

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

A

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-08

DIE STAAT teen :

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ANDER

VOOR:

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ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

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KONTRAKTEURS :

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THE COURT RESUMES ON 8 AUGUST 1988

MR CHASKALSON: May it please your lordship, I am informed that all the accused are present.

COURT: Thank you. Before you commence, my assessor and I have discussed this question of your preparedness as far as the argument is concerned. We would like full argument, as full as possible and we would like to hear you on all aspects on which you think you are fully prepared. When you come to a stage where there is an aspect that you have not prepared fully you can re-apply for an extension. (10

MR CHASKALSON: I am grateful for that, m'lord. The cornerstone of the prosecution's case against the accused persons in this trial is the allegation that they planned and began to implement a scheme to overthrow the state by violence. The prosecution lead no direct evidence of any planning of such a scheme but it argues that such a scheme must have been contemplated because the UDF made demands to which it knew that the government would not submit. That indeed became a central structure in the argument of the state, and the argument proceeded as follows: in paragraph 8.1 (20 of the state's heads in volume 1 it was said that it was common cause that the UDF declaration formed the basis of its existence, of its planning and of its organising. And it went on to say that the UDF knew that the government would not submit to the demands made in the declaration, that it would not submit to the conditions involving the national convention which was a subsidiary portion of those demands; it is not in the declaration but it was part of the defence case that the call for a national convention was a call made by the UDF from the beginning and it is said that (30

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it must therefore have contemplated that violence would be the only means through which it could achieve its goals and that it must be taken to have been organising and mobilising its support for that purpose and it began by looking at the declaration and it said that that is the basis, that is a basis for the existence, the planning and the organising. Now what are the demands made in the declaration? M'lord, the declaration will be found at page 4 of EXHIBIT A.1 and it is a document which we are all familiar with in this case. Your lordship will recall the preamble which introduces (10 the document. It says: "We, the freedom loving people of South Africa, say with one voice to the whole world that we cherish the vision of a united, democratic, South Africa based on the will of the people; will strive for the unity of our people through united action against the evils of apartheid, economic and all other forms of exploitation and in our march to a free and just South Africa we are guided by these noble ideals" and then it states the three propositions which constitute, if they be demands, the demands made in the declaration. It says: "We stand for the (20 creation of a true democracy in which all South Africans will participate in the government of our country. We stand for a single, non-racial unfragmented South Africa, a South Africa free of bantustans and group areas, and we say all forms of oppression and exploitation must end", and those are the only demands made in the declaration. For the rest there is a statement of rejection of the constitution and the Koornhof bills, a drawing of attention to the fact that apartheid is to continue under that dispensation, under the new dispensation and drawing attention to aspects of (30 apartheid / ..

apartheid which affect the day to day lives of people. So the demands are these: first, for a true democracy; secondly for all South Africans to participate in the government of the country; thirdly, for a single, non-racial, unfragmented South Africa and fourthly, for an end to group areas and all forms of oppression and exploitation. Now that says counsel for the state, that is something to which the government will never agree. It will never agree no matter what happens. It will never agree no matter what the feelings of the people ruled by the government may be, and it will (10 never agree no matter what may happen in this country. Now m'lord, it is a strange argument coming from counsel for the state for it implies a government so determined to hold on to power that it will do so irrespective of the wishes of the majority of the country. And what is being said through that argument to your lordship is that no matter how much support could be demonstrated by the UDF for the claims it makes in the declaration, no matter how successfully it may organise and mobilise people to prove that such rapport exists, the government will ignore the wishes of the (20 majority of the people. It implies a ruthless and arrogant government determined to impose its will upon the majority of the people, no matter how much they may resent its policies and no matter how much they may suffer under it. It is indeed a very strange argument to be put before your lordship by counsel for the state.

Now it is this faulty premise that leads the state to characterise what has been referred to in this case as the freedom struggle, as a struggle for seizure of power, as if the UDF were seeking to replace the government by its (30 own / ..

own people, to seize power and then to impose its own rule without regard to the wishes of the people of the country. Now it will be our submission to your lordship that this premise reveals an inverted perception of the evidence that has been given in this case and we intend to show your lordship from the evidence that the freedom struggle as expressed through the UDF is not a struggle for seizure of power. It is essentially a struggle against powerlessness. In a very broad sense the evidence shows that it is a struggle with a long history which has taken different forms at (10 different times and which has been pursued by different people in different ways over that period of time. If there is a common factor between these different strands of the freedom struggle the characteristic, the common characteristic which has been demonstrated is that it has been a struggle for the liberation of the majority of the people of this country from oppression and discrimination. Now if one looks at the role of the UDF and its perceptions of how it relates to this broader struggle we need to go back to the evidence to see how the UDF came into existence and what led to its (20 formation, what it sought to achieve and the evidence shows that the UDF came into existence at the time that it was proposed that the new constitution be introduced into South Africa, and the evidence shows too - we will go into this in more detail later in our argument - that the new constitution was perceived by persons who became associated with the UDF and by many others who are not associated with the UDF, as being an infringement and a continuation of apartheid. Now that specifically is stated in the declaration. Page 5 of EXHIBIT A.1, it is the second page of the declaration (30

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we find the statement in the recitations contained in the declaration, mindful of the fact that the new constitutional proposals and Koornhof measures will further infringe apartheid and white domination. "We commit ourselves to uniting all our people wherever they may be in the cities and countryside, the factories and mines, schools, colleges and universities, houses and sports fields, churches, mosques and temples, to fight for our freedom". So it was perceived as being an infringement and a continuation of apartheid. It was perceived, and we will show your lordship this too (10 as being introduced at a time of reform and it has been a statement really to the majority of the people of the country that they are excluded. Reform will take place but it is still going to be minority rule, and it was that, that new constitution which offered something and excluded the majority of the people from what was being offered, that led to the formation of the United Front to oppose those proposals. And the evidence also shows that the UDF saw its opposition to the new constitution as having two essential characteristics. On the one hand it was a struggle against the (20 continuation of apartheid and against the suffering and oppression associated with that policy. On the other hand it was a struggle for democracy and for the right of all South Africans to participate in the government of the country.

When we come later in our argument to look at that aspect of the evidence we will show your lordship how these two characteristics are present, but can I for a moment - I want volume 267 - draw your lordship's attention to a few passages in the evidence which expresses the sentiment. In volume 267 in the evidence of Mr Molefe, who is accused(30

no.19 at page 14 430 when it was put to Mr Molefe that -

COURT: Your page number was?

MR CHASKALSON: 14 430 out of volume 267. It is possibly on your lordship's desk.

COURT: Yes, I have got mine.

MR CHASKALSON: Oh, as your lordship pleases.

COURT: It was merely my assessor's that was missing.

MR CHASKALSON: Mr Molefe was being cross-examined and it was put to him that the UDF was not fighting for political and civil rights but that "you are fighting for the establishment of a government for the people and power going over to the people" and his answer was this: "That is not so, we are fighting for political rights. We are fighting for a vote in this country and that is a political right. It is true that that would really mean fundamental change in the context of a situation in the sense that when we had a minority of white people making laws and ruling the country to the exclusion of the majority, once we have political rights you would have a different situation where now all the people of the country have a vote and the government (20 that is elected, a government elected by the vote of the majority of the people black and white, in that sense it is a fundamental departure, it is a fundamental change." (10

Now what is clear from that is that it is struggle for political rights, a struggle whereby all people will have a say in the country and the government will be representative of all the people in the country and not as it is at present representative of the minority of the people in the country. That is the fundamental difference and that is why the government which will then come into existence, will come (30

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into existence in a fundamentally different situation because it will reflect the interests of all the people and not the interests of a narrow portion of the society. And then it was put again to Mr Molefe further: "I put it to you that the ANC is subscribing to a corresponding principle. that the freedom struggle is not a struggle for political rights or civil rights but it is a struggle for the seizure of power and the establishment of a government of the people". The answer is: "Well, the UDF is not involved in a struggle for the seizure of power by the UDF, it is involved in a (10 struggle for the transference of power or at least a struggle where the power would be shared by all the people in the country and as far as the UDF is concerned, it is a political struggle for political rights. At least we differ from the ANC in the sense that it says it is not interested in political rights if we go according to what counsel is putting". And Mr Lekota takes up the same theme in his evidence - it is volume 290, page 16 093. I think I gave your lordship the reference, it is volume 290, page 16 093, lines 10 to 20. It is put that the UDF tries to unite the people for (20 extra-parliamentary opposition and the answer is: "Even if we wanted to go and sit parliament we cannot go and sit in parliament. We did not exclude ourselves from parliament. When the 1910 Act was drawn up we were excluded and there has been generations of people who have tried to get into that parliament. We are still trying, that is why I am here also because we want to go into parliament. We want to be there and go and make the laws we have been denied. We can only talk from outside parliament because we have not been allowed to go and sit in parliament." (30

And / ..



And on the trend of democracy, Mr Molefe put it this way at volume 256, page 13 800, lines 1 tot 24. He said - m'lord it is part of a longer answer and I am not going to read to your lordship the whole answer but it is all to do with the co-ordination of the massas for the freedom struggle. The passage that I am interested in, it has got about half a page that goes before it, but this is the part I am interested in; at the top of page 13 800, he said: "We made it very clear on many occasions that we do not believe that a small group of activists, those who are active in (10 organisations all the time, are the ones who must decide for the people and use their understanding of issues as a yard stick to determine the understanding of the ordinary people. They must find a way of allowing the ordinary people to participate in these issues. Those matters are very crucial to us as organisations that are operating within a community that had never tasted democracy. Our people who lived a life of being shunted from pillar to post either by the bosses in the factories or the madams in the homes where our mothers work as domestics. We do not want to extend that kind of (20 situation where we want to pull around people by their noses. We want our people to taste democracy and that democracy can be tasted in our organisations, they can begin to develop their own confidence to do things on their own, to decide on matters that affect them in organisations. If we do not do that we are merely perpetuating what the present government is doing, where it is denying - whether it is denying as a right to participate in those things, where in the factories we are simply shunted around as workers or as garden boys and washing girls. That the UDF does not want(30

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to approach. It is simply not in line with our approach."

Now one of the problems in this case is that the state has made no attempt whatever to evaluate the evidence, matters such as this, to tell your lordship why statements such as those and many other statements which we are going to put before your lordship later should be rejected. Presumably m'lord it has no reasons to offer than a very bald statement that had been put forward in its argument.

Now I think that what I want to do now is to take your lordship first to the indictment because the indictment (10 defines the parameters of the case, and that is important because the state has frequently in its argument gone outside of those parameters and indeed it has on occasions lost sight of the allegations which it made and to which the accused pleaded. I think it will be as well first of all to define the structure of the main conspiracy and I will be referring your lordship here to the slim volume 1 of the indictment, to the request for particulars with the answers and further and better particulars. I will be looking at volume 4 I think of the indictment and I will also be looking at what (20 was said to your lordship during the time of the argument on the objection to the indictment. Now the structure of the indictment was really that the members of the UDF, well let me step back a bit because I think I am anticipating something. Let me rather say what does the state - who does the state say are the members of the UDF. In this indictment it alleges that the members of the UDF and this lordship will find at page 7, at the very bottom of the page. It is the last line and it goes over to the top of the next page, that basically what the allegation made by the state is that (30  
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the members of the UDF are in effect organisations or bodies and this is my interpretation of the indictment, m'lord, I will read it to you - well, let me read it first and then I will put what I understand it to be. It says:

"En nademaal UDF en/of sy lede synde organisasies en/of liggame verteenwoordig deur lede van organisasies en/of liggame geaffiliëer met die UDF en/of organisasies en/of liggame verteenwoordig deur lede van organisasies en/of liggame wat UDF aktief ondersteun en/of persone wat deel vorm van die bestuurstrukture en amptenary (10 van UDF besef, aanvaar en verklaar.."

Now that seems to me to embrace three categories being said to be members of the UDF. First it is said that they are organisations or bodies affiliated to the UDF and represented by their members; secondly, they are said to constitute organisations or bodies which actively supports the UDF as represented by their members; and thirdly, persons who are officials or who are on the management structure of the UDF. Now the evidence shows that membership of the UDF consists of the affiliated organisations - your lordship will find (20 it actually in the working principles and basically it consists of all organisations present at the first national conference, otherwise as observers, shall be members of the UDF subject to their right of withdrawal or review; secondly all organisations that are prepared to commit themselves to the declaration policy and to the programme of action will be eligible to make application for affiliation through regional councils and that is really all. So it is affiliates. Membership consists of affiliates of the UDF so the category of people whom the state refer to as being active (30 supporters/..

supporters of the UDF, unless they are affiliates of the UDF are not members of the UDF and nothing said or done by such persons can determine policy of the UDF. It is a matter which I will come back to later, but the state has failed to appreciate that distinction in its argument and it has as if it were lumped every document and every statement in these exhibits, put them all together, extracted passages from them and then boldly states UDF "verklaar". So everything said by anybody, just about anything done in the country during the period of unrest is pulled out of a pot and (10 given a label: that is UDF.

Now it is actually a lot more complicated, complex and difficult in that we are going to have to try to disentangle or disaggregate that conglomerate and try and break it up into some of its components' parts to see just what is UDF, what is not UDF; what has been shown and what has not been shown. What has been proved by admissible evidence and what cannot be relied upon. And that is what I perceive to be such a laborious task because I had hoped that I would be able to answer an argument which attacked that and put (20 it before your lordship and did all that and that I could with what we had, be able to say well that proposition we will not quarrel with; this one we will. But m'lord, we have just a conglomerate and it is out of that we have to try to as if it were create something. Now secondly what is the goal of the UDF? Now that is stated very clearly in the indictment. It is said that the goal of the UDF, it is at page 7, lines 19 to 23:

"En nademaal die doelstelling van die UDF was en is die wederregtelike omverwerping en/of in gevaar- (30 stelling/..

stelling van die wettige regering deur geweld en/of dreigemente van geweld en/of ander wyses wat die gebruik van geweld insluit of beoog.

So in shorthand the indictment says that the goal of the UDF is to overthrow or endanger the state by violence and that is the treason. That constitutes the treason pleaded in the indictment.

Now who according to the indictment are the parties to the treason? That your lordship will find on page 10, it is really the last line on page 9: (10

"En nademaal te alle tersaaklike tye die lede en die bestuurstrukture en amptenary van UDF en die lede van die bestuurstrukture van die organisasies en/of liggame wat met UDF geaffiliëer is of UDF aktief ondersteun waaronder die beskuldigdes, met mekaar saamgesweer het onder die naam van UDF om.."

and then we get the alternative -

"..en/of onder die naam van UDF met die ANC en sy lede en aktiewe ondersteuners saamgesweer het om bovermelde doelstellings van die ANC of SAKP of van UDF of van (20 beide genoemde doelstellings uit te voer en/of te bevorder en ter uitvoering daarvan.."

and then it goes on. Now if one then breaks up the persons who are alleged to be party to the treason, to the treasonable conspiracy; to the central conspiracy because it is that conspiracy which is the foundation really of every charge that has been made; but according to the indictment the parties are first officials and members of management structures of the UDF. Secondly that they are members of management structures of organisations affiliated to the UDF; (30

and / ..

and thirdly that they are members of management structures of organisations which actively supported the UDF: and they are said all to have conspired together under the name of UDF. Now that composition of persons and that structure of conspiring together under the name of UDF is not altered when the ANC is introduced, because what has happened there is the introduction of the ANC brings additional people into the conspiracy, but also to conspire under the name of the UDF. It says - because the additions are the officials and members of management, well, the additions merely are (10 those people whom I have referred to, who are acting under the name of the UDF in the second part of that passage of the indictment are said to conspire together with the ANC the SACP and the ANC and the SACP's active supporters. So we see first of all the group of persons whom I have mentioned on their own, the officials and members of the management structures, the members of management structures of organisations affiliated to the UDF, the members of management structures of organisations which actively support the UDF; all together under the name of the UDF and the accused are (20 included in that group under the indictment, that is the group under which they fall; they are said to have promoted the treasonable conspiracy and then the state says alternatively that group together with ANC, SACP and its members and active supporters conspired. So we are looking at two parallel conspiracies but as far as the accused are concerned and the case is concerned the central structure through which they are linked is that cluster of persons defined in the indictment. And the treason charge is the achievement of the goals of the ANC and the SACP or the goals of the UDF which the (30

state / ..

state had previously defined in identical terms. There is no difference in the state's definition of the goals of the ANC and in the state's definition of the goals of the UDF because your lordship will remember I drew your lordship's attention to the passage on page 7, lines 19 to 23, and if I could go back to page 5, lines 1 to 6, your lordship will see that in precisely the same terms - m'lord, I am wrong in saying it is precisely the same terms. If your lordship goes to page 5 at the top from lines 1 to 6 you do find precisely the same terms. It says: (10

"En nademaal die doelstellings van die genoemde ANC waarmee die SAKP hom vereenselwig, was en is die weder-regtelike omverwerping en/of ingevaarstelling van die wettige regering van die RSA, hierna die regering genoem, deur geweldpleging en/of dreigemente van geweld en/of op ander wyses wat die gebruik van geweld insluit of beoog."

Now that is the same language which is used to define the goals of the UDF. So we see at page 7 and at page 5, the goals are defined in exactly the same terms. (20

Your lordship will also see that - well, I will come to that later, but let me pause for a moment just to look at what the indictment tells us about how the people are brought into the conspiracy. We are told first of all that the names of the persons who are alleged to be officials or members of the management structures of UDF and members of the management structures of the affiliates and members of the management structures of the active supporters of the UDF, those are given at pages 1 to 28 of the further and better particulars; at pages 2 to 27 of the further particulars. So those are (30  
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the people falling into the categories. As far as the accused are concerned we are told what the case against them is, how they are said to be party to the conspiracy. I am going to be reading from the further and better - no, the further particulars. I am sorry, mine looks quite different, mine has got a funny blue cover. I do not know whether anybody else's is blessed with the same appearance, but that is the request, that is my one of the further particulars. I think they have been put together with different bindings. As far as the accused are concerned we are told at page (10 81 of the further and better particulars the following information: "The state alleges further to paragraph 12.3 that each of the accused became part of or associated with the conspiracy and the aim to overthrow the government. When exactly each accused became part of or associated himself with the conspiracy and its aims is to the state unknown. We are told that at 20 August 1983 at the foundation of the UDF as a front organisation the conspiracy openly and perceptibly took shape.." I am going to come back to that later too, because it is the state case that the planned scheme of (20 conduct had been agreed upon prior to - during the period between January and August of 1983 and the state sets out to prove from August 1983 an agreement with definite goals had already been entered into and that was when the conspiracy was concluded and that that planned agreement involved the use of violence to overthrow the state.

COURT: Well, would it make any difference as far as the accused are concerned whether the conspiracy came into being in January 1983 or whether it came into being say at the beginning of 1984 or later on in 1984? The state case is (30 that / ..



that there was a continuing conspiracy. Does it matter when it started?

MR CHASKALSON: Yes, it does because the state case is of a single continuing conspiracy not of an amended agreement. It is a totally different thing to say there was an agreement entered into on such and such a date which you implemented. It is an entirely different thing to say you entered into an agreement on such and such a date to do X. On a later date you amended that agreement and changed the goals of your conspiracy. That is not the case that is pleaded. (10

COURT: It is put on a different basis. Say the state case is that the conspiracy exists, how it comes into being is immaterial; it exists from January 1983 to end of 1985 - middle of 1985 it exists. Now it is not proved that it existed initially, it is proved that it came into being half-way through the period, how does it affect the accused?

MR CHASKALSON: Well, it would have all sorts of complications as far as the case is concerned because the evidence which would be admissible would only be admissible as executive statements of co-conspirators, so one would get immensely (20 entangled in trying to identify what evidence could be used and what evidence could not be used, which is one of the reasons why you are entitled to know what the case is. Now the state chose to - the state could have charged it on different bases but it chose to charge a conspiracy, a single when I say single I am mindful of the fact that the parties it pleads in the alternative in one sense that it excludes the ANC and the SACP and the other sense it includes them and when I use the word single I am talking about the terms of the conspiracy, not the parties at the moment. (30

ASSESSOR / ..

ASSESSOR: But the terms still being the overthrow of the government?

MR CHASKALSON: The violent overthrow of the government. It shows two charges single conspiracy based on adherence to the declaration of the UDF. Now if its case was something different it should have said so. It should have said everything comes back to the adherence to the declaration of the UDF and the policy of the UDF and the single ongoing policy of the UDF. If its case was going to be that you join the UDF but during 1984 or 1985 a small group of you (10 decided to do something different that should have been pleaded, or if its case was going to be that the UDF declaration and policy which was the planned scheme was not implemented in August but there was an entirely different agreement entered into by different people at different places at different times in 1984 or 1985 then that should have been stated, and if..

COURT: So we are dealing with two matters. The one is a change of dates as to when the conspiracy started; the other is a lesser number of conspirators. (20

MR CHASKALSON: Yes.

COURT: You are mixing the two up. The second part I also wanted to ask you about a bit later. At the moment we are debating, let us say that the state places the following case before court in the indictment. It says there are twenty conspirators, all twenty are before court. The conspiracy started in January 1983. It is proved that there are twenty conspirators but the conspiracy started in January 1984.

Would the state be tied to its indictment?

MR CHASKALSON: Well, if the January 1983 were as it were (30

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a typing error or some slip like that then obviously not.

COURT: No, it is clear that the state was wrong there or that I cannot prove the first year, it only proves the second part, how would it affect the hypothetical case?

MR CHASKALSON: Because it would then become an entirely different agreement and you would have to locate the time and the place and what happened and how it came about that that occurred. It is like in a civil case..

COURT: But we are not dealing with a contract, we are dealing with an allegation that there existed a conspiracy(10 for the overthrow of the state.

MR CHASKALSON: Yes.

COURT: Now is the emphasis not on the existence of the conspiracy during the period of the indictment rather than the date upon which the agreement to conspire came into being?

MR CHASKALSON: Well, it would depend upon the facts of the particular case. I could contemplate cases where what your lordship puts to me I would accept, but in this case the indictment very specifically charges with a planned course(20 of conduct, an agreement concluded at Rocklands on such and such a date and that is where we are told that it took substance and that what is focussed on is the coming together of people in August 1983 after some preliminary planning during which this germinated and the state says it may well be that certain people had agreed amongst themselves prior to August 1983 that this should happen, but certainly at Rocklands in 1983 this agreement took form and it was put before the public at that stage, people were asked to join the organisation, that was the organisation's policy at (30

that / ..

that stage and everybody who joined and adhered to the declaration joined the conspiracy. Now if its case was going to be different, if its case was going to be that the goal of violence or the planned scheme of violence was formulated let us say - let us take any hypothetical date, m'lord. There was an NEC meeting I think in November of 1984, let us hypothetically assume that that was the state's case that then becomes the centre and the focus of the case. One then investigates what was discussed at that meeting, was there a change of plans, did anything happen to change(10 the plans which were X and make them become Y? If that is the state's case then the state must tell the accused that that was so. The moment they are being brought to court to answer the case that the goal of the UDF was the violent overthrow of the state and that that was planned between January and August 1983 and it took substance in August 1983 and everybody who joined, all the affiliates who joined on that date are said to be, all the members and management councils and affiliates who joined on that date are said to be party to that conspiracy. (20

The evidence, the evidence is all pushed in on the basis that these statements and everything that was said at the meetings, hypothetically if the conspiracy date becomes some other date, what date, when? What is it meant to be that we are dealing with? What evidence must now be totally excluded from the reckoning because it is not evidence admissible against the accused on any basis. How does one even begin to deal with that? Part of the problems of this case come from this attempt to roll up into one conspiracy people who really did not belong together and to be able to join (30 them / ..

them together the state has rolled them up into this one single ongoing conspiracy saying everything is admissible against all of you, every act done by every person is evidence against all of you and to try and catch everybody in the net it put them down together in this way. If there had been three or four trials each one would have been over within a month or two or three, but it is the bringing together of everybody..

COURT: And I would have sat on only one.

MR CHASKALSON: Yes. So your lordship would only have (10 been a month or two or three. Your lordship might have got the one which was a month. If your lordship got accused no.1 it might have been a day.

COURT: Now the second part of the question. Let us accept that it is true hypothetically that there is a conspiracy from the date that the state sets out in its indictment but the state has pleaded that the conspiracy consisted of twenty people and now we find that there are only three how would that affect a case like this?

MR CHASKALSON: I would like to think a little bit about (20 that, m'lord, but my immediate answer is that it would depend upon the nature of the participation, of the alleged participation. There could be circumstances under which it would be impossible to have three and not another seven, and there are cases like that even that I am aware of where courts have said no you cannot do that because of the nature of the particular conspiracy. And I can also see there are cases and we know it, every day when people come to the courtroom charged under conspiracies or common purpose which is really the same, you might have six people on trial and two get (30 acquitted / ..

acquitted so the mere fact that it does not prove the allegations against everybody in itself cannot vitiate the whole charge and I would not argue that to your lordship. It depends very much upon..

COURT: No, this was a very simplified example. One could make the example more involved and ask the question on this basis. It was alleged that a large number of affiliates are all co-conspirators. Let us say it is proved hypothetically that only a small number of these affiliates conspired, alternatively it is alleged that the whole management of the UDF conspired and let us say for example it is proved that only a small portion of that management conspired how would it affect a case like this?•

MR CHASKALSON: I think that would vitiate the charge. I am going to show your lordship - it is not the state's case that there was a small clique within the UDF which was conspiring. The state's case is based on the policy of the UDF and if it turns out that the majority of the affiliates or if it emerges that the majority of the affiliates of the UDF were totally unaware of it one could never say that (20 that was the policy of the UDF and that would be the end of the state case. I am going to take your lordship at a later stage to the judgment in the 1956 treason trial where there are certain comments which I think are very relevant to this case.

So it merely depends upon the hypothetical factual situation. But if I may come back to - if I could come back to page 81 of the further and better particulars, we are told in sub-paragraph 3 of page 81 that accused nos.19 and 20 as members of the NEC became part of the management of (30

the / ..

the UDF as a front. We are told under 4 that accused no.21 became associated with the conspiracy as a member of UDF media committee and as a member of the management structure of the UDF. We are told that accused no.16 was a member of the committee of ten of the Soweto Civic Association which affiliated to the UDF on 20 August and became part of the conspiracy and became part of the general council of the UDF Transvaal and have a seat thereon. Then under 6, accused nos.1, 2 and 3, all associated themselves with the conspiracy in terms of an agreement of co-operation between (10 UDF and AZAPO and in co-operation with VCA actively conducted the UDF campaign in the Vaal Triangle to destroy the black local authorities. They were all members of the management of AZASO - I am sure that that is a typing error, it must have been intended to be AZAPO.

COURT: AZAPO.

MR CHASKALSON: Hm, I am sure of that. It has never been suggested by any witness that it was meant to be - I think that is a patent error. AZASO Vaal and are involved in acts 67 to 77. So they fall within the group because they (20 are members of the management of AZAPO Vaal, otherwise they are not conspirators because it is only members of management committees who were charged. So the state set out to prove that accused nos.1, 2 and 3 are all members of the management committee of AZAPO Vaal and the only way that they can be linked because AZAPO Vaal is not alleged to be an affiliate of the UDF, that there was an agreement of co-operation between the UDF and AZAPO. So that agreement has to be proved otherwise they have nothing to do. They have got to prove two things, the management committee and their agreement to (30 pursue /..

pursue the UDF campaign. Accused no.6 is charged as a member of Evaton Rate Payers' Association and accused nos.5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18 and 22 are charged as part of the management structure of the VCA so that is the management structures to which they are alleged to belong. Now that answer is taken over in respect to all the counts, so we see in 13, 14 and 15 a repetition of the answers. Now that is the basis of the charge.

The activities with which they are charged ...

COURT: Does the last portion of that paragraph.. (10

MR CHASKALSON: Which paragraph, m'lord?

COURT: Of paragraph 8 on page 82 not constitute further allegations against the accused?

MR CHASKALSON: They have seats at the meeting and participate in discussions and planning and organisation, furthermore the accused participated in that activity - that is what they have done in terms of the conspiracy and that is picked up at an earlier stage as well, m'lord. I was going to refer your lordship to the further particulars. That I think becomes clear if your lordship would look at paragraph 8.5(20

COURT: Yes, but is it not that they are held liable not only because they are part of the management structure of VCA but also because they acted in terms of acts 67 to 77?

MR CHASKALSON: No, because the only people who are in conspiracy are the people in the management structures. This is what they did. They are tied to management structures and they said you did that. If you are not in the management structure then you are not party to the conspiracy on the state charge. Because the whole state charge depends upon your knowing what the goals of the UDF were. The whole (30

state / ..



state structure, the whole case is based upon the allegation that you knew, you the accused knew the goal of the UDF was the violent overthrow of the state and the reason you knew it was because you were on the management structures of these bodies. Now an activity without the knowledge of the broad conspiracy does not bring a person within the network of the state charge.

If your lordship would turn to page 38 of the further particulars after the state there in paragraphs 8.4.1 at page 38 and 8.4(i) 8.4(ii) - I will come back to that a (10 little later in a different context, basically what the state has alleged there is that the accused knew that the UDF's goal was to overthrow the state by violence. Then it is asked in 8.5 for information about the accused's knowledge and identification with the conspiracy. An answer given is this, 8.5.1: Accused 1, 2 and 3 actively identified themselves with this aim - that is the violent overthrow of the state - at least in the Vaal triangle by participating actively in the execution of UDF campaigns against the government and black local authorities to destroy the (20 black local authorities in at least the Vaal triangle and to render the area ungovernable and actively to organise and to take part as set out in the indictment. This was in accordance with the agreement between AZAPO and UDF to co-operate in the Vaal triangle against the government and the black local authorities. The accused 4 to 18 and 22 were at least aware of and identified themselves with this aim of UDF by their co-operation and as members of bodies affiliated to UDF and actively co-operating against the government and black local authorities in the Vaal (30 triangle/..

triangle and to destroy the local black authorities in the Vaal triangle at least as set out in more detail infra in the indictment. If I may just pause for a moment, m'lord, the suggestion in the state argument that accused no.22 had something to answer for being a member of the Black Students' Society in Grahamstown has nothing to do with the charge, even though there was no evidence really of what - it was never really investigated, presumably because it had nothing to do with the charge. And then we have accused 19, 20 and 21 who as part of the management structure (10 concerned with and identified themselves with this aim, again the violent overthrow of the state and actively co-operated in making the decisions, co-operating and implementing the activities to fulfill this aim.

At this stage I would like to make three observations. First, that the nature of the charge which the state brought against the accused is a charge based on a planned course of conduct. In the judgment in the Adams-case which is the 1956 treason trial, this is a judgment on the indictment, reported in 1959 1 SA 646 at 667, it was one judgment given (20 in the name of three judges of the special court; they were RUMPF J, KENNEDY J and BEKKER J. Against the letter G on 667 it says:

"Turning now to the present indictment it in form in part A charges each of the crime of high treason alleging that they "acted in concert and with common purpose" a phrase which in our view can only be equated with "some planned scheme". In part B the Crown... alleges that there was such a scheme afoot, i.e the conspiracy, and it then sets out...the means whereby the (30  
criminal / ..

criminal design was to be achieved. It claims in parts C, D, E and F of the indictment that all the individual overt acts laid against the accused were so performed by them in their endeavour to achieve their ultimate goal. These overt acts are similar at least in this sense that they consist in the making of speeches and in the creation of propagandist literature alleged to be in favour of and propounding a different form of state. It is difficult in our view to accept the correctness of an argument that the Crown has not(10 averred or set up "a planned course of conduct" on the part of the accused. In form at least..the Crown has charged the accused with the commission of a single crime of high treason, based on a series of overt acts constituting in ..... the course of conduct."

Now this indictment is really very similar in structure. It is a single conspiracy, it is a planned course of conduct and the plan is the violent overthrow of the state. Now the accused, and I should mention this, that in addition to having been charged as conspirators, as part of this (20 planned scheme to overthrow the state by violence they are charged in their personal capacity and it is clear from the averments made in the further particulars that this charge is brought in the event of the conspiracy not being proved. But they are not charged, they are very specifically not charged on the basis of any common purpose or agreement or sub-conspiracy, if I could call it that, alleged to exist independently of the principal on-going conspiracy, and when I say one conspiracy your lordship will always realise that the state has said it either includes ANC or it does not, (30

but / ..

but each time - either it is a single conspiracy which includes the ANC or it is a single conspiracy which does not include the ANC, but it is a single on-going conspiracy. There are no charges of common purpose outside of that, there is no charge of a conspiracy outside of that. If the state does not prove the conspiracy it is left only with the individual acts of each of the accused taken on their own and it cannot link people with - now that became very clear from the request for particulars, the answers which were given. The request for particulars at page 15 of the request for (10 particulars, the state is very specifically asked in question 12: "Does the state intend to rely upon the doctrine of common purpose as distinct from the conspiracies alleged by it" and then it is asked if so to give particulars and if not in what way does the common purpose as distinct from the conspiracy affect the guilt of the accused. Your lordship will remember that there was argument on that and your lordship ordered the state to furnish those particulars and the first question which is: "Does the state intend to rely upon the doctrine of common purpose as distinct from (20 the conspiracies", the answer is: "The state alleges that the accused at all times acted with a common purpose with regard to the execution of the above-mentioned conspiracy, the aims of those set out in the indictment, the conspiracies are directed at their execution of the above-mentioned aims and existed between the persons set out on page 10 of the preamble to the indictment".

COURT: You are now referring to which document?

MR CHASKALSON: I am referring to their further and better particulars, page 80. It is the state's case that each (30

accused /

accused is liable in law for each act attributed to him personally as well as each act attributed to his co-accused and co-conspirator from the time that he became involved in the conspiracy/ies as set out in the indictment. So it is..

COURT: Yes, you are going a bit fast because you are reading in English and we are reading in Afrikaans.

MR CHASKALSON: I am sorry, m'lord, I did not realise that I had a translated version. I thought that the state had replied - at one state the indictment was translated and I had not realised that - I am sorry. I am sorry, I had (10 just been given the wrong one, I have overlooked

COURT: No, it makes no difference to us. Just give us a chance to pick up the Afrikaans.

MR CHASKALSON: I would like to make sure that I am reading the right language. If it is wrongly translated I will.. M'lord, I hope I have given your lordship the right pages.

COURT: Yes, the pages are correct.

MR CHASKALSON: Yes, I do not think anything I have said..

COURT: It makes no difference.

MR CHASKALSON: .. was wrong. Again it is the conspiracies (20 that they are tied back to and it is absolutely clear in 12.2 when one asks, the question was: "Does the state intend to rely upon the doctrine of common purpose as distinct from the conspiracies alleged by it. If so, full particulars are required". Answer: Nie van toepassing nie. So it is quite clear that the answer to 12.2 confirms the answer to 12.1. Now your lordship will recollect that in the argument on the indictment it was made perfectly clear to the state, indeed by your lordship that there could not be common purposes or agreements outside of the main conspiracy and if they (30

intended / ..

intended to rely upon them they should particularise them and at page 232 - no, sorry I have got the wrong page, I beg your lordship's pardon, I will have to find it; there is a page in the argument when your lordship raises it specifically with counsel for the state. I will give it to your lordship after the tea adjournment, but you brought it very specifically to their attention that there were those differences and your lordship then made the order and the state has chosen to tie itself to the single on-going conspiracy and there have been reasons for that, m'lord, (10 because as soon as it introduces sub-conspiracies the whole question of joinder would immediately have been raised and the question of whether it was proper to join parties to different conspiracies in the same count would have become an issue. And that was also made clear in our argument. Whether that was a good or a bad argument we need not concern ourselves with now but that was certainly an issue at the time. The state deliberately chose to tie itself to the single on-going conspiracy.

Now I want to go back now to look at the way in which (20 the violent overthrow of the state has been pleaded. It is very close to 11h15, if your lordship would..?

COURT: We can start on that after the tea adjournment.

THE COURT ADJOURNS FOR TEA / THE COURT RESUMES

MR CHASKALSON: May it please your lordship. I have the passage from your lordship's judgment. It is in volume C page 232. When your lordship was giving judgment to the question which I was dealing with immediately before the adjournment to the issue raised by that question, your lordship mentions the state's answer which is: "Aangesien (30 die / ..

die verdediging van die staat vereis om 'n uitleg van regs-  
beginsels te gee, is die vraag onverstaanbaar en vaag en  
verwarrend", and your lordship's judgment deals with it in  
this way: I do not think that this is a proper answer. An  
accused can conceivably be held liable for an act not  
committed by him personally where he was a conspirator and  
the act was committed in furtherance of the conspiracy, or  
where he was not a conspirator but had a common purpose with  
the person who acted. It might be argued that there was an  
overall treasonable purpose and that to have that in common (10  
would make one party to the conspiracy, but that becomes  
more complicated if this question and answer on the mutatis  
mutandis is repeated in respect of each alternative count  
including the counts of murder. It is conceivable that a  
person is murdered by X, that Y has a common purpose with him  
and that Z is part of the alleged conspiracy which uses X  
as a pawn. It is therefore necessary for the accused to be  
apprised of the state's case against each of them".

Your lordship spelled out very clearly the difference  
between conspiracy, the over-arching conspiracy, different (20  
conspiracies; the state deliberately chose to tie itself to  
the over-arching conspiracy.

Now if I could go back for a moment to the indictment  
just to see how the violent overthrow, the allegation of  
violent overthrow has been pleaded; now I would be looking  
again at the little volume 1. It begins at page 5 with an  
averment that the ANC's attitude was that its goal which as  
we have already identified is the overthrow of the state  
through the use of violence, could only be achieved if masses  
were persuaded to take part in a violent revolution in (30

South / ..

South Africa and to this end it called upon its supporters to establish a united democratic front in South Africa. That is one of the preambles at page 5. We have therefore line 7 to 12 at page 5, we have the averment: "And nademaal die ANC sy lede en/of aktiewe ondersteuners besef, aanvaar en verkondig dat bogenoemde doelstellings slegs verwesenlik sal, kan of moet word as die massas en veral die swart massas in die RSA betrek en ooreed kan en/of moet word om deel te neem aan 'n gewelddadige rewolusie in die RSA en veral sedert Januarie 1983 organiseer.." so we see two (10 things here. One is that the organisation is for a violent revolution in South Africa and we see the date which is picked up later of January 1983, and if we go down to the second sub-paragraph at the bottom of the page, the one bearing the number (2), it says the ANC did a call "op sy lede, aktiewe ondersteuners en organisasies en/of liggame wat bestaan en/of ontstaan veral onder die swart massas in die RSA om saam te werk en te organiseer en 'n verenigde demokratiese front tot stand te bring onder veral die swart massas en sogenaamde demokratiese anderskleuriges". So (20 that is all tied back to the goal of violent revolution and at page 6 we see that point taken up again, in that paragraph numbered (iii): "sy lede aktiewe ondersteuners en/of lede en persone in beheer van so 'n verenigde demokratiese front", so we see again that the ANC's members and active supporters and people "in beheer van so 'n demokratiese front" which replicates the averment of management structures, "wanneer dit tot stand kom veral die swart massas in die RSA te organiseer, te mobiliseer.." and so on, and then the concluding paragraph, "waardeur die RSA onregeerbaar gemaak (30

moet / ..



moet word en welke situasie moet ontwikkel in 'n geweldadige rewolusie deur veral die swart massas in die RSA". Now that refrain is picked up in every paragraph of the charge. Each act is specifically linked in every paragraph of the charge to that proposition. And we see too, if we go to page 8 that precisely the same case is made as far as the UDF is concerned. Page under paragraph (i): "dat bogenoemde doelstelling van UDF.." now the "bogenoemde doelstelling" is a reference back to page 7, lines 19 to 23 to which I have already referred your lordship, "die doelstelling (10 van geweld". And if we look at (iii) we see that it says "om hierdie taak suksesvol uit te voer moes UDF soos hierbo imskryf", so that is a reference back to what they say the UDF is, what it has to do is the same acts which it said the ANC wanted done, "organisering, mobilisering.." and so on and then the concluding paragraph: "waardeur die RSA onregeerbaar gemaak moet word en welke situasie moet ontwikkel in 'n gewelddadige rewolusie deur veral die swart massas in die RSA".

Now if your lordship will pick up any volume of the (20 indictment - let me just take volume 2, the very first paragraph, the meeting at Rock..

COURT: The page is - we do not have your volumes, we have different volumes..

MR CHASKALSON: I beg your lordship's pardon.

COURT: If you will just give us the page.

MR CHASKALSON: Page 1. I will take the very first allegation. In my numbering it is the "Aanhef". Volume 2 mine is called and it is page 1. It is the very first averment about 20 August. (30

COURT / ..

COURT: No, we do not have that.

MR CHASKALSON: It is "Aanhangsel tot die klagstaat".

COURT: I am sorry, we do not seem to have that.

MR CHASKALSON: That is the one which contains hundreds of pages.

HOF: Ja, hier is hy.

MR CHASKALSON: Or anyone, does your lordship have anyone of them?

COURT: It is "Aanhangsel tot klagstaat", is that the one you are referring to? (10

MR CHASKALSON: Ja, ja.

COURT: Yes, that one we have.

MR CHASKALSON: You have the whole of it?

COURT: Yes.

MR CHASKALSON: Well, then if we go to page 1, "Op 20 Augustus 1983 en te of naby Kaapstad en ter uitvoering en/of bevordering van bogenoemde sameswering en ter verwesenliking en/of bevordering van genoemde doelstelling van die ANC, SAKP of UDF of albei genoemde doelstellings..". Let us pause for a moment, that is a reference back to the conspiracies (20 the treasonable conspiracy, the violent overthrow, and the "doelstelling" is the "doelstelling" referred to which I have drawn your lordship's attention to which is specified as the violent overthrow of the state, and then it goes down and it finishes with "om deel te neem aan geweldpleging, handeling en/of aktiwiteite waardeur die RSA onregeerbaar gemaak moes word en moes ontwikkel in 'n gewelddadige rewolusie deur die massas van die RSA". That form, that structure appears in everyone of the acts charged in the annexure, each one of them is tied to the violent conspiracy, each (30 one / ..

one is specifically said to be part of the planned scheme to lead to the violent revolution of the masses in South Africa. And it was consistently with that m'lord, consistently with that allegation the state alleged that each of the accused was aware of and accepted that the UDF sought to overthrow the state through the use of violence. That question was asked in paragraph 8.4 at page 12 and it was answered in paragraph 8.4 at page 38 of the further particulars. And that the activities of the UDF were all directed to the achievement of its long term aim, namely the overthrow of (10 the state through violence is again reaffirmed by the state in its further and better particulars.

Your lordship will see that in paragraph 1.5 at page 64 of the further and better particulars there is a reference to the fact, "die feit dat die UDF tot stand gekom het met spesifieke doelstellings en projekte. Hierdie doelstellings word meer volledig uiteengesit en behels, (a), as langtermyn-doelstellings.." and in (a) we are told that "met die stigting was sy doelstelling die omverwerping en/of in gevaarstelling van die wettige regering in die RSA deur geweld en/of (20 dreigemente van geweld en op ander wyses wat die gebruik van geweld insluit of beoog. And if you go to (b), "korttermyn-doelstellings ter verwesenliking van gemelde langtermyn-doelstellings het UDF spesifieke doelstellings..", so the whole structure of this case is that everything that is done is towards the end of the "langtermyn-doelstelling" which is the violent overthrow of the state, so it reaffirms the nature of the case.

Now if I could just step back for a moment to look really at what the state says about violence actually (30 committed / ..

committed in the case because the allegation that is made there and I take your lordship shortly to the pleadings to show how it is made, but the allegation which is made there is that as part of this planned scheme of violence the UDF campaigned against black local authorities and in the course of that campaign it succeeded in directing the masses to commit violence in the Vaal and in 31 other areas in South Africa. Now what follows from that and I am going to show your lordship the paragraph shortly, is first that the violence which broke out in South Africa which had been (10 referred to in the 31 areas which have now been reduced in number is said to have been part of the planned campaign of violence by the UDF. Secondly, it is said to have been - it is tied if I may put it that way to the campaign against black local authorities. Now if I could then go to the indictment to say why I make that submission to your lordship in volume 4 at page 267 we see the allegation which introduces the acts of violence which have taken up so much time in this case, it is page 267, paragraph 626. It says:

K1467

"Gedurende die tydperk 20 Augustus tot einde April 1985 (20 en op verskeie plekke in die RSA het UDF en/of organisasies en/of liggame wat UDF aktief ondersteun ter bevordering en/of uitvoering van bogenoemde sameswerings en ter bevordering en/of uitvoering van bogenoemde sameswerings en ter bevordering en/of uitvoering van bogenoemde doelstellings van die ANC en SAKP of van UDF of van albei genoemde doelstellings in die uitvoering van UDF en/of ANC en/of SAKP se kampanje om die regering in die RSA se beleid en wetgewing ten aansien van verskillende vorme van gesagstrukture en in die besonder ten opsigte van swart plaaslike besture sowel as wetgewing (30 rakende / ..

rakende beheer oor swart burgers in die Republiek van Suid-Afrika algemeen bekend as die Koornhofwette te gebruik om die massas en veral die swart massas in die RSA te organiseer, mobiliseer, polities te indoktrineer en te aktiveer en/of op te sweep tot geweldpleging, en/of handelingte waardeur die RSA onregeerbaar gemaak moes word en wat gewelddadige rewolusie deur die massas in die RSA". So the allegation is that under this conspiracy and in the execution of that conspiracy and of the campaigns, the campaign against the Koornhoff bills were used, was part of the plan to (10 use that campaign to organise and mobilise etc. the black massas to actions which would lead to a violent revolution in South Africa and they then in the fifth paragraph say that "op 'n algemene en op 'n landswye basis 'n propagandaveldtog gevoer deur publikasies, pamflette.." etc and if one goes to the particulars one will see that the particulars that they give are all connected with the Koornhof bills, that propaganda campaign. And if one then goes to 66.7 at page 275 it is said, "en is hierdie spesifieke kampanje" - now there is a reference continually to the "spesifieke (20 kampanje" and "hierdie kampanje" is clearly a reference back to the campaign against the Koornhoff bills and black local authorities which is clearly part of the Koornhoff bills campaign. Then we are told there that "deur veral burgerlike gemeenskapsorganisasies wat met UDF geaffiliëer is in swart woongebiede opgeneem en gevoer ooreenkomstig bogenoemde leiding en opdragte en het werkers-, jeug- en vroue- en studente-organisasies genoemde burgerlike gemeenskapsorganisasies ondersteun en op verskillende plekke in die Republiek van Suid-Afrika daarin geslaag om die massas sodanig (30

op / ..

op te sweep, te organiseer, te mobiliseer en/of polities te indroktreiner dat die massas oorgegaan het tot geweld-pleging en/of intimidasie.." and it is all set out and in the particulars, when we asked for particulars to that, paragraph 27.6.5 of the request for particulars on page 40 - we asked for particulars of violence and how the violence in each area took place and it was effected and so on, and the answer which we get is at 27 - maybe your lordship has the wrong page number, it is 27.6.5, page 40 of the request for particulars and the reply is at page, it begins at page(10 76. I seem to have the wrong reference, I am sorry. It may be the further and better particulars.

ASSESSOR: It is the further particulars.

MR CHASKALSON: I think I have a page..

ASSESSOR: Page 76.

MR CHASKALSON: I have page 76 but my "nadere besonderhede" do not go that far.

ASSESSOR: Paragraph 27.6.5.

MR CHASKALSON: Oh, the reason is I have only got half the Afrikaans version, I had better go back to the English one(20 Where is the English one? Oh, I am sorry, it was page 76, I just did not have it. I am sorry, I am looking at the English version, but 27.6.5. says: by means of the propaganda by which the black masses in the black residential areas were incited against council members and black local authorities as set out in paragraph 27.6.1 supra, and if one traces the history of 27.6.1. one will find it in the further and better particulars where they give you the pamphlets which they rely upon; the black masses proceeded to violence and property was destroyed, council members were murdered (30 and /..

and council members were forced to resign by means of fear and intimidation, and then it goes on to say it was a direct result and outcome of the conspiracies, the mobilisation etc and then it tells you that in at least the Vaal triangle and later at page 77, it talks about the following places - so everything is introduced here under the rubric of the campaign against the Koornhoff bills and specifically against the black local authorities and all of it is attributed to the planned campaign to overthrow the state by violence. (10

Now we submit to your lordship that it is quite clear from the structure of the indictment that this was the case which the state set out to prove and tied itself to and indeed right at the beginning in answer - during the course of argument on the objection.. m'lord, I will read my notes and I will find the right reference, I am afraid that again I seem not to have - the reference has not been corrected I am afraid. The passage which I rely on and I will give your lordship the reference, what was said by counsel during the course of the argument was: "Julie het saamgesweer (20 om die staat met geweld omver te werp omdat julle aangesluit het en deel was van die UDF en die UDF se doel is om die staat met geweld omver te werp. Dit is die bewering, dit staan in die aanhef". I will give your lordship the page where that appears and I apologise, I have an incorrect reference in my note. That was again reaffirmed at the time of the application for the discharge of the accused when your lordship specifically asked counsel for the state whether their case was a conspiracy to overthrow the state by violence and he acknowledged that. Apparently I had the right reference (30

I / ..

I just did not read it correctly. It was a question your lordship put at page 166.

ASSESSOR: Volume?

MR CHASKALSON: It is volume C and at line 26 your lordship puts the question: "Kom ons laat nou die ANC eenkant voorlopig want ons moet nie die ding deurmekaar gooi nie. Die bewering is dat julle het saamgesweer om die staat met geweld omver te werp omdat julle aangesluit het en deel was van die UDF en die UDF se doel is om die staat met geweld omver te werp. Dit is die bewering, dit staan in die aanhef". It (10 is a question your lordship put to Mr Jacobs, the answer is: "Dit is reg". So right throughout this case, from the formulation of the indictment, from the argument on the objection, at the time of the application for the discharge its case was that the conspiracy is one to overthrow the state by violence and indeed that was actually underlined by the fact that in argument addressed to your lordship at the end of the case, there was no argument addressed to your lordship in connection with non-violent treason and it was only raised very obliquely at the very end of the argument when your (20 lordship asked counsel for the state about the Mayekise case. He certainly did not consider it appropriate to argue non-violent treason to your lordship, presumably because the indictment did not charge non-violent treason, presumably because he had committed himself at every stage of these proceedings to a different case.

Now we therefore submit to your lordship that the Mayekise case has no relevance to this case because the state has tied itself to the proof of a conspiracy for the violent overthrow of the state. And if I could take up that (30 argument/..



argument now by reference to the 1956 treason trial - now I am going to arrange for these judgments to be copied and made available to your lordship, your lordship's assessor and the state and I will see that it is done within the course of the..

COURT: That is not Mayekise's case because we have got that

MR CHASKALSON: No, this is S v Adams, the judgment of the special court and I will get these judgments copied.

Unfortunately I do not - I only have the one copy now but - I have only one copy with me and I am going to come back (10 to the case. I am going to come back to the case because in many respects the indictment and the charge is very similar to the present case and there is lots in the judgment in this which is relevant to this particular case.

But if I could tell your lordship, there were three judgments given ultimately, one by RUMPF J, one by KENNEDY J and one by BEKKER J. They have given a joint judgment in which they dismissed the charges against all the accused. Subsequently they gave reasons and when they gave reasons they tended to deal with different aspects of the case. There (20 was a disagreement between BEKKER J and KENNEDY J on an issue which I do not think is of any importance to this case, but the question of the examination of the indictment appears largely in the judgment of RUMPF J, and pages 1 to 2 RUMPF J describes the indictment in that case, or the nature of the evidence which has been led before he gets onto the indictment. He says:

"The evidence which has been led presents a picture of the activities of a number of organisations who made it their object to organise the masses of Non- (30 Europeans/..

Europeans in South Africa, to coerce the Government to deviate from its policy of apartheid and to grant a general franchise irrespective of any educational qualification. The evidence indicates that it was the policy of these organisations to establish a new form of state, possessing the qualities set out above and appearing in the so-called Freedom Charter and over a long period of time leaders and also publications issued or supported by these organisations have attacked the Union of the Union in intemperate terms; that (10 the need for mass action against the government had been stressed and that mass resistance against the implementation of laws have been organised. The evidence furthermore indicates that the international policy of the so-called Western countries, particularly that of the United States of America and of Great Britain have been condemned, and that of the Soviet Russia and China consistently lauded, and the Non-European masses were being educated along leftist lines, that the necessity for sacrifice was stressed on almost every (20 occasion, that the prospect of an inevitable clash between the suppressed masses and the state had on occasions been mentioned and that certain of the leaders had on occasions advocated violence."

Now your lordship will see from that description that it was a very much more powerful case than anything that the state has been able to produce here, because it had produced evidence that the leaders had on occasions advocated violence and it had produced evidence of the prospect of an inevitable class between the suppressed masses and the state having been (30 mentioned / ..

mentioned but what is common to the case is the fact that the organisation, that what has been done was to organise the masses. RUMPF J uses the word "to coerce the government to deviate from its policy of apartheid and to grant a general franchise". The accused have told you here that they wanted to put pressure on the government so that it would respond and change its policies.

At page 8 we are told that the allegations in the indictment covered a multitude of facts and events over a period of four years, from October 1952 to December 1956 (10 and inter alia allege the conspiracy involving the 92 accused and 152 named co-conspirators. Now our period of indictment is less than four years. It certainly covered a multitude of facts and events over a long period of time. Then at page 9 his lordship says this:

"In the indictment read with the further particulars the prosecution brings together a number of accused who belong to various organisations. They are brought together on the basis that they entered into a conspiracy to commit treason in that they are said to have (20 actively supported the policy of the organisations with the knowledge that this policy was one of overthrowing the state by violence."

Now that of course is the structure of this indictment. You committed treason because the policy of the UDF was to overthrow the state by violence. And at the bottom of page 9 his lordship says this:

"The task which the prosecution set itself was to prove that over the period of the indictment the organisations that it had cited in the indictment had a policy to (30 overthrow / ..

overthrow the state by violence and that each of the accused and each of the co-conspirators actively supported that policy."

His lordship then continues at the top of page 10:

"The particulars supplied by the prosecution indicated that the court would be asked to return a finding that such was the policy, mainly by way of inference from what had been published in thousands of documents consisting of bulletins, newspapers, minutes of meetings and other publications and from what had been (10 said in hundreds of speeches allegedly made by the accused and others over a period of at least four years from 1952 to 1956. In addition, the court would be asked also by way of inference from all the facts, to find the organisations had a policy of propagating communism inherent in which is the theory of violent revolution, and that each of the accused with knowledge thereof, supported that policy and intended thereby to achieve the violent overthrow of the state. To anybody with a little knowledge of trial work, the manner in which (20 the indictment was phrased and the contents of the further particulars foreshadowed a long and wearisome trial."

That is of course what has happened here.

Now it is not part of the state case here that the doctrine of communism was propagated, it is not part of the state case that there was a theory of violent revolution so that aspect of the treason trial is not repeated, but the first part, that the policy of the organisation is to be derived from speeches, bulletins etc is repeated. And (30

then / ..

then his lordship at page 11 sets out the structure of indictment drawing attention to the fact that the accused were charged, namely to subvert and overthrow the state or to disturb, impair or endanger the existence of security of the state and that they did disturb, impair and endanger the existence of the security of the state, or actively prepare to subvert or overthrow the state or to disturb, impair or endanger the existence of security of the state, and then the individual acts are then set out and it is much the same as our individual acts have been set out in this indictment. (10 ment.

And then there is a reference at the bottom of page 11 to the top of page 12, to a section of the indictment, part B of the indictment:

"During the period and at the places aforesaid, the accused did wrongfully, unlawfully and with hostile intent aforesaid, conspire with each other, with the persons mentioned in Schedule A hereto, and with other persons to the prosecutor unknown, to subvert and overthrow the state by violence and to substitute there- (20 for a communist state or some other state; (b), make active preparations for the achievement of the objects set out in sub-paragraph (a) hereof. It was part of the said conspiracy that the objects set forth in paragraph (b) above, were to be achieved by the accused in their individual capacities and/or as members or supporters of the associations and/or corporate bodies set out in schedule B. It was further part of the said conspiracy that the objects aforesaid were also to be achieved through the instrumentality and activities of the (30 associations/..

associations and corporate bodies."

Here we are charged with the personal capacity and instrumentality and activities. Then at page 13 is a whole series of allegations which deal with the congress of the people; they deal with recruiting and listing and preparing for acts of violence; a special corps of freedom volunteers being a semi-military and disciplined bodies as members are obliged to take an oath or solemn pledge to carry out the instructions, legal or illegal, of the leaders of the associations, of persons and/or corporatate bodies set out in Schedule B. (10

Sub-paragraph (3), the reference is to advocating and propagating unconstitutional and illegal action including the use of violence as a means of achieving the objects; sub-paragraph (4) refers to organising and participating in various campaigns against existing laws, inciting to illegal and violent resistance against the administration and enforcement of such laws and more particularly (a), the Native Resettlement Act, (b), the Bantu Education Act, (c), the Native Abolition of Passes and Co-ordinating Act; and under (5) there is a reference to promoting feelings of discontent (20 or unrest and hatred or hostility between various sections and races of the population of the Union of South Africa for the purpose of the ultimate violent overthrow of the state. Then there is a reference to communism and then finally, preparing and conditioning the population of the Union of South Africa and more particularly the Non-European section thereof, for the overthrow of the state by violence and inciting and to carry it into effect the means hereinbefore set out. So your lordship will again see the similarity between the indictments. (30

Now / ..

Now if I go back for a moment to remind your lordship that at page 9, I refer to two passages on page 9, in which first of all the people were brought together on the basis that they were said to have actively supported the policy of their organisations, with the knowledge that the policy was one of overthrowing the state by violence; and secondly, that the task which the prosecution set itself by that averment - those words are mine, I have added "by that averment" because his lordship merely says "which the prosecution set itself", was to prove that over the period of indictment (10 the organisations cited in the indictment had a policy to overthrow the state by violence, and that each of the accused and each of the co-conspirators actively supported that policy. At page 24, his lordship deals with an argument which was put up by counsel for the state at the end of the case. Counsel for the state had referred to the judgment of SCHREINER J. in the Leibbrandt-case and after referring to that judgment, RUMPF J. continues as follows:

"The above dictum gave rise to a submission by the prosecution in the present case, that any action (20 outside the constitution amounting to pressure on or coercion of the government or the electorate, with the intention to change the government or the constitution would be an illegal act and would be treason, even for example a sit-down strike embarked upon with that intent. The suggestion was made in the following words: "My Lord, you cannot hold a pistol to a man's head and say I am giving you an option. You can either change your heart or you can take the consequences. And if he then changes his heart, that is not a change of heart and (30 that / ..

that is why, My Lords, that is why His Lordship makes it quite clear that if your object is to use unconstitutional means, if you intend to act outside the constitution, you are using a form of pressure, a force which is not permissible. And nobody, no voter, no government, no authority is expected to tolerate it. My Lords, I think it is quite clear when once free scope is given to unconstitutional action to change government, to change the constitution, there is no and My Lord, there must be no end to the danger, the instability and insecurity of (10 the state in which that type of action were to be tolerated. I do not say, My Lords, that a strike or a passive resistance campaign in itself is treasonable, is in itself unlawful, but My Lords, if that action is embarked upon with the object of coercing the government, with the object of overthrowing the government and with the object of bringing it to its knees, that is treason."

That was the argument.

His Lordship deals with the argument as follows:

"Interesting and important as this suggestion may be (20 it is not the court's duty to consider it, because the entire case for the prosecution was brought and conducted on the basis of a conspiracy to commit violence against the state. In this respect the record reads:

MR JUSTICE BEKKER: This really is not the Crown's case and the indictment is not.

COUNSEL: That is not our conspiracy.

MR JUSTICE BEKKER: Your (inaudible) to violence.

COUNSEL: We have said, My Lords, that they wanted to overthrow the state by violence and they wanted to (30  
prepare / ..



prepare the people for that. That is what we have said." And His Lordship Mr Justice Bekker in his judgment at page 1 says this:

"The case for the prosecution, as presented by the indictment is that the accused conspired to overthrow the state by violence, because they individually took an active and leading part in the activities of the organisations of which they were members, with full knowledge and in support of the policy of that organisation. In each instance the prosecution attributed to the (10  
respective organisations a policy to overthrow the state by violence. This is the cornerstone of its case and if it fails to establish such an organisation or policy on the part of the African National Congress, then for reasons mentioned in our earlier judgment.."  
that would be the short judgment handed in at the end of the case before they gave their detailed reasons -

"..the whole case against the accused collapse. The prosecution did not suggest or contend that the policy of the African National Congress stood to be ascer- (20  
tained from any secret acts or activities, but from what it did or advocated openly or publicly. In our earlier judgment we held that the prosecution failed to prove that it was the policy of the African National Congress to overthrow the state by violence.."

and then he goes on to deal with another matter.

But that case collapsed for precisely the same reason that we suggest to your lordship that the state case in this trial should collapse; and that the cornerstone of the prosecution was the conspiracy to overthrow the state by (30  
violence/..

violence. Having failed to prove that and we are going to submit to your lordship that it has not been proved in our case either, the cornerstone collapses. Now that judgment is of course consistent with the well-known principles of our law that the state is bound by its particulars. There are a numbers of cases that I do not need to trouble your lordship with and I will give your lordship the references and I shan't read them unless your lordship want me to, but there is R v Bruyns 1944 AD 131 at 135;

COURT: Just a moment. What is your reference? (10)

MR CHASKALSON: R v Bruyns 1944 AD 131 at 135; R v Anthony 1938 TPD 602 at 604; S v Mandela 1974 4 SA 878 (A) 882.

ASSESSOR: What volume, please? 1974..?

MR CHASKALSON: I am sorry, it is - I will have it in a moment - it is 1974 4 SA 878, the passage appears at 882. I want to go back for a moment to the case of Adams, in the reported judgment in 1959 part 1. I am sorry, my notes are not in order, I would like them to be, but the passage in Adams is one which I can find quite easily. It is where RUMPF J - oh, no, it was the court as a whole, indicated (20 that the basis of charging people on a course of conduct over a long period of time is an exception from the general rule and because of the potential prejudice to the accused the state would be held strictly to its obligations. Now that was said in a slightly different context. If ever there is a case in which the state must be held to its obligations in regard to the indictment, it is a case of this nature where people are brought together - different people are brought together, being charged with an on-going conspiracy over a very long period of time is an exception. There (30 could / ..

could not be a more difficult case for them to meet, because apart of the very great difficulty inherent in trying to sort out the position of individuals in such a case, there are masses of evidence which get put into the smelting pot and the bare minimum that one expects in such a case is that the state tells you this is going to be our case, that it sticks to that. I will find that passage later, m'lord.

Now that then is the structure of the case that we were brought here to meet and I want to now go back and look first at the averment which introduces really the ANC into the (10 UDF conspiracy. And that averment, m'lord, and the foundation, really what is the foundation of the state case on this issue, in the indictment was that the UDF was formed at the instance of the ANC and it was formed at the instance of the ANC to promote its objects in South Africa. I have already read that passage to your lordship. If I may just remind your lordship of it, give the context of this section of the argument, it is the passage at page 5 in the first volume of the indictment and it says:

"En nademaal die ANC en sy lede en/of aktiewe onder- (20 steuners besef, aanvaar en verkondig dat bogenoemde doelstellings slegs verwesenlik sal kan en/of moet word as die massas en veral die swart massas in die RSA betrek en oorreed kan en/of moet word om deel te neem aan 'n gewelddadige rewolusie in die RSA en veral sedert Januarie 1983 organiseer en doen 'n beroep op.."

and the first proposition is, and that is set out in sub (i) on that page : ".sy lede en aktiewe ondersteuners om veral die swart massas in die RSA te organiseer, te mobiliseer polities op te sweep en te indoktrineer, te kondisioneer (30 en/of / ..

en/of te aktiveer, om te verenig in organisasies of  
liggame in alle vlakke in die samelewing in die RSA."  
and under (ii):

"Sy lede, aktiewe ondersteuners en organisasies en/of  
liggame wat bestaan en/of ontstaan veral onder die swart  
massas in die RSA om saam te werk en te organiseer en  
n verenigde, demokratiese front tot stand te bring onder  
veral die swart massas en sogenaamde demokratiese anders-  
kleuriges.."

and then it goes on to talk about calls to the people in (10  
control of such a front and so on. And the gist of the  
averment is that it was as a result of that action on the  
part of the African National Congress that the UDF was esta-  
blished on 20 August 1983, and as we have seen m'lord the  
state said that the object of the UDF was precisely the same  
as that of the ANC - the violent overthrow of the government  
and it goes on to say that it had been established that once  
the ANC had been established it sought to achieve that object  
and to achieve the goals of the ANC and the SACP, and I have  
already referred your lordship to these passages, I am not(20  
going to read them again but your lordship I think will find  
them in volume - in this volume that I call volume 1, it is  
the charge, page 7, lines 1 to 7, page 7, lines 19 to 23  
and page 5, lines 1 to 6.

And then it goes on to say that once it was in existence  
the UDF was called upon by the ANC to organise and mobilise  
the masses to engage in activities that would make South  
Africa ungovernable and lead to a violent revolution. And  
that your lordship will find set out on page 6. And it goes  
on to say that that was just what the UDF did, and it says(30  
that / ..

that at page 8, line 7 to page 9, line 20, and I have already read those passages, and I do not want to go through that. I have been told that the passage I have been searching for and could not find, was in the Adams case, the 1959 1 report at p 669 against the letter E to G. The passage on which I rely is this:

"In our view of the matter, a joinder of persons on the basis of participation in a course of conduct, not for the same periods, constitutes a departure from the usual or general rule. Such a departure is only to be (10 permitted by the court if the Crown is made to comply with its duties in the strict sense of the word."

It is obviously such a burdensome procedure because nothing could be more difficult for an accused person to stand trial on such a broad ranging conspiracy, where even the most careful of courts has great difficulty in sorting out the evidence and avoiding the problem of guilt by association, because you get hundreds of documents being put before you, of writings by people who are not before the court; of writings by people who may on the charge have (20 something to do with the case but may not be shown to have something to do with the case. And at the end of the day so much gets put before the court that there is a sense that something is not right, until you start taking it all apart. And the only way you can evaluate it and take it apart is by looking carefully at what the accused were called upon to meet because they cannot be expected to defend themselves as it were against a generalised allegation.

Now there are really two parts to the state averment. The first part is that the ANC was formed at the instance (30 of / ..

of - sorry, that the UDF was formed at the instance of the ANC, and the second part of this side of the case is that the UDF launched a variety of campaigns at the instance of the ANC, and they are referred to by the state throughout its argument and throughout its case as the ANC campaigns - "rond-om die ANC knelpunte", and during the course of argument on the objection the state said this to your lordship. It said it undertook to show that the ANC decided on a campaign and the UDF carried out that decision. It is volume C, page 143. Your lordship asks the question, it is at line 21: (10

"HOF: Gaan u saak wees dat die ANC besluit het op die kampanje en dat die UDF dit later uitgevoer het?

MNR JACOBS: Dit is reg.

HOF: Met ander woorde kronologies dat daar eers 'n ANC besluit is en dat daar dan uitvoering gegee is deur UDF?

MNR JACOBS: Dit is reg.

HOF: Of wat betref elkeen van die kampanjes?

MNR JACOBS: Selfs die mobilisering en organisering van die massas sal ons bewering wees dat dit kom van die ANC. Dit is dus deur hulle gepropageer en UDF het dit voort-  
gesit." (20

Now all of this we are told is from January of 1983. Now of course the defence evidence showed your lordship that these campaigns and I am going to leave aside for the moment the constitution and the Koornhof bills, but even then it will be covered by what I have to say. These campaigns, so-called campaigns were in fact matters or issues, if I may call them that, in which the affiliates were engaged and which the affiliates which pre-existed the UDF had all taken up prior to the formation of the UDF. And the evidence (30  
shows / ..

shows that the affiliates which pre-existed the UDF and which were pursuing these issues continued to pursue these issues after affiliation and sought the support of the UDF in connection with their work, and of course the UDF thought to unite them in what they were doing. And there were clearly some new affiliates which came into existence after the UDF had been founded which took up similar issues, but what the case shows is that these were not campaigns or issues as it were which were initiated after January 1983, or after August 1983 when the UDF came into existence; chronologically as (10 it were pursuant to a specific instruction given by the ANC, There has been no evidence of that at all, just generalised calls by the ANC and I am going to deal with the admissibility of that evidence in a different context. But what is fatal to that part of the state case is the proof which the defence has put before your lordship that on each one of the major issues these pre-existed January 1983; it pre-existed anything which you might be able to pick out of any Seshabe, even if that document were an inadmissible document. And indeed the state ultimately seem to acknowledge (20 ge this because it did not attempt to cross-examine witness who were called on this issue, to support the thesis which it had advanced in its indictment; nor did it even argue that to your lordship. As I understood its argument it said yes, a lot of these issues were there, what the UDF did was brought it together. But that is a very different proposition to the one that it was done - these were all initiated as it were after they had been identified by the ANC for that purpose. And on this aspect of the case, and I am going to come back to it later - your lordship will also bear in (30 mind / ..

mind that there is a lot of evidence that precisely the same issues were taken up by non-affiliates of the UDF and that these are in fact burning issues within the black community particularly, and any number of organisations are referred to as having been concerned with those issues. So if I could come back to the way we are going to try to approach this argument, is we make the submission to your lordship that what is important as far as this part of the case is concerned is that the state set out to prove two central propositions and we are going to submit to your lordship that it has (10 failed on both of those two central propositions - first that the UDF was established at the instance of the ANC and secondly that the ANC in effect directed the activities of the UDF.

I am going to look first at the averment that the UDF was established at the instance of the ANC and we then move to look at the direction of the activities and then we will move away from that and look at the broader picture of what the UDF had been doing. My introduction to this is going to follow that way, first the instance and secondly the (20 directions.

Now if we go to the proposition that the UDF was established at the instance of the ANC, now the foundation for that part of the state's case was the so-called or what had been referred to as the call made by Mr Oliver Tambo on 8 January 1983. And in the further particulars we were told that Mr Tambo made this call in an address delivered on behalf of the national executive committee of the African National Congress on 8 January 1983. That is in the further particulars at page 32 - I just want to make sure that I (30

have / ..



have - yes, it is page 32:

"Op 8 Januarie 1983 het O.R. Tambo, president van die ANC namens die nasionale uitvoerende komitee van die ANC in 'n toespraak die oproep gedoen op die lede en aktiewe ondersteuners waar hulle hul ookal bevind. Daarna was die oproep in amptelike publikasies van die ANC, SAKP en Mkhonto we Sizwe in die RSA versprei. Die oproep is ook oor Radio Freedom, Voice of the ANC en Mkhonto we Sizwe in hulle uitsendings van Radio Luanda, Radio Lusaka, Radio Ethiopië, Radio Madagaskar(10 en Radio Tanzania aan die massas in die RSA herhaal. Die dokumente en bande waarin die oproep vervat is word nie tans beskikbaar gestel nie maar sal as bewysstukke by die hof ingehandig word."

Well, we did not get all we were told we were going to get, m'lord, but we got some; but let us see what the evidence was.

First the state led the evidence of the witness IC.24. He was a former member of the African National Congress who testified that every year on 8 January a speech is (20 made by the national executive committee, or on behalf of the national executive committee of the African National Congress. I do not need to read his evidence, I will give your lordship the reference. It is volume 147, page 7 334, lines 27 to 29. And he said that the practice was that the speech is first broadcast on Radio Freedom and thereafter that it is disseminated in the camps in pamphlet form, and that is at page 7 335, it is the same volume; volume 147; and he said the practice is that finally the speech is published in Seshaba. And he said that at page 7 335, (30 lines / ..

lines 21 to 22. And he also identified - he was shown EXHIBIT AAH.2 and he identified that as a leaflet which he has seen in one of the camps. I don't think that meant that that was a leaflet that was handed to him in the camps, he had seen one like that in the camps. His evidence is not clear but nothing turns on that. He said that that statement was available in the camps. That is volume 147, page 7 336, lines 2 to 13. He also said that while he was a member of the ANC and was in a camp in Angola, he had heard the 1983 speech over Radio Freedom and that he had also (10 received in pamphlet form the speech which he had heard and he said he had also seen it in Seshaba. That your lordship will find at volume 147, page 7 335, line 23; page 7 336, line 1. Now to the best of our knowledge no evidence was led to support the averment made in regard to cassette recordings, nor are we aware of any evidence having been led in regard to the distribution of either pamphlets or this particular Seshaba, or any other publications in which this speech is said to have appeared through other means in South Africa. Apart from the confirmation and I will read his (20 evidence concerning the contents of AAH.2, it is possibly arguable that it does not go that far but I will read it as confirming the contents of AAH.2 by IC.24. There was no evidence that this particular publication or any other containing the speech was ever distributed in South Africa or if it was distributed as far as we are aware there is no evidence as to when or to whom it was distributed or how many copies, if any, reached the country. Nor as far as we are aware, and I have not found anything in the state's argument to the contrary, is there any evidence that the (30 particular / ..

particular programme of Radio Freedom that IC.24 heard in the camp in Angola was ever beamed to South Africa and if it was, whether it was received in South Africa; and if it was received in South Africa, in what form it was received. All that we really know, taking IC.24's evidence at its most favourable to the state was that pamphlets were distributed to members of the ANC in a camp in Angola and that he saw the document published some time later in Seshaba. We do not know when it was published, when and in which Seshaba. Now we may be able to find it somewhere amongst the (10 documents, I do not know. But again the state has not attempted to show us anything like that in its argument.

Now it appears from EXHIBIT AAH.2 that the call relied upon by the state is contained in three lines of the statement made on behalf of the national executive committee of the ANC. The statement, it is quite a long statement, it is 12 pages of A.4 paper and it reviews the activities of the ANC in the previous year and it addresses certain future issues and at page 5 at the bottom it says:

"In the face of this determined enemy counter offence we must hit back with all our strength, ensuring that the millions of our people are engaged in struggle. To increase our offensive power we must organise the people into mass democratic organisations; we must organise all revolutionaries into underground units of the ANC; we must organise all combatants into units of Mkhonto we Sizwe.."

and then the two lines which the state relies on:

"We must organise all democratic forces into one front for national liberation."

(30

That / ..

That is at the top of page 6.

Now if I could step back for a moment from that position, and ask your lordship to look at the evidence concerning the situation in this country at the time prior to Mr Tambo's call. Now there are a number of propositions which need to be taken into account and which are relevant here. First that the defence evidence shows that the concept of a united front was not something that was raised as it were by Mr Tambo or which came for the first time out of the speech by Mr Tambo as if it were something new which introduced (10 this concept to people in South Africa. On the contrary the evidence shows a very different picture. Mr Molefe said that in approximately May of 1981 he himself had been asked to speak at the national conference of the South African Council of Churches. Now May 1981 is actually before the Seshabas, the series of Seshabas on which the state relies - the first Seshaba upon which the state relies and again I am speaking under correction but I think they began in 1982 I believe, in January of 1982.

ASSESSOR: Reference, please? (20

MR CHASKALSON: To Mr Molefe's - I will give your lordship that, Mr Molefe's speech is at volume 247, page 13 154, line 27 to page 13 156, line 30 and the exhibit to which he referred to is EXHIBIT DA.13. Now Mr Molefe gave evidence about that and his speech was put in and at page 3 pages 2 to 3, the bottom of page 2 to the top of page 3, this is what he said:

"Having experienced an unfortunate and sordid chapter in our history in South Africa as well as Christians.."

ASSESSOR: Did you say DA.13? (30

MR CHASKALSON/. .

MR CHASKALSON: 13, DA.13. It is at the bottom of page 2.

"Having experienced and unfortunate and sordid chapter in our history in South Africa, as workers, Christians, students, women's organisations, political organisations a chapter characterised by treachery and betrayal, greed, hypocrisy and blunder, a united front becomes an imperative in our chief endeavours to meet the demands of our times. Unless the church develops in unity with the oppressed masses as a bastion for action, and unless all strata of the oppressed unite (10 and develops a bastion for action, the progress of our liberation struggle will also be militated against by the exploitative system and its kindred forces. The broad front envisaged here is the major challenge of the day and can be pursued in the following manner: by formulating initially an ad hoc committee consisting of all social, political, religious and cultural organisations from all sections of the oppressed masses. It must be noted that here we are thinking of political bodies, sports bodies, churches, teachers' organisa- (20 tions, workers, nurses' associations, etc. We mention the following few organisations as an example, AZAPO, AZASO, Committee of Ten and SCA, MOASA, TAC, UMDALI, COSAS, Taverners' Association, RMWU, etc."

Now Mr Molefe's evidence was, made at the meeting of the South African Council of Churches I think it is, on 4 May 1981, and he said that that speech was widely publicised and I would ask your lordship to turn to volume 247, page 13 159. It says: "You have identified the speech that you made and you have given us the date, but you have told us (30

that / ..

that you have made a suggestion in May 1981 for this united front to be established and that it was a subject for discussion within the political circles in which you moved and that there was wide publicity attached to it" - I think that we have to go back to 13 159, line 20:

"That was in May 1981. Was there publicity in the press concerning your speech? -- It was widely publicised.

Was it a matter of discussion within the political circles in which you moved at the time? -- It was." (10  
Now to the best of our knowledge that evidence was never challenged. If it was, it certainly has not been dealt with in the state's argument, and I personally am unaware of any passage in these 25 000 pages in which that bit of evidence was put in dispute. But it is more than that. Mr Molefe's call for a united front in May 1981 was not the only call made in the period prior to Mr Tambo's address, because there was evidence that during 1982, evidence from Mr Molefe that he received a pamphlet through the post entitled: "Let us unite in the year of the united front". He said (20 the pamphlet was under the pseudonym "Speerman", but that was a pseudonym for Dr Neville Alexander and that the pamphlet was subsequently published in a book under Dr Alexander's name entitled: "Sow the Wind". And that pamphlet was produced and at page 13 to - I am sorry, I should give you the reference to Mr Molefe's evidence where he deals with that. It is volume 247, page 13 163, line 22, to 13 164 line 16. And the pamphlet is DA.14 and it is the concluding paragraphs at pages 13 to 14, which reads as follows:

"There is a great need for a national debate on the (30 principles/..

principles and practices of the united front. The time has come to combine our forces in a united front that represents the vast majority of the black workers and of the radical black middle class. The challenge of the oppressed and exploited groups has never been greater in our entire history. Against the background of the heroic events since the Soweto uprising, there is no doubt that the organisations of the people will rise to the occasion and will create through united action the instruments required to (10 meet this challenge. Let us make 1982 into the year of the united front and raise our struggle for liberation from apartheid and capitalism to a higher level. Let us unite for a non-racial, democratic and undivided AZANIA - South Africa."

Now the evidence shows that Dr Alexander was associated with the National Forum and that he never became a member of an affiliate of UDF. That appears from Molefe's evidence volume 247, page 13 167 line 14 to line 22. And in answer to a question by your lordship about Dr Alexander, Mr (20 Molefe said this - at page 14 587, lines 22 to 24. Your lordship had asked Mr Molefe a question. The question was:

"Where does the author stand?"

and it was a long answer but I will give your lordship only the parts which seem to me to be relevant, it is at line 22 to 24. He says:

"All I can say is that Dr Neville Alexander has been very critical of the UDF, he has been very critical of the ANC, he has been partly critical of the black consciousness position insofar as it excluded every (30

white / ..

White person".

Your lordship has asked him for a general survey of Dr Alexander's position. Then your lordship asks him why he should be critical of the UDF, and he says:

"I think on the basis that the UDF thinks that it can bring together everybody, the white working class, the black working class, the sons and daughters of the bosses, the Black Sash."

And then your lordship puts: "So he actually is a pure socialist, is that what he has against the UDF?" - (10

"I do not know because he is differing from those people who are saying that the struggle is the struggle of the working class alone."

And your lordship says: "So he seems to be a square peg in all round holes?" -

"That may be so, I do not know. He is the only one who can argue his position."

and then it is left there. The evidence is that this was distributed. Mr Molefe went further and he said there was a long history of attempts to form united fronts. He (20 said already in 1980 when he was a member of AZAPO he had discussed with political colleagues the need for a broad front comprising various organisations in Soweto. And that your lordship will find in his evidence in volume 248, page 13 168, line 24, to 13 169, line 1.

Now there is also the evidence of Mr Lekota who mentions previous attempts at united fronts, including the celebrated call by adv M Kies in 1943 which led to the formation of the Non-European Unity Movement. That is in Mr Lekota's evidence, volume 290, page 16 091, lines 10 to 18. (30

Now / ..



Now it was against that background - perhaps I should give your lordship some other references there. Also at volume 299, page 16 916, line 15; 16 917, line 20; and to EXHIBIT BA.102. Now it was against this background that evidence - it was in this context that your lordship must have regard to the evidence of the newspaper reporter, Mr Henrico Kemp who questioned Dr Boesak on 6 January 1983 about the possibility of opposition to the tri-cameral parliament proposals. Now the chronology becomes important. Your lordship will recollect that at the beginning of (10 1983 the Labour Party had met in Eshowe and it was at that conference at which the opening address if I remember correctly, at any rate an address was given by Dr Buthelezi urging the Labour Party not to go into the tri-cameral parliament. And he of course had been in some form of alliance with the Labour Party up until that stage. We know that the Labour Party conference was between 4 and 6 - no, I have got the dates wrong, m'lord, 3 to 5 January. And I will show your lordship there is a passage in Mr Dangor's evidence where I can find that date. I will get (20 it for your lordship in a different context. On the 6th, which is a day after the Labour Party conference was over Mr Kemp questions Dr Boesak about the possibility of opposition to the tri-cameral parliament proposals. Mr Kemp said that he was aware from his work as a journalist that there was widespread opposition within the black community to the constitutional proposals. He said that he had encountered that during the previous year. He said that the opposition had been expressed by organisations across a broad front and that at that time there was the idea (30 that / ..

that they should be united into a broad front to oppose the constitutional proposals, and Mr Kemp said that having gained this impression from his work as a journalist he decided to raise that question with Dr Boesak. Mr Kemp's evidence which I have summarised there can be found in volume 408, page 23 825, lines 10 to 30. Now one of the questions that Mr Kemp asked Dr Boesak was whether he foresaw a united front by community organisations and churches against the Labour Party's decisions and the words according to Mr Kemp were his, and he said the idea was a form of (10 journalistic shorthand which he had used to mean a broad based coalition of political opposition and that evidence your lordship will find at volume 408, page 23 818, line 28 to 23 819, line 8. And then Mr Kemp wrote a story - in fact your lordship will remember that the computer print-out, DA.201, was produced by Mr Kemp and question 5 was:

"Do you foresee a united front by community organisations and churches against the Labour Party's participation in the constitutional scheme."

COURT: Is it DA.101? (20

MR CHASKALSON: 201. And that is dealt with at page 23 825 line 5 to 25. Now we know that that article appeared on the front page of the Cape Times on 7 January 1983, that is before Mr Tambo's speech. Friday, 7 January 1983. The headline on the front page: "BOESAK CALLS FOR UNITED FRONT."

COURT: Which is not true of course because if you read the print-out or the article, he did not call for a united front.

MR CHASKALSON: Well, that is the headline that the sub-editor gave.

COURT: Yes, one wonders why because he did not call for (30

one / ..

one.

M CHASKALSON: Well, did you foresee it - well, perhaps that is a question which somebody should have asked Mr Kemp. I am going to read your lordship Mr Kemp's cross-examination, if I may do that now just to conclude this part of the evidence. At page 23 824, line 26, the cross-examination of Mr Kemp goes as follows:

"Is this the whole interview on EXHIBIT DA.201? --  
Yes that is correct.

And are you satisfied that everything that is quoted in inverted commas in this article, article on DA.202 appears on DA.201. -- If you are referring to the direct quotes, yes.

Everything is here? -- As far as I am aware, yes.

Haven't you checked it? -- Yes, I have checked it.

And are you satisfied that they are all here? --  
Yes, I am.

There are no more quotes in EXHIBIT DA.202 than appears in DA.201? -- No, there are no more quotes that I am aware of.

So why did you specifically ask Dr Boesak about a united front? Where did you get the idea from of a united front? -- As I explained the term united front was a spontaneous term which I used at the time to indicate a broad based political opposition. It was a form of journalistic shorthand.

Yes, but where did you get the idea from? Why did you ask him that? What was the reason for that? --  
Prior to the Labour Party's decision to enter the new parliament in the previous year, during the course(30

of /...

of my work as a journalist I encountered in the community strong opposition to the new constitutional dispensation and I had also encountered the feeling that organisations in the community should oppose the constitutional proposals.

On a broad front? -- Well, the organisations that indicated their opposition to the dispensation were organisations across the broad front. By that I mean civic organisations, church organisations and youth organisations. (10

Was it the idea that they must be united on a broad front to oppose the new constitutional proposals? -- That is my impression, yes."

All this is cross-examination, m'lord.

"And those organisations does it also include the ANC? As a journalist have you seen that? -- Could you please rephrase that question?

Have you as a journalist also seen publications by the ANC or statements by the ANC or did you know about statements by the ANC about a broad united front? -- No, I did not. (20

Thank you."

Well, m'lord, that was the evidence. There was no cross-examination, it was never directed. The cross-examination confirmed and accepted the proposition that there was talk of forming a united front at the time amongst the community organisations and that is why he questioned Dr Boesak about it, and then came the story. He said he had heard nothing about the ANC and he knew nothing about the ANC and it was never suggested to him that he did. (30

THE COURT ADJOURNS FOR LUNCH