

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-08-26

DIE STAAT teen:

PATRICK MABUYA BALEKA EN 21

ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST EN

ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS

ADV. P. FICK

ADV. W. HANEKOM

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

LUBBE OPNAMES

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Friday COURT RESUMES ON 26 AUGUST 1988.

MR CHASKALSON: I am informed that all the accused are present in court this morning. I have a request to address to your lordship. Accused no. 9, Mr Ramagula, receives treatment for diabetes. He has an appointment with the hospital service in Johannesburg, I have a doctor's certificate, to attend their clinic on Monday morning for treatment.

COURT: That would be the 29th?

MR CHASKALSON: 29 August, and the request that I ask to your lordship is that he be excused from court on Monday to enable (10) him to attend the clinic.

COURT: Yes accused no. 9 is excused.

MR CHASKALSON: Yesterday we were given the dates upon which EXHIBIT AB7(6) had been referred to other witnesses and we caused searches of the record to be made and we can give your lordship the references to the pages of the record where it is dealt with.

COURT: Just a moment. .

MR CHASKALSON: I should tell your lordship that I am informed that all of the witnesses said that they knew nothing about (20) the document. But I can give your lordship the pages where that appears.

COURT: Yes that is also our recollection.

MR CHASKALSON: That is what I am told but I can give your lordship the pages - it will save your lordship possibly the trouble of looking for them.

COURT: Yes?

MR CHASKALSON: Mr Vilakazi, accused no. 10, it was put to him at volue 168 page 8 644 lines 1 to 10; to accused no. 8, Mr Nkopane, at volume 178 page 9 182 lines 1 to 9; to accused (30)

no. 9, Mr Ramagula, at volume 185 page 9 598 line 27 to 9 599 line 2 and to accused no. 16, Mr Manthata, at volume 277 page 15 070 lines 7 to 26. There were two other matters which I told your lordship we would look through the record for. One was the reference to the defiance campaign, to the fact that though the defiance campaign had been considered it had been rejected. Your lordship will find that dealt with in EXHIBIT H1, which is the minutes of the meeting of the National Executive Committee held on 21 and 22 July. It was the workshop which was converted into an emergency meeting and in para- (10) graph 7.4 there was a reference to the fact that no agreement was reached as to whether the UDF could call for a defiance campaign. The relevant passage is that no agreement was reached as to whether the UDF could call for a defiance campaign. The emphasis made was that every action taken must win the UDF more supporters, that those involved must understand the implications of the action. It was accordingly recommended that the matter be discussed seriously by all regions as it is likely to have far reaching implications for the UDF. And Mr Molefe gave evidence about that in volume 253 page 13 527 line 20 (20) to page 13 528 line 10, oh no that is a wrong reference I am sorry. I am terribly sorry it is volume 250 page 13 355 line 29 to 13 357 line 5. And the effect of his evidence was that no such decision was ever taken in his time. And then the third matter which I think that I said that we would look for is the evidence that "Speak", the publication "Speak" was not a policy document of the United Democratic Front and that the United Democratic Front had no say in its running. That appears from Mr Lekota's evidence in volume 290 page 16 172 lines 23 to 28. Now yesterday I was dealing with the document C.18 and .. (30)

COURT:/....

COURT: Where are we on the "Betoog".

MR CHASKALSON: The "Betoog", I will get it. I am sorry.

ASSESSOR (MR KRUGEL): Page 17.

MR CHASKALSON: It is here yes. The state relies on that document, it says that it demonstrates the dishonesty of the evidence of the accused, and our submission to your lordship is that there is in fact nothing in EXHIBIT C.18 which shows accused nos. 19 and 20 to be liars - as they are characterised by the state - that it is not a writing for which they were responsible or which they had ever seen prior to the trial, (10) that at best it deals with the attitude of an individual writing we do not know for whom, possibly for an affiliate, possible for some organisation or group which has members within the UDF and its affiliates and seeks in some way to influence UDF decision. But in any event since it is not a UDF document and it is not shown to have been distributed by the UDF to conspirators and affiliates the basis upon which the state used the document to discredit the accused falls away. If the document is inadmissible as we contend it to be then of course the state cannot rely upon it for any purpose whatever. The next document dealt with in the "Betoog" is at page 19. It is EXHIBIT H.1 and EXHIBIT H.1 is referred to and in the second paragraph the state says:

"Nou word die minimum vereistes die amptelike beleid en eise van UDF en trawante as geheel..."

Well once again that misstates the evidence. It is a misstatement both of what the document says and of the evidence which was given concerning the document. If we turn first to EXHIBIT H.1, if one looks at paragraph 3 of EXHIBIT H.1 it says this:

(30)

"It/...."

"It was decided that the workshop be transformed into an emergency NEC meeting. It was further noted that the nature of some of the issues under discussion were such that mandates of regions were needed. It was therefore decided that the NEC decisions (it says "forwarded" - it looks as if it should have been "be forwarded") forwarded to regions as guidelines for discussion, that firm decisions be taken on the basis of synthesized views of the regions."

Now ...

(10)

COURT: Why was an emergency meeting necessary?

MR CHASKALSON: Well there was evidence given about that and I think I can find that - I think that question ...

COURT: No it is not necessary to look for it. Just, as your recollection is just remind me.

MR CHASKALSON: My recollection - I have told your lordship what my recollection is but I am not sure my recollection is right but my recollection is that there had been a workshop and it was decided that they had to meet together for certain purposes at the workshop and they decided that they would (20) then meet. They then had these discussions and they then decided that they could not really take decisions because of the implications of the matters which they were discussing. Your lordship will see here that it discusses the future of the UDF and its direction, it discusses policy matters, it discusses - this is the matter where the question of the defiance campaign is raised and is considered and it was decided in the end that the matters were of such a nature that they could not actually take binding decisions and that they would have to go back to the regions for discussion. (30)

COURT:/....

COURT: Ja but that is step three. Step one is a workshop is arranged, step two is it is converted into an emergency NEC meeting.

MR CHASKALSON: Yes.

COURT: Now why step two? Step three is the NEC sees it cannot decide finally on it, but why step two?

MR CHASKALSON: I think if my memory is right - and I will find the passage and give your lordship a more accurate statement later - my recollection is that they converted it into a, they decided to convert it into an NEC because they felt that (10) there were matters upon which decisions were necessary and so they converted it into the NEC and then they subsequently decided that the issues were of such a nature that it had to be circulated to the regions. Now - I do not think anything really turns on that because there is documentary evidence to show that that is precisely what did happen and there is direct evidence to show that that is what happened. Now if I could address simply the question at this stage of the National Convention and the pre-conditions. Mr Molefe's evidence on that at volume 249 page 13 300 lines 12 to 25 was to the effect that the ques- (20) tion of the National Convention and the conditions for the convention were discussed at this meeting and that there were differences of opinion on this issue, though the majority took the view which is recorded in the minutes. Secondly Mr Molefe, at volume 250 page 13 311 lines 8 to 14 confirmed that the views of the NEC recorded in EXHIBIT H.1 certainly in regard to the National Convention but I think also in regard to other matters were regarded as guidelines for discussions with the regions and that they were to be treated as it were as recommendations from the National Executive Committee to the regions (30) but/....

but not as binding decisions - that would only happen after the regions had had an opportunity of discussing all these matters. And indeed according to Mr Molefe - and his evidence to this effect your lordship will find in volume 273 pages 14 877 line 2 to 14 878 line 20 - the guidelines were in fact forwarded to the regions for discussion. Now that happened in September of 1984. If your lordship would, the documentary evidence which I indicated to your lordship confirms that is EXHIBIT C.59. It is a letter dated 13 September 1984 and it is a circular to all regional secretaries and it begins in (10) this way, it says:

"During its meeting in Bloemfontein on July 21, 1984 the NEC could not take binding decisions relating to the most concrete questions of the future of the UDF. It was noted that regional mandates were required before such serious decisions could be taken. The NEC consequently resolved to refer the matter to the regions for thorough discussion and that its views be seen as mere guidelines for such discussion. We would like to ask you to ensure that serious discussions go into the (20) above question. This must preferably be handled in workshops. Our workshops must be broadly representative of our affiliates. We must guard against a few activists deciding for organisations while organisations themselves are left in the dark. Please make sure that the views of the regions are made known to the NEC meeting on 29 and 30 September 1984. I enclose some guidelines arising out of the said NEC meeting."

You will see that Mr Molefe did not sign the letter himself. It was signed on his behalf and I think that by 13 September (30)

he/....

he was in detention. Oh I am wrong he was not yet in detention, I am sorry. He was in detention shortly after that. Now your lordship will see that part of the, attached to EXHIBIT C.59 is a document which is "The Future of UDF - Some NEC views" and it deals with issues and the third page of that document under paragraph (c) says:

"Our immediate demands. There was common agreement that the projection of demands such as democracy, freedom and non-racialism were in themselves too abstract and that during the anti-election campaign more specific (10) demands needed to be made. A number of suggestions were put forward

1. Release of all political prisoners.
2. Unbanning of organisations and individuals.
3. Return of exiles.
4. Repeal of pass laws, stop pass arrests.
5. Repeal of security legislation.
6. --Stop forced removals.
7. Repeal of labour preference area policy.
8. The demand for all South Africans to take part (20) in the drawing up of a new constitution. This demand would include the demand for a National Convention, Constituent Assembly or Peoples Assembly with the necessary pre-conditions emphasised."

Now I have given you the reference to Mr Molefe's evidence but that has to be read with the fact that at about this time most of the NEC was put in detention, and that the consequence of that was seriously to disrupt and disorganise the functioning of the structures of the United Democratic Front. At page, in volume 273 page 14 879 line 2 to 14 881 line 21 Mr (30)

Molefe,/....

Molefe, who was then under cross-examination, said that about thirty of the top leadership from the various regions were in detention, that the detention started on 20 and 21 August 1984 and he said that some of them remained in detention through until 1986, that others were released briefly and then re-arrested, that there were court proceedings and that he himself was only released on 10 December with a number of others and that in February of 1985 other people were detained again. And at page 14 380 at line 20 he said that the effect of these detentions was to disorganise the structures of the UDF. He (10) said those who had not been caught in the net on the 21st had to avoid detention - which meant that they could no longer operate from the offices on a regular basis. It was not possible to meet and it was difficult to find members of the UDF and important discussions simply could not take place and it disorganised the functioning of the UDF in a number of ways. And according to Mr Molefe no final conclusion had been reached on all these matters by the time of his arrest. And that is at volume 273 page 14 878 lines 21 to 23. Now if one then goes back a bit to see the evolution of these demands. (20) The evidence shows I think quite clearly that the demands for a National Convention had been on the agenda of the UDF from the time of the launch. It had been raised at the launch where it had been made clear that the UDF would call for a National Convention as part of the non-violent strategy. Mr Molefe's evidence to that effect is at volume 249 page 13 219 lines 3 to 17. That is in his evidence-in-chief and I found nothing in the record to suggest that that was ever challenged. Indeed Mr Lekota also gave evidence that at a press conference on the eve of the rally this was mentioned. That is at (30)

volume/....

volume 283 page 15 499 lines 6 to 17 and the proposition was not only not challenged but as I understand the record was accepted by the state because in volume 287 in the cross-examination of Mr Lekota it is put by counsel for the state at page 15 903 lines 5 to 8, it is put to him:

"Now the idea of a National Convention was part of the UDF's policy since August 1983? -- That is correct.

Maybe some of the affiliates would even have ascribed to the idea even earlier than that."

And so it seems to have been common cause that this was on (10) on the agenda from the time of the launch, and indeed it is implicit for the demands for the release of the political prisoners and the return of the exiles which is the minimum demand stated in the introduction to EXHIBIT A.1. Mr Molefe refers to that in volume 248 page 13 205 line 29 to 13 207 line 2. And it was referred to in the letter written by the UDF on 25 October 1983 to the then prime minister which is EXHIBIT DA.21. And Mr Molefe in his evidence at volume 250 page 13 316 line 22 to 13 317 line 8 explained why that letter had been written. He said that the purpose of the letter was (20) to make clear to the government from the UDF what its position was, to make clear to the government the UDF's position on the question of negotiations and how the UDF thought the problems of the country could be resolved and as he says the letter was really written "in line with our principle (that is at the top of page 13 317):

"This letter was really written in line with our principle of commitment to the principle of a National Convention."

There is also evidence that the call for the National (30)
Convention/....

Convention for this purpose was referred to frequently by Mr Lekota and other leaders during 1983 and 1984. Sometimes to the press and sometimes in speeches. I can give your lordship some references to Mr Lekota's evidence. Volume 283 page 15 499 lines 6 to 17; volume 285 page 15 635 line 28 to 15 636 line 20 and volume 286 page 15 772 line 22 to page 15 773 line 14. Mr Lekota said that during the first half of 1984 it was referred to in a press release for which he sought wide publicity. The, his evidence - there are two passages which need to be read together here both in volume 283. (10)

The first at page 15 479 lines 1 to 15 and the second at page 15 489 line 2 to 15 492 line 8. And those passages need to be read with EXHIBIT AL.8. If you look at the very last paragraph your lordship will see it says:

"In the letter to the prime minister last year the UDF drew attention to these shortcomings and called for a National Convention of all South Africans, black and white, to draw up a constitution acceptable to all. We have confidence that given the opportunities South Africans will not choose revolution. We are opposed to the new deal because we are opposed to bloodshed." (20)

It was also mentioned by Mr Lekota in the article which he wrote as a policy statement at the request of the South African Foundation which was publication in the South African Foundation News and reproduced in the Weekend Post. So it had a broad circulation both to the white community and to the black community. There is Mr, there are two passages in Mr Lekota's evidence. One is volume 283 page 15 512 line 13 to 15 516 line 7 and the second is at volume 284 page 15 564 line 24 to 15 565 line 2. And the, those passages need to be read with (30)

EXHIBIT DA.66 which concludes, it concludes with the statement that the government should strive to create an atmosphere necessary for a national convention. Let the accepted leaders represent their constituencies, black and white. Let there be representation on the basis of popular support and let us create an open forum for all the peoples of South Africa without exception. It is also mentioned in a number of speeches in the V series. Now if I might just move a little bit ahead - I have got to come back to the other but merely to round off this section of the argument on the national convention in (10) paragraph 5.6 of the "Betoog" at page 25 the state argues that when the UDF issues statements to the commercial world or the outside world it records only the three preconditions of release of political prisoners, return of the exiles and the unbanning of the organisations and it does not mention anything else and they suggest that that is done deliberately to try and put the government into a bad light. And then it goes on to say but where the UDF deals with its own activists an entirely different picture is painted and the demands of, the unreasonableness of the demands of the UDF become clear and (20) they refer there to EXHIBIT A.1 at page 2. Now there are two observations to make about that submission to your lordship. First of all EXHIBIT, page 2 of A.1 is the introductory section which draws attention to the fighting of the Koornhof Bills and the focussing of the attention on the imposition of the new deal and as the minimum demand that the UDF has called for all political prisoners to be released, for all individuals and political organisations to be unbanned and for the return of all exiles before a democratic constitution can be drawn up by all South Africans. Those are the demands which were there (30)

from/....

from the beginning and according to the evidence no finality was ever reached on the details of the national convention. But, I am not quite sure what point the state is making but whatever the point is it seems to forget the earlier part of its own submission and indeed the evidence in the case because at page 5 of the "Setoog" it is pointed out in paragraph 1.3, no reference is given but I do not dispute this, it says:

"Hierdie dokument is van baie groot waarde geskat deur UDF en die binnelandse leiers want ..."

Well I do not go along with their language but what follows (10) later is I think common cause:

"Duisende eksemplare was gedruk en versprei nasionaal en internasionaal."

Well this was a widely publicised document. If it is meant to convey some secret message I could think of no document which could be regarded as less secret than EXHIBIT A.1. So the, really the evidence in our submission is perfectly clear. That from the very beginning this was the demand that was made, from the very beginning this was the demand that was made, from the very beginning it was known, it was publicised in a whole (20) variety of ways. Now the state does not refer to any of the evidence given by Mr Molefe and Mr

COURT: Is there a resolution calling for the national convention?

MR CHASKALSON: I do not see a resolution which says that. It was dealt with in the evidence. The introduction is clearly a call for such a ...

COURT: Well the introduction was written much later.

MR CHASKALSON: Yes.

COURT: Why was there no resolution?

(30)

MR CHASKALSON: /.....

MR CHASKALSON: Well your lordship will remember that the evidence given was that it was actually raised, that somebody raised it as an amendment to the two, somebody said that the political prisoners resolution should record that fact. There is in fact evidence that that was raised in the context of the political prisoners resolution and that it was at the, it happened at the time when the chairman was, when the, I think it was at the time when they were running out of time for the resolutions and the chairman said that these resolutions would have to be settled by some committee, and the evidence as I (10) understand it was though that was clearly the feeling of the meeting that in the settling of the documentation it did not get recorded. But there is no doubt that it was already in the published papers and it is already referred to in the letter to the prime minister in October and it becomes a public position...

COURT: Well is it in A.1? It is not in A.1 is it?

MR CHASKALSON: Well it, what it says in A1 is that it says the return of all exiles before democratic constitution can be drawn up by all, and "all" is underlined, South Africans. It (20) does not say at a national convention but what else does it mean? But that is all that it can mean but even if there is not a formal resolution recorded and the evidence is that that was indeed the sentiment of the meeting but even if there is not a formal resolution recorded everything that is done that I have drawn your lordship's attention to by the National Executive Committee from then onwards indicates that it was the policy of the UDF and in accordance with the judgment in the 1961 case you look at the public statements, public acts and public position to determine policy and there can be (30)

no/....

no doubt about that. It was not even challenged by the state, it was not put in issue by the state. There is a great abundance of evidence if the state case was that this was not the policy, it had not decided upon it, it should have said so. Perhaps other evidence could have been brought and other issues might have been looked at a little bit more closely. But at the, it was never put in issue and there is an overwhelming body of evidence to show that that is so. Had the state wanted to put it in issue then perhaps there may have been even greater evidence and perhaps some of the questions your lordship asks (10) me now might conceivably have been cleared up. But in its argument the state does not refer to any of the evidence given by Mr Molefe and Mr Lekota in regard to the national convention and we would like to take your lordship through portions of that evidence on which we rely. Mr Molefe explained the significance of the call for a national convention in his evidence-in-chief, volume 249 page 13 292 line 13 to 13 294 line 13. It is a long passage. I am not going to read it to your lordship but I will tell your lordship what Mr Molefe says in that passage. First he makes the point that the United Democratic (20) Front believed that if a lasting solution to the problems of South Africa were to be found, a solution which as he put it would guarantee lasting peace, it would have to be a solution which would be supported by the majority of the people of the country both black and white and that there was therefore a need to bring together respective leaders of the various communities into a national convention where there could be debated and arrived at a conclusion as to how a new constitution could be formulated. Secondly that the call for a national convention was being made at a time when there was (30)

already/....

already conflict or violent conflict within the country. It was a conflict which involved the government on the one hand and certain South Africans, as he put it, who had decided to pursue the goal of freedom - rightly or wrongly - through the armed struggle.

COURT: That is now the ANC/PAC?

MR CHASKALSON: I think he mentioned other people as well.

But we know that the, yes, and he said it was clear that in the course of that conflict casualties were being suffered and it was affecting the country including in particular very (10) talented young people. And he said thirdly that the UDF saw the call for a national convention as a crucial issue that needed to be shouted as loudly as possible to convince the government of the need and he said and those who had taken up arms of the need to come together in a situation of negotiations where this conflict could be ended once and for all. Now those are the main points made by Mr Molefe in that passage but there could be no doubt at all from his evidence-in-chief, from the way he was led, questions he was asked and the answers that he gave that the defence case was that the national (20) convention was the policy of the United Democratic Front from August of 1983 and apart from all the documentary evidence which exists to which I have referred your lordship the fundamental point is that it was never ever put in issue by the state. And certainly the state could not be heard to say now that they dispute that this had been policy from the beginning. Now Mr Lekota said that this was not a new idea. He said that it was one for which support existed within the black community and he said that that was a matter of which they were aware and he referred to that in volume, I am sorry I have (30)

left/....

left out the last number. I will give your lordship the volume number. It is page 15 675 line 25 to 15 676 line 21 and I am told that that is volume 285. And your lordship will remember from other evidence that the national convention, or the concept of the national convention had been part of other political movements within South Africa. Mr Dangor said that this had always been part of Labour Party policy. His evidence is at volume 372 page 21 480 lines 15 to 25 and he also in his evidence at page, in the same volume at page 21 486 line 31 to 21 487 line 30 referred to the minutes of the conference (10) as far back as 1976 when a call for the national convention had been made and those minutes are DA.118 and the relevant page is - I seem to have a wrong reference there and perhaps I should leave that and come back to it when I find the correct reference. I will have to look into that, I seem to have made an error there. But there was also evidence from Mr Molefe in volume 249 page 13 294 lines 20 to 29 and volume 272 page 14 762 lines 3 to 8 of the fact that calls for a national convention had been made by the Labour Party, by Inkatha, by the PFP and that there had been a special convention alliance (20) led by Adv Browde and that he mentioned ...

COURT: What has happened to that movement, I have not heard of it lately?

MR CHASKALSON: I believe it has not progressed very far.

COURT: Adv Browde is too busy.

MR CHASKALSON: I do not know my lord, I think conditions in the country are not necessarily opportune at the moment for such a movement. Perhaps they will change.

COURT: Well one can take, go a bit back because in that judgment one reads, the judgment by the special court, one reads (30) that/....

that the call for a national convention was an old one. It started, in '56 there was a sort of a national convention.

MR CHASKALSON: Well the Freedom Charter was done in conjunction with a national convention and that there were calls for a national convention. It was an old call. And indeed Mr Molefe also said that the UDF stuck to this call, notwithstanding the fact that it was being criticised by rival political movements for having adopted that position and his evidence in that position, he says the criticism came particularly from AZAPO and that the reference in the evidence was volume 250 (10) page, I am so sorry again I have a wrong reference and again I correct it and I apologise to your lordship.

COURT: I remember that evidence. I will be able to pick it up.

MR CHASKALSON: Thank you my lord but we will find it and I apologise. It is in my own handwriting and I have got 1332 and I have left something out. I think we will find it in the 13 320 series but it may not be. Now the other parts of the evidence which are relevant to this are aspects which are evidence which was given which make it clear that the UDF (20) was concerned with propagating and seeking acceptance for the principle of the national convention but had itself not worked out details for practical implementation. In other words the idea let us have a national convention and apart from the fact that that national convention could not take place unless the political prisoners were released, the exiles returned and the banned organisations were unbanned and as Mr Molefe explained, and I will give your lordship that passage later, that was obviously an essential from their point of view because the conflict which made the national convention necessary was, (30)

he/....

he said it is no good having a convention if the conflict is going to continue. And so those were their conditions and he said in volume 249 at page 13 296 line 16 ro 13 297 line 6 that, first of all that the UDF had never sat down really to work out the mechanics of how it was going to handle this, that they did not really deal with the nuts and bolts of the national convention, that they were trying to promote the principle and gain acceptance of the principle and he said that if that had been accepted there would obviously be people coming together to work out the precise mechanics of how that should be (10) effected. There would obviously be a whole range of factors to be taken into account which would have implications for the national convention itself and Mr Lekota's evidence was to the same effect in volume 287 page 15 902 lines 2 to 30. And obviously that makes sense. The first issue upon which one would have to get agreement would be the question of the principle of the convention. If that were accepted then where, how, what the mandate would be, who would come together, how they would come together, what the agenda would be, what would be open for discussion, what would not be open for dis- (20) cussion, all that would have to be worked out later and indeed one knows that even now with the government having decided to constitute the national forum which in a sense, what is really quite interesting if one goes back a few years - and I am going to come back to that in another context - but if one goes back a few years to the time of the launch of the UDF to the opposition to the Koornhof Bills and to the call for a national convention one does see that from the government side the Orderly Movement and Settlement of Black Persons bill which was a key structure of the Koornhof bills was in fact abandoned. (30)

We/....

We see that influx control which was a key to the Koornhof bills has been repealed and we see the concept of negotiating a new constitution to replace the Tricameral constitution having been accepted by government through its national forum legislation. Now obviously the national forum legislation is not the national convention that the UDF was talking about and I do not want to be suggesting that the basis upon which the UDF came into existence and the position which it took up in 1983 has been acknowledged by the government but if you think back to August 1983 and if you think of the UDF's position in (10) that time the government has moved, in relation to central issues, substantially and it has acknowledged that the Koornhof laws are not satisfactory, that they, and it has recognised that there is need for negotiation and that there is need to incorporate black persons into the political process in this country. Now, so the argument of the state that the government would be immovable and would not respond to the demands which were being made is shown to be wrong. Now I do not say that the government has met the, has agreed with what was put but if you look at what has happened events have shown not (20) only that the UDF was right in thinking that it could expect responses from the government to these issues but that room exists for creating a new constitutional structure in this country and that the only way in which that new constitutional structure can be created is by involving all the people of the country and the essential conflict at the moment in regard to the new constitution for the country is who and how, well there are a number of conflicts we know but one of them is who are the people who are going to represent the disenfranchised. Leaders they want to represent them or other people?(30)

And/....

And, so the theory of a national convention is not so remote and there is a passage in Mr Molefe's evidence which I will find during the adjournment where he in fact said this is going to happen sooner or later. Sooner or later we are all going to have to settle down and talk about this. We all know that. It is going to happen sooner or later. Our view is the sooner it happens the better. Why put it off until later when conflict will be, the consequences of conflict will be more severe. I will find that passage for your lordship. Now another factor which is important, another factor which is (10) important in this part of the case is that the call for a national convention was in fact directed to the government. The, that is shown by the letter to the then prime minister and also the press statements and the speeches show that the call was for a national convention and that was in fact specifically confirmed by Mr Lekota when the issue was raised with him. I think your lordship asked him that question and he dealt with that in volume 284 page 15 589 line 30 to 15 590 line 12. And Mr Molefe in his evidence in volume 271 at page 14 717 line 26 to 14 718 line 14 said that the government would be (20) a key participant in the national convention. He said it could not be held without the government, obviously. In volume 15 595, sorry perhaps we were indeed fortunate that it is volume 284.

COURT: It depends on how long you will still speak.

MR CHASKALSON: Yes my lord, but I think even I will not reach volume 15 595. Volume 284 page 15 595 line 11 to 15 597 line 9. There is a reference to the speech which Mr Lekota had made at Ladysmith and which is recorded in EXHIBIT V.17 in which he had called for a national convention where the people of (20)

South/....

South Africa will participate and in which they will hammer out the constitution and have a constitution which will be acceptable to all and he actually says we are saying to this government - I am just trying to find the passage:

"We were saying that this government must forget about its new constitution (and then some words are left out by the person questioning him) It must call a national convention."

Yes the passage is in fact the etcetera, etcetera is from the speech, not from the questioner. The passage is: (10)

"We are saying that this government must forget about its new constitution etcetera etcetera, it must call a national convention in which South Africans, all of them including the Afrikaners, indeed including the Afrikaners."

So the passage, his own speech indicates publicly that he is calling upon the government to call the national convention. It is at the top of page 46 in EXHIBIT V.17 and it is cited in his evidence at page 15 595. And at the bottom of page 15 596 at line 27 he said: (20)

"I have no doubt in my mind that the government, that such an initiative had to be taken by the government. That it was only with the approval of the government that it could be done. In any event as I said yesterday the debates which were taking place, the whole question of reform, was a question that had been raised by the government and our formation of the national democratic front was in response to what the government had said. Really we were addressing ourselves to the government at a time when the government was saying that there is (30)

need/....

"need to (it says "form", I think it must be "reform") our society. So this is why even there I have to say the government must call the national convention."

And in volume 250 page 13 314 line 20 to 13 315 line 2 Mr Molefe's evidence was to the same effect. He said:

"The government is in power in this country. It is in control in this country. It would thus have to be part of that process. In fact the government would have to call that convention. When we made all these calls, when we made this call from time to time we were really (10) directing the call to the government. It is unimaginable for any national convention to take place if the government is not party to that. It would be meaningless."

And indeed that must obviously be so. And there is another passage in Mr Molefe's evidence which can be added to that. It is volume 258 page 13 896 lines 5 to 17.

COURT: Thirteen thousand?

MR CHASKALSON: 896 lines 5 to 17. I am going to turn now to look at EXHIBIT H.1 and it might be a convenient time for your lordship. (20)

COURT ADJOURNS FOR TEA. COURT RESUMES.

MR CHASKALSON: I want now to turn to deal with the EXHIBIT H.1 and to the question of the disarming of the armed forces which was the subject of much debate during the course of the evidence. Now first the background to how the matter came to be raised. That is given by Mr Lekota in his evidence at volume 284 page 15 573 line 26 to 15 574 line 23 and he said that as he was going around the country in the period building up to the elections he had met various groups of people and organisations and that people were saying what were the UDF, (30) they/....

they must be more precise about their alternatives to the new dispensation and he said that he in fact as a result of those discussions raised the issue for discussion or saw that it was raised and he referred to EXHIBIT H.2 which is the National Secretariat Recommendations to the UDF NEC for this July meeting and in the context of the anti-election campaign under paragraph 2.1.1 with the heading of "Overall Political Line" there appears:

"Explaining and restating our commitment to a national convention."

And he said it was because of that really that the matter (10) came up for discussion at the July meeting and your lordship will see of course that there is reference to restating, which shows quite clearly that apart from everything that I have shown your lordship before that it certainly was a principle prior, the national convention was an accepted principle prior to the July meeting. And Mr Lekota had said that people were saying well this national convention is really a very long term process. Should not the UDF be formulating more precise demands, demands some of which could be met immediately, some of which could be met later but that there could be a process and I (20) think as he put it that there could be demands in relation to issues to which the government might make a principled commitment, there could be demands on issues which the government might accept and it was really when this issue came up for discussion that the question of the disbandment of the armed forces was raised. Now if one looks at the minute one sees the two headings are the headings under 10.1 which are under "Minimum Demands" and 10.2 "Conditions for a National Convention".

COURT: Are you looking at H.1 or H.2?

(30)

MR CHASKALSON:/.....

MR CHASKALSON: H.1 my lord. And your lordship will, they are not in as logical an order as they should be but Mr Molefe did explain that this had been typed from notes which he had made and that that explains, that is the reason for that. But if one looks under "Minimum Demands" one sees a non-racial democracy arising out of participation by all the people, a society based on justice, equality for all, health education, the release of all political prisoners, the return of all exiles. Then we have a national convention and underneath that is a sentence saying "disarming of the armed forces, scrapping (10) of bantustans and puppet local authorities, meeting of authentic leaders, end to GST and removals and relocation". Now if one would pause for a moment there, if one looks at that one will see for instance the end to removals and relocations which is something which would, it is something which presupposes action prior to the creation of a non-racial democracy. So there is a lumping together here of things in a process because the ultimate goal - and that does appear from the evidence that the ultimate goal is a non-racial democracy arising out of participation of all the people. And these (20) would be steps on the way to that goal. In other words the process would entail meeting of authentic leaders, the release of prisoners, well the release of prisoners, the return of exiles and the meeting of the leaders would be a step on the way to the minimum demands, to the minimum demand of a non-racial democracy and the ending of removals would also be a step on that way. So that we can see within the minute itself what Mr Lekota describes as their thinking and he says well I was at that meeting and the thinking was that it was a process, that things would have to happen and really that the national (30) convention/....

convention could only occur after a lot of things had happened and that the non-racial democracy could only come into existence after the national convention. Now as far as the conditions for a national convention were concerned a great deal of time was directed to the disarming and disbanding of the current army and police force and a suggestion had been made, I cannot remember whether it was made in argument or made by your lordship to me in argument or made by the state to your lordship in argument at the time of the application for the discharge but the suggestion had been made that the call (10) for a national convention, how serious could such a call be if such a condition were included in it and Mr Molefe was specifically asked about that in his evidence-in-chief and he refuted any suggestion that the call was not a serious call. He said - and his evidence on this issue is at volume 250 page 13 328 line 25 to 13 330 line 14 - and I will give your lordship some other passages here, there is also Mr Molefe at volume 258 page 13 883 lines 12 to 27 and Mr Lekota volume 284, that cannot be Mr Lekota, that reference is wrong. Well let me give your lordship volume 286 page 15 908 line 2 to (20) 29 and volume 288 page 15 931 line 5 to 15 932 line 27.

ASSESSOR (MR KRUGEL): What were the pages in volume 286 please Mr Chaskalson?

MR CHASKALSON: Page 286, page 15 908 lines 2 to 29.

ASSESSOR (MR KRUGEL): Thank you.

MR CHASKALSON: Well I am afraid these references have been checked very late last night and they seem to be wrong. They were taken out of another section of an argument to be put in today because it seemed an appropriate place for it. It is volume 287 not 286. But the effect of their evidence was (30)

certainly/....

certainly the passage I am giving you now from Mr Molefe at volume 250 and really the rest of the evidence is to the same effect and that is that the United Democratic Front was seriously committed to the call for a national convention. Also Mr Molefe said that they did not, they were not under any illusions that every single condition or stipulation which they might make in regard to the holding of a national convention would be met. And he said that it was accepted and really understood that there would have to be a process of negotiations if the call were taken up. If the government said (10) yes we are willing to have a national convention and the call were taken up and there were then discussions in regard to the circumstances in which the national convention will take place.

He said quite obviously the government would call a convention and if the government wanted participation in the convention in the end there would be give and take in regard to the circumstances and that one could not tell what the final position would be and that seems obvious. After all whoever goes into negotiations without knowing that the position at the end of the negotiation may turn out differently to the position (20) you adopt at the beginning of a negotiation. I think we all know that from our own experience of negotiations on much more limited issues in our day to day lives in these courts. But that anybody who seriously wants to achieve a result must accept that that is what will happen and he said that when one goes into negotiations you state conditions, you state your position but you go in with a flexible attitude and in the end compromises may be arrived at. And he says that he himself did not believe that if a single or two or so of those conditions set out for the national convention were not met that that (30)

would/....

would have invalidated the whole question of the national convention. Now he said that he himself - and you will remember his own position as described to you - he said that he himself did not go along with the, he did not think that the call for the disbanding of the armed forces was one which the government would accept and he said at that meeting he spoke against it but that the majority took a different view. I will show your lordship later that there is evidence to show that it was a disputed issue within the United Democratic Front's meeting itself, that executive committee meeting, but that the (10) majority of those people took the view that that should be included in the call and I am going to deal with your lordship a little bit later in, as to the relevance of such a demand being made, why it should have been put on the table. But it is really in this passage at volume 250 that Mr Molefe says what I told your lordship there was this passage where he says we are going to have to sit down one day and he says, it is at page 13 329 line 21 he says:

"In any event I believe (there seems to be some typing error and I do not know what that is meant to mean) (20) but in the final analysis in this country that national convention is going to have to be called. Maybe we might decide to call it something else but in any event a situation is going to arise in the future in this country where the people of our country, black and white, are going to have to sit down and try and resolve the crisis that this country has been going through over the years. The government is going to call that national convention in the future. I am pretty certain of that. It is going to happen and once that happens there will be peace (30) forever/....

"forever in this country and I am not alone in this suggestion. Many people have said it before and there is no use equivocating (it says equivocated) now and prevaricating when we know that in the end we are going to have to call a national convention and talk about the real future of the people of our country. That is going to come. It is just that possibly the process towards it that is a bit slow. There are still doubts there and there (I think it must here and there). There is a whole question of having to allay the fears of the white (10) community who over the years have known themselves to be the guardians of the african people and other racial groups in this country. We have to convince them that they also have a future in this country, that we are not working towards a situation of the so-called black majority government, we are not talking about that. We are talking about a majority government on the understanding that the people of this country come from all sorts of racial groups who under apartheid have been divided and under that new government shall have become a (he says (20) "symthesis" but it is meant to be "synthesis") that would project a non-racial country under a single government. We have made that point before in the past that we are not calling for a black prime minister in this country or a black president. We are simply saying we want a government that is properly elected by all the people of South Africa and that guarantees the future of all the people of this country on an individual basis. Even if Mr P.W. Botha were to become the prime minister or the president of that government we have no qualms about it. All we (30)

are/....

"are saying is let us be treated decently as citizens of this country, let us enjoy the rights that everyone else enjoys in the country, let us share in the wealth of this country. All of us who have sacrificed a great deal in building this country to what it is, why should it today be claimed by one racial group? We believe that we have a chance to claim as citizens in that regard."

And then he says:

"I am sorry to be seeming to say so many things but I am trying to impress this upon your lordship."

And your lordship says:

(10)

"You can put across your point as long as you stick to the question."

Now can one reasonably say that such an attitude is not what Mr Molefe honestly believes? Is there any reason for rejecting that? Is that so startling a proposition that no reasonable person could consider it to be, could hold views like that? Obviously not. Obviously it is evidence which could reasonably be true and which indeed I suggest your lordship, having heard Mr Molefe, and having listened I would think to Mr Lekota's speeches which really if one thinks of Mr Lekota's (20 speeches there is a call for reconciliation in so many of them, a continual call for reconciliation. We can sit down together, we can reach each other. This is not a country for the black people, it is not a country for the white people, it is a country for all of us. That is what they were saying before this trial. It is not something which they fabricated for the purpose of this trial. It is what they were writing before the trial, it is what they were saying before the trial and what they were speaking to their own people about when they went around the country and what they were criticised (30

for/...

for doing by rival political organisations who said that that posture is the wrong posture. Now if one accepts then that that position is one which can honestly and reasonably be held then of course an entirely different complexion is thrust upon the circumstances and one sees them in a light entirely different to that put to your lordship in the "Betoog", without any real argument to develop it it is put as a factual proposition and your lordship is asked to accept it. Now how did the cross-examination proceed? The cross-examination seemed to be directed towards elevating the so-called minimum demands (10) into rigid inflexible policy positions. But there are two answers to that. First that Mr Molefe and Mr Lekota made it clear in their evidence that they perceived them as issues on which there could be flexibility and which would be subject to negotiations and the second proposition, which is actually apart from anything else fundamentally destructive of the state case and that is that they were not positions decided finally upon in July but they had to go back to the regions for discussion and that with the disruption of the organisation which commenced in August no finality was reached. And (20) Mr Lekota made it clear that, he said in a passage in volume 287 page 15 904 line 16 to 15 906 line 9 he said, he made a number of points there. First he pointed to the fact that as at July 1984, he said:

"It did not seem to us that the national convention will be called next week or the week following."

And so that there were issues which needed to be raised and to which the government shall be persuaded as part of the process of calling a national convention. He gave the example, he said well for instance the termination of things like (30)

forced/....

forced removals and relocations, that would be a signal. He says the call to the government to scrap GST on some basic foodstuffs because of the impact that had - I do not know whether he said that, I do not have the passage but implicitly the impact it has on the poor section of the community, that would be a signal. He says those sort of things do not have anything necessarily to do with the calling of a national convention but they are put down to say these are the stages along the road to the national convention, these are some of the things we are looking for. If there is response from that, (10) signals from the government along those lines he says it would be the beginning of the winning of confidence, the persuading of people of the seriousness of the government towards this issue and the idea of commitments being made to a long term future which would be acceptable to all the people of the country, not necessarily the final deeds but saying our policy is directed to this goal which would be a goal acceptable to everybody in the country. He says those are the sort of things which people would be looking for and indeed in the working of politics that is how things work, that people (20) send signals to each other at different times when one is in a situation such as that which exists in this country and so the process is what is important. I told your lordship that Mr Molefe had said that, described the debate and his own attitude to the disbanding of the armed forces and it is really in his evidence at volume 249 page 13 300 lines 15 to 25. He said, and this was his evidence-in-chief, he said that when this aspect was debated there were differences of opinion on the practicality of this issue. He says:

"I was one of those whose view was that the disbanding (30)

of/....

"of the armed forces was not a practical suggestion. My view was that whether a national convention was called or not there was at all material times a need for peace keeping forces or law enforcement agents. However other people had different views but as I understand it whilst it was suggested that there should be this disbanding of the armed forces it did not mean that there would simply be nothing in their place."

And he later goes into that in more detail where he says:

"There was a view that a kind of law enforcement agent (10) must be set up that would be something that would be neutral, something that is not seeing itself as defending the policies of apartheid. In that connection a suggestion was made that the proposals could be made of some kind of a neutral force similar to the one suggested around the period in 1978 in Namibia when Resolution 435 was discussed and the possibility of independence of Namibia was debated both in the western countries and in the United Nations. A kind of force that would be acceptable as a neutral peace keeping force that would (20) respect the whole issue of a national convention and ensure that nobody who wields power misused that power to disrupt the question of the national convention. I think that the kind of view of a neutral peace keeping force is not something that was imagined from nowhere, as I understood it from the debates in the meeting, it is something that finds its genesis, its origin from daily experience of oppressed communities at the hands of the police force and the army."

And he developed that to say that there was a feeling that (30)

the, /....

the, within the army and the police force there was a commitment to the ideology of apartheid which could result in the destruction of a national convention, which could result in those who actually had the arms saying well you may have decided that but we have the guns and we are going to do what we think is correct. And so he said it was actually the, what the thinking there was was that it was important that the people could participate in those discussions with an absence of fear and an absence of mistrust and the feeling that agreements reached would be implemented. Now one must bear in (10) mind that an essential part of their call was that the exiles should return, that the political organisations should be disbanded and that the political prisoners should be released, and one could understand a fear that if you want to involve the ANC and other organisations who had taken up arms in this convention which was clearly as far as the people there were concerned necessary, otherwise the conflict would continue, that if you were going to say to those people you must lay down your arms and come back what, how do you deal with the situation or a fear within such people if they do that and come back that (20) if things break down they will all be arrested and their organisations will be destroyed. And the idea of a neutral force at the time of the crucial negotiations is very understandable because it is with the presence of a neutral force that everybody could feel secure in such a situation and everybody could be involved. Now Mr Molefe said - and I think he said that at volume 258 page 13 881 line 28 to 13 882 line 23 - that he, he repeated in cross-examination, he said:

"I have indicated what my attitude was that, but the consensus there was that there would have to be a (30) peace/....

"peace keeping force, that there would have to be a kind of a peace keeping force which would have to be a neutral one. But as I also indicated that those issues were not matters which if not met would invalidate the convention. I personally do not think that the government would agree to that and I have said that, and I do not think that it was a practical suggestion."

But he said:

"I do not imagine that any situation could be allowed to develop where one side should be armed, another side (10) should be unarmed, those who are in exile to come carrying weapons and there being no peace keeping forces."

But he says:

"The national convention itself has got to be protected. There have got to be people who will protect those who are negotiating at the national convention."

Now if one is looking at it from a purely practical point of view, if the government is to call the national convention and it wants those organisations who had turned to violence and the leaders of those organisations and those people to take (20) part in it the convention would either have to take place outside of South Africa or if it was to be held in South Africa where people could go and consult with their different constituencies within South Africa there would have to be no fear as far as such persons were concerned. And so that is a reason for such a condition. But that does not mean that having put that on the table that this was just as it were a joke or something else. I mean what would happen if you go around the country organising and mobilising people and telling your supporters this is what we ask for, this is what we want, (30)

and/....

and the government then says we agree and you have mobilised everybody to that end, what do you achieve if you then say well we will not go ahead? Obviously if the government were to agree to the key conditions and were to agree and set up from its side the structures which were necessary it would win the political argument and so one cannot, I suggest to your lordship, look at that single condition within the totality of the conditions and say well because that is there I must reject all the evidence I have heard about this, I must disbelieve Mr Lekota and Mr Molefe when they tell me that this is what (10) they thought and felt, and this is what we were thinking. I must say that all the speeches that they were making around the country when they called on their people and met their people and said we must work towards this, all this was really a ruse of some sort and whatever they did not do. I suggest to your lordship that one cannot, from the presence of that condition, reach that conclusion because it has a logical place in the thinking of people who are concerned about the issue of bringing to the national convention those who have turned to violence. Now there is another reference I should (20) give your lordship. I may have given it already. If I do I apologise. It is in Mr Lekota's evidence in volume 258 page 13 882 lines 24 to 27 where he said that the national convention is a complex process which would obviously be a long drawn out affair and I remember reading that passage correctly, your lordship asked them how long and whether it was likely to be longer than this case because your lordship felt that if it was it was not something you would like to be party to. I think it was in that context that that exchange arose. And Mr Lekota also, Mr Lekota in his evidence in volume 284 (30)

page 15 562 line 25 to 15 563 line 17 referred to an interview which he had given to the Sunday Express - now somewhere amongst our circulation figures we will have or we should have the Sunday Express figure but your lordship knows it is a wide, it was a national newspaper and in this he said:

"The UDF has shown that it has the mandate of the people to pressure the government to abandon the new dispensation. We do not say that we have the right to prescribe what alternative order should exist but what we need is a forum of some sort. You can call it a national con- (10) vention if you like, which will bring together all people of South Africa, black and white, in an atmosphere that is conducive to concerted discussion to hammer out a constitution that will be based on the will of the people. We are not asking white people to abdicate power, are not looking for revenge. What we are asking is that they must share power and that that is no threat to anybody.

It is the only thing that can help reconcile our society." So even in February they were saying, or Mr Lekota was saying, we do not have the right to prescribe an alternative order. (20) And Mr Lekota said that that in fact expressed the position of the United Democratic Front and that is in volume, I have given your lordship the reference and I think your lordship may wish to see EXHIBIT DA.67 as well. Now if I may move away from EXHIBIT H.1 - and your lordship will of course bear in mind the number of speeches which were made in which the national convention was referred to at rallies and on other occasions. If I may move away from EXHIBIT H.1 to, I have dealt now with the submissions made by the state in regard to the national convention and at page 21 of the "Betoog" there (30)

is/....

is a reference to EXHIBIT C.102 and that is a report of the UDF National General Council of April 1985 and there are two aspects of that report that are referred to , well it is really two aspects of the statement of the UDF National General Council. And the statement of the National General Council which is referred to first by the state in the "Betoog" at page 21 is the passage:

"There is still time for the racist minority regime to consult with the authentic leaders of the people, with the sole objective of making the necessary arrangements for the speedy and effective dismantling of the apartheid state and the transfer of power to the people. (10)
The preconditions for the achievement of peace in this country is the removal of the evil apartheid system. That is why we say that our struggle for liberation is a struggle for peace. Not one more drop of blood need be shed, not one more family need live in misery and starve, no man or woman need go without work, not one more family need go without shelter if these conditions are met." (20)

ASSESSOR (MR KRUGEL): Just for the record a correction, it is page 26 of the "Betoog".

MR CHASKALSON: I have it at page 21, I think that it is ...

ASSESSOR (MR KRUGEL): The same ...

MR CHASKALSON: Yes I think, it is what I was referring to yesterday that if one speech is repeated six times it does not become six speeches and at page 21 of my "Betoog" which is where I am in the "Betoog".

ASSESSOR (MR KRUGEL): Yes this portion is there too, sorry.

MR CHASKALSON: Now that of course is strident language. (30)

But/.....

But what does it really say? Apart from the stridency of the language? And your lordship will recollect that this was a time when feelings were clearly running very strong. The leaders of the United Democratic Front, many of the leaders, were in jail, had been in detention.

COURT: But who were the "authentic leaders of the people" at that time?

MR CHASKALSON: I think leaders who they, they would include leaders whom the people would wish to represent them in discussions with the government. The persons with whom consul- (10)
tation should take place.

COURT: But these were existing persons if one looks at the paragraph. So they must have had in mind the people.

MR CHASKALSON: Yes.

COURT: Certain people, certain names.

MR CHASKALSON: Well they do not mention any names. But they would include the leaders of, they would clearly include the political prisoners and the people who were seen within the black community as their leaders. We know that. They would clearly include people like Mr Mandela. That is quite clear. (20)
But they do not identify who they are. But authentic leaders means people who have the confidence of communities, not people appointed or chosen to represent them or persons who have no, in fact do not have the confidence of the community. But if one were to ask the question what is this statement, despite the stridency of the language what does it say? It is saying consult, the word used is "consult", consult with leaders, agree to dismantle apartheid, transfer power to the people which means, we know, give everybody the vote.

COURT: Can it mean that in that context? If you take the (30)
first/....

first part of that passage "people" is the black people because it is contrasted with the racist minority regime which has to consult with the authentic leaders of the people.

MR CHASKALSON: Transfer power to the people ...

COURT: Because the racist minority regime is a regime which consists of the leaders of the white people.

MR CHASKALSON: Well then what it is saying, if your lordship, let us look at that interpretation and see where it leads us, what he is then saying is leaders of the white community should consult with leaders of the black community. (10)

COURT: And transfer power to the leaders of the black community?

MR CHASKALSON: Well it does not say to the leaders, it says transfer power to the people.

COURT: To the black community.

MR CHASKALSON: I will give your lordship on Monday references to the record as to what is meant and understood by power to the people.

COURT: No forget about the word "power", I am not debating the word "power". I am debating the meaning of the word "people" (20) in the context of your argument that "people" means all the people in South Africa. I say it might be interpreted, that paragraph, that "people" means the black people, the disenfranchised. In that context.

MR CHASKALSON: Well it might mean that. It might mean that they are the majority so in the end if you have majority rule the people who are powerless would now get access to power and that the people instead of being ruled would now decide for themselves or participate in the decisions for the future. But leaving aside for the moment - and I will give some (30)

thought/....

thought to the point that your lordship puts to me and look for the evidence which may be relevant to that particular point.

COURT: That paragraph was dealt with on 16 September 1987.

MR CHASKALSON: Yes well I will ...

ASSESSOR (MR KRUGEL): And on 13 August.

COURT: And on 13 August 1987.

MR CHASKALSON: I will look for passages that are relevant but what I am asking your lordship at the moment to do is to look, remove the stridency of the language and what is it really saying? And let us even take your lordship's construction, the one you put to me. It says there is time to consult with the leaders, there is time to dismantle apartheid, there is time to transfer power to the people - and let us use a neutral phrase for the moment for power for the people. What would be necessary to achieve peace in this country? Remove the evil apartheid system. That is why we say that our struggle - and that is the struggle against apartheid in that context - is a struggle for peace because peace is identified as the consequences of the removal of the apartheid system. It says not one more drop of blood need be shed. That means the conflict can end. Not one more family need live in misery. That means that if apartheid goes what we see as the cause of the misery and starvation will end, what we see as the cause for unemployment will end, what we see as the cause of homelessness will end. If these conditions are met. What it is saying, what it is saying is that agree to dismantle apartheid and this will come to an end. Now your lordship will remember that this was in April of 1985, it was a time of great tension, there was undoubtedly great anger at the time and the stridency of the language reflects that. But how does

it/....

it establish the proposition that the struggle will be pursued by violent means and not by non-violent means? You cannot read that into that statement. And that is what the state has to show. It does not really matter - and I will look at the evidence on this - but it does not really matter what that phrase power to the people means because the issue is how do you seek to achieve your goals. Your lordship will remember in the 1961 treason trial there was a lot of discussion about power to the people and the sort of state that would exist and there was talk about transfer of power. But that did (10) not, that was not considered sufficient. It was really brushed aside I would think, in the context of the whole judgment, though space is devoted to it. It does not really matter precisely what form of state, what that means or what that contemplates. The issue is was the UDF, as a matter of policy, saying we will pursue our goals by violence? And you cannot read that into this statement. To warn people that violence will continue if you do not change is not proof of a policy of violence. It is not only prime ministers and state presidents who can talk about futures too ghastly to contemplate or (20) the need to adopt or die. There are other people who can also see the dangers and issue the warnings and the issuing of a warning or the pointing to the dangers of continuing with a policy which is bringing forth so much conflict, if that is what you feel well then to remain silent is a crime. If you are political leader of your country, if you want to participate in the politics of your country to remain silent and to do nothing in that situation is actually appalling. I will come back on Monday morning to power to the people. I would like to look at it carefully in the context of the passages your (30)

lordship/....

lordship has referred me to and to other parts of the evidence.

I will address my submissions to your lordship in regard to that there. It is not an issue which the state made in this section of its argument. But there is another passage which is there, which is, one sees immediately after the statement cited:

"The state and its agents are engaged in the wholesale letting of blood in the townships. Billions of rands are spent maintaining apartheid subsidies."

Just let me pause for a moment. It was a time - and the (10)
statement shows it - of very deep anger and it is natural that that anger, let me put it to your lordship differently, it is not unnatural that that anger should in some way be reflected in the language used in that statement and we know that a lot of the people who died at that time were young people, including children. And I am not now concerned with the circumstances in which those deaths took place, whether there was an excessive use of force or not. I am not really concerned with that but understand the sense of anger at children being shot, young people being shot and dying. (20)

COURT: Where is there a statement in this statement by the UDF National General Council which deplores the violence which gripped our country at the time? Not only the violence of the SADF, or police as it is alleged, but the violence of the hooligans in the townships?

MR CHASKALSON: I do not see anything there.

COURT: Well would one not expect it in the circumstances if you used that strong language in that type of statement?

MR CHASKALSON: Well it depends. I do not know, the ...

COURT: Why merely blame the police for blood letting, or (30)
whatever/....

whatever is mentioned here? The state and its agents are engaged in wholesale letting of blood in the townships?

MR CHASKALSON: Well I do not know my lord, I would assume that if that is what you perceive the situation to be ...

COURT: But nobody could have perceived it to be the situation, that it is solely the state that is responsible for everything? Is that your contention, that anybody in his right senses could have perceived it in that way?

MR CHASKALSON: I think that people in their right senses could have perceived the state to be primarily responsible (10) for that situation and if that were so one could understand that having happened. Perceptions are very different depending upon where you are and who you are, one does perceive things differently. But again your lordship may feel that this is a very one sided strident unfair statement, that is your lordship's ...

COURT: I am not concerned with fair or unfair. That is not the point. The point is the allegation is made that the UDF stands for non-violence. It issues a statement at a time when the whole of the country is in turmoil. In that statement (20) there is no mention at all that the UDF deplores the violence in which our country is gripped and then on page 2 of this statement the UDF pledges itself to organise the masses of our people to effectively challenge the apartheid state by frustrating its efforts, preventing its advance, forcing its retreat and if possible to cut off all its lines of retreat. Now in the circumstances what does it mean?

MR CHASKALSON: Well I, your lordship says what does it mean, it means we will challenge you where we can challenge you by the methods, let me assume that it is talking about non- (30)

violent/....

violent methods.

COURT: Well this is my problem Mr Chaskalson, that I must put to you directly, is there not a situation in which in a certain set of circumstances one would expect a responsible body to state clearly and unequivocally "We are non-violent and the methods we intend employing are non-violent" and is this not the situation where that would have been expected and it is sadly lacking?

MR CHASKALSON: But how can your lordship take the next step and say because you did not say that therefore your goal is (10) to overthrow the state by violence?

COURT: I have not got to the next step yet. I am merely interpreting the document and making a couple of remarks on it that have been troubling me all along on this document.

MR CHASKALSON: Yes. Well again that was not really an argument that was put up in the "Betoog".

COURT: Yes, but I hope I have the liberty to put a couple of personal problems also to you.

MR CHASKALSON: No, all I am saying my lord is that if your lordship puts a personal problem to me I would like to look (20) at the evidence to see what support I can get for the arguments I want to put to your lordship.

COURT: Certainly. I think that that passage was dealt with on 6 October 1987 and possibly on 17 September 1987. We also have the 23 September 1987 and 6 October 1987 and 14 August 1987 and 27 August 1987.

MR CHASKALSON: Yes well we will look for what the evidence is and I do not like making submissions which may not be in accordance with the evidence.

COURT: Well just leave this aspect aside and continue with (30) your/....

your argument. You can always come back to it.

MR CHASKALSON: Yes I will. I

COURT: I think it is my duty to put this to you straight out. This has been troubling me.

MR CHASKALSON: I understand what your lordship is saying to me and I would prefer not to, I would like to look at the evidence before I address an argument to your lordship in that particular context because I do not think I should put an argument to your lordship which may be different to the evidence or inconsistent with the evidence. (10)

COURT: Well we can do that on Monday.

MR CHASKALSON: Yes. So I will look at it from that point of view. And then perhaps I should then leave the whole document until then and move onto ...

COURT: Well would you not like to deal with what the "Betoog" says about the document and get that out of the way?

MR CHASKALSON: Well what the "Betoog" says is:

"As die regering nie bereid is om te kapituleer en gesag oor te dra aan die massas nie geweldpleging en bloedvergieting noodwendig onvermydelik in die stryd (20) vir vryheid ..."

That you cannot infer from that document. What you can infer from it is that conflict will continue and that it is, well let me put it to your lordship - it is put in very strong terms. Really what the statement is saying and my argument relating to that proposition was that we are in a violent situation in this country. All of that would come to an end if you would remove the cause of violence and the cause of violence is apartheid and that I suggest to your lordship that it is not only the UDF that has said that in this country, or indeed (30) there/....

there are many people who have said that and many people who are still saying that, both here and as your lordship will know everywhere in the world. So that sort of a proposition cannot be elevated, it cannot be elevated to as it were a policy to promote violence. But I think I should deal with the whole of the document on Monday morning. In paragraph 5.4 of the "Betoog" there is a reference to document C.109.

ASSESSOR (MR KRUGEL): Page please Mr Chaskalson?

MR CHASKALSON: 23. The passage cited is this, it says:

"Since its inception the UDF has constantly called for (10) a peaceful solution to South African problems. What we reject most emphatically is for the nationalist party to unilaterally dictate the conditions and terms of such negotiations. In our 1983 letter to Mr P.W. Botha we stated

1. That a meaningful process of change must be based on the unconditional release of Nelson Mandela and other imprisoned leaders.
2. That the banned and restricted should be unbanned.
3. That Oliver Tambo and all the exiles should be (20) allowed to return home unconditionally.
4. That such apartheid structures as bantustans must be dismantled to allow for a non-racial and democratic constitution to be worked out.

We must make a point that any solution that excludes participation of the ANC and its followers has no future. This is because such a settlement would not be terminating the present armed confrontation between the state and a growing proportion of the country's population."

Now the, that is a statement by the UDF but there is (30)
nothing/....

nothing in this - as far as I know it was not put to any of the witnesses - but there is nothing in this statement which supports the state argument. It is no different to what we have heard before. Show a commitment to a non-racial democratic state, show a willingness to discuss the process of change with leaders, bring back everybody and dismantle apartheid. I mean that, from the very beginning the struggle has been a struggle against apartheid and from the very beginning the call has been a call to dismantle apartheid structures and to reintegrate society and to reconcile society by removing the cause of (10) the conflict and ...

COURT: Do we have a date of this statement? We can ...

MR CHASKALSON: The statement was after the arrest of the leaders.

COURT: That must have been then after ...

MR CHASKALSON: It must have been in 1985, 1984 ...

COURT: 1984/85.

MR CHASKALSON: Can I have a look? There may be some internal evidence from which we can see it. I do not know that we have a, we can date it. It would be later than the arrest of the (20) sixteen UDF leaders who were put on trial for treason in Durban.

COURT: Yes and before this case started otherwise they would have mentioned us as well. In the last paragraph. That was merely a matter of levity Mr Chaskalson. But it is clear that this was made before this trial started.

MR CHASKALSON: It seems reasonable because there is a reference to only sixteen of the UDF leaders.

COURT: Yes and we started in 1985.

MR CHASKALSON: We started the end of 1985.

(30)

COURT:/....

COURT: So this will probably be at the end of 1984, beginning of 1985. Some time.

MR CHASKALSON: Well I think we may have some date, that all sixteen had not been arrested.

COURT: I do not think it is very relevant.

MR CHASKALSON: I do not think so. I think it is probably some time in 1985.

COURT: Yes.

MR CHASKALSON: But when I really do not know. Now then the next page of the "Betoog", page 24, is the page where (10) the speech of Cedric Kekana is dealt with. I think I have previously referred to this speech. I am not sure whether I have or not but it is referred to on page 24 in paragraph 5.5 and the same speech is referred to again on page 27 paragraph 6.4 and in page 36 ...

COURT: I am sorry I missed you a moment. Could you just repeat your last two sentences.

MR CHASKALSON: Yes, this speech at page 24 by Cedric Kekana is referred to at paragraph 5.5 on page 24, that same passage is referred to again in paragraph 6.4 on page 27 and at para-(20) graph 7.3.9 at page 36.

COURT: Would you just pause a moment. I would like to make a couple of cross-references.

MR CHASKALSON: Well there is another passage, and it is also combined with a reference on page 70 at paragraph 10.18.4.2.

COURT: Yes thank you.

MR CHASKALSON: Now if one turns to paragraph 5.5 the state says:

"Hierdie vername idiospreuke laat hoegenaamd geen twyfel by die massas van hulle verbondenheid aan die ANC in (30)

sy/.....

"sy gewelddadige stryd."

Now before I look at the text of that speech the first question is why is Cedric Kekana referred to as a "vername UDF leier"?

COURT: What was he? Was he the chairman of SOYCO? NOT?

MR CHASKALSON: I do not even think he was chairman of SOYCO. I think he was a member of one of the youth organisations.

COURT: A member of SOYCO.

MR CHASKALSON: He is, there is simply no evidence to say he is a "vername leier". Neither Mr Molefe nor Mr Lekota knew (10) him. I will give your lordship the reference to those passages in the evidence. Mr Molefe's evidence at volume 265 page 14 292 lines 15 to 20 and Mr Lekota's evidence at volume 298 page 16 779 lines 6 to 16 780 line 18. Now I am not aware of any other speech or writing which we have in this case which is attributed to Cedric Kekana.

COURT: I have come across the name before but I do not know where.

MR CHASKALSON: Well if your lordship read the "Betoog" you would have come across it in many places. (20)

COURT: No that is before I read the "Betoog".

MR CHASKALSON: Well he was mentioned in the evidence so your lordship would have come across his name.

COURT: Must have been. He is SAYO, S-A-Y-O, and he attended one or more UDF Transvaal General Council meetings.

MR CHASKALSON: Yes. So he is a SAYO representative.

COURT: Yes.

MR CHASKALSON: As far as we, there is no other evidence of him having spoken, as far as I am aware, there is no other evidence of his having written and there is simply no evidence (30)

to/....

to elevate him to the position of a "vername UDF leier", or "vername UDF spreker". Now this is a speech which is clearly an impulsive speech made by seemingly a young man if he is from the youth organisation at a youth rally. How that speech can be converted into a policy statement made on behalf of the UDF is simply not shown in the "Betoog" and I suggest to your lordship that there is no basis for giving it or characterising it that way. The ...

COURT: Could I just ask a question here. Does, at a certain stage of a meeting, a duty arise on the part of the chairman (10) to repudiate what a speaker is saying, never mind where that speaker comes from? And if he does not repudiate him can one draw a conclusion as to the general feeling of the chairman, of the general policy of his organisation?

MR CHASKALSON: Well no, one cannot, because that observation was made more than once in the treason trial judgment. It was made more than once that senior executive people have made speeches which included, which amounted to incitement to violence that they had made in the presence of the chairman who held high office in the organisation, that they had (20) been received warmly by that particular audience and that the chairman had not repudiated them. The most I suggest that one can do as far as that is concerned, that whoever the chairman of that particular meeting might have been may or may not have had some personal obligation. I am never quite sure what it is and I certainly do not think that a sort of obligation which anybody outside of the law would ever contemplate, particularly when different people from different organisations are coming together.

COURT: Is it your contention that if a speaker at a (30)
political/....

political rally of a certain political party makes a speech inciting the persons to violence he should not be repudiated by the chairman?

MR CHASKALSON: Well when you say "should not be" it is not necessarily the question is is the organisation liable if it does not repudiate them.

COURT: Liable for what?

MR CHASKALSON: Well that is what I, liable for his speech. Does it adopt his speech and I suggest to your lordship no. It is no more than a speech. First of all you have got to (10) go back to the fact that Kekana makes a speech at a youth rally. He is one of, we know for instance that that youth rally, the evidence is that that youth rally went on for hours. I think it is that it went on for five hours. We have a very incomplete video of the proceedings. We do not know what speakers before said, we do not know what speakers after said and so we have a very imperfect picture and there is even no evidence one way or another as to what may or may not have been said by the person who acted as chairperson of that meeting at any time during the meeting, either before (20) or after Kekana's speech. One, so one could not even get to the stage of saying that you have evidence before you from which you could draw the inference that the person who acted as chairman of that meeting said nothing at any time during the proceedings which would be in any way inconsistent with what Kekana had said in his speech. So the material from which one could seek to make, to draw some inference simply does not exist. But I go further than that. Apart from the fact that there is, apart from the fact that that material is not there the policy of an organisation cannot be made by a speaker (30) who/....

who is not even an official of the organisation, he is merely a member of a youth organisation. He cannot make UDF policy by making a speech at a youth gathering. He neither has the mandate from the UDF to do that, the authority of the UDF to speak on its behalf. There is nothing to show that he purported to speak on its behalf either. It is clearly a speech which was not known to Mr Molefe and Mr Lekota. And so as far as that is concerned the suggestion to your lordship is that whatever you may say about Mr Kekana you cannot take the next step and say that what Mr Kekana said was UDF policy, and in (10) fact there was very direct evidence by Mr Molefe that this was not UDF policy. Now I shall give your lordship the references to the time that this meeting took and the passages to Mr Molefe but perhaps I should do that on Monday.

COURT: How long will you take before you finish this subject, V15?

MR CHASKALSON: Well I can give your lordship some references to it.

COURT: If we are going to come back to it on Monday it makes no difference, then we may as well come back to it on Monday (20) but if it takes a further two or three minutes we may as well complete it.

MR CHASKALSON: I think I will be longer than two or three minutes.

COURT: Then we will take the adjournment now.

COURT ADJOURNS UNTIL 29 AUGUST 1988.

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