BIZOS : I would like to read this into the record.

COURT : Are you going to read the whole of it? (20)

MR BIZOS : No, only portions. The heading "PFP calls for lifting of the ban on ANC." I want to read the third and fourth paragraphs in the left -hand column wherein it is stated "The leader of the opposition, Dr Van Zyl Slabbert, called for a clear declaration of the intents of the government. He said it was needed before the initiative stood any chance of success. Dr Slabbert said an important step by the government was President Botha's announcement that he would consider freeing ANC leader Nelson Mandela from jail if he rejected violence." Then I would like to refer (30) particularly/...

particularly to the middle of the right-hand column in which Mr Olivier is mentioned for the third time. "Mr Olivier suggested that the time had come to consider lifting the ban on the ANC. This could create a climate for political negotiation. Replying to the debate the Minister of Constitutional Development and Planning, Mr Chris Heunis, said that the willingness of the government to negotiate should not be interpreted as a lack of will when it came to maintaining order and stability. Mr Heunis said the government was not prepared to give a blue print or agenda for (10) negotiations with Black leaders. If he did, it would amount to prescribing beforehand what the talk should be about." At that time, do you recall whether or not the door to negotiation had been closed completely by the government? -- The doors to negotiation were not closed completely. There were indications that the government was prepared to negotiate. I think at that same time there was a lot of talk about how to include the Black people in the government of the country.

I want to show you another article in The Star dated (20) Wednesday, December, 12 1984, headed "NP paper says time may be right for ANC talks." Please have a look at it and tell His Lordship whether you saw this at the time or not?

COURT : This is third-hand hearsay is it not?

MR BIZOS : Except, that the perceptions - we tried to find Beeld without success.

COURT : Do you want the perceptions of The Star not the perceptions of Die Beeld?

MR BIZOS : We actually tried to find Beeld and my note is in fact "Put in Beeld if available by the time re-examination(30) has/...

has to be done", but we have not had any success in that regard, but the perceptions would have been created by all the publicity, including the - do you recall whether you saw this? -- Just having read the first column I recall reading this, but I did not read it directly from the Beeld. I think I read The Star.

COURT : That will go in as EXHIBIT DA32.

MR BIZOS : And it reads "A leading nationalist newspaper suggested today that time could be right for talks between the South African government and extra-parliamentary (10) groups, such as Inkatha, the ANC and the UDF. In its leading article Beeld said the question whether such talks should take place, struck a raw nerve in South African politics." So it goes on. I do not want to read the whole of the article, but I want to ask you is this. It has been suggested to you that you knew or ought to have known that the government would never ever talk to the ANC or the UDF or call a national convention. What do you say the climate was during 1984 when the call for a national convention was being made? -- I would say the climate was one of good-(20) will, where there were indications that negotiations were possible. As I have indicated in my evidence previously, we sought to take advantage of that and influence the content of the changes that were to take place.

These matters expressed as pre-conditions, such as the release of Mr Mandela and the unbanning of the ANC and other unlawful organisations, you said under cross-examination that other people, such as Inkatha, Enoch Mabusa, Tom Boya and others have called for the release of Mr Mandela as a precondition for their participation in the national (30) statutory/...

statutory council which has been proposed, which as been on the table for about a year as a result of the President's announcement. Do you recall that evidence? -- I do.

I want you to please have a look at an article in the Sunday Star on 19 July 1987.

COURT : Is that not a bit late? We were happy with '84 and the beginning of '85. Why take yesterday's newspaper?

MR BIZOS : Except that these persons like UDF Update speak with a continuous attitude in relation to these matters.

COURT : Well, that document would be admissible if reference was made to it in terms of a section in the Internal Security Act. Can you bring it under the section? (10)

MR BIZOS : But I am not going to press the point, but what was really being put to the witness is that you, as you are standing there, are not telling the truth when you tell us that you expect the government to accept those conditions. His answer is I do not only say that. People to the right of us - it is a convenient label ... (Court intervenes)

COURT : Then you can call all those people to the right and left of yourself, but not through a newspaper article. (20)

MR BIZOS : I will abandon the tender. I will first ask this, you have said that these people called for similar conditions and participating to the council. Was this part of the general debate? -- It was part of the general debate. I may also indicate that Reverend Sam Mbuti had also made a similar statement, that he was not going to participate in the national forum. That time it was commonly known as the Black Forum and he was saying that he was not going to be party to that. Many people were surprised because he had accepted the BLA, they could not understand, (30)
but/...

but he said he was not going to be party to that unless Nelson Mandela and others are released, the ANC and the PAC were unbanned so that proper negotiations could be undertaken with a view to bringing about a constitution acceptable to all the citizens of the country.

On that same day you were shown EXHIBIT C131. I want you to please have a look at it and tell His Lordship whether you had ever seen that document before you became involved in this case and whether or not it sets out UDF policy? -- I do not know this document. It is not a UDF (10) document. It does not set out the UDF policy.

WITNESS STANDS DOWN.

COURT ADJOURNS.

COURT RESUMES.

POPO SIMON MOLEFE, still under oath

FURTHER RE-EXAMINATION BY MR BIZOS : Mr Molefe, it was suggested to you that the use of the word destroy in UDF documents was evidence of the fact that the UDF was an organisation which would use violence. I want you to please have a look at EXHIBIT W41. This is the - under, just under the words "Big lies", underneath that ... -- What page (20) are we looking at?

It is on page 3.-- I have got the page.

Just under the head "Big lies, simple truths", the following appears "Hendrickse says 'We are going into the new deal to destroy apartheid from within.'" Who is the Hendrickse referred to? Do you know? -- That is the leader of the Labour Party, Mr Allan Hendrickse.

What does the statement refer to? Do you know? -- The statement really refers to the argument put forward by the Labour Party as to why it was going to participate (30)

in/...

in the tri-cameral parliament. They were saying that they were going in there to destroy apartheid from within.

You asked for examples of political language. I may say, My Lord, that we intend placing before Your Lordship through other witnesses the type of language. Is this sort of talk "destroy apartheid from within" something that was in current use at the time? -- It had been in use for a long time, as well as at that time. I had testified in my evidence that subsequent to the collapse of the Coloured Representative Council the Labour Party had claimed that it had destroyed(10) the basic structures of the policy of separate development.

By the way, have you ever heard the expression "Apartheid is dead"? -- I think I heard that for the first time in 19 - around 1978 I think it was. That statement was made by Dr Koornhof. He was I think in the United States of America dealing specifically, at that time I think he was the Minister of Sport and he was saying that apartheid is dead and then subsequent to that it was really a phrase that was used from time to time in government circles.

Did you believe it? -- I did not believe it. (20)

This idea of destruction and death of apartheid, did that convey the use of violence to you? -- It did not.

Would you please have a look at EXHIBIT W37. That is Working Progress of February 1983, volume 7. There is on page 7 the second column the third last paragraph a statement by Mr David Curry. I will start with the words "The CRC", what does that refer to? -- It refers to the Coloured Representative Council.

"The CRC was finally established by the government in February 1980 ..." -- Finally abolished. (30)

"Finally/..."

"Finally abolished", I beg your pardon "by the government in February 1980 and replaced by fully nominated Coloured Persons Council (CPC). This council never got beyond the planning stage. Curry hailed the decision as 'a victory for the party and a ratification of its stand for using the platform of the CRC to destroy the basic structure of the policy of separate development as far as the Coloured people are concerned. It is a recognition of the power of the Labour Party and an admission by the government that it fears Coloured voters by appointing a fully nominated (10) council not holding elections. It also clearly exposes the bankruptcy of the government when it has to resort to legislation to remove elected leaders, selected in terms of its own policy. The people nominated to the new council will be looked upon as representatives of the government and not of the people.'" Being asked on political language, you were asked whether people to the right of the UDF used this sort of language. Where would you place Mr Curry? To the left or the right of the UDF? -- I would place him to the right of the UDF in the sense that he had accepted parti-(20) cipation in what the UDF rejected as policies that were furthering apartheid.

I would like you to please have a look at the same document on the first column the first paragraph, page 7, dealing with the 1977 constitutional proposals does the following appear "The only solution acceptable to us would be the holding of a national convention, representative of all South Africans in order to formulate a new constitution for the country. This will provide the means to find a just solution to the problems facing our country." Will (30) you/...

you please have a look at the top of the second column of page 6. Does that appear to have been what I have just read out, the statement of the Labour Party's view of the 1977 constitutional proposals? -- Are we looking at column 1 page 7?

No, in order to show who said what I have read previously, who it was that had called for a national convention.

COURT : It seems to have been the Labour Party's national executive. (10)

MR BIZOS : The national executive issued a statement - the document speaks for itself, calling for a national convention. -- That is so.

You were asked whether you wanted by your actions to make the government plans unworkable? -- I was asked the question, yes.

I want you to please have a look at the same document on page 11 where the following appears in the middle of the second column "The Labour Party has entered the parliament." Do you see that? -- I see the section. (20)

"The Labour Party has entered the parliament reassuring its supporters that if things do not work out, they were treated in the same as they treated the CRC and make it unworkable." Was it known during 1983/84 and before your arrest in 1985 as to what the role of LP was, the Labour Party was in making the previous representative body that they were on unworkable, the CRC? -- It was a wellknown fact and in fact that is what gave rise to the popularity of the Labour Party after the collapse of the CRC. It is also the reason why many people were shot when in January 1983 the Labour (30)
Party/...

Party decided to support the new constitutional proposals.

Insofar as your cross-examiner, My Learned Friend, Mr Jacobs, may have equated the expressions making the Black Local Authorities unworkable with making the country un-governable, do you draw any distinction between the two? -- That is so.

Would you like to explain to His Lordship and the Learned Assessor how you distinguish these two notions? -- When one talks about unworkability, making it unworkable, one really refers to a situation where it does not get (10) co-operation from the people. It is discredited politically to a point where the government can simply not go on or if it goes on, it goes on with a shell that is empty and that has got nothing inside, that has got no respectability. That would have entailed of course either people in it refusing to co-operate in carrying out certain policies or where people would refuse to stand as candidates, where communities would refuse to support, to participate in the elections. Any other schemes of that kind of a structure. But when one talks about ungovernability, I would under-(20) stand that to mean really a situation of chaos where services cannot be provided. There is simply no government at all. Nobody is in control of the situation. Everybody is doing what he likes. That is, I think, in simple terms the difference that I can draw.

Insofar as non-negotiable conditions may be set by political parties and how seriously they are considered as non-negotiable, I would like you to read the same document page 11 the third paragraph on the right-hand column "The Labour Party has committed itself fully to a parliament (30) which/...

which is based on two premise. Both Botha and Heunis are on record as saying the removal of the group areas act and the inclusion of Africans in the new dispensation, constitute non-negotiables." Were those expressions currency at the time? -- That is so. I think these really were from about 1982 and so on, that there had been public statements by cabinet ministers to this effect.

Still dealing with the question of political language at the time, you yourself used the word puppets in the witness-box? -- That is correct. (10)

Did you use it in your writings and in your speeches? -- That is so.

My Lord, may I indicate that the date in relation to this is against me, but I submit that it is used even now, this is part of the political language and I intend putting in a cutting dated 26 August 1987.

COURT : Why bother with what is written now? It would not help us at all. There are lots of stuff written in 1984 and 1985 that would probably support you. I do not know. (20)

MR BIZOS : Here is a situation, I need not put it in, but a group of people are described as decorative puppets. The amount of insulting, if you like words, is part of the rough and tumble of political language in the country.

COURT : Yes, very well, put it on.

MR BIZOS : I would like you to have a look at the Sowetan of Wednesday, 26 August 1987. This will be DA33. "At first glance the drama between the State President and the Reverend Dr Allan Hendrickse is a sad one with Mr Hendrickse getting a raw deal from Mr Botha, but when you look a little longer(30) you/...

you will realise that there is nothing that Mr Hendrickse is using. He continues to get his full salary as a minister inspite of having resigned from the cabinet and he continues to get all the pokes of being a minister. The rest is just a lot of words. What in fact makes this a sad story is that Mr Hendrickse and other Black in the tri-cameral parliament went against the wishes of the majority of this country and got involved in second class politics. They argued that they would fight apartheid from within. They are now getting frustrated by the system but instead of nodding their heads (10) and getting out, they are this graceless dance."

COURT : Now why should you read the whole of this article when you can just refer to the last paragraph - refer me to the last words in the last paragraph.

MR BIZOS : I thought things like second class politics and getting out of it and boycotting it, its advocating boycott, something that the witness was cross-examined on has been something conspiratorial and treasonable and what we intend proving is that what the UDF was doing, is really part and parcel of the parlance of the political type of war that (20) has been going on.

COURT : Yes, well, in future will you confine yourself to the period of the indictment, please. It will make it rather difficult if we start using language which may have become invoked after the time of the indictment.

MR BIZOS : I will then read the last part. "Mr Hendrickse and his colleagues in the House of Representatives and the House of Delegates, are a pathetic lot and they will continue to be for as long as they continue to remain in parliament as decorative puppets." Was this sort of language involved(30)

at/...

at the time that the UDF was operating? -- That is so.

I now want to turn to another point. You told His Lordship that people in the townships were paying more for electricity than people in the large centres? -- I did so.

We certainly cannot find our copy ... (Court intervenes)

COURT : The Court would like to put to you something in that regard, while counsel is looking for his documents. Are you putting that as a general proposition or are you contrasting new projects in the townships with old projects in certain White areas? Because the redemption factor comes into play(10) when you determine the amount to be paid for electricity monthly. -- I was really referring specifically to things like consumption, the money charged for electricity consumption per unit.

Yes, but the money charged per unit includes electricity board and also redemption on capital costs? -- Well, I do not know about those details. I was merely looking at it from the point of ... (Court intervenes)

I am asking the witness this question, Mr Bizos, so that you can be warned before we get embroiled into a very intricate debate about the financing of electricity charges. (20)

MR BIZOS : I will do nothing more and refer Your Lordship to AAC56 page 16 where the two different rates are given. 5c for the one and 6,14c for the other in the little block there in the left-hand bottom corner.

COURT : What is LRC? -- Labour Resources Centre.

Labour Research Committee?-- Research Committee.

MR BIZOS : In answer to your cross-examiner, you were asked whether you would condemn the ANC or Mr Mandela or both of them. In your answers you said that there were different(30) perceptions/...

perceptions and that Black people could not bring themselves to condemn either the organisation or Mr Mandela. Do you recall that? -- I recall that.

And you also said that the UDF was not alone in this but that statements were made by various others? -- That is correct.

I want to show you a statement by Mr Middleton. You mentioned his name in your cross-examination. Who is Mr Middleton? -- He was the deputy leader of the Labour Party. He resigned in January 1983 when the Labour Party decided (10) to participate in the new dispensation.

This is a cutting from the Star of 8 April 1980. Will you please have a look in the third last paragraph on the left-hand column. Do you recall seeing this "In another major resolution the delegates decided to support the campaign for the release of Nelson Mandela. Mr Middleton said party official has had discussions with people in Johannesburg and Durban regarding the campaign. Mr Mandela is our natural leader and we have therefore called on our supporters and members to give their full support to the campaign, he said. (20) He said some of the other resolutions adopted were" and I want to read two others, the first one on the right-hand column "That telegrams be sent to the British Prime Minister, Minister of Sport to stop the Lions tour of South Africa in accordance with common wealth - the common wealth Gleneagles agreement and the United Nations sports boycott against South Africa" and the last resolution "The party should strive for complete unity among the Black people in the struggle for full political rights and should work tirelessly to politicise the so-called Coloured people." (30)

Do/...

Do you recall seeing this at the time?-- I recall reading a similar report.

I ask leave to hand it in as DA34. Again to use the imperfect yardstick to the left and the right, would you consider the Labour Party to the left or the right of the UDF? -- When one really looks ... (Court intervenes)

COURT : The Labour Party in 1980 or the Labour Party in 1987? -- I was going to say if one takes it as at this time, it might well have been on the left of the UDF, at this time of 1980. But as of now it is really to the right(10) of the UDF.

MR BIZOS : Please have a look at a cutting of the Sowetan of 13 June 1983 "Inkatha leaders slans 'reform' ..."South Africa's constitutional changes are recipes for violence, says Chief Gatsha Buthelezi. Speaker at a press conference in the Netherlands on Friday after talks with Dutch Foreign Secretary Willem van Eerkeren, Chief Buthelezi said the proposed three chamber parliamentary system had clearly closed the door on political participation by Blacks and would inevitably lead to escalation of violence. Pleading(20) for non-violent resistance to the government's homeland policy Chief Buthelezi said he could not, however, condemn members - condemn ANC members for their use of violence. We are comrades in the same struggle, he added. He had requested clemency for the three ANC members executed last week for bomb attacks and said because they were not ordinary criminals." The UDF was highly critical of Chief Buthelezi? -- We were critical of his participation, yes, in the homeland system.

This perception that he would have spoken of, that (30)
the/...

the UDF was not alone in relation to not condemning the ANC, not being able to use the word terrorist and regarding people who are opposed to apartheid as comrades in the same struggle, is this representative for Black people as a whole? -- I would say representative of the vast majority, but I cannot say as a whole.

I want to show you another cutting of The Star of 16 May 1983. Have you seen this before? -- I saw the report before.

I beg leave to hand it in as DA36. I will try and (10) read only the pertinent parts. Will you please have a look at the second paragraph in the second column "Any Black man who even sings of co-operating in this treacherous political development, will have opted out of the Black struggle for liberation." Will you please also have a look at the first column - the third paragraph in the first column. "He said he was surprised by the Labour Party's decision to join the new constitution with such haste. Long before there was any need for them to act, they betrayed us as comrades in the struggle for liberation." I would like you to please (20) have a look at the second paragraph on the first column. "Their fingers are itching to shoot 'Kaffirs', If anyone what I am saying look at the invasion of Angola, look at the Maputo killings and look at the South African Defence Force shootings in Maseru last December, he said. Of the African National Congress Chief Buthelezi said he had never condemned the external mission of the organisation co-opting for armed struggle. All I have pointed out is that if people at any time are forced to take the option of violence, I am not afraid to leave them, even though those - even (30) through/...

through those dark waters as the people's options are many options." I beg your pardon "as the people's options are my options." Was wide publicity given to the views of the Chief Minister at that time? -- That is so.

MNR. JACOBS : Ek maak weer beswaar teen die leidende manier van hierdie vraag. Hoe kan mnr. Bizos h stelling maak dat daar "wide publicity" gegee was aan hierdie dinge en dan stem die getuie net saam? As die getuie weet dat daar wye publisiteit gegee is, dat hy dan sê dat daar is wye publisiteit gegee en die voorbeelde gee. Elke keer word h (10) stelling gemaak op h leidende manier en dit word dan sommer die getuienis van die getuie.

MR BIZOS : It was a question, but if My Learned Friend wants to ask the witness for details, was there any discussion at the time about these views?

COURT : Well, do not let us be so vague about these things. What publicity do you know of? -- It was widely reported.

In what newspapers? -- The Star newspaper.

We have got The Star. What other newspapers? -- The Rand Daily Mail had a report of that. (20)

What else? -- It was spoken about generally in the streets. There had been at the meeting attended what was estimated by other newspapers as 15,000, others 10,000. The Jabulani and Sowetan. The Sowetan newspaper had also reported on that.

MR BIZOS : I want to go on to the next point. Would you please have a look at C23.

COURT : What I have noticed in this article in the previous one is that expressly every time Chief Buthelezi says "Do not resort to violence." What is the next one? (30)

MR BIZOS/...

MR BIZOS : C23. Do you know whether this speech purporting to have been written by Professor I.J. Mohammed and to be delivered on 27 November 1983 was ever delivered in this or any other form? -- I do not know. I was not present at that meeting, neither did I know that Professor Mohammed was going to speak at that meeting. I did not even get a report that he had spoken at the meeting after the meeting. So, I do not know if the speech was delivered or not and whether it was delivered in this form or not.

What event or events were to take place shortly after (10) 27 November 1983? -- There were supposed to be elections for the Black Local Authorities in Soweto and elsewhere in the country.

The speeches that were delivered during that period, what were they to deal with? -- One would have expected them really to deal with the then coming elections for the Black Local Authorities although they would have also dealt with the tri-cameral, the elections, because it was shortly after the constitution bill had passed as an act and it was a few weeks after the White electorate had given a go ahead (20) to the new dispensation.

We have had evidence that the election in the Vaal was, if my memory serves me correctly on 29 November. Do you recall whether or not there was going to be an election in Soweto? -- I think there was going to be an election in Soweto at the beginning of the month of December. I think on the 3rd or so.

Had there been any publicity as to what the people were expected to do in relation to that election? -- The question is too broad. There have been a lot of publicity calling (30) on/...

on people to boycott the elections from the side of those who were calling for the boycott of the elections.

You were asked how the second last paragraph on page 5 would have been understood by the audience if the speech was delivered to an audience. "Let our pride in the response of our people fire us with a new determination to destroy the local authorities and bring our struggle for freedom to a new height as we join hands in our day to day struggle for freedom." In the climate or in the atmosphere in which you lived in Soweto at the time, if these (10) words were uttered, would you like to venture an opinion if you were asked before, as to how that might have been understood? -- They would have been understood simply to mean that people must not support the policies of the government, in particular the Black Local Authorities which were presented as a solution to their problems. It would have meant that they should demonstrate this by not voting, by staying away from the poles.

You also said in your evidence that the UDF sought to impose discipline at times when there were spontaneous (20) behaviour. Would you please have a look at EXHIBIT C102 page 9 paragraph 7.1.

COURT : That is page 9 of the Secretarial report I take it?

MR BIZOS : Yes, the Secretarial report. It reads "7.1 Black Local Authorities. After a successful campaign against the BLA our affiliates felt to assert their legitimacy at a local level. Subsequent to raising the level of awareness in generating excitement, our affiliates did not mobilise the masses effectively. In many areas in the townships organisations trailed behind the masses, thus making it (30) difficult/...

difficult for a disciplined mass action to take place. More often there is continuity of actions in the townships." Is that what you were referring to when you gave evidence? -- That is so. All really one was trying to convey here was that a lot of things which were happening in the townships were almost taking everybody by surprise without organisations being at the head of that.

In EXHIBIT C102 you were asked why the United States of America, the United Kingdom and the Federal Republic of Germany were singled out and the Soviet Union was left (10) out of the appellation of imperialists. At the time was there any saying that these countries that you labelled as imperialists had done together or singled themselves out in any way? -- My recollection is that at that time they had demonstrated their support for the new constitution and in respect of America, apart from that, there had been a statement issued by Mr Reagan suggesting that the shootings that took place in Uitenhage were justifiable, which we now know were criticised by the Kannemeyer Commission.

Do you know whether or not there was a debate at the (20) United Nations in relation to the new constitutional proposals? -- There had been a debate in the United Nations and these countries had abstained, they had refused to vote against South Africa.

These three countries? -- That is so.

COURT : In the general assembly? -- I think it was in the general assembly.

MR BIZOS : And the rest of the world? -- The rest of the world had condemned the new constitution and voted against it.

You were asked in cross-examination whether you expected His Lordship to believe you that since 20 August 1983 (30)

the/...

the National Executive Committee had not discussed the details of the national convention. Would you please have a look at EXHIBIT C59 of 13 September 1984. Do you recognise this document? -- That is so.

Was the letter written by you and signed on your behalf? -- That is correct.

And who drew the document? -- I drew the document.

Headed "The future of the UDF. Some NEC views attached to the letter." -- That is correct.

ASSESSOR (MR KRUGEL) : Did you draw this also? -- The (10)
second document?

Yes? -- I did.

MR BIZOS : Will you please have a look at the last paragraph of the second document reading "These views are not intended to pre-empt any serious discussion. They must not be seen as a ceiling to any meaningful discussion. New ideas extending beyond the points given, are welcome." Will you please have a look at EXHIBIT H1? That calls on regions to discuss various matter and encloses guidelines arising out of the NEC meeting. (20)

COURT : Yes, but now what portion of the document is relevant? Guidelines for what?

MR BIZOS : For a national convention. Will you have a look at the second enclosure annexed to C59? The second paragraph on page 1. "The NEC stated firmly that because ... (Court intervenes)

COURT : The heading is "Demands of the UDF and the Anti-election campaign"?

MR BIZOS : Second paragraph "The NEC stated firmly that because any demands put forward by the UDF relate directly (30)
to/...

to the overall policy of the UDF, decisions could only be taken after thorough discussion in all regions and on all levels. The NEC has, however, submitted the suggested line outline for discussion into all regions." Will you please have a look at the last paragraph of that document on page 2. "Our immediate demands. There was common agreement that the projection of the demands such as democracy, freedom and non-racialism were in themselves too abstract and that during the Anti-election campaign more specific demands need to be made. A number of suggestions were (10) put forward. Release of all political prisoners, unbanning of organisations and individuals, return of exiles, repeal of pass laws, stop pass arrests, repeal of security legislation, stop forced removals, repeal of Coloured Labour preference area policy. The demand for all South Africans to take part in the drawing up of a new constitution. This demand would include the demand for a national convention/constituent assembly or people's assembly with the necessary preconditions emphasised." Was that the discussion that was going on at the time? -- That is so. (20)

And was any final conclusion arrived at by the time of your arrest? -- There was no final conclusion at the time of my arrest.

Would any suggestions have to be ratified by anyone? -- Those suggestions would have had to be - is it the suggestions of the NEC?

The suggestions that came out of the discussion? -- They would have had to be ratified and synthesised by the NEC.

May I just indicate, My Lord, that this is recorded (30)

on/...

on EXHIBIT H1 which are really the minutes as guidelines. I want you to please tell us in August 1984 what proportion of the National leadership was detained? -- Mr Gumede, one of the presidents was in detention. So was one of the National treasurers Mewa Ramgobin, the national publicity secretary was in detention. Aubrey Mokoena was also in detention. The NEC was in detention. Dr Saloojee was in detention. George Sewerpersadh, one of the vice-presidents, was in detention.

Where was Mr Curtis Nkondo? -- He was not on the(10) NEC. He was also in detention.

What about the top leadership in the more important regions? How many of those people were detained? -- At that time we estimated about thirty or so really. All of them from various regions.

I think we have the date, some were detained on the 20th and some possibly on the early hours of 21 August 1984? -- I should think they were all detained on the 21st. COURT : How long were they in detention? -- Some of them until, I think until late 1986 and others were released (20) briefly I think and re-arrested. We had an application, challenging the section under which they were detained. The powers of the minister to detain them, to issue orders for their detention and then some of us were released. We were released on 10 December and then of course in February 1985 other people were detained again.

MR BIZOS : You said that they were detained until late 1986. Are you sure of that? -- Well, a person like for instance Aubrey Mokoena. He was detained on 21 August 1985 and I think - August 1984 and I think he was released on(30)

bail/...

bail. No, I think I am mistaken. I think he was released on bail around May 1986 or so. I was already in detention but I read about their release on bail.

You were detained in October and released in December?
-- That is so.

And again detained in April. What effect did this have on the internal workings of the UDF from August 1984?
COURT : The last dates I missed. You were detained when, released when, redetained when? -- I was detained on 2 October 1984 and released on 10 December of the same (10) year and I was redetained in April 1985, on 23 April.

MR BIZOS : And brought to court on 12 June 1985? -- I think it was on 11 June.

These detentions of the leadership of the UDF, what effect did this have on the workings of the UDF? Do you know? Let us be specific. Let us deal with the period when you were free from 21 August to 2 October, what had happened to the leadership that you were a member of? How did you manage to do the UDF work with them in detention? -- Well, it really disorganised the structures of (20) the UDF. Firstly it meant that those who had not been caught by the net on the 21st, had to avoid it, avoid detention. It meant we could no longer operate from the offices on a regular basis. It was not possible to meet with a few individuals who had not been detained. It was difficult to find members of the UDF and important discussions which were to take place could not take place. So, it really disorganised us in a number of ways.

This business of keeping away from the police, had you felt that you had committed any crime? -- I considered (30) myself/...

myself to be innocent and I felt that it was an unwarranted punishment that we were subjected to.

What unwarranted punishment do you refer to? -- Where one would be detained without any charges preferred, just kept away in jail for a long time. It had happened to me previously and I knew what it meant.

Were you alone in this situation that you - had any of the other people in the National and Regional executives been detained previously and not charged and released? -- That is so. (10)

You have told us that it was very difficult to really run the affairs of the UDF during this period? -- That is correct.

What happened to the proper filing of documents and the proper presentation of reports and proper circulation of documents from one region to the other? What happened in the UDF from 20 August, 21 August onwards? -- There was what one could call a situation of chaos. One could not follow anything up properly. It was really very difficult. It was difficult to run the office and to know what was (20) happening in the office during that period.

You were taken to task for something said in a document about drawing a list of people who had committed crimes of apartheid and there was a suggestion ... (Court intervenes)

COURT : What document are you referring to?

MR BIZOS : AAA2 I think. There was cross-examination on it. It is AAA2 page 6 item 20. Your Lordship will recall this check list?

COURT : The judicial commission?

MR BIZOS : Yes. On those notes, you will notice that (30)

there/...

there is a question mark after this. Is there a question mark there? -- I see that.

Who put the question mark there? -- I put the question mark there.

Why? -- I think I put the question mark really because the decision was not final, it was a matter that was to be discussed further. It really meant whether it was necessary to proceed with that kind of a commission. It was a matter that was to be debated further really.

Before you made these notes on AA2, do you recall (10) whether the matter had been publicly discussed or not? -- I know that that it had been discussed previously and it had also been the subject of debate in parliament I think round 1983 or so in a similar matter.

My Lord, I may indicate that we have the minutes in parliament but as indicated we cannot really prove them, but there was newspaper publicity which I intend proving in that regard.

COURT : I have some doubt about whether your interpretation of the ruling of the speaker can be correct. I was (20) taught that Hansard was there to serve as a record for everybody to read as to what happens in parliament. On what basis can it then be ruled that nobody may refer to it?

MR BIZOS : May prove it.

COURT : If you were entitled to refer to it, why am I not entitled to refer to it?

MR BIZOS : Well, Your Lordship can do it and there is nothing preventing Your Lordship from doing that.

COURT : I mean not as a private individual but as the Court?

MR BIZOS : When I spoke about it, I spoke off the top of (30)

my/...

my hat and Mr Marcus also doubted it and we looked at the books and eventually found that there is a case KAHN v TIME INCORPORATED and its origins are in an act called The Powers and Privileges of Parliament Act, which prohibits anyone from proving in court without the authority of the speaker ... (Court intervenes)

COURT : What is the reference to the act and what is the reference to the case?

MR BIZOS : The case is KAHN v TIME INCORPORATED AND ANOTHER per WILLIAMSON, J. 1956 (2) SA 581 (WOD). It was then (10) known as the Powers and Privileges Amendment Act no. 19 of 1911 and it is now the Powers and Privileges of Parliament Act, no. 91 of 1963.

COURT : So, how does one prove then that the Prime Minister or the State President said something in parliament?

MR BIZOS : You would have to ask the speaker to issue a certificate. That is what they had to do in - the point was taken. The KAHN case affects not only the parliament but the sub-committees and the select committees that inquired into it and really the fundamental reason is to (20) protect people really giving evidence to those committees which generally speaking are in committee, but the act is in general terms. So that - and the point was taken by the defendant who had to prove some highly defamatory matter against Mr Kahn and tendered what was being said in parliament and the point was taken and the point was upheld. An attempt was made to issue a certificate by the clerk and the Court found that the clerk was not good enough. Where it says the speaker, it means the speaker, but be that as it may, it came as a surprise. It was something off (30) the/...

the top of my hat and obviously remembered the case from days gone by when I read reports as a matter of course and not selectively. That is how it came about, but I submit - we are proving what was being said, what was the political debate at the time and not wanting to as this ... (Court intervenes)

COURT : Just for interest sake. If the State President makes a public statement in parliament, as he normally does, would it then be a contravention of the law for the press to report? (10)

MR BIZOS : No.

COURT : Everybody can talk about it except that nobody in court may say anything about it?

MR BIZOS : In terms of the case and in terms of the act you cannot prove Hansard to say this is what was said. You cannot prove the document. Presumably you can call the newspaper person to say that I was in the gallery and this is what the President said.

ASSESSOR (MR KRUGEL) : Would that not be hearsay?

MR BIZOS : It depends what the issue was. If the issue (20) was that this is what I heard and this is what I published in my newspaper. If the issue was what did you publish in your newspaper, did you publish what he said or did you distort what he said.

COURT : It may relate to the reliability of Hansard.

MR BIZOS : I think that originally it was really part of the privilege of parliamentarians and the protection of people.

COURT : To say what they want to.

MR BIZOS : To say what they want to and that they would (30)

not/...

not be capable of easy proof by just producing Hansard.

COURT : Any way, they still say what they want. I will have a look at this case just for interest sake. You go ahead and do it your way.

MR BIZOS : When we could not find the authority, because it was not so easy to find, My Learned Friend had phoned a learned professor who had never heard about it. So, Your Lordship is not alone.

COURT : There are many, many things I have not heard yet.

MR BIZOS : Was there talk before you made this entry (10) with a question mark about this question of trials? -- There was a talk. I had read about it in the newspapers. There had been ... (Court intervenes)

COURT : How do you mean? Talk of who trying whom? -- I had read about the suggestion that there might be trials similar to those of the Nürnberg, relating to the activities of the Nazi the activities of Nazis, in Germany, so that the subject of judicial commission came as a result of reflection on previous reports on similar atrocities.

ASSESSOR (MR KRUGEL) : It is not plain what you mean. (20) Do you mean that there was talk that some section of the community or some organisation was advocating trials on the basis of the Nürnberg trial zone, that this came up in parliament? -- When I read about it, it had really first come out. It had been reported in the newspapers and then it was ... (Court intervenes)

COURT : Was it reported that in parliament somebody suggested a People's Judicial Commission? -- That is so.

In parliament? -- That is so. No, no, not the People's Commission. It is something like the Nürnberg trials, (30) suggesting/...

suggesting that there should be some kind of a register kept of people committing atrocities. There was a debate on the whole question of forced removals. It related also to that.

If it is a crime, it is brought before the court. How can anyone in parliament say you must keep a separate record? There is a record of the Court?-- They said so. It was reported like that in the newspapers and I think in 1984 there was a discussion similar to that, though not a structured one within the circles of the UDF and the (10) suggestion for a judicial commission was finally made in 1985.

Could I just get clarity. Are you saying that in parliament somebody stood up and say "We must have a judicial commission to record the crimes of collaborators"? -- That is so. I remember ... (Court intervenes)

What sort of a person was this?-- I remember reading a statement made by the PFP, a member of the PFP in parliament.

Referring to whom? -- He was accusing the government for (20) the policy of forced removals. This policy has undermined the dignity of the people, desecrated all the places and so on. It has led to forced removals of over three million people. Something like that and that their atrocities were similar to those experienced caused by I think the Russians and so on.

MR BIZOS : It is documented. We share in some respect Your Lordship's surprise, but we intend proving this as part of the language which in the cold and calm atmosphere of the court is considered or it may be considered unacceptable (30) but/...

but which was published in a newspaper not of the alternative kind as the present matter is referred to and also taken up by a member of the country's loyal opposition in parliament. I want you to please have a look at an editorial in the Sunday Express of June, 12 1983. I want to read the whole of it. Did you read it at the time? -- (Witness reads article) I recall reading this article, but I think I had confused it somewhat because I think later on this very article became a subject of debate in parliament raised by I think the PFP in parliament. (10)

I want to read this into the record. It deals with a number of things that you can taken to task for. It is the Sunday Express June 12, 1983. I suggest that it be called DA37. It is an editorial and the heading is "Atrocity: Who did what? Cruelty like any sin or any crime is easier after the first time and it becomes progressively easier with each repetition. That surely must be the explanations for the ease, the pitiless with which South Africa has continued uproot people from homes and familiar surroundings and chuck them into the wilderness like so much trash. (20)

The five volume report on forced removals published this week biting the name Surplus People's Project, comes like a blow to the solar plexus. Breathtaking and numbing and painful all the same time. No newspaper account can possibly convey, as these volumes do, the full horror of the cold-blooded policies that the Nationalists have pursued since 1960. Find the said and read it for yourself. As a nation who have committed atrocity on the same scale as the Russians in terms of numbers of victims, if not of deaths, we have outdone the Turkish forced removals of (30)

the/...

the Armenians which ranks as one of the great plots on this century. We have forcibly removed three and a half million people and we propose to move another two million. In doing so we have seized land, desecrated holly places, broken families, divided friends and smashed the affections of small people and their familiar locality. Inflicted hardship and pain, perpetuated poverty and wasted the scarce wealth of a half developed country, smashed the hopes and the lives of little people, bullied the weak, broken the strong and generally behaved with an indifferent callousness that(10) deserves only one description. It has been a triumph of evil. It is all recorded. In an overwhelming mass of discussionate detail, in the five volumes under the title 'Forced Removals in South Africa.' Copies can be ordered from Surplus People's Project, P.O. Box 187, Cape Town. No library should be without it. Faced with this shattering evidence we have only one rather dispairing suggestion to make. It is that opponents of this government and its policies should be begin now to compile a register of those who have in the name of the nation committed these atroci-(20) ties. We need to begin now to work towards our own redemption, by recording the names of the politicians who have made these policies and their words. We need to complete a register of the names and pictures and a record of the specific acts of the officials and the policemen who have carried out this mass removals. We need to begin now to record who did what, to whom so that one day when South Africa is put on trial for its actions. the guilty will not be able to hide in the minds of those who were merely indifferent. For surely, as there is justice under heaven,(30) there/...

there will be a day of reckoning." I want to show you a newspaper report in The Star on Thursday, 30 June 1983 under the heading "Tempers flare as Nazi war trials jibe riles Government" The second paragraph on the first column "In the third reading debate on the budget Mr Malcomes said that one day South Africa might see apartheid trials similar to the war crimes held in Nürnberg after world war 2. The government had done nothing to save the country from further acts of terrorism, Mr Malcomes said. 'Our raids into Lesotho and Mozambique are treating the symptoms but not the disease. Apartheid(10) continues remorselessly. The government should ask itself what Ministerial action finally decided that those responsible for the recent bomb blast in Pretoria to tread the trail of terrorism. The government should ask itself whether the actions created terrorists and whether it might be guilty of being a recruiting agent for the ANC. If the answer is yes, then you share the responsibility for the death toll in Pretoria' Mr Malcomes said." I also want to read the last six paragraphs on the last column "Mr Du Plessis said Mr Malcomess had implied that the government policy was the (20) equivalent of the policy of Nazi Germany and had asked whether it was implied that apartheid was a crime against humanity. Several PFP members replied across the floor yes. Mr Du Plessis said he could not believe that such an attitude could be expressed in parliament and he wanted to know whether Dr Slabbert agreed with this view. Dr. Slabbert asked 'Is it not a crime?' Braced again by Mr Du Plessis to answer the question Dr Slabbert asked. 'Do you say it is not a crime to move 3,5 million people against their will?'" In your note with this question mark did you intend(30)

to/...

to suggest to anyone in the UDF to ... (Court intervenes)

COURT : Have we given this one a number? DA38.

MR BIZOS : Was DA38 the article you were referring to when you gave evidence to His Lordship before these documents were presented to you? -- That is so.

Did you intend that anyone should in the UDF set up machinery to drive these people or to record their names? What does your note mean? -- It was really recommended that record must be kept of all atrocities and specific individuals involved in that. It was not intended that the UDF(10) would have some kind of a court that was going to try people in that respect. It would really relate to by and large collection of affidavits from individuals concerned who had been victims of these atrocities and that could be publicised. Where Court proceedings could be done, then applications would be done in that respect. It was by and large really a work that would be done by the lawyers, but as I say, the whole thing was not final. It was still subject to discussions. I may just indicate that throughout its activities the UDF has never sought to get involved (20) in the kind of struggle that seek vengeance against those who had done wrong things.

Will you please have a look at DA38 which quotes Mrs Helen Suzman as saying that certain aspects of national party policy, certain constituted crimes against humanity. Do you recall reading that in the report? -- I cannot see the section that counsel is referring to. What paragraph?

The first paragraph? -- Oh, yes, I see it. I recall reading the section.

Do you know whether there is a general assembly (30)

resolution/...

resolution calling the policy of apartheid any names? --
I recall that in the seventies I think, I am not quite sure,
it was in 1973 or so. I am not very certain about that.
It may well be much later than that. There was a decision
taken by the general assembly of the United Nations Organi-
sation to declare apartheid a crime against humanity. I
think it was in 1973.

During the course of that debate, did you think that
there was anything improper ... (Court intervenes)

COURT : Which debate? The debate in parliament ? (10)

MR BIZOS : During the debate in South Africa.

COURT : At what stage?

MR BIZOS : At the stage that DA37 and 38 were published.

COURT : Well, was there a debate? Was he involved in a
debate?

MR BIZOS : After these publications were made in DA37 and
DA38 and the reported debate in parliament, did you con-

sider whether or not there was anything improper in the
UDF collecting the material suggested in your note? --

I did not consider it to be improper in any way. I con-(20)
sidered it to be falling within the broad perceptions of
both the public here in South Africa and the international
community.

COURT : An ordinary policeman, doing what he is obliged
to do, as he has been ordered to do that, do you refer to
him as a collaborator? -- No, one would have had in mind
really people like councillors who would give orders for
such a thing to be done. I think it would also really
go for senior policemen who would give instructions for
atrocities to be committed. I may just indicate that I (30)
have/...

have previously read that a senior police officer, I think that time he was a colonel, who in 1960 refused to give orders to the policemen to shoot when about 30,000 people were marching I think towards Caledon Square in the Cape. That time there was a protest against the detention of the leaders, in particular I think of the PAC and they were led by a young fellow called Khosana. He was I think aged about 20, 21 at that stage. The Colonel I think is Colonel Terblanché, refused to give orders that the police must shoot the 30,000 people who were marching and he (10) chose instead to negotiate with the marchers and he called Khosana. He persuaded Khosana to tell people to go back home and they went back home and he promised that he would arrange a meeting between Khosana and other representatives to talk to the Minister of Police. When Khosana came to meet the Minister, he was arrested. Now, the point I am trying to make here is that that is a reasonable policeman who understands how to deal with people who have grievances, but someone else would just say look, shoot. Just shoot them, open fire and we have innocent people dying unnecessarily (20) whereas that kind of a thing could have been avoided. I think it is really a situation similar to the one that involves one single policeman in the Cape who has been suspended now for doing similar things. So, the activities of such people would be recorded and those in authority would be challenged to try such people, to take them to court and it is very important that when one takes such an action he has got the facts and one could have the facts if you have a register with all this kind of activities, atrocities and people directly involved who had been victims. (30)

Does/...

Does collaborators not refer to Blacks who work with the system? -- I think generally it refers to the Coloureds and Indians and Africans, but I think people like a policeman falling within the example that I have given, would also be considered.

MR BIZOS : You were taken to task for the evidence in the documents calling upon young people not to join the army and to be against conscription. Were you alone during the period 1983/84? -- No, as I have testified there were many other people. Some of them were people who supported the (10) new constitutional proposals, but they made it very clear that they would not support conscription of the Coloured and Indian youths into the apartheid army and I indicated that I think the National People's Party was one of the parties as well as solidarity which opposed conscription into the apartheid.

COURT : I may be wrong, but I seem to recollect that though a minister or a parliamentarian may have said well, the purpose of the new constitution is to conscript the Indians and the Coloureds, but that was immediately repudiated (20) by a more senior minister? -- Well, that is not my understanding. My understanding is that in fact even the directly concerned minister, Minister Magnus Malan accepted the fact that they will have to be conscripted. So did Mr P.W. Botha.

But I thought, I understood you to say that that was the prime motivation behind the new constitution, conscription being the prime motivation, prime reason for the new constitution? -- I understood it to be at the heart of it, because that is what was used when motivations were given why White people should accept participation by (30) Coloureds/...

Coloureds and Indians in the tri-cameral parliament.

ASSESSOR (MR KRUGEL) : But are Coloureds and Indians conscripted into the Defence Force at the present moment? -- They are not conscripted in terms of my understanding of conscription. They are - I understand conscription really to mean it was going to be compulsory military service now. They would have no choice.

I have it there is no compulsory service, no compulsory military service for either Indian People or Coloured People? -- Previously it was not compulsory, but as we (10) understood it, it would become compulsory in terms of the Defence Act as amended. I think it was amended in 1983.

COURT : It is still not compulsory? -- For the Indians and Coloureds?

For the Indians and Coloureds it is not compulsory? -- But it was clear that it was going to become compulsory because as I pointed out the Minister of Defence, Mr Magnus Malan, had said that they would be conscripted in the same way as the Whites - conscripts were conscripted also. So, that I think the fact that it is not happening now, is may (20) be due to the fact that there has been strong opposition to that, strong protest to that and it carried with it the danger really of discrediting those who had accepted participation because they also undertook to fight conscription. If the government had gone ahead to do it, it would have undermined the position of what one could consider the junior partners in the parliament, those in the House of Representatives and those in the House of Delegates.

MR BIZOS : What is the National People's Party? -- That is the ruling party in the House of Delegates as I understand (30)

it/...

it.

What is the Solidarity Party? -- The Solidarity Party is the official opposition in the House of Delegates.

Do you know what their attitude, both those parties' attitude is to conscription of Indian people into the army? -- From what one has read from reports it is that both of them are opposed to conscription, although one party is accusing the other of actually working towards the conscription of the Indian youth, but that other party is also denying it and says it will not do that. It cannot allow(10) for the conscription of the Indian youth .

MR BIZOS : I want to show you two advertisements by these parties.

COURT : How far is this case going?

MR BIZOS : It is put to the witness that you are opposed to conscription because you want to weaken the Defence Force for the ANC to take over.

COURT : Yes, very well.

MR BIZOS : If Mr Reddy and Mr Rajbansi having a go at each other, both saying we are both against conscription, then(20) the accusation is not well founded. Have you seen these advertisements before? -- I did, if that is what I saw. I did see these. I saw them really in two newspapers. One of them I think was the Sunday Times Extra for the Indians and then the other one was the Sunday Tribune. They carried these advertisements.

COURT : That will be DA39 and 40. DA39 is the National People's Party in the Herald of 12 July 1987. That is an advertisement and DA40 will be Solidarity's advertisement in the Herald of 12 July 1987. How did the one party know that(30)

the/...

the other party was putting an advertisement in that particular paper of that particular day? There are ways and means?

MR BIZOS : There is all sorts of intelligence, industrial, political, all sorts.

COURT : Let us get back to business. What are the terms to be?

MR BIZOS : The classes are on Thursdays - on Mondays and Thursdays. He would like to start on Thursday, the 3rd and continue until the course is completed. I was hoping that to have a registration certificate, but we have a note (10) that the money could not be paid in during the weekend.

COURT : What about the Saturday morning course?

MR BIZOS : That is alternative. He would either have to go for a long session on Saturday or Monday and Thursday during the week.

IN THE SUPREME COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

PRETORIA

1987-08-31

THE STATE

versus

PATRICK MABUYA BALEKA AND 21 OTHERS

AMENDMENT OF BAIL CONDITIONS

VAN DIJKHORST, J. : The conditions of bail of accused no. 10 are amended in the following respect:

That leave is granted for him to attend the course (10) for the DMS Diploma in Industrial Relations at Damelin Management School on Mondays and Thursdays from 19h00 to 21h00 starting on Thursday, 3 September 1987 until the conclusion of that course.

COURT ADJOURNS UNTIL 1 SEPTEMBER 1987.