

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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PRETORIA

1988-06-88

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

420

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON

ADV. G. BIZOS

ADV. K. TIP

ADV. Z.M. YACOOB

ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN AKTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS:

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COURT RESUMES ON 16 JUNE 1988.

MNR JACOBS: Edele net voor mnr Bizos aan die woord kom, ek het erkennings omtrent die bewysstukke van mnr Bizos gekry. Ek het vir hom dit teruggegee hoe dat ek bereid is om dit te erken. Ek het dit vanoggend vir hom terug gegee. Dit is in verband met daardie band en video band en opname geneem in Sharpeville met 26 Augustus 1984 se vergadering. Dan het hulle omtrent die koerante vir my h lys gegee. Ek het hulle deur gegaan en daar is van die koerante wat ons nie kon kry nie en wat ek mnr Bizos se aandag op gevestig het. Ek weet nie of (10) hy op hierdie stadium wil hê ek moet die erkenning maak van die ander nie maar op daardie wat ek nie kon kry nie kan ek nie op hierdie stadium vir hom h erkenning maak nie. Ek het vir hom in kennis gestel.

HOF: Dankie. U kan dit maar uitsorteer h ander tyd.

MR BIZOS: I may say that I think that the amendments made on the draft admission are of a formal nature but I have not had time to look into it, refer to exhibit numbers and things and I do not want any misunderstanding but it looks as if it will not be necessary to call further evidence in relation (20) to that tape but we want time to study the amendments and to formulate them properly so that there is no misunderstanding. As far as the newspapers are concerned I notice that the list that they have made they merely refer to The Herald. Now there are apparently many Heralds in South Africa and it should really have been Eastern Province Herald, but they are not serious matters. A little time will see to it that ...

COURT: Will you type out the list of admissions so that I can add it to the AS bundle.

MR BIZOS: Series, yes we will do that in due course. (30)

LOUIS/....

LOUIS CHARLES DOUWES-DEKKER: d.s.s.

EXAMINATION BY MR BIZOS: Professor Douwes-Dekker are you an associate professor in industrial relations? -- I am.

At the graduate school of business administration of the University of the Witwatersrand? -- I am.

Now will you please, do you hold a Masters degree? -- I do.

In what? -- In sociology.

And what was your thesis on? -- The thesis dealt with the development of industrial relations policies by companies (10) during the period 1973 to 1977.

Were you involved in the Trade Union Council of South Africa before that? -- I was.

In what capacity? -- I was the assistant general secretary of that body.

For how long? -- For three years.

And were you in any way connected with the Industrial Council for the clothing industry in the Transvaal? -- I was.

For how long? -- For six years.

In what capacity? -- Assistant general secretary. (20)

Did you hold other posts in industrial councils? -- I was also a representative of a trade union at a industrial council.

Have you worked on various committees in the urban training project? -- I was. I was a founder member of the urban training project and I am presently the chairman of that organisation.

Were you on any committees connected with the Human Sciences Research Council? -- Yes I served on the economic committee of the investigation into inter-group conflicts of the HSRC.

Which groups in conflict in particular professor? -- This study addressed itself to the question of inter-group conflict (30) between/....

between the race groups in South Africa.

Have you undertaken study tours in industrial relations to places outside the Republic of South Africa? -- I have. I have visited and studied industrial relations in Spain, Singapore, the Netherlands, Germany and the United States.

Have you published a number of papers in recognised journals on industrial relations? -- Yes I have in published journals, in accredited journals of industrial relations.

Are you in any way connected with the Independent Mediations Service of South Africa? -- I was a founder member of (10) the Independent Mediation Service in South Africa and am presently the deputy vice-chairman.

What does the, is that referred to as INSSA, I-N-S-S-A, what does it do? -- INSSA provides as an independent organisation mediation and arbitration service to trade unions and employers and employer organisations who are in dispute on primarily labour matters.

Yes. Now when did the state for the first time enact any provision professor to regulate the activities of employers in employee organisations in South Africa? -- The important (20) labour legislation named the Industrial Conciliation Act was enacted in 1924 with the aim of regulating relations and facilitating their reconciliation between employers, trade unions and workers and employees associations.

Was the term "employee" defined in that legislation? -- The term "employee" was given a very specific definition in that legislation to the extent that it excluded african workers but included whites, coloureds and asians.

Did african workers remain quiet about this exclusion from the provisions of this act in 1924 onwards? -- No they did (30)

not./....

not.

What did they do about it? -- African workers, as worker throughout the world sought already at the turn of the century, to be able to have their legitimate rights to form trade unions, in other words to associate, to enter into collective bargaining, negotiations and processes with employers and to become accepted as the legitimate bodies representing worker interests.

And was there any particular person or any particular union that was in the forefront of this agitation for trade union rights among african workers? -- Yes in 1918 Clemence (10) Kadalie established the Industrial Commercial Union which at that period attained a membership of about 50 000 black, african members.

Kadalie is spelt K-a-d-a-l-i-e. Now did the union started by Mr Clemence Kadalie, referred to as ICU, make demands for the african workers whilst it was in existence? -- It did. It tried to represent their interests in negotiations with employers.

And I want to take a big historial jump to the early 50's. Was an act passed in the early 50's which purported (20) to deal with, or try to deal with the rights of african workers in South Africa? -- Yes in the early 1950's special legislation was enacted to provide for the establishment of works committees in the place of work. This legislation was referred to as the Native Labour Settlements of Disputes Act.

Yes. And what were the works committees to do? -- The act required those works committees to represent the interest of the workers in that particular workplace.

Did it provide for trade unions in the generally accepted sense, for a particular industry or for a particular section (30)

of/....

of the working people or was it confined to the factory floor of a particular establishment? -- The act was specifically confined, the function and operation of works committees to a specific company or factory floor and it was perceived to be an alternative to the rights of freedom of association.

In trade unions? -- In trade unions.

Well your lordship might want to note that it is act 48 of 1953. Now at the time that this act was passed were there trade unions to which africans belonged? -- There were. The Industrial Commercial Union established by Kadalie in the (10) early 1900's, because it was not recognised, declined in membership but the drive for trade union rights continued amongst the african people and we saw a resurgence of workers taking out trade union membership rights in the 1940's and they established in fact a number of unions which were co-ordinated in a federation and again when that body could not serve the interests of the members because it was not given due recognition it declined in membership in the 1940's. But again the african people were determined to exercise their rights to defend and promote their interests and unions were estab- (20) lished in the early 1950's, both by african workers themselves and with the assistance of some of the unions representing primarily the white workers.

Did separate federations or umbrella bodies of trade unions come into existence in the 1950's? -- A number of federations emerged in the 1950 decade as a result of the legislation passed which required unions, even of coloured, indian and white membership to separate their interests.

And which were the federations which came into being? Or continued to exist during the 1950's? -- The unfortunate (30) division/....

division in the labour movement which had not existed during the war years nor crystallised itself out and you had on the one side the white workers who formed the South African Confederation of Labour. Then you had the Trade Union Council of South Africa which had unions affiliated to it from, with membership from whites, coloureds, asians members, as well as african members. And then you had the South African Congress of Trade Unions, SACTU which specifically aimed to also include as affiliated unions the unregistered, as they were called, african unions. (10)

Yes. Now this idea of works committees as a substitute for trade unions did it ever get off the ground professor? -- No the provisions in the legislation were only made use of in a very few isolated cases.

Has it been documented as to how many establishments created or established works committees? -- Yes. Statistics exist to that extent. One of the statistics I am aware of is that in 1970 you had 27 such committees in existence in terms of the registration process provided for in the act.

That is the 1953 act? -- Yes. (20)

Twenty-seven works committees out of how many establishments in the country? We will take the middle of the period, how many establishments were there say by 1960? -- If one takes into account the typical retail store, the shop as well as manufacturing establishment where such committees would have become viable, then one could have expected them to have been established in about 50 000 such establishments.

But only 27 were established? -- That is correct.

What was the reason for this paucity of registration of works committees professor? -- The primary reason was the fact/.... (30)

fact that those committees did not provide the african people, for whom they were intended, the rights of association and the rights of collective bargaining. They were primarily instruments or committees where certain problems could be discussed but not where the crucial concern of any worker, namely to be able to be involved in a process of collective bargaining with employers and employer associations could be established. It is significant that even employers saw that these committees were not effective organs to regulate the affairs and, between management and worker. Some companies, wishing to improve (10) the method of dealing with workers, method of conflict management, established in fact a number of committees outside the requirements of the act. These committees were different to the works committees as provided for in the act in that they had representatives on them from both the employer, or management, as well as the workers.

You say that trade unions are there for conflict management. Would you please elaborate on that professor. What is the main function of a trade union and the main function of an employers organisation in relation to conflict management? (20)

-- Trade unions are there to represent the interests of the workers on a collective basis and to extend membership rights to workers who so wish to take up that possibility. That provides for an important right, namely to be able to associate in a collective body. Once the workers have established a trade union and have approved of its constitution they will then seek to represent the workers who are now members of that body in process of collective bargaining, on wages, working conditions, social security needs, and any other aspect relating to the effective and efficient operation of (30)

the/....

the enterprise or the company.

By ... -- And that would be an important process whereby the conflict between workers and employers can be regulated and agreements can be obtained.

By the beginning of the early 70's did it become clear as to whether or not the 1953 act was capable of managing the conflict that comes about between employers and employees? -- It became very evident in the late 1960 decade, and then broke out in frustration in the 1970 decade that because the african people did not have these rights to associate and (10) to bargain collectively their standard of living in fact was dropping and there was no protection of the human dignity of the individual worker in the workplace. When in a particular instance a wage regulating instrument provided for increases which workers in certain factories in Natal found unacceptable because it would mean that their standard of living would drop they protested through strike activity.

Was there any machinery to settle those disputes, could that conflict be managed on an employer-employee basis as distinct from the police force and the security forces? -- (20) No I think the fact that when that protest initiated itself, primarily in Natal but then in other parts of the country and that over 100 000 workers in 1973 were involved in such protest strike activities, that fact demonstrates that there was no adequate machinery whereby their grievances and concerns could be accommodated.

Was there any amendment to the legislation to try and create some new machinery to try and resolve the conflict that was there? -- Yes amendments were made in spite of the fact that certain key business leaders called for a full commission(30

of/....

of enquiry to assess the need for granting african workers trade union rights. But parliament let it be known that it would seek amendments to the Native Labour Settlements of Disputes Act and it brought about those amendments in that year, that year of 1973.

What was the main difference between what had been in existence since 1953 and the then legislation? -- The main additional provision in that legislation, and it now became known as the Bantu Labour Relations Regulations Act, was to provide for another type of committee system in the work- (10) place. That committee system became known as the liaison committee. Whereas the works committee allowed all the workers to elect representatives and consisted of hundred percent elected worker representative the liaison committee structure could have up to 50% of the representatives elected or appointed by management.

Yes. The amending act my lord was in 1973 but the act remained the same one. Now did these new provisions prove a success in solving the problem of the resolving of conflict? -- No they did not because they did not provide for the (20) rights to associate and to collective bargaining and in fact by the legislation providing for two types of committees the problems were exacerbated because now there was a choice as to whether to establish a works or liaison committees and employers preferred the liaison committees because they would be able to control its affairs.

Did the liaison committee procedure find great success among the people in industry, and more particularly the workers? -- The number of liaison committees established and registered in terms of the act was considerable but that should not (30)

be/.....

be regarded as a measure of its success because it was the employer who would take the initiative in establishing such a committee. So if one wants to think of the success of those bodies one should rather ask what the extent was of worker determination to form their own organisations and not organisations in which the employer could have a say and we see in the 1970 decade a remarkable resurgence amongst the african people to again establish their own african unions.

How many liaison committees were actually formed. Do you know professor? -- This of course depends on the year in (10) which you extract the statistics from the Department of Manpower reports but within a short period of time 2 000 liaison committees were established and depending on the year you select - and I have got the information if it is so required - about 100 to 200 odd works committees.

Out of how many establishments by the middle 70's? -- I am afraid that I do not know exactly what the actual number of establishments was in that period but in terms of the previous assessment of the success of the committees it would have been at least 100 000 if not more. (20)

Now this process of rejection of the works committee and the liaison committee by the vast majority of the workers and the establishments were you involved in this in any way professor? -- As I indicated earlier I was involved in the establishment of a workers education organisation called the Urban Training Project which had as its aim to provide educational facilities to workers wanting to know what their rights were, both in terms of legislation and in terms of ILO, International Labour Organisation's conventions. As a result of the seminars held over weekends primarily by the Urban (30) Training/.....

Training Project from the period 1971 to 1976 eleven trade unions were established by the african workers and those trade unions tried to seek recognition from companies in which their members were employed.

Yes. Now did you yourself suffer any disability as a result of your involvement in that process professor? -- I was restricted in 1976, in September 1976, for a period of, sorry in November 1976 for a period of nearly three years until September 1979. I was not given reasons as to why I was restricted. (10)

Now in ...

COURT: What does it mean restricted? Could you not do your work or could you not publish? -- I was prevented from lecturing at the University of the Witwatersrand. I was prevented from entering the Urban Training Project or other such educational activities. I was restricted to a magisterial district and I could not continue with publications of academic articles.

MR BIZOS: Were you alone or was there a group of persons involved in labour relations who were restricted at the (20) time? -- No I was not alone. Approximately 20 people were similarly restricted towards the end of 1976.

Now were any steps taken after the apparent failure of the works committee and the liaison committee to try and put things right? -- Yes fortunately certain steps were taken, and particularly the then minister of labour asked Professor Wiehahn to become an adviser to his department.

And was a commission of enquiry established into labour legislation in South Africa under the chairmanship of Professor Wiehahn? -- That is correct. (30)

And/....

And after, was a similar commission shortly after that established under the chairmanship of Professor Riekert? -- Such a commission into the effective utilisation of labour was established under Dr Riekert.

And could you just very briefly indicate to us what the differences in their terms of reference were? -- The Wiehahn Commission, as it was known, had to investigate the very specific set of labour legislation operating in South Africa at the time. Not only the important Industrial Conciliation Act but all labour laws which enabled and assisted in the (10) operation of regulating the affairs between workers and employers. The Riekert Commission, as it became known, had a different emphasis in that it was required to look into those legislations which affected the movement and utilisation of african workers in terms of primarily the Urban Areas Consolidation act, section 10 thereof. It is interesting and very important to note that the two commissions of course had a certain common concern and interest and awareness of the fact that you cannot separate the broader issues relating to the regulations of people in terms of where they live and where (20) they can reside and the labour legislation. This overlap was demonstrated by the fact that Dr Van der Merwe, who was at that stage attached to the University of Pretoria, was a member of both commissions.

Now what was or what were the main recommendations of these commissions when they reported professor? -- If we take the Wiehahn Commission first one can note, and specifically the recommendation which extended the definition of "employee" to also now finally include the african worker. Certain other important amendments were made to the legislation, namely (30)

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the establishment of an industrial court as it became clear from the evidence which the commission had gathered that as is the case in other countries South African should have a special court to deal with labour-management disputes. The Riekert Commission was, in terms of the Riekert Commission the whole problem of racial separate legislation was not resolved. In the Wiehahn Commission report and the government's white paper response we find that there was a determination to eliminate any reference to race in the legislation. But the Riekert Commission, although it acknowledged the problems which (10) section 10 gave the african workers, and although it tried to say that it was necessary to have uniform legislation for all race groups that in fact made distinctions in terms of the way workers were to be categorised which would retain the migrant labour system. And this in fact then brought some of its recommendations and the government response to those recommendations in conflict with the recommendations which were now enacted in terms of new legislation for the workplace and in industry.

Where, whilst these commissions were in the process of (20) gathering facts and considering their recommendations were black workers establishing trade unions? -- Yes black workers, as we noted already in 1971, from 1971 onwards, either established new african unions or re-established some which had become dormant as a result of restrictive measures imposed on them during the 1960 decade. A survey conducted in 1976 by a masters student at the Wits business school established that in fact 26 such african unions had been formed in that period.

Were they registered in terms of the legislation then in existence? -- No the unions could at that stage, if we think (30)

of the year 1976, not be registered because the african worker was excluded from the definition of "employee". But it is important to note that although the legislation did not give them the chance to have legal status employers increasingly accepted that they were legitimate bodies even if they did not have, in terms of the Industrial Conciliation Act, legal standing. And this was, this legitimacy which employers were now starting to accord the african unions was demonstrated by the establishment of a joint labour management body called The Institute for Industrial Relations, on which leaders from (10) those black unions, some of the leaders from those 26 black unions were represented on a board of trustees.

And were agreements entered into between unions and employers during this period, even before the commissions reported and before the legislation was amended? -- It is often forgotten but it has to be noted that in fact the National Union of Clothing Workers had been established already in the early 1950 period in the garment industry as a separate black union when mixed unions could no longer operate and that that union, that african union, in fact entered into agree- (20) ments, private contractual agreements, with certain employers in the clothing and hat manufacturing industry in the Transvaal but that example did not immediately take on in other sectors during the 1960 decade. However when these black unions emerged, re-emerged or emerged in the 1970 decade we find that a number of companies did start to recognise them and enter into collective bargaining with the union leaders. The most well known example of that being the company called Smith & Nephew in Natal.

Now in your view professor would the 1979 amendments (30)

to/....

to the legislation, including africans or black workers into the industrial relations mainstream, have come about if the earlier provisions in relation to works committees and liaison committees had been accepted and not rejected? -- I am sorry maybe the question could be repeated?

Do you see any correlation between the rejection of the works committees and liaison committees by the vast majority of the workers during the period 1953 to 1979 when the act was amended? -- Certainly there was a direct correlation because during that 1970 decade the african people by es- (10) tablishing their own organisation had shown that they wanted to be recognised as autonomous bodies and not just operate in a specific workplace which was the limitation of the works committees system, but that they wanted to operate on an industrywide level, be it for the building industry or the engineering industry or the chemical industry.

Was this sort of development peculiar to South Africa or is there a history of rejection of unrepresentative bodies and the seeking of ...

COURT: Am I interested in anything that happens outside (20) South Africa?

MR BIZOS: As your lordship pleases. I will, right. Now did this fundamental change in the legislation lead to greater worker organisation or greater unionisation of the work force professor? -- I think the period 1979 till now in fact has been one of the most encouraging and remarkable periods for South Africa to witness because not only did we see during that period a tremendous taking on of union membership rights and responsibilities by the african workers, as well as also in-creasingly coloureds and indians but we see that employers (30) started/....

started to understand the advantage of dealing with a leader who represented the workers in a workplace and evidence of this is that the black unions, as they were now referred to because they could take members from all race groups, put forward to employers the whole idea of procedures which went under the general heading of a recognition agreement. The idea of recognition agreements as a method of reconciling conflict between management and workers had already been debated by the african unions in the 1970 decade. In fact the Urban Training Project organised seminars and work- (10) shops so that people could understand the relevance and use of those procedures and we saw immediately after 1979 when employers heard of the advantages of such procedures which the few companies could record who had entered into them in the 1970 decade, we see a remarkable increase in the number of recognition agreements signed to regulation relations between workers and employers on the workplace from 1979 onwards.

Now have, traditionally have employers or especially before 1979 did employers look upon trade unions, and particularly trade unions formed by africans, with a loving (20) an another type of eye professor? -- I think it is understandable that any employer will prefer not to have to deal with or enter into joint decision making with another party but employers started to realise that they could not continue without some form of representative body which could really guarantee satisfactory relations. So there was mixed reactions. My thesis in fact identified two main types of company reactions to the emergence of african unions. There were those companies who I designate in my thesis as the paternalistic type who wanted to retain unilateral control (30)

over/....

over affairs in the workplace and there were those companies who in my thesis I designate as the open or free enterprise type who were determined to recognise the unions and enter into procedural agreements with them. As the 1980 decade unfolded so more and more workers with joint unions entered with those unions into such recognition agreements with employers in various manufacturing establishments, the retail sector and also the mining industry.

Now is the South African Federated Chamber of Industries an important employer's organisation in South Africa? -- Yes. (10)
The Federated Chamber of Industries, or FCI as it is normally referred to, is one but probably the most employer federation in South Africa.

Did it adopt the Business Charter of Social, Economic and Political Rights? -- Yes that is a document which was adopted by the members of the federation, of the South African Federated Chamber of Industries in 1985.

ASSESSOR (MR KRUGEL): The Social Charter?

MR BIZOS: It is called Business Charter of Social, Economic and Political Rights. I will seek to hand it in because (20) we are going to compare it with the resolution passed at the UDF launch. Is this the charter? -- Yes this is the charter which was endorsed by the South African Federated Chamber of Industries.

COURT: EXHIBIT DA.215.

MR BIZOS: Thank you my lord. Now you have a copy of that charter. Would you just mark it EXHIBIT DA.215 for the purposes of identification please. You say that this was adopted in 1985. Do you remember when in 1985 this was adopted? -- I seem to recall early that year but I do not know the month (30)

now/....

now.

And I want to ask you firstly about this heading "Charter of Social, Economic and Political Rights". As far as workers are concerned can social, economic and political rights be separated or looked at compartmentally professor? -- No workers feel that they want to pursue improvements in those, in all those three rights.

Now there are certain portions of this that I want to read into the record. We will start off with the first

"Whereas":

(10)

"WHEREAS WE, members of organised commerce and industry and of business generally in South Africa:"

And then the last paragraph on the left-hand column:

"Willing to contribute to the processes of ongoing reform and to create the necessary conditions of peace, stability and prosperity for all South Africans on the foundations of democracy;"

Had this sort of sentiment ever been expressed by an organised industry and commerce before professor? -- I think that some of those points might have been raised on certain occasions (20) but to the extent that it is formulated here as part of a specific charter not to my knowledge, no.

The first paragraph in the middle column:

"Recognising the need for South Africa to take up its rightful place in the international community as a land of justice, equal rights and opportunities and to fulfil its duties in the community of free and peace-seeking nations and with a deep sense of patriotism for our country;"

Now had anything like this in relation to equal rights as (30)

far/....

far as workers were concerned ever been expressed in South Africa? -- It must be remembered that certain companies did prescribe to what was referred to in the 1970 decade as the SACOLA code. SACOLA is an umbrella body of employers associations and they did establish a code in South Africa but that code, although it dealt with certain of the sentiments expressed in that paragraph in that document did not formulate it in the extent to which it has been formulated here.

Then under part 1, Social and Cultural Rights and Principles, the first sentence: (10)

"All human beings are born free and equal in dignity and rights."

Had that ever been said before by any employer's organisation?

-- Not to my knowledge, no.

Do you feel that the provisions in the legislation, in the 1953 and 1973 acts making provisions for works committees and liaison committees acknowledged that people were equal or workers were equal in dignity in the workshop or on the shop floor? -- To the extent that that legislation provided for separated limited forms of representation for the african (20) people that legislation did not acknowledge the rights reflected in this clause.

And then the fourth, on the right-hand, the third column:

"Everyone has a right to equal education and opportunities."

Had that been expressed before? -- Not in the extent that we now know, that this document was not just the work of a committee but in fact was fully endorsed by the membership of the South African Federated Chamber of Industries. (30)

I/....

I want to read paragraphs 8(2), (3), (4) and (5) on page 2 of the document.

"(2) Everyone has the right to work and to free choice of employment.

(3) Everyone, without discrimination, has the right to equal pay for equal work.

(4) Everyone who works has the right to fair remuneration.

(5) Everyone has the right to form or join trade unions, or commercial, industrial or other associations of his (10) choice for the furtherance or protection of his economic interests; however, no one may be compelled to join such a union or association."

And paragraph 9, I see like other charters it starts off with "The people may". Now was that sort of declaration ever uttered before by any employer's organisation professor? -- No, it is to be noted that this very body called the FCI did attempt in 1945, also in the 1950 decade as well as in the 1969 decade, to address itself to these sort of issues but did not obtain concurrence within its affiliates or members to formulate (20) something to the extent that it is formulated here. So this makes this document historic.

The paragraph 13

COURT: What does paragraph 9 mean? What does paragraph 9 mean? -- If I can just read the paragraph.

Yes, I have read it. What does it mean actually:

"The people may, themselves for their own ends ..."

Let us skip the rest:

"Freely dispose of their natural wealth."

Well obviously I may dispose of my wealth and you may dispose (30) of/....

of your wealth and somebody else of his wealth. So what is the purpose of this? -- I think that the FCI felt that there were certain regulations in South Africa which restricted those rights.

Like what? -- To the extent that the bantu people could not sell or buy property in certain areas.

No but it is a question of disposal, it is not buying. -- Well I understand that certain africans did own property in certain areas which were designated white and ...

But could not they then sell it? -- Not to my knowledge, (10) no.

And what does it mean "any prejudice to any obligations arising out of international economic co-operation"? Is that international treaties? -- I assume that that is what they would refer to.

Because if it is not international treaties it does not make sense because then there is no legal obligation. -- It is to be recalled that at that stage, or the employers associations in South Africa did have contact with international agencies of employers. (20)

Yes but this is not a question of employers. It is a question of people disposing of their natural wealth and resources. What does this mean? -- I think this is reaffirming certain very important basic principles.

Yes? -- Which they felt should be acknowledged for South Africa.

Like? -- Well if one takes the concluding paragraph:

"In no case may a person be deprived of his own means of subsistence."

There might have been concerns here that there are certain (30) legislation/...

legislation in South Africa because african people are denied citizenship rights, could be restricted in that regard.

Well let us leave the last sentence out of which may be interpreted like that, but what does the first part mean? It seems to me the most woolly sort of thinking that I have ever come across. Can you please explain it to me? -- Well I was not party to the drawing up of it.

Yes, well but you have studied it and you lecture on it?
-- Yes.

Please explain it to me. -- Yes, and the whole purpose (10) of such a lecture would be in fact to throw it open for discussion and debate and people would then put their own meanings and understanding to it. I think the important paragraph which they would touch upon would be that the people may themselves for their own ends, or through the institutions of democratic government freely dispose of their natural wealth and resources.

Without any prejudice to any obligations arising out of international economic co-operation. -- One could check. We could ask the body concerned. It might have had to do with (20) the fact that certain businesses in South Africa were restricted even to send certain information about their operations to outside of the country.

No but that is not disposal of natural wealth and resources. Well I think we are wasting time. We are getting nowhere with this paragraph 9 but that was just in passing. You may discuss this paragraph in your next lecture. -- Thank you my lord.

MR BIZOS: May I ask a question which may, as part of the debate without suggesting that, what is the natural wealth (30)

of/...

of the worker professor? -- That would be his capacities and abilities which he brings to the workplace.

Yes. I am not vouching for it my lord. I merely thought I would throw it into the debate.

COURT: Are they also his resources?

MR BIZOS: I am merely throwing it into the debate. I am not vouching, charters are lofty in their principles and in their wording but that is part of the ...

ASSESSOR (MR KRUGEL): And they do not speak to their workplace either? (10)

MR BIZOS: Well this is obvious from the next one that I am going to refer to.

COURT: Do you see the words "the people" as "the workers" or do you see the words "the people" as including employers and workers? -- I would say that includes all the people, not just only the workers.

Then it would seem that Mr Bizos is wrong. -- Well the employers also bring to the workplace their abilities I would have thought.

Yes continued. (20)

MR BIZOS: Paragraph 13:

"No one shall be subjected to arbitrary arrest, detention or exile and everyone shall be entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and of any obligations and of any criminal charges against him."

Now this question of subjected to arbitrary arrest, detention or exile, is this something which you would consider in the South African context as outside the purview of an employer's (30)

or/....

or an employee's organisation professor? -- No I think this is very relevant to the concerns which an employer's association should express. We have seen in South Africa how numerous times the union leaders, and their members, have been subjected to arbitrary arrest, detentions and even sent into exile and this has certainly hampered the satisfactory industrial relations pattern between employers and trade unions and we do know of instances where employers, when their trade union leaders were arrested, that they made representations to the state to have them released because it was essential that (10) they meet with those trade union leaders across the bargaining table in order to continue the satisfactory reconciliation of the disputes between them.

And to deal with article 18:

"Everyone has the right to freedom of association and freedom of peaceful assembly."

Are these necessary adjuncts to the collective bargaining process and the formation of strong trade unions? -- Those rights certainly are. The right to freedom of association would include the rights which we have referred to previously (20) ly, the right to associate into an independent organisation of your own choosing and the right to collective bargaining with an employer.

COURT: What does paragraph 15 refer to? I thought slavery had been abolished long ago? -- There is a concern that in South Africa there might still be certain requirements in that regard. We note for instance that the master and servants laws were still on the statute book until the mid-1970's and had to be hastily removed when they caused certain problems in the export of coal. (30)

Yes/....

Yes but now what does this mean then, we are dealing with 1985 and even then that was not slavery. What does this refer to? -- Well it refers to the fact that forced labour and compulsory labour should not be imposed on any person and ...

Does this refer to the penal system? -- I would have thought it would, yes. But I am not sure whether they had that in particular in mind. But I see a charter like this also being very important in in fact reaffirming certain rights, even if one is hopeful that they have been removed from the statute books so that one is known to not uphold such conditions as (10) we did uphold up to 1976.

MR BIZOS: Just in relation to this what is the attitude to the, in industrial relations what is the attitude to the use of prison labour by farmers and other people? -- To the extent that those people have no choice into where they can sell their labour that would be seen as to be detrimental to satisfactory relations.

ASSESSOR (MR KRUGEL): Well have you got a solution? What should be done with prisoners, what should you do with them? -- You mean... (20)

I am very much interested. -- If I can check on the question? Should we in fact allow for prison labourers to be used as farm workers?

To work. Should you have them work? How should they work? -- To the extent that I have not studied that particular legislation I am not quite sure how best to answer that.

COURT: Well let us not take you out of your field. It is wide enough as it is.

MR BIZOS: Then paragraph 19:

"Everyone born in South Africa or the independent (30)

or/....

"or national states, or naturalised in accordance with law has the right to South African citizenship.

(2) Every citizen has the right to take part in public affairs, directly or through freely chosen representatives."

Would this, is this an expression of fundamental difference with the status quo professor? -- Yes this would reflect a difference with the legislation as it exists in South Africa at the moment.

And:

"(3) Everyone has the right of equal access to the public service. (10)

(4) Due regard being given to the protection of the rights of minorities, the will of the people is the basis of the authority of the government and this will shall be expressed by way of periodic and genuine elections which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Is this a fundamental, is this a call for fundamental change in South Africa? -- That would be because the reference is here on the fact that people should be able to exercise their rights as citizens in their country and be involved in elections and parliamentary procedures. (20)

And 23:

"Everyone is entitled to all the rights and freedoms identified in this charter, without distinction of any kind, such as race, colour, language, sex, religion, political or other opinion, ethnic or social origin, age, property, birth and economic or other status."

Had any employer's organisation before this ever expounded (30)

such/....

such an egalitarian principle in relation to the society that we are living in professor? -- I think again we need to acknowledge that there were certain employers who certainly supported those personal and public responsibilities and those requirements as identified in the charter but this document for the first time was able to give a collective expression to the beliefs and principles to which employers would hold themselves and would want to see operating in their country.

And then finally the call to action in the last column on page 3: (10)

"Urging all members of industry, commerce and business generally to adhere to these rights and principles.

Influencing government and all political parties and groups to abide by the abovementioned rights and principles and in this regard, to assume an active role in scrutinising all discriminatory laws, measures and practices.

Working towards the termination of turmoil, unrest and conditions of emergency.

Striving for the release of political prisoners as (20) defined in the context of the Charter."

COURT: Where is the charter, is this the charter?

MR BIZOS: This is the charter.

COURT: And where is the definition?

MR BIZOS: Well I will ask a question about that. There is no ...

COURT: No I am asking you because it says "as defined in the context of the charter". So one should look at this charter for a definition unless it refers to a different charter?

MR BIZOS: No my lord I do not know that it refers to any (30)

other/....

other charter. I will ask the witness how he understands it.

COURT: No it does not help me. He cannot interpret the document for me.

MR BIZOS: As your lordship pleases.

COURT: So you say there is no definition in the charter?

MR BIZOS: I do not see, of political prisoner my lord?

COURT: Yes.

MR BIZOS: No my lord. But it is not the political prisoner, "Striving for the release of political prisoners as defined in the context of the Charter." It does not say that there (10) is a definition.

COURT: Yes.

MR BIZOS: "Exploring means of and supporting social, economic and political debate and constitutional negotiation towards the realisation of the abovementioned rights and principles."

Now, my lord I am going onto another topic.

COURT ADJOURNS FOR TEA. COURT RESUMES.

LOUIS CHARLES DOUWES-DEKKER: d.s.s.

FURTHER EXAMINATION BY MR BIZOS: Was page 26 of EXHIBIT A.1 (20) drawn to your attention professor, the resolution headed "Worker"? -- Yes that was drawn to my attention.

I am sorry I should have thought of it. Now have you studied this resolution which is common cause was passed at the launch of the United Democratic Front at its inaugural conference on 20 August 1983? -- I have.

COURT: That is now the one on workers? -- That is the one on workers.

MR BIZOS: It goes from page 26 to page 27 of A.1. Now are the sentiments expressed and the beliefs declared and the demands (30)

made/....

made in this resolution usual or unusual in the workplace in your experience professor? -- No I would say that those demands are typical of the type of sentiments and expectations which workers have.

And having regard to the fact that this was in 1983 if we take the first noting that workers are the producers of the wealth of this country yet they do not enjoy the benefits of the wealth they produce. Now I do not know that I am called upon to ask you to say whether, to what extent this is correct or incorrect but what I am asking you is this, is this the (10) sort of sentiment that has been expressed by trade unionists prior to 1983? -- I would say that that sentiment is the thrust of workers desires and that explains why they formed trade unions.

And is it a 1983, a new demand in 1983, the trade union movement? -- No one would find the sentiments expressed in that, in resolutions and speeches of unions and worker groups from the turn of the century onwards, if not earlier.

Two, that workers do not enjoy security in their jobs as evidenced by rising unemployment and the increasing (20) threat of retrenchment. What was the position in 1983 professor in relation to unemployment and retrenchment? -- We must remember that although in the early 1980 decade the economy had shown some promise of growth that there were threats of retrenchment when the economy's performance did not improve and in fact declined. In fact the retrenchment issue caused a tremendous lot of concern and became part of the procedural mechanisms which unions had to enter into with employers in order to protect their members from arbitrary decisions.

COURT: When you use the word "retrenchment" do you mean (30) firing/....

firing out and out or do you mean lay off for a period of time and then coming back? -- This was the very concern of the workers that employers had had the habit in the past of, as soon as they saw the economy decline of firing people irrespective and what they and their unions tried to achieve was some sort of due process in order to make those methods of retrenchment more equitable and look for creative solutions and alternatives to actual retrenchments.

So by "retrenchment", by the term "retrenchment" one means firing? -- One means firing in terms of a due process, yes. (10)

Yes, proper firing? -- Yes.

Legal firing? -- Yes.

MR BIZOS: Because the state, if we understand the state contentions correctly they say that this sort of resolution was calculated to lead to disorder. Just very briefly how do unions expect, retrenchment has to take place at some time or another as unfortunate as it has to be, what do the recognition agreements as an example provide in relation to retrenchment? -- The recognition agreement procedures which would be entered into by the union and the company would (20) provide for due notice to be given, in the first instance, so that people who know what the company's intentions are. This could be three months or more and would immediately provide for consultation to be held between the union and the management in order to understand the threat which made the employer look at retrenchment as an option and in order to look at alternatives. In many instances workers would, through their union leaders, ask for instance that people not be retrenched but that all the workers in that company, or a number in a specific department work a four day instead of a five day (30)

week/....

week and the employer will try and accommodate that as much as possible and that might then lead to very few, if any, workers being retrenched. But that all the workers would share the burden of that economic problem which the company faced.

And are there rules called the last in the first out type of rule, so that a person with children at school and in a particular area or, your lordship knows what I mean.

COURT: Last hired first fired?

MR BIZOS: Last hired first fired, all other things being equal, is that one of the, is that the sort of thing ... (10)
-- That sort of principle would be applied but again it would be necessary for the union and employer to discuss specific cases because there might be reasons why that could not always be applied in an arbitrary fashion and there might be certain circumstances which a union might want to bring into the debate to discuss who would actually feel the brunt of losing his or her job.

Then the third one, workers continue to be harrassed, intimidated and jailed in their attempts to organise against this exploitative and oppressive conditions through the (20) building of genuine democratic trade unions. Have trade union leaders been detained without trial, without any charges being brought against them? Have they been restricted? Were they in any way threatened by any of these to your knowledge professor? -- Yes certainly this has been a pattern unfortunately in South Africa's history and it is significant that the Joint Labour Management, Institute for Industrial Relations, records on a monthly basis in its journal the number of people who, to their knowledge, have been so affected and cannot perform their duties. Of course the actual information is sometimes (30) very/....

very difficult to obtain but the purpose of that monthly review is to give an indication of the extent to which the right to associate and the right to collective bargaining is in fact interfered with and that thereby the building of genuine democratic trade unions cannot be achieved satisfactorily, if not in some instance impeded very severely.

You use the expression "genuine democratic unions". First of all what is the opposite of that in the industrial relations parlance professor? -- We noted that certain employers resist extending rights to workers and would hesitate to actually (10) recognise a trade union. Such employers would argue that they have then the right to in fact give the workers what they think is best for them in that paternalistic style and some of those employers would then form what is referred to as "Sweetheart unions".

COURT: Speak? -- Sweetheart.

Sweetheart unions? -- That is a term which is used to describe a body which has not been independently formed by the workers.

Are the sweetheart unions formed then by the employers? (20) -- By the employer or by the employer granting facilities and financial assistance to a particular trade union member who they think they can buy out or take away from the trade union.

MR BIZOS: Have there been, without actually giving us the examples, have there been examples of such sweetheart unions in South Africa? -- Yes there have been examples of employers providing office space and certain funds to trade, not trade unions, to workers to set up these sweetheart trade unions.

And have they been particularly successful in the establishment of such unions? -- No because to the extent that (30) the/....

the body was not formed by the workers themselves it soon finds itself unable - because it does not honour democratic processes - to operate effectively and those unions would experience considerable turmoil or would in fact have to go out of existence.

That state manoeuvres such as the President's Council proposals, Wiehahn, Riekert and Koornhof Bills are designed to destroy the unity that workers are striving to build and are aimed at denying workers genuine political rights. Now you told us that the Wiehahn and Riekert commissions made (10) some important, reached important milestones in the provisions of the rights of workers in the country. Were there any, or were there in 1983 or are there still certain discriminatory provisions in the legislation or in the practice, despite the Wiehahn and the Riekert recommendations, in existence up to this day? -- Yes the trade union movement in general has and still does express concern that workers in domestic employment, or in farm employment, cannot exercise trade union rights as envisaged by the Labour Relations Regulations Act.

COURT: As at 20 August 1983 had there been a Wiehahn and (20) Riekert, and/or Riekert report? -- On that particular date?

Well by that time, by 20 August 1983? -- Those reports were tabled in Parliament in 1979.

1979 already? -- Yes.

C.1439 So could it then be regarded as a state manoeuvre, the Wiehahn and Riekert reports? -- It could from the point of view that the state did not act on all the recommendations from those reports and to the extent that the legislation which was enacted as a result of the Riekert report in particular sought to continue the section 10 provisions of (30)

the/....

the Urban Areas Consolidation Act provided, providing for influx control measures.

But now what was the objection against the Wiehahn report? -- The concern about the Wiehahn report was that there was never any clarity as to the ability of the legislation arising out of that report to prevent security legislation interfering in the exercise of labour rights. The Wiehahn report did acknowledge the problem of security legislation interference in the exercise of worker rights but this matter was never addressed in subsequent investigations. It is (10) also to be remembered that the establishment of independent homelands severely restricts the exercise of rights.

Yes but that had nothing to do with the Wiehahn report. No I am just looking at this aspect, the Wiehahn report is stated to be a state manoeuvre to destroy the unity that workers are striving to build and are aimed at denying workers genuine political rights. I have difficulty in seeing this because as I see it on your evidence the Wiehahn report was a major step forward? -- It was a major step forward but in the process of change in any country there are also problems (20) in actually making all the intentions work effectively and I think this resolution reflects concern that certain of the requirements are not met fully, as they are known in the broader approach of workers rights and freedom of association.

But how would the Wiehahn report destroy the unity of the workers? -- One of the, the problem of collective bargaining is whether both the employer and the union have the right to industrial action. The employer in terms of the right to lock out and the union in terms of the right to strike and this aspect of the investigation into the legislation which (30)

Wiehahn/....

Wiehahn had to address himself to was never satisfactorily resolved. So it was perceived, and I assume that that might be the reason why this wording was included, it was perceived that certain rights were given but not full rights. And we do know of many instances where workers exercised the right to withhold their labour after due process but the employer then, because the legislation had not been satisfactorily amended, used common law provision to dismiss those workers who had gone on a legal strike.

No I can appreciate it if you say that there were still (10) certain aspects that were not entirely satisfactory but how could the Wiehahn report destroy the unity of the workers? -- I read this resolution to include the Wiehahn report as one of them but not as the major one.

Yes.

MR BIZOS: On this last matter that you have told his lordship about, the, how effective is it for sound industrial relations if the Wiehahn recommendation was that you have the right to strike and make provisions for certain safeguards in the legislation and with the final step being the right to (20) strike and the employer's right to say well you have got the right to strike but in common law I dismiss the whole 1 200 of you. How effective is the right to strike as an effective collective bargaining principle professor? -- It is not unfortunately effective and this is why there is a concern that worker unity will be destroyed if there is a possibility of workers who have gone through due process being faced with the possibility of being dismissed. Certain workers because of the considerable unemployment will fear their loss of job and will then be as it were intimidated by that employer (30) threat/...

threat to dismiss them if they continue participating in that legal strike.

Without wishing to ask you about the details in 1983 were there, was there a debate in relation to the registration procedures? Were they universally accepted as sound procedures or were there objections to them? -- The black trade unions were particularly concerned in the 1980 decade to, not to be caught by a registration process which would in effect control them or interfere in their affairs. Some of the unions came out with the request that yes they would not (10) mind registration but it should be primarily a process of certification and not lead to possible interference by the registrar in their affairs.

COURT: How would he interfere? -- The powers defined are so wide that he would have had the right to interfere as he saw fit.

Would he look into the financial affairs for example? -- The financial affairs were not the worry of the trade unions. In fact one trade union, in order to support the need for suitable financial accountability said I am quite prepared (20) to submit my financial annual certified accounts to the Department of Manpower but that would fall under what I see as pure certification. But if I register in terms of the present provisions, which are so wide, I do not know what the registrar can and cannot do and hence I do not want to expose myself and the union I represent to those possible interferences.

MR BIZOS: And the President's Council proposals and the Koornhof Bills, were they a matter of public debate at the time professor? -- The provisions of those bills and proposals were considerably debated. (30)

And/...

And did they affect workers as citizens, and as workers?

-- They certainly did.

And then five, the migrant labour system drives down the wages of workers and forces them to live in single sex hostels. I think that it is self evident, was that the situation at the time? -- That was the situation at the time, yes.

Then the critical situation of worker organisations in the Ciskei, can you tell his lordship what the crisis in the Ciskei was at about that time? -- At that time a trade union called SAAWU, South African Allied Workers Union, was operative (10) in that part of the country, both in Ciskei as well as in East London, and the Ciskei authorities banned that organisation which hampered severely its ability to operate as an independent body because it could only operate in say East London but could not operate in the Ciskei and if the workers indicated through either a T-shirt or a badge that they belonged to that organisation they would be either detained or severely beaten. It is interesting to note that the International Union Movement also expressed concern about that, what was seen as a retrogressive step. (20)

Were the members of that trade union living with, or some of them, were some of them living within the Republic of South Africa and working in the Ciskei and vice versa, in the border industry developments that were taking place at that time? -- That would be correct. Because some of the townships were in fact situated in the Ciskei although their place of work was in the Republic.

Yes. Then the belief expressed that workers must fully share in the benefits of the weath they produce. Is that good trade union language? -- It certainly is, that reflects (30)

the/....

the sentiment of trade unions, irrespective of race.

That workers are entitled to security in their jobs and freedom from unemployment. Is that considered as self evident in the trade union movement? -- Very much so. And it is important that even employers and certain government agencies recognise the importance of that security and try and see what can be done about it.

And the workers have a right to organise themselves into trade unions of their choice without state repression. Is that axiomatic? -- That is what we noted already earlier on, (10) exactly what the african workers tried to be granted since the turn of the century.

And that workers must enjoy free democratic rights? -- That would be a similar right which they have demanded since they entered the labour market.

And that migrant labour and influx controls are a fundamental denial of the rights of workers to work where they choose. -- That similarly is an important demand which workers have expressed.

Now six, in the leadership of the working class in the (20) democratic struggle for freedom, what do you understand by that? -- Well the workers in any society represent probably the majority of the people and they feel as such that they should be able to take an important role in the political system of that particular country.

And the democratic struggle for freedom, what do you say that that refers to? -- That would be the broader struggle to obtain the franchise.

Therefore resolved to work for a South Africa in which the repression and exploitation of workers shall cease to exist. (30)

Is/....

Is this popular trade union language, was it so before 1983?

-- It certainly was.

Secondly to encourage the building of genuine democratic trade unions, was that the language prior to 1983? -- Yes.

To oppose the migrant labour system and fight for the right of workers to have permanent urban residences. Has this been a call for workers before 1983? -- Yes. In fact we must remember that there was an initial suggestion after the establishment, after the publication of the Wiehahn commission report that workers would not all enjoy the same rights and (10) that particularly migrant workers might not be allowed to enjoy the rights of association and collective bargaining and the trade unions who were in existence at the time indicated immediately that if such divisions were going to be entrenched in law then they would not be able to work with the new legislation.

And to strengthen the unity between genuine democratic trade unions and all patriotic and freedom loving people in the struggle for political rights for all. Was that sort of call made before 1983? -- That certainly was. (20)

Have you professor ever heard the slogan "An Injury to One is an Injury to All"? -- Yes that became a very prominent slogan at trade union rallies in the 1970 decade.

For the sake of completeness do you know any of the accused professor? -- I do.

Which one? -- Mr Bavumile Vilakazi.

How do you know him?

COURT: What is his number?

MR BIZOS: No. 10 my lord. -- Mr Bavumile Vilakazi was employed as an educator by the Urban Training Project. (30)

COURT:/.....

COURT: When? -- Up to the time of his detention, in December 1984.

MR BIZOS: And what was your connection with that association at the time? -- I served on the executive committee of that workers educational association.

Thank you my lord.

CROSS-EXAMINATION BY MR JACOBS: Professor Dekker can you tell the court why the UDF adopted, what was the purpose of adopting this resolution or do you not know? -- I do not know what the direct purpose was. I was not there at the time (10) that it was adopted. But it clearly indicates an identification with the plight of the workers and the, supports the need for them to exercise rights.

Would you agree that this was done in order to organise and mobilise and politicise the workers and/or the people together with the workers on a national basis? -- That the UDF had that ...

Yes. -- Certainly the UDF seems to support here what was being done by the unions in that regard. The unions have from 1970 decade already organised workers and through meetings (20) mobilised their concerns.

Do you know what the UDF and its leadership or its affiliates did in order to comply with this resolution? -- No I do not.

Do you know of any co-operation between UDF and the unions? -- I understand from newspaper reports that there were certainly times when issues emerged which affected both the workers as workers as well as workers as people living in a community that there were joint concerns expressed, or actions.

(30)

That/....

That is only from newspaper reports? -- Right.

Otherwise you do not know? -- I have not, I do not know it myself directly, no.

Do you know of any unions affiliated to the UDF? Out of knowledge ... -- I understand that there are certain unions affiliated to the UDF.

Do you know Mr Steve Tshewete? -- No I do not.

Have you ever met him in your work in connection with the trade unions? -- No.

Do you know Mr Curnick Ndlovu?

(10)

COURT: Curnick?

MR JACOBS: Curnick Ndlovu? -- I do know of Ndlovus but I do not think that particular gentleman. I do not know what capacity he had or ...

And Billy Nair? -- I beg your pardon?

Mr Billy Nair? Do you know a Billy Nair? -- I know of him but I do not know him personally.

Do you know what, if he was connected to the trade union system or trade unions? -- That I do not know. I do not know if he had an office, bear a position with a trade union. (20)

Do you know anything about the freedom struggle fought by the UDF and its affiliates? -- To the extent that it has been reported upon in the newspapers and in academic papers I do, yes.

Against whom is this freedom struggle fought? -- I understand the freedom struggle to be for the right of the people to exercise the franchise in the country of their birth.

But against whom are they fighting? -- They would be fighting against legislation which prevents them exercising those rights.

(30)

Is/....

Is it only against legislation? -- That would be my understanding, yes.

Do you know whether the fight is also against the government and the system? -- Well to the extent that the government is able to effect that legislation they would also make maybe representations to or requirements of that government.

And that it goes so far as not only against the laws or the legislation but against the whole system and to replace it with another system? -- I do not in this resolution read (10) anything about replacing.

No I am not asking you in the resolution. I am asking you now whether you know the freedom struggle fought by the UDF, whether it is for, what do you know about the struggle against the government and to replace the government? Do you know anything about that? -- I understand that the struggle is for obtaining a situation where all the representatives can sit down and negotiate a new system of government in the country.

Do you know anything about it that the struggle is (20) against the government itself and to replace the government itself? -- I am not aware that it is actually saying that they want to replace the government. I think they want to negotiate a new constitution.

Can you tell the court who all the parties are on the side of the UDF... -- I understand that a lot of ...

... who is fighting against the government in this freedom struggle? -- I understand that a lot of organisations, civic associations, certain trade unions are affiliated to the UDF.

Do you know whether the workers are regarded, according (30)

to/....

to the policy of the UDF as part of this freedom struggle?

-- I am sure that they would regard the workers as an important part of the struggle because the workers had already indicated themselves that they saw it as important to be able to exercise rights in their place of work and in the community.

Do you know, according to the UDF policy, what, in what regard and what is the role of the workers in the freedom struggle?

COURT: Well before you answer that question do you regard yourself as an expert on the policy of the UDF? -- I do not. (10)

What are the purposes, what is the purpose of these questions?

MR JACOBS: Yes. Then I will leave it at that sir. Do you know anything about peoples power? -- Peoples power?

Yes. -- I think that is a slogan which one hears about at rallies and events.

Do you know whether the workers are trying to achieve peoples power and/or peoples organisations? -- I am sure that that sort of slogan is used just as much as employers and their associations use slogans such as free enterprise. (20)

Is it only a slogan as far as you know or not? -- Instead of, I, if it is not a slogan?

In establishing organs of peoples power, do you know anything about that? -- Well to the extent that a trade union is an organisation representing the people in a particular sector that would represent the power they have as a collectivity to bargain collectively with an employer.

So on the political side of this, the political meaning and the political side of this resolution before you you cannot tell the court what the UDF was doing about it and (30)

what/...

what their aims were? -- No I am not an expert on the UDF but I think it has to be noted that workers will always try and seek a better position for themselves and if they have not got the franchise then they will use whatever means they have to seek peaceful access to the machineries of government.

Ek het geen verdere vrae nie, dankie.

RE-EXAMINATION BY MR BIZOS: No questions.

NO FURTHER QUESTIONS.

COURT: As envisaged by myself yesterday you have run into trouble. (10)

MR BIZOS: Absolutely my lord.

COURT: And do not say I did not warn you.

MR BIZOS: Well I took heed of your lordship's warning and made many telephone calls and appealed for assistance from the attorneys and others to try and make arrangements and unfortunately I have to ask your lordship to adjourn the trial until Monday morning. I was told that the people doing the transport and the enquiries thought that they would not ...

COURT: Mr Bizos tell me now where are your witnesses coming from? Are they from far away or are they near? (20)

MR BIZOS: No the witnesses that, there are two witnesses that are from near. The others are from the townships....

COURT: Well why cannot, well where are they in townships near?

MR BIZOS: In townships yes.

COURT: Well then why can they not be got, at least this afternoon? Let me accept that you have difficulty as far as african witnesses are concerned. Have you got any white witnesses that come?

MR BIZOS: There is one who is not available until next (30)

week./....

week, he is a newspaper man in a very senior position.

COURT: Well have you heard of the procedure of subpoenas?

MR BIZOS: Yes but my lord ...

COURT: I can help you and issue a subpoena for you.

MR BIZOS: No my lord, we have tried because we do not know how long witnesses are going to last and I think that we have...

COURT: Yes no that is so but I warned you yesterday and I foresaw exactly what has happened now.

MR BIZOS: No but my lord your lordship must understand, with respect, and I think with the greatest respect that without (10) the use of subpoenas, except where sometimes, I must say that we did issue a couple of subpoenas where the employees felt that they may, that they would feel more comfortable if the employer got the, they were able to show a subpoena to an employer. We tried to avoid that procedure because people would have had to come around here, we would subpoena them for Tuesday and they would not have to be called until Thursday and the method that we have used when there were a number of witnesses available, then it was easy. But now that we are with what one may call the very tail end of the situation, (20) it is very difficult to make arrangements and to substitute and we have been in the process, we are meeting almost every late afternoon, we are pruning down, we are considering and reconsidering the position and I do not want to compare ourselves to anything else that may happen in other courts but I think that we have managed to maintain a pace over a period of almost eighteen months which ...

COURT: We are not at the moment debating the pace we have maintained. We are debating the question of whether there are not witnesses today and why there are not witnesses (30)

available/....

available for tomorrow. That is the important thing and I can appreciate your problem as far as today is concerned, it is 16 June, as far as african witnesses are concerned. I cannot appreciate your problem as far as the white man is concerned and I cannot appreciate it for tomorrow at all.

MR BIZOS: No my lord let me ask your lordship this, that assume that, I do not want to give a long story as to what are our arrangements but the people who drive the motor car that goes and fetches the witnesses, the person who drives the motor car is not at work today. We cannot communicate with him (10) because he is not at the other end of a telephone.

COURT: But you have got four sets of attorneys. You have got the address. They can get into the car and get the witness.

MR BIZOS: We have got four sets of attorneys, they have other duties to perform.

COURT: Well if you give me the names I will order the police to contact those persons and get them here tomorrow morning.

MR BIZOS: No, with the greatest respect I do not think that in a case of this nature it would be correct for anybody to go and be approached by a member of the police force to come and (20) give evidence in a case of this nature. Even in the ordinary pro deo it is an unsatisfactory practice, with the greatest respect, because with all the good will in the world a police officer may be perceived as being on the other side and that is not a solution to the problem and what I am appealing to your lordship to do is this, that where we have managed not to ask your lordship, hardly to ever ask your lordship for any time until very recently and the state your lordship will recall had the same difficulties with the tail enders when we were at Delmas and your lordship was constrained from time (30)

to/....

to time to grant them adjournments. We are appealing ...

COURT: I cannot remember that we had this type of problem at Delmas.

MR BIZOS: Oh yes my lord, I would not like to put it on a scale but we did have, in fact it was Mr Fick yesterday who sympathised ...

COURT: Well what is your problem as far as tomorrow is concerned? Why should I sit here and wait around because a newspaperman does not want to come to court? If he does not want to come to court you give him a subpoena Mr Bizos. Is (10) he more important than this court?

MR BIZOS: No he is not.

COURT: He does not want to come this afternoon, he does not want to come tomorrow, he says I must wait till next week for his convenience.

MR BIZOS: No my lord that is one ...

COURT: That is number one, there are a number of other witnesses.

MR BIZOS: Yes, but what I want to urge on your lordship is this that I cannot discuss precisely what the problem of (20) each witness is. We have consulted with them, we have appealed to them. If a person is, there was uncertainty as to when he might be called we did not believe that we should call him this week, that we would be able to call him this week and we have made special arrangements with that person ...

COURT: Now on what basis could you think, possibly Mr Bizos, that this witness would last more than half a morning?

MR BIZOS: No my lord I foresaw that and this is why I sounded a note of my having to eat the humble pie today yesterday, because I foresaw that. But in relation to the week I told (30)

your/....

your lordship that a witness from Alexandra township did not turn up which put out the programme for the week. It is very difficult when a person is in a senior position, with the greatest respect, and in respect of whom special arrangements have been made for a special day such as to take Professor Douwes-Dekker for instance as an example for today when he moved all his duties in order to come today. He could not have come yesterday although he is a local man. A senior newspaperman is in the same position, with the greatest respect. He has a very large newspaper and he has made arrangements as a public duty to come at a specific time next week and we cannot ... (10)

COURT: And for what day have you booked him?

MR BIZOS: He will be available on Tuesday and ...

COURT: I am not going to wait for him till Tuesday. I cannot wait for him till Tuesday. It is Thursday morning now, at 12h15 we have stopped with this witness. I am not prepared to wait till Tuesday for a newspaperman.

MR BIZOS: No but my lord there will be other witnesses in the meantime, on Monday. (20)

COURT: Well we may have the same problem with them.

MR BIZOS: No we will not have the same problem. I am asking your lordship for an adjournment until Monday morning and promise that we will continue until the case is finished, and I did indicate to your lordship that we will finish the case next week. Your lordship must, with the greatest respect, realise the difficulties that we have and I want to assure you that all of us have been working very hard, including the attorneys and the assistants but your lordship must realise that although we have four attorneys they have other duties to perform/.... (30)

perform in relation to other clients and they are ...

COURT: I should think in a situation such as this they must just let the other clients wait a while and get the witnesses going. That is what they have clerks for. You do not use the senior partner for that purpose.

MR BIZOS: Obviously my lord. But they have managed, with due respect they have managed very well over the last eighteen months and I do believe that we have all managed reasonably well...

COURT: Well it seems to me Mr Bizos, despite what you are (10) saying as if the last week there has been a dragging of feet and ...

MR BIZOS: My lord let me concede to your lordship that people during the last lap do not show the same stamina or the same enthusiasm but it is something that I have found and your lordship is correct and I have had reason myself to speak in this manner to at least one or two members of the team. But the realities of the situation is that when a particular attorney was not able to do anything in the past we would say well please see to it that you do it for the next day or early next (20) week and go to another attorney and team and say get the position done for tomorrow. But because of the tail end we cannot sustain what we have done in the past with considerable success. There is no attempt to delay the proceedings, deliberately. There is no attempt to keep the proceedings going for longer than is necessary but there are practical situations which come along. The witness who would have lasted for more than a day did not turn up. In fact Mr Fick described the person as the defence's Edith Lethlake in good humour. But that sort of thing happens. Now that having (30) happened/...

happened it is not so easy to reshuffle the pack in order to do what we have done in the past. And I am very sorry that I am in this situation. I said that I did not want to refer to other trials but we have deliberately and as a matter of policy not sought adjournments in order to prepare for cross-examination.

COURT: Mr Bizos had this case been run like some other trials that I know of we would be here for six years, not three years.

MR BIZOS: I am indebted to your lordship for that, for the expression of that sentiment and may I say that we as a team(10) decided very early on that that would not happen in this case and I think that we have actually shown that we have kept up with it and I am indebted to your lordship for that. When I notice the adjournments that take place, but anyway that is their concern and not ours but where I find myself constrained to ask your lordship for an adjournment until Monday morning in the circumstances and we are, I may indicate, we are meeting tomorrow afternoon where your lordship's remarks will no doubt be conveyed that we must really get rid of the evidence for the portion of next week that it will take. (20)

COURT: What is your attitude Mr Jacobs?

MNR JACOBS: Edele ek is verbaas dat my geleerde vriend vandag kom en tot Maandag toe uitstel vra. n Mens sou verwag dat in hierdie saak dat hy tog voor die tyd sal reël dat sy getuies by die hof sal wees en n mens nie sal reëlings tref dat vandag gee n getuie getuienis en as hy klaar is nou moet daar eers rond gespring word om n getuie te wees. n Mens sou reël dat daar sou meer as een getuie op n dag hier is. Daar is n belofte blykbaar deur mnr Bizos gedoen aan die hof dat die saak sal nou volgende week sal sluit. Maar ek verstaan (30) een/...

een van die getuies wat kom gaan oor die hele UDF getuig en daar sal beslis redelike kruisondervraging wees van daardie persoon. Ek weet nie wat gaan hy kom sê nie. n Mens kan nie jou kruisondervraging voorberei voordat hy nie getuig het nie. So dit gaan ook weer daarop neerkom edele dat ons miskien sal moet vra dat ons geleentheid kry om beter voor te berei vir daardie getuie. Ons kan nie op hierdie stadium voorberei nie want ons weet nie op watter aspekte hy kom getuienis gee nie. So n mens sou verwag dat ten minste die getuie wat dan n deskundige is oor UDF dat hy al môre sal begin getuig. (10) Dit gee ons dan n geleentheid om oor n naweek te werk daaraan. Maar ek dink edele n mens se reëlings kon gewees het dat getuies kon, as hulle met die getuie wat weg, wat nou skielik weggeraak het kon gesubpoena gewees het dan as daar moeilikheid was dan kon hy gesubpoena gewees het dat hy hier by die hof gewag het. Ek stem saam met die hof honderd persent daaroor. Ons moet nie wag vir die gerief van die getuies nie maar dit is die hof wat nou al vir jare sit op hierdie ding se taak om aan te gaan en voort te gaan. So ek gee nie om vir vandag nie, daar kan vandag moeilikhede wees want ons weet dit is 16 (20) Junie maar ek kan nie sien nie hoekom kan ons nie môre en hoekom kan hulle nie die getuies môre hier hê nie. Laat ons aangaan.

MR BIZOS: Let me give your lordship an assurance that I do not know where my lordship gets his information from about a long UDF witness that is going to speak about that, there is no such witness on our programme. So that a long witness that requires, on the UDF that is just not on the cards. I do not know where he gets this information. I most certainly did not tell him or anyone else so. I do not know if it is (30) sensitive/....

sensitive information which he has. There is not going to be such a witness and there is no danger of a lengthy UDF witness having to be called in order to, for the state to require time. So that is out of the way. And I am merely saying in relation to what Mr Jacobs has said that the record will show that he was in a similar situation at the end and your lordship ...

COURT: Well let us not go back on the record. This thing has to be decided on what we have now before us. Let me just speak to my assessor. Can we get the assurance Mr Bizos that as from Monday morning this thing will run, the case will run (10) without further interruptions? If the witnesses have to wait they have to wait for our convenience, not for their own convenience?

MR BIZOS: I can only give your lordship that insofar as it rests with me and my other senior colleagues in the case that we will make that abundantly clear and we hope to have a clear run from Monday onwards.

COURT: And what type of evidence must we expect on Monday.

MR BIZOS: Your lordship must expect briefly the evidence from a person from AZAPO insofar as it relates to accused no. (20) 2, a newspaperman on political language and incidental matters and there are on my list five or six witnesses, short witnesses from one or two, about half of them from the Vaal, some short, one might say peripheral issues. Something that happened in

COURT: You mean Seeiso Street, block 5 and 6?

MR BIZOS: No not Seeiso, it is Bophelong that there is a witness who has had difficulties about coming up now, and Bophelong and one of the, I may say that one of the reasons for the delay is that there was an inquest and we have been (30)

struggling/...

struggling to find the inquest record. Your lordship will recall that a child was killed in ...

COURT: An inquest record can surely be handed in by agreement?

MR BIZOS: Well, but it is not evidence, it is what the person says about the circumstances of the death. That is really the, and not the, but we are having difficulty, this is the sort of thing that is outstanding which has given us ...

COURT: Well Mr Bizos can we have agreement then that you will have the lot together on Monday, except your newspaperman, (10) so that if I get this proceeding going and we can get some speed into it again we can complete as many as we can and those that have to wait wait till Tuesday.

MR BIZOS: As your lordship pleases, we will ...

COURT: But get them all together so that we do not have this sort of thing that we have half a witness in the morning and then stand down again for the afternoon.

MR BIZOS: Your lordship is entitled to an assurance from me that I will try my best for that to happen.

COURT: Yes very well.

(20)

COURT ADJOURNS UNTIL 20 JUNE 1988.

DELMAS TREASON TRIAL 1985-1989

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