

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING)

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SAAKNOMMER: CC 482/85

PRETORIA

1988-03-23 en 24

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

372

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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HOF HERVAT OM 14h00 OP 23 MAART 1988.

PABALLO ALINAH MONYKOSELI, v.o.e. (Deur tolk)

VERDERE KRUISONDERVRAGING DEUR MNR. JACOBS : Mevrou, ons was gewees by die begrafnis van Patrick Phala, die rede wat gehou is in die stadion. Toe u nou daar gekom het, u het netnou vir die hof vertel u was by die ingang gewees, was u aan die binnekant van die stadion gewees of aan die buitekant by die ingang? -- Ek het nie verder dieper gegaan vanwaar ek oorspronklik gaan staan het toe ek binnegekam het nie.

Dit is nie wat ek vir u gevra het nie. Ek vra vir u, (10) het u binnekant gestaan of buitekant die stadion by die hek? -- Soos ek alreeds gesê het, daar was baie mense daar gewees. As ek moet sê hoe ver ek in die stadion was, ek was tussen die opening gewees van daardie hoë grond waarop die gras geplant is. Net daar tussenin was ek gewees.

En die mense wat saam met u daar in die omgewing so baie gestaan het, was dit lede van COSAS gewees, skoliere? -- Nee, nie net hulle nie. Die mense was gemeng gewees.

Was daar baie COSAS lede daar wat ook die banier gedra het daar? -- Hulle was nie baie nie, maar hulle was daar (20) teenwoordig.

En was dit ook naby die kiste gewees waar julle en hierdie groep mense gestaan het? -- Nee.

HOF : Kon u die kiste sien? -- Nee.

MNR. JACOBS : Gedurende die tyd wat u daar was, hierdie groep mense waaronder die COSAS lede en die ander mense in die arena het hulle die naam Tambo kort-kort geskreeu? -- Nee, nie almal nie. Die meeste van die ouers daar sal ek sê het nie daaraan deelgeneem nie. Dit is mense wat bekommerd was.

(30)

Het/...

Het hulle die naam van Oliver Tambo daar uitgeskreeu?

-- Ek kan nie so goed onthou nie.

U het nou-nou gesê die meeste het nie, die meeste is bekommerde mense. So, met ander woorde, daar moes mense gewees het wat dit geskreeu het? -- Daar was vreeslik baie mense gewees daar. Ek kon hoor dat mense iets daar sê, maar ek kon nie presies hoor wat die mense sê nie. Dit was na aanleiding van die groot getal mense wat bymekaar is en die gemompel wat daar plaasgevind het.

Maar ek wil dit aan u stel, dit is nie gemompel nie, (10) dit is geskreeu en wat meer is, dit is ritmies geskreeu deur die groot klomp mense "Tambo, Tambo, Oliver, Tambo"? -- Ek sê daar was vreeslik baie mense daar gewees. Dit kan wees dat dit gebeur het, maar dit is nie al die mense nie, veral as daar baie mense is wat dieselfde ding sal doen op dieselfde tyd.

In die pawiljoen, kon u daar plakkate sien? -- Nee.

Sal u sê daar was geen plakkate in die pawiljoen nie?

-- Nee, ek sal nie so sê nie. Ek is 'n korterige persoon.

Daar was mense wat op daardie hoop grond gestaan het waarop (20) grasperk is. Dus kon ek nie sien wat daar gebeur het nie.

Maar ek verstaan dan u het tussen die grasperke gestaan by die ingang? -- Heeltemal reg. Ek was daar tussen gewees. Daar is mense wat bo-op daardie grasperke gestaan het, mense het op enigiets gestaan daar en daar was van die mense wat natuurlik langer is as ek. Met die gevolg dat my uitsig versper was. Ek kon nie hulle sien nie.

Het u die pawiljoen gesien? -- 'n Sekere gedeelte daarvan aan een kant kon ek sien.

Was dit die helfte of minder as die helfte of meer as (30)

die/...

die helfte wat u kon sien? -- Ek kon dit nie skat nie.

Verstaan ek reg, toe u daar gekom het, het u glad nie die spreker van COSAS gehoor praat nie, hy moes dus al klaar gepraat gewees het toe u daar gekom het? -- Ek het nie die spreker gehoor nie.

Het u ook nie die spreker van SOYCO en ERAPO of sprekers van SOYCO en ERAPO gehoor nie? -- Glad nie.

En Vader Mkhathwa, het jy hom gehoor praat daarso? -- Ja, na mnr. Tutu het hy 'n afsluitingsgebed gehou. Ek het dit gehoor. (10)

Maar hy was ook genooi na hierdie begrafnis toe as 'n spreker vanaf UDF? -- Ek weet nie daarvan nie. Ek het nie sulke kennis nie. Ek het net gehoor dat hy bid.

So, u het ook nie sy toespraak gehoor indien hy een gelewer het nie? -- Bedoel u die gebed van hom?

Nee, toespraak? Is 'n toespraak en 'n gebed dieselfde ding vir u? -- Wat my betref is 'n gebed 'n toespraak van 'n mens wat hy rig aan die Here.

So, u beskou dit is sy toespraak wat hy daar gelewer het? -- Ja. (20)

Biskop Tutu - u sê hy was voorgestel daar op die begrafnis toe u daar gekom het deur Star - is dit deur Star Motswege? -- Dit is so, ja, maar op daardie huidige oomblik toe hy, biskop Tutu, voorgestel was, het ek nie gesien of dit nou Star was wat die voorstel doen nie. Ek het net gesien 'n manspersoon is besig om biskop Tutu voor te stel.

Jy ken mos vir Star Motswege? -- Op daardie tydstip het ek hom nog nie geken nie. Ek het hom eers later leer ken.

HOF : U het later uitgevind daardie man wat daar gepraat het is Star? -- Dit is so, ja. (30)

MNR. JACOBS : Het Star toe vir biskop Tutu voorgestel dat hy n boodskap daar bring namens UDF? -- Nee.

U het nou biskop Tutu se toespraak gehoor. Kan u onthou dat hy gepraat het daar van die "freedom struggle"? -- Daardie een onthou ek nie.

Dit is eienaardig dat u dit nie onthou nie. Dit is mos iets belangrik as hy praat van die "freedom struggle"? -- Miskien by ander mense sal dit snaaks wees dat hy daarvan praat en dat n mens dit nie kan onthou nie, maar wat my betref, van hom af het ek verwag dat hy woorde sal sê (10) wat die mense daar kalmeer en niks aangaande die vryheidstryd nie.

Dan is dit nog meer rede hoekom jy dit sal onthou want hy het nou iets gedoen wat jy glad nie van hom verwag het nie? -- Dit is hoekom ek sê ek sou daarvan geweet het. Ek het hom dit nie gehoor sê of so sê nie.

Want ek wil dit aan u stel dit is bekend in hierdie hof dat hy dit wel gedoen het? -- Dit kan wees dat dit bekend is, maar ek het dit nie met my ore gehoor nie.

Kan jy enige rede gee hoekom jy dit nie met jou ore (20) gehoor het nie, jy wat daar teenwoordig was? -- Ek kan nie n rede verstrek nie. Al rede waaraan ek kan dink is dat ek dit gehoor het wat ek daar gehoor het. Ek onthou dit wat ek gehoor het so ver.

Jy sien, hy het ook nog verder gepraat van "freedom" en gesê dat vryheid "freedom" is nie goedkoop nie, dit is nie "cheap" nie? Wat sê jy daarvan? -- Ja, iets soos daardie as ek reg is onthou ek vaag dat hy daarvan gepraat het, dat dit nie maklik is om vryheid te kry nie.

En hy het toe ook verder gesê om vryheid te kry (30)

beteken/...

beteken dit dat die mense moet deelneem aan die "liberation struggle"? -- Nee, daardie een het ek nie gehoor nie.

Dit is eienaardig, want jy hoor van die "freedom". Dan het hy nog verder gesê in hierdie vryheid "struggle" waaraan die mense moet deelneem moet hulle ook aanvaar dat hulle sal ongevalle hê, dat daar sal mense doodgaan in die vryheid "struggle"? -- Dit kan wees dat hy dit gesê het, maar ek is bang om vir die hof hier te oortuig of probeer oortuig en sê dat hy dit gesê het, as ek nie daarvan seker is nie. Wat ek wel kan onthou waarvan hy gepraat het was die apart-(10) heid en onderdrukking.

Het hy gesê daar oor apartheid en onderdrukking, dit is die regering wat die mense onderdruk? -- Ja, hy het dit gesê.

En dat die mense moet nou veg vir hulle vryheid en onder hierdie onderdrukking uitkom? -- Hy het nie so gesê nie. Wat hy gesê het was, die mense probeer om 'n optog te maak om te toon dat hulle onderdruk is. Die antwoord wat hulle daarop kry na aanleiding van die optog is die vuurwapens.

Toe hy dit gesê het, het hy verwys na die manier waarop(20) die mense wat daar begrawe word gedood is, dat hulle gedood is tydens 'n vreedsame optog? -- Ek het dit so verstaan. Ek weet nie of hy dit eintlik so bedoel het soos ek nou sê nie. Dat hy bedoel dit was as gevolg van 'n vreedsame optog dat dinge nou so geword het. Ek sê nie dit is wat hy gesê het nie, maar dit is die indruk wat ek gekry het. Ek weet nie wat in sy gedagte was nie.

Na watter vreedsame optog het hy verwys toe hy dit gesê het? -- Ek het verstaan dat hy bedoel het dat die kinders die skool verlaat het omdat die kinders dit duidelik wou (30)

gemaak/...

gemaak het dat hulle ontevrede was. Dit is wat ek verstaan het.

En in h optog die skool verlaat het? -- Dit is hoe ek gedink het. Ek weet nie wat sy gevoelens was nie. Dit is biskop Tutu se gevoelens nie.

En was dit op die dag gewees wat hierdie persoon Phala eintlik geskiet was? -- Wat ek gedink het hier gebeur het is dat as die kinders nie die skool verlaat het met die oog daarop om dit te toon dat hulle ontevrede was met hierdie optog nie, sou hierdie kind nie doodgegaan het nie. (10)

Waarheen was die optog op pad om waar te gaan toon dat hulle ontevrede is? -- Ek weet nie.

Is dit nie so dat hierdie mnr. Patrick Phala is dood nadat daar h konfrontasie met die polisie plaasgevind het nie? -- Ek het nie h idee daarvan nie. Ek het nie h idee wanneer, waar en hoe die kind geskiet was nie. Al wat ek gehoor het is dat h kind doodgeskiet is.

U sien ek wil dit aan u stel in BEWYSSTUK W21, dit is h SASPU National van November 1984 word dit gestel op bladsy 15 - ek sal vir u voorlees ... (Mnr. Krugel kom tussenbei) (20)

ASSESSOR (MNR. KRUGEL) : Volume?

MNR. JACOBS : Ekskuus, volume 4. Die volgende word daar gestel ... (Hof kom tussenbei)

HOF : Gaan die oor die begrafnis of gaan die oor die dood van Phala?

MNR. JACOBS : Dit gaan oor die dood.

HOF : Ons is nou besig met die begrafnis. Sy sê sy weet niks van die dood nie. Waarom moet u met haar daaroor debatteer?

MNR. JACOBS : Ek sal dit daar laat. Na die begrafnis is (30)

die/...

die kiste vanaf die stadion na die begraafplaas gedra op die skouers van die mense? Na die rede in die stadion, is hulle gedra vanaf die stadion na die begraafplaas? -- Ek het nie 'n idee nie. Soos ek alreeds vroeër gesê het, dat daar so baie mense daar was. Toe hulle begin het om Morena Boloka te sing, het ek toe weggestap na die bus toe.

Is u nie na die begraafplaas toe nie? -- Ek was begraafplaas toe. Ek het gestap na die vervoer toe, wat mense toe vervoer het vanaf die stadion na die begraafplaas toe.

Het hierdie bus wat u nou daar bestyg het deel gevorm(10) van die stoet na die begraafplaas toe? -- Ja, dit is so.

Het die bus ingeval in die stoet agter die kiste met die lyke? -- Ja, heel, heel agter.

Maar dan moes u tog gesien het daar waar u by die bus gewag het dat julle plek kon kry dat hulle dra die lyke daar weg in die kiste? -- Dit is nie maklik nie. Die stadion van ons daar het 'n vierkantige vorm en daar is strate rondom hierdie stadion. Die bus wat ek gaan bestyg het, was aan die heel ander kant, nie aan die kant waar die mense sou uitgekom het met die kiste nie. Dus terwyl ek by die busse(20) daar was waar ek gewag het om dit te bestyg, kon ek nie om die hoek sien wat daar anderkant aangaan nie.

En op pad van daar na die begraafplaas, kon u dit ook nooit sien nie? -- Ek kon net hier naby my sien.

Daar is net een ander aspek wat ek met u wil opneem en dit is die kwessie van die klagtes. U het nou as die organisasie wat aangestel was om die klagtes van die jeugdiges te ondersoek - kan u net vir die hof sê, weet u wat is al die klagtes wat die jeug gehad het? -- Ek sal nie alles kan onthou nie. Die rede daarvoor is dat daar sekere dinge(30)

is/...

is wat ek as belangrik beskou het van hierdie eise. Daar is van die dinge wat ek moontlik nie sal kan onthou nie as gevolg daarvan.

U sien, dit sou sekerlik 'n baie belangrike eis gewees het as hulle dit geëis het en ek stel dit aan u dat een van die eise was dat hulle wou 'n einde maak en 'n einde hê van wat genoem word "undemocratic education"? -- Ek kan dit nie onthou nie.

Maar was dit nie belangrik, as julle die dinge moes oplos, die klagtes moes oplos dat u dit sou onthou en dat (10) u iets sou gesê het daaromtrent of iets probeer doen het nie? -- Dit kan wees dat dit een van die eise was wat ook belangrik is soos ek dit sien. Dit is heeltemal reg, maar wat gebeur het daar is die volgende. Die eise was meer en meer bygetel deur hierdie kinders. Ons het aan sekere eise voorkeur gegee om die kinders te kalmeer sodat hulle kon teruggaan skool toe en eers na hulle terug is op skool, sou die res van die eise dan aandag geniet het. Byvoorbeeld die ouderdomsbepערking was een van die belangrikste dinge om die kinders op skool te kry en die lyfstraf is dinge (20) waaraan ons meer belang gegee het.

En 'n volgende eis wat hulle gestel het daar in Daveyton was dat die skoliere wat op daardie stadium aangehou word moes vrygelaat word? -- Ja, dit was een van die eise.

Wie was gekies op die vergadering wat daar aan die begin van Januarie 1985 gehou was? Wie moes die eise van die kinders gaan oplos volgens die beloftes wat daar gemaak is? -- Niemand spesifiek was uitgewys nie. Dit was iets gesê deur die ouers in die algemeen daar dat ons die kinders gaan help om dit te bereik op die beloftes wat reeds gemaak is. (30)

Is dit dan nie so dat die opdrag opgedra was aan hierdie "committee of concern" nie? -- Dit is so, ja.

So, dit was dan aan iemand opgedra? -- Nee, daar was net 'n ooreenkoms gewees dat die komitee, nie 'n persoon nie, moet dit doen.

Kom laat ek net hoor. Het die komitee toe iets gedoen daaromtrent, na die begin Januarie 1985? -- Ja.

Het julle iets gedoen oor hierdie ondemokratiese onderwys? -- Nee.

Oor wat het julle iets gedoen? -- Wat ons gedoen het (10) was, na ons gehoor het dat daar skoolfooie betaal moet word by die skole en die kinders is teen daardie betaling van die fooie, het ons besluit om nou met die mense by die skole te gaan praat. Ekself is na Davey Skool toe waar ek met die kinders en ouers gaan praat het en die volgende aan hulle gesê het. Daar is geen organisasie wat kan vorder sonder fondse nie. So, met ander woorde dit was die aanmoediging dat hulle bereid moet wees om die fooie te betaal.

Enige ander klagtes van die leerlinge wat julle opgeneem het na die begin van Januarie? -- Niks meer as dit nie, (20) want die kinders was al terug op skool by daardie tyd.

Ek wil dit aan u stel dat die skole-onluste daar in Daveyton het alreeds in Juliemaand 1984 begin? -- Ek het nie so 'n kennis nie.

Wel, u moet daarvan kennis dra, want daarna was die skole alreeds gesluit? -- Juliemaand? Nee. Al wat ek van weet is dat die moeilikheid by die skole begin het op 9 Augustus.

En ek wil dit verder aan u stel dat die moeilikheid het aanvanklik begin in Tembisa en toe het dit oorgegaan na die (30) ander/...

ander woongebiede toe en van Tembisa af het dit versprei na Katlehong toe en na Daveyton toe en na Thokoza toe, Wattville toe en Vosloosrus? -- Laat my toe om vir u te sê wanneer dit begin het in ons gebied waar ek woon. Ek wil nie namens die ander gebiede praat nie.

En ek wil dit aan u stel dat ... (Mnr. Bizos kom tussenbei)

MR BIZOS : The witness seems to be borne out by the state witness in relation to this date. The only date mentioned by Mr Fourie in answer to Mr Hanekom is 9 August and (10) earlier on - and all this and earlier on on page 6 068 the period covered by the witness is September to February and August is brought in on page 6 072. There is nothing about July and more particularly 9 August is mentioned specifically on line 21 on page 6 072.

MNR. JACOBS : Ek stel feite wat ek kry uit 'n bewysstuk wat ook bewys is in hierdie hof en wat getuienis is voor hierdie hof wat ek die feite aan haar stel nou.

HOF : Watter bewysstuk is dit?

MNR. JACOBS : Dit is BEWYSSTUK W21 waarna ek netnou verwys (20) het op bladsy 8.

HOF : Ja, wel, wat is u antwoord? -- Ek weet nie wat by ander gebiede gebeur het nie.

MNR. JACOBS : Ek wil dit aan u stel dat daar in Daveyton het die moeilikhede vanuit die skole verder uitgebrei. Hulle het van die skole af op die strate gegaan, die studente en toe het die ouers saam met hulle gegaan in die onluste? Die ouers het begin om die leerlinge te steun in hulle eise? -- Ek het nie 'n kennis daarvan nie.

Het u geweet dat in Daveyton het die studente besluit (30)

dat/...

dat die raadslede moet nie eers die begrafnis bywoon nie omdat hulle sogenaamde "collaborators" is van die sisteem?

-- Watter begrafnis praat u van?

Enige begrafnis van mense wat slagoffers was van onluste?

-- Ek het daarvan geweet, ja.

HOF : So, weet u daarvan? -- Ek was daarvan bewus dat die kinders nie daaroor bly is dat die persone daar teenwoordig moet wees nie.

MNR. JACOBS : En raadslede het toe ook nie die begrafnis bygewoon nie? -- Nee, ek wil nie vir die hof onder die (10) indruk bring dat ek al die begrafnis daar bygewoon het nie. Dit is nie korrek nie. Die eerste begrafnis wat ek bygewoon het en die tweede een waar ek teenwoordig was, het ek hulle nie gesien nie.

Dan die laaste aspek, die kampanje, die "stay-away" kampanje van 5 en 6 November 1984, wie het dit georganiseer? -- Ek weet nie.

Die wegbly-aksie het nie sommer net so uit die lug geval nie. Sal u saamstem? -- Ja, ek stem saam met u, maar ek weet nie wie die organiseerders was nie. (20)

U het ook glad nie belang gestel nie? -- Ek sou graag wou geweet het maar soos 'n persoon wat nie gewerk het in daardie tyd nie, het ek nie veel belang daarin gehad wie die persone is nie.

Maar u het tog seker daardie twee dae wat daar gereël was dat julle nie sou werk toe gaan nie, het u tog seker weggebly van die werk af?

HOF : Sy was nie by die werk nie. Sy het nie gewerk nie.

MNR. JACOBS : O, ekskuus. Het u man weggebly van die werk af? -- Ja, hy het. (30)

Die/...

Die dag wat die mense weggebly het van die werk af en wat nie gewerk het nie, het hulle ontmoet enige plekke in die woongebied? -- Ek het nie daardie kennis nie. Ek het by my huis gesit.

HOF : Wat is aangegee as oorsaak van die "stay-away"?

Hoekom moet daar een wees? -- Ek het nie eers daarvan geweet nie.

MNR. JACOBS : Het u man die dag omdat hy nie gaan werk het nie in die woongebied gegaan om deel te neem aan die verrigtinge van hierdie "stay-away"? -- My man is 'n huurmotor- (10) bestuurder en daardie dag was daar nie passasiers gewees nie. Hy kan nie alleen met die kar heen en weer ry nie. Dit was vir hom nodig gewees om by die huis te bly.

Is dit nie ook so dat daar gereël was dat geen vervoer moet beweeg daardie dag nie en dat huurmotorbestuurders en -eienaars moet nie hulle huurmotors beskikbaar stel vir mense wat wel wil gaan werk nie? -- Ek het nie sulke kennis nie.

Maar was u man nie aangesê dat hy mag nie sy kar daardie dag vat om die mense te vervoer nie? Dit is mos in julle (20) huis? Julle weet mos van die omstandighede? -- Ek glo daaraan dat hy dit te hore gekom het dat hy dit nie mag doen nie, want hy het nie gegaan nie.

Daar was ook geen busse wat daardie dag daar kon loop of moes loop nie? -- Ek kan nie oortuig wees dat daar geen busse was nie. Ek woon nie in die straat wat 'n busroete is nie. Ek woon omtrent twee strate ver van daardie straat af. Die oggend was dit stil gewees. Ek kon nie eers die masjiene van die busse hoor wat gery het nie. Sonder om te sê dat daar geen busse was nie, was daar nie 'n geraas gewees (30)

van/...

van voertuie wat ek kon hoor nie.

En is dit reg, daar het daardie dag toe ook geweld uitgebreek in die woonbuurt? En die polisie moes optree teen die geweld wat uitgebreek het? -- Ek onthou nie meer so goed of dit hierdie dag was of die volgende dag nie, maar dit was tussen die twee dae gewees wat die onluste begin het daar.

En hierdie dame of vriendin wat u nou die begrafnis van bygewoon het en wat u h spreker by was, sy was in hierdie onluste - het sy omgekom? -- Dit is so, ja. (10)

Net een ding, wanneer het u u verklaring gemaak oor die gebeure waaroor u nou getuig? -- Praat u van die verklaring waaroor ek nou getuig hier in die hof?

Ja? -- Vandag is Woensdag. As ek reg is was dit Maandag gewees.

Is dit die eerste keer wat u h verklaring gemaak het?
HOF : Verlede Maandag? -- Ek is nie seker nie. Dit is nie lank nie. As ek reg is, is dit eergister, Maandag.

MNR. JACOBS : Is dit die eerste keer wat jy die verklaring gemaak het en nooit voorheen met die verdediging gepraat (20) in verband met jou ondervindings nie? -- Praat met die verdediging oor die skryf hiervan?

Die gebeure waaroor u getuig het? -- Nee, al wat ek gevra was, was dat ek moet kom getuig oor die dood van die Sibongile en ek moet nou skryf wat het gebeur.

En ek wil dit ook aan u stel dat die storie wat u vir die hof sê dat die polisie sommer die water en die goed en die houers daar platgery het, is nie die waarheid nie? -- Ek weet dit het plaasgevind het. Ek het dit gesien.

Hierdie ouerkomitee waarvan u nou die lid was, wat (30)

julle/...

julle nou gekies het, was dit 'n deel van die "national interim co-ordinating parents committee? -- Nee, ek weet nie van daardie een nie.

Het julle nie lateraan met 'n groter liggaam geaffilieer of saamgesmeld wat al die plekke se mense ook aan behoort het nie? Al die plekke se ouerkomitees soos julle nie? -- Nee.

En dat hulle weer almal dan geaffilieer het aan "national education crisis committee"? -- Nee.

HERONDERVRAGING DEUR MNR. BIZOS : U het aan sy edele (10)
gesê dat u Maandag 'n verklaring gemaak het. Wanneer het u vir die heel eerste keer die vroumense wat aan my regterkant sit ... (Hof kom tussenbei)

HOF : Vir rekorddoeleindes sal u haar beskryf?

MNR. BIZOS : Mej. Hinton Nichols, die prokureur in die saak wanneer het u haar gesien? Hoe lank gelede? -- Op 'n sekere Saterdag het ek haar gesien. Dit is nie nou Saterdag nie, maar dit is die ander week se Saterdag. Toe het ek haar gesien en vir haar gesê ek kan nie nou met haar praat nie, ek was 'n bietjie besig gewees. My hande was vol. (20)

Het u haar weer gesien? -- Ja, ek het haar weer op 'n Sondag gesien.

Het sy met u gepraat? -- Ja, dit is so.

Het sy notas daarvan gemaak? -- Ja, dit is so.

Die eis van die kinders dat alleenlik as hulle toestemming gee kon iemand hulle vier hou gee, wat was die eis van die kinders? Sou daar enige ander straf wees as hulle nie die houe aanvaar het of bereid is om dit te ondergaan nie, sal hulle vrygespreek word of was daar enige ander ding wat met hulle sou gebeur het? -- Ek glo daaraan dat (30)

die/...

die vier houe sou die kinders nie van die hand gewys het nie en as daar enige ander manier ook voorgestel was, glo ek nie daaraan dat die kinders dit miskien sou geweier het nie, want die klagte van die kinders was dat hulle oor die skaal geslaan word.

GEEN VERDERE VRAE.

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MR BIZOS ADDRESSES COURT ON BAIL APPLICATION.

K1264

MNR. JACOBS ANTWOORD OP BORGAANSOEK.

HOF VERDAAG TOT 24 MAART 1988.

K1265

HOF HERVAT OP 24 MAART 1988.

(10)

MNR. JACOBS : Eintlik het ek gister my betoog afgesluit tensy die hof iets verder wil weet. Ek dink my hoofde wat ek ingehandig het sit die hele antwoord sistematies en duidelik uiteen. Ek kan miskien een aspek wat ek nie op bladsy 209 uitgemerk het nie, is op bladsy 256. Dit is onder afdeling L. Die hofie daar "The state has little success in aims. Despite detaining thousands of people, occupying the townships and villages, crippling the media and generally launching a full scale offensive against the people, the state has had little success in achieving its objects. The democratic (20) movement has not been crossed. While widespread detentions over 70% of which are of a number of Udf affiliates have hit some areas hard. Many activists foresaw the emergency and took the necessary precautions. They have been able to avoid detention and remain active, even if covertly." Dit is net n verdere bevestiging van wat ek reeds gesê het dat die afkondiging van die regulasies het geen, volgens die aktiwiteite wat voortgaan, verandering gebring in die veiligheid-situasie nie. Dit is net die argument, soos ek gister gemeld het/...

het, wat mnr. Bizos opgesit het en die gronde waarop hulle steun wat sou h realistiese toestand wees as hulle effektief is. Niks is daar om te sê dat hulle is wel effektief nie. Soos ek sê, ek steun dan verder op my betoogshoofde soos ek dit by u ingehandig het tensy daar enigiets anders is wat onduidelik is en die hof my miskien wil vra daaroor?

HOF : Nee, ek het dit deurgelees.

MR BIZOS : There is one aspect that we want to get out of the way and that is the submission in relation to not disclosing to your lordship that one of our instructing (10) attorneys was taken steps to have the proclamation declared ultra vires. An attack on an attorney was made. I merely want to refer your lordship to the papers in order to show that it is completely unwarranted. The first reference to it is made in this memorandum signed by Mr Jacobs. Your lordship will see on page 34 what Mr Jacobs says. "Die bona fides van die applikante is verder bevlek deurdat hulle aan hierdie agbare hof voorgegee het dat hulle steun op die genoemde proklamasie in h Goewermenskennisgewing as h voldoende feit terwyl een van die opdraggewende prokureurs in die saak te wete (20) Priscilla Jana en Kie besig is om voorbereidings te tref om die geleentheid van genoemde verordeninge in die Hooggereshof te Kaapstad te betwis, as opdraggewende prokureur op 10 Maart 1988 en te Kaapstad Hooggereshof namens Detainees Parents Support Committee, Release Mandela Campaign en COSATU h aansoek ingedien het vir die nietverklaring van die genoemde wetgewing." For a moment I merely want to sug ... to recall to your lordship's memory that Mr Jacobs said that it was the banning of the UDF and now here Mr Jacobs mentions the name of one of our instructing attorneys. One would have (30) assumed/...

assumed that before a submission like that is made, some evidence ... (Court intervenes)

COURT : The evidence of Mr Botha?

MR BIZOS : Mr Botha does not mention the name of an attorney.

COURT : Does he mention no attorney?

MR BIZOS : No. He does not mention the UDF either. Your lordship will ... (Court intervenes)

COURT : But he does not say the UDF? Mr Jacobs does not say the UDF. He says the Detainees Parents Support Committee.

MR BIZOS : In argument Mr Jacobs said the UDF. (10)

COURT : Well, let us forget about the argument. What is before court is this application on 10 March on behalf of the Detainees Parents Support Committee and two others.

MR BIZOS : Yes. The affidavit of Mr Botha on this issue ... (Court intervenes)

COURT : What page?

MR BIZOS : 269. I beg your pardon. That is our reply. The delicate information about Mr Botha is on page 44. Your lordship will see that this delicate information, even on the assumption that it is admissible, that the name of an attorney (20) is not mentioned. I am informed as a matter of public record in the newspapers that in fact it was an entirely different attorney who has got nothing to do with this case, that is actually involved in that. I understand it is a matter of public record that Cheadle, Thompson and Harris are the attorneys. So, whatever the states view may be of the sensitive information, it only goes to show that sensitive information is not always accurate and the accused themselves say that they read something about this in the newspaper at page 269. So, I think that the attack on our instructing (30) attorney/...

attorney and her integrity was hardly called for, but in any event we would submit with respect that the law reports are full of reports of applications, some successful, some not successful and some complete failures in relation to these proto proclamations of this nature, but your lordship will have to take the matter as it is, that there is a proclamation which prohibits this activity and we submit that it is a changed circumstance.

The other matter, we have already submitted to your lordship that what is obviously some sort of a copy of a (10) speech purporting to be of Albertina Sisulu that was read to your lordship this morning, is not admissible. I drew your lordship's attention to it, but let us assume that even information which is not properly before your lordship can be taken into consideration. Mrs Sisulu is speaking before this proclamation was issued and one cannot see with respect what the statement that an organisation, although it was harrassed may want to continue and really be a valid ground for opposition to this application.

The other matter that we want to refer your lordship (20) to that the state specifically referred your lordship to in argument is at page 222. Your lordship will recall this is the Transvaal executive meeting minute.

COURT : No, it is not 252. It is not the minute.

MR BIZOS : 222.

ASSESSOR (MR KRUGEL) : Is that S12?

MR BIZOS : Yes, S12 and it is also L3. Your lordship will see that the main heading is "Threat to ban the UDF" and then what it says - let us remember that this is October 1984 when Mr Molefe and Mr Lekota were in detention as well as (30)

your/...

your lordship will recall in evidence the leadership that was on trial before MILNE, J. that eventually came on trial in the beginning of 1985 in Natal. That is the setting in which this meeting in October 1984 is discussed and the following is minuted "Threat to ban the UDF. It was felt that this should be left as it is and also in the light of the harassment of the UDF leadership, the second layer of leadership must be created. Obviously this - and is completely disjunctive. There can be no doubt that at that time what was in the minds of those people present was that (10) the organisation may be banned but there is also and there is also harassment. What it really means is that our leaders have been detained. That what we really need is a second layer of leadership to be created, because the whole of the executive in October 1984 practically the whole of the executive, the national executive was in detention and that is what they are talking about. There is no suggestion and certainly no support in this for the proposition that it was decided at this executive meeting that if the organisation was declared unlawful than an unlawful organisation would go on as the (20) UDF, certainly does not support that contention in our respectful submission.

The state has also submitted to your lordship despite R23 there nevertheless is activity. Your lordship was told some of the things - referred to some things in the papers and some things that are not in the papers, such as that there was a stay-away for two days. As far as everyone else seems to be concerned the stay-away was called by persons who are not said to be the UDF or certainly had anything to do with the applicants before your lordship for a stay-away (30)

on/...

on Monday, but this proves in our respectful submission the necessity to bear in mind what the cases say. That there must be a causal connection between what the accused did and what other people over whom they have no control may or may not have done. This brings us to the crux of what we submit to be our main argument to which the state has not furnished your lordship with a valid answer. We submit that the release of the applicants on bail will not adversely affect the security of the state. The state's answer to that is that look at them, look at Molefe and Lekota, they(10) have refused to resign their positions of general secretary and publicity secretary, despite their arrest. Their position has been a clear one. They contend and your lordship will have to decide eventually whether rightly or wrongly that they have committed no crime. That they were elected to senior positions by a lawful organisation. Rightly or wrongly they believe that they have done no wrong and that it would be an admission of at least some moral guilt if they formally resign their positions. I submit that that is a factor in their favour and not against them in the context(20) of the suggestion by the state that they will indulge in undercover activity. With due respect to the state their attitude appears to be that they expect the accused to renounce their faith and if they renounce their faith, then they could go out on bail. Well, I submit that our way of administering justice does not require people to do that.

Do we understand the state correctly that if a hypocritical resignation, because that is really their main argument that if a hypocritical resignation was tendered by Mr Molefe and Mr Lekota then they could go out on bail. We would take(30)

it/...

it further. The state says "Look at them, they refuse to resign, therefore the security of the state is adversely affected, with a mere say so that we resign these positions solve the country's security problems." The proposition has only to be enunciated in order to establish with the greatest respect that it is not a valid argument and both logic and justice require the rejection of the state's argument on this point, but the main pillar, a word favoured in this documentation, the main pillar of the state's argument is "Look at them. The two of them have refused to resign." (10) The validity of the argument must be tested against the erroneously held belief by the attorney general that accused no. 21, Mr Chikane, continued to be a high ranking official of the UDF, when in truth and in fact it was not so. So that, in our respectful submission far from this being held against the accused, your lordship ought to find with respect that it is because they believe in their innocence that they have not resigned and that has got no effect on the security of the state.

There is another aspect. What is the state saying? (20) Is the state saying that if these two accused are found not guilty and discharged at the end of this case, then the whole scenery that operates to secure the security of the state will collapse because they have become free agents. In this context we have some over nine hundred co-conspirators and at least two dozen men and women who were their seniors in the UDF moving about freely, holding office in the UDF until the proclamation and in respect of whom there are newspaper advertisements after the proclamation. It is really elevating the continued incarceration of these three (30) persons/...

persons far beyond any necessity for the administration of justice and the security of the state and we would submit with respect that your lordship should let them to bail.

MNR. JACOBS : Mag ek miskien net iets sê op die kwessie dat ek verkeerde inligting sou gegee het omtrent die prokureur. Miskien kan mnr. Bizos vir die hof sê of dit reg of verkeerd is. Nadat ons die - ons het min tyd gehad toe ons die goed gekry het en ek het dit telefonies gekry. Ek het in die tussentyd h Fuchs oorsending van die aansoek in Kaapstad gekry. Miskien kan mnr. Bizos sê of Priscilla Jana wel (10) die prokureur is wat die opdrag gegee het as ek dit vir hom gee. Ek het die aansoek voor my van "Release Mandela Campaign. Notice of Motion" en waarin dit gevra word "Declaring the proclamation 95 - R95 of 11 June 1987 issued by the first respondent purporting to declare a state of emergency ..." en dan gaan dit verder "Declaring regulation 6A" wat aangeval word. Daar is heelwat en onder andere die spesifieke een en dit is dan geteken "Dated at Cape Town 10 May 1988 for Priscilla Jana, applicant's attorney, First Floor, Abbey House, 51 Commissioner Street, Johannesburg." (20)

MR BIZOS : We know nothing about this, but let me just have a look at it and see when this is done. Mallinick, Ress and Richman in Cape Town appear to have filed these papers. Certainly the accused know nothing about this.

COURT : Apart from the accused what does Miss Jana say about it? -- I do not know. She has not been asked.

MR BIZOS : I do not know. She has not been asked.

COURT : I will reserve my judgment and you can inform me of her answer to the allegations by the attorney general in due course and as soon as you have done that, I will (30)

give/...

give judgment.

MOHAMMED DANGOR, d.s.s.

EXAMINATION BY MR TIP : May I give the court an indication of what the witness will testify about?

COURT : Yes.

MR TIP : He will testify as having been a member of the Labour Party for many years of the events leading up to the Eshowe 1983 congress at which your lordship will recall the decision was taken to participate in the tri-cameral parliament and he will indicate to your lordship with a very brief (10) look at some minutes of the history of the call for unity leading up to that point. Unity against the proposed dispensation. In the course of this, we will also draw your lordship's attention to some resolutions of the labour party, some aspects of political language as recorded in the minutes which bear on some of the terminology which has come under discussion here and thirdly, he will testify on the basis of his own experience in the areas of housing and removals and group areas of some aspects concerning those issues and he will indicate to your lordship a position concerning (20) UDF resolutions on those areas. May I just say also immediately that the witness has a file containing some of the labour party minutes which are on the subjects that he will testify about. They are with him for the purpose of his refreshing his memory from them and also in order that we should be accurate about what is put before your lordship. We do not want to burden your lordship with copies of all these minutes over many years. I have prepared copies of certain of the pages to which we will refer so that if your lordship pleases can have it before your lordship whilst (30)

the/...

the evidence is given, but not for the purpose of putting in as an exhibit. We will, however, ask your lordship to receive two or three of the minutes, because there are so many matters that are raised that it would be cumbersome to have bits and pieces.

Mr Dangor, you are a man of 42, married and living at Newclare, Johannesburg? -- That is correct.

Presently employed as a salesman? -- That is correct.

And in the course of the last fourteen years or so, have you been involved with a number of community organisa-(10) tions? -- That is correct.

Which variously concerned the promotion of cultural activities amongst underprivileged children? -- That is correct.

Housing programs? -- That is correct.

Feeding schemes amongst the poor? -- That is correct.

And generally welfare and selfhelp programs? -- That is correct.

May I for the record just schedule them. The Board of Trustees of the open school? -- Correct. (20)

Chairman of the Wesbury Muslim Building Project? -- That is correct.

Vice-chairman of the Good Shephard Community Service? -- Up to a period of 1982. Not any longer.

The Central Islamic Trust? -- I am a member of the board.

The executive of the Bosman Mosque? -- Yes.

And you have been vice-chairman and chairman of the Southern Transvaal region of the South African Institute for Race Relations? -- That is correct.

And is it correct also that under your chairmanship (30)

of/...

of that region, Operation Hunger was launched? -- That is correct.

And you yourself have worked fulltime on Operation Hunger for approximately one year? -- That is correct. I am still a trustee of Operation Hunger.

And finally the organisations before we come to the labour party, you have been involved also as vice-chairman since 1978 of Actstop? -- Yes, that is correct.

COURT : What does it stand for? -- Action Committee to stop evictions under the groups areas act. (10)

MR TIP : And the areas with which Actstop was concerned are areas in and around Johannesburg? -- That is correct.

In the course of your involvement with these various organisations, have you had occasion to investigate the problems concerning housing and poverty? -- Yes, I have done so. I have also prepared memoranda in this regard as to the housing shortages and the problems of housing, which I submitted to the then deputy minister of community development.

I want to turn to your involvement in the labour party of South Africa. When did you become a member? -- I became a member of the labour party in 1969. (20)

Were you elected onto the executive? -- In 1971 I was elected as chairman of the Newclare branch, also onto the Transvaal executive and also onto the national executive.

For how long did you remain a member? -- Until the Eshowe conference in 1983.

Were you present at the conference itself? -- I was present at the Eshowe conference itself.

During the years 1969 to 1983 did you attend annual conferences/... (30)

conferences of the labour party? -- I attended all conferences, except for the one in 1975.

Did you attend also meetings of the national executive council? -- I attended most of the meetings of the national executive council in that period.

Just to give his lordship an idea of the general orientation of the labour party, from the start of your involvement, what sort of political dispensation is considered to be acceptable? -- The labour party believed in the freedom of the individuals paramount and sought a one man one vote (10) system within the country in a unity system.

Was the labour party concerned only with its own members? -- No, the labour party was concerned with the entire country.

My lord, I wonder if we might interrupt the evidence of this witness for my learned leader, Mr Bizos, to address you very briefly?

COURT : Yes, if he wants to.

MR BIZOS : Mr Marcus tried to get hold of Mrs Jana but could not and apparently ... (Court intervenes)

COURT : There is not such a hurry. We can do it after (20) tea or after lunch. There is no hurry.

MR BIZOS : We might, because, what I wanted to say is this. I wanted to place on record that on the documents that have been shown to us Mrs Jana apparently - the papers were signed on her behalf in Cape Town on 10 March 1988, but what I want to say to your lordship is this, that the notice of motion in this case has been signed by Mr Dyason on behalf of all three attorneys. Your lordship will notice that. The notice of motion for this bail application.

COURT : Yes, but now let us have that argument when you (30)

have/...

have the facts first. It may well be that Mrs Jana's name was used in the Cape or was not used in the Cape without her knowing about it.

MR BIZOS : I do not think that that is likely.

COURT : So, let us first get the facts straight and deal with it. Let us conclude the evidence of this witness at least till teatime.

MR TIP : In the constitution of the labour party, to what extent does it refer to its own members or to all South Africans? -- If I can read the constitution. It says (10) "The promoting and the advancing the dignity and rights, socio-economic, culture and well being of all South Africans through responsible negotiation with the government of the day."

There are a number of further clauses referring to all South Africans. I do not want you to read them all. It is just to give your lordship an indication at this stage. To what extent did the labour party view its own political future in relation to members of other communities in South Africa? -- The labour party always viewed it as one of the (20) constituent members that will seek to form a broader alliance (?) of the black people of South Africa to build up centres that were in those organisations so that in the end it could get together with the state to set up a national convention to talk about a new South Africa.

What were the attitudes concerning the coloured persons representative council? -- The coloured persons representative council was not acceptable. There were two schools of thought. The one school of thought said that let us participate in the elections, win the elections and then we will take up (30)

our/...

our seats. The second school of thought said that let us participate within the election and use a program of exposure to expose the institution for its weaknesses and its fallacies and embarrass the nationalist party for its policy of apartheid.

COURT : So, the second view was we take up our seats, but embarrass the government? -- That is correct.

And which view won? -- The second view prevailed.

MR TIP : Did the labour party at any time secure a majority in the council? -- Yes, in 1975 the labour party secured (10) a majority in the council.

Are you able to tell his lordship anything about the election manifesto's of the labour party candidates for the election? -- Yes, the election manifesto's were basically around that that we would go to the people and talk to them about apartheid, the rejection of apartheid and also about the destruction and I think in the Afrikaans manifesto, the word "vernietiging" was used of the CPRC.

Was that language destroy and "vernietig" something (20) that was fairly common place in labour party circles? -- Yes, it was.

Once the labour party had won a majority in those elections what did it do in the council? -- It is sought to prospect the workings of that council. When the first budget came up, I think we must first go back to the first no confidence debate. In the first no confidence debate when the no confidence debate was put, the labour party brought an amendment that this council moves a motion of no confidence of the nationalist party of any of its institutions. Thereafter (30) the/...

the budget was put and Mr Leon refused to pass the budget. The state then appointed Mrs A. Jansen in his place to pass that budget.

What was the specific reason for not passing the budget? -- The specific reason for not passing the budget was that it was a differential budget that less money was set aside for so-called coloured pensioners, for so-called coloured education and other welfare institutions.

What was your understanding of the consequence of not passing the budget? What would be the result in relation(10) to the further administration? -- Clearly that it would revert back to the minister who would then have to pass the budget himself or appoint somebody to pass that budget.

To go on with this thumb nail sketch of the labour party history. The response to the situation when Mrs Jansen was called in to pass the budget, did that affect in any way the program of the labour party? -- Yes, it did. It brought about a situation where the community felt as large and the labour party as well that this was a response to legitimate proposal that we talk about the future of this country (20) continuously. That we talk about the inequities. That we talk about the differences being spent on the different population groups insofar as education and other things are concerned and the response was basically that we will fire Mr Leon and we will bring in Mrs Jansen and Mrs Jansen will pass the budget.

Did the labour party concern itself with programs outside the ambit of the institution of the council? -- Yes, as early as 1972 the labour party had a moved a motion at a conference where it said if I can refer to that ... (Mr Tip intervenes) (30)

My/...

My lord, may I refer the witness to page 1 of the minutes of the conference of 6 and 8 April 1972. May I hand up a copy for working purposes.

COURT : You want us to look at what section of the agenda? These are the minutes?

MR TIP : At the resolution, item 9 towards the foot of the page. My lord, may I read it onto record. I have the original minutes and I notice that there is a line left off on the photocopy. I am sorry.

COURT : Yes, well, just read it into the record if you (10) need it.

MR TIP : "That the labour party withdraw as soon as possible from the CPRC and institute the following program. (a) Intensive political organisation outside the CPRC. (b) Create financial strength. (c) Intensify the scale of non-violent confrontation. (d) Identify itself with the oppressed groups." An amendment was moves as follows "That the labour party of SA remains in the CPRC until such time that the political situation warrants its withdrawal from that institution, but that the party institute a program on the four points (20) of the resolution" and the minutes record that the amendment was carried. You were present at that conference? -- I was present at that conference.

Subsequent to the adopting of that - perhaps, before we go on to that, could you indicate to his lordship what sort of discussion there was around this proposal program and particularly what was envisaged in the confrontation referred to in paragraph (c)? -- We are talking about the problems of the people within the townships as it were. That were rent problems, transport problems, and problems (30)

of/...

of that nature. People and groups organised, the labour party in fact organised around those issues within the townships (a) to get some measure of membership going and to address the problems of the people in those areas. On the second part it sought to bring about an alliance of groups in other areas or other race groups with similar views and similar problems.

Whilst we have the minutes of this particular conference before his lordship would you look at item 13 on page 2 "Resolutions." If I may read them onto the record "That the labour (10) party of SA endorses and supports (1) the campaign among all South Africans to boycott the Dame Margot Fonteyn ballet performances and the ^{(?) Eartha Kitt.} ~~earth of kids~~ shows which are presented on a separate basis; (2) the boycott of the national football leagues matches called for by the South African soccer federation and the Western Province soccer board; (3) that the party gives practical effect to its support by establishing boycott committees" in all centres to organise the people behind these campaigns and others that may arise; (4) (a) calls for people to stay away from forthcoming rugby matches (20) organised on a racial basis against visiting English team; (4) (b) South Western district of Somerset West Rugby Union be complimented in their stand to break away from the rugby federation; (5) that the party strongly condemns discriminatory practices and grounds of colour by business institutions such as petrol companies that are patronised overwhelmingly by the oppressed people of South Africa and calls for the withdrawal of support from such institutions; (6) the labour party of South Africa calls for the immediate release of all political detainees and persons placed under house arrest (30) and/...

and banned without trial." There is reference in several of these resolutions to the concept of boycott. Could you indicate please to his lordship what the philosophy was amongst labour party members concerning the boycott approach?

-- Yes. It was one, if we boycott an institution or a function that the credibility would be lost within that institution or the functions. Let us take sport for example. There was a slogan that was used in the labour party at that particular point in time that you could not play normal sport in an abnormal society. That participation within sports organi--(10) sations which had wanted, foreign tours had wanted people from other countries to come and tour here, was one of window dressing and showing the world that we accept it, that what was happening in South Africa was normal and that we had in fact to show our displeasure at what was happening and had to indicate that we did not accept the situation of apartheid within South Africa. Boycott committees were established by the labour party in all provinces and regions to give effect to these resolutions. There were further boycotts, boycotts such as the boycott of bread when the price of (20) bread arose. A successful wine boycott was instituted the master and servant act which prevailed in the Cape where children and people were being intoxicated and slaved by the farmers and the farm labourers who were suffering under these consequences. As a result of that boycott the master and servants act was repealed.

The minutes that you have referred his lordship to in 1972, did the approach of utilising boycott techniques remain with the labour party? -- Yes, it remained with the labour party until 1983 and subsequently I read in the (30) press/...

press that they still use some of those tactics.

I want to turn now to the aspect of negotiation with other groups in South Africa. From when did they become an express program of the labour party? -- It had been there for quite some time but I think from 1974 onwards it had actually been put into effect. I can just refer to the minutes there.

COURT : Well, it does not matter whether it is 1974 or 1976, Mr Tip.

MR TIP : As the court pleases. I would like you please (10) to look at the minutes of the 1976 annual conference at page 5. I would like to tender these as an exhibit. You had an opportunity to read these minutes? -- Yes, I had.

Do they reasonably fairly reflect the proceedings of that conference? -- Yes, that is correct.

If your lordship will receive it, it would be DA118.

COURT : They go in as DA118.

MR TIP : If you could turn please 5 towards the foot of the page there is a discussion arising from the national secretary's annual report and in item (e) the following (20) appears "To achieve consolidation it was necessary to keep lines of communication open and promote the polarisation of the oppressed groups, a black alliance was a priority." If your lordship would turn to page 13 of the same minutes item 15 appears on that page under the sub-heading of "Race relations". If I may read the first three paragraphs onto the record " (Indistinct) read the declaration signed by the representatives of the labour party, indian council prog reform party and homeland leaders at the first meeting held aimed at laying the foundation for regular meetings to (30) plan for the future of South Africa. At the second meeting where/...

where only leaders were present correspondence were sent to the prime minister replying to his criticism of his efforts and calling for a national convention of all people of South Africa." The third paragraph "Mr Leon said that it had become abundantly clear that the black alliance was a priority. Afterwards reconciliation with white South Africa could take place." I would like you please with reference to those portions that I have read to explain what was conceived in the motion of polarisation of the oppressed groups referred to on page 5? -- What was (10) referred to as polarisation between the oppressed groups was that at that particular point in time black consciousness was the major political philosophy in South Africa. People had been dehumanised and people had dropped, they were less than being human. Black consciousness was a program whereby we could bring people to realise their own values again that everything that was black was not necessarily evil. Everything that was white was not necessarily good. What was being projected all the time and inculcated into people's minds that that which is good, you have a white angel, a white (20) God, white lies and black being portrayed as evil. That black people in fact were to be given a value that they were human beings and that they could come together by themselves to talk about their own values, that their own values were as important and that on that basis that they could get together with the purpose of bringing resources and bringing people together in a form of unity with the eventual aim of bringing about and talking as a united voice to the nationalist party about the national convention and a new South Africa. (30)

Could/...

Could I ask you please also to explain the minute on page 8 of the conference minutes, the 1976 annual conference minutes which reads as follows "The party participated in separate institutions to destroy them and too much importance should not be attached to such institutions. This was only one facet of our struggle. Priority should be given to Grassroot work." And item (i) "We should not be afraid to go outside the law to implement the black alliance convention." Could I ask you first to deal with paragraph (i). What was discussed in relation to this entry? -- It was the (10) improper interference act as it was known then. I do not know if I have got the name of the act correctly.

Could you explain that then, please? -- Yes. It was an act which said that persons of different racial groups could not get involved in political organisation or parties of other racial groups. As an act of disobedience, civil disobedience in that respect, the labour party was in fact going to ignore the provisions of that act.

COURT : What did you call the act? The improper interference act? -- The improper interference act. Political. (20)

MR TIP : I think it is the improper political interference act. I should like you please to revert to paragraph (h) and there is reference there to the word "destroy". "To destroy the separate institutions." What did that mean? How as this destruction to take place? -- By frustrating the workings of those institutions by a process of boycott, exposure and embarrassment.

COURT : I am informed the act's name is The prohibition of improper interference act.

MR TIP : I am corrected. -- By doing so hopefully that (30) these/...

these institutions would be closed down, that the state would then enter into a process of negotiation to bring about a national convention.

Was there any dimension of violence contemplated in this?
-- Never.

My lord, we will return to this minute in respect of other matters but if I may proceed to a different topic. Pursuing the question of the black alliance which you have mentioned to his lordship would you please turn to the 1977 conference papers to the address of Professor Bhengu. (10) Have you had an opportunity to read the addresses contained in the document? -- Yes, I have had an opportunity to refresh my memory about that.

And does it correspond with the address which you heard on that occasion? -- That is correct.

My lord, may I put this in as an exhibit as well, which will be DA119.

COURT : The heading of this document is "Labour Party of South Africa, Twelfth Annual Conference held at Oudtshoorn on 27 to 28 December 1977 address by Professor S.M.E. (20) Bhengu on politics of the situation."

MR TIP : May I ask you to look at the third paragraph. Before I ask you to look at the paper, perhaps having regard to the date, 27/28 December 1977, what issue confronted the labour party at that time? Do you recall? --Yes, it was the issue of the new constitutional dispensation.

And had the labour party taken up an attitude too? -- That is correct. The labour party's attitude was that they would not accept it, they would not participate in it and they would not go into the new council of cabinets I think it was (30) called/...

called.

Could you please turn to paragraph 3 on the first page and I should like to read onto the record the portion in the middle of that paragraph.

COURT : Was the new political dispensation mooted as early as 1977? -- There was a different form, a new political dispensation but in a different form to the 1973 one.

MR TIP : In the middle of the third paragraph on the first page of the address the following appears "Inkatha congratulates you on having refused to sell your birth right for (10) a supposedly democratic gimmick calculated to isolate you from your fellow black sufferers. Inkatha applauds your having seen through the trick which is aimed at perpetuating our subjugation. We stand for one South Africa with justice for all population groups regardless of the ethnic affiliations." And the following paragraph "Our rejection of the Pretoria type of independence and your refusal to become an appendage to an all white parliament has already given us a base for a common political strategy. Before we establish a political strategy, however, it is necessary for (20) us to remind ourselves of the lessons we ought to learn from the history of the liberation struggle in South Africa."

Could I ask you to turn to page 4 of the same address. In the second paragraph on that page, if I may read onto the record the first few sentences. "The fact that we call ourselves a liberation movement operating within the country speaks for itself. Our motives are identical to those of the liberation movements engaged on fighting at the borders of this country. The only difference is that we have adopted a strategy of non-violence." Could you tell his lordship (30) please/...

please who Professor Bhengu was? -- Professor Bhengu was the secretary general of Inkatha.

In fact it appears on the first page in paragraph one "He describes himself as the secretary general of the national culture and liberation movement" and is that how Inkatha described it? -- That is correct.

Whilst we have the address before us, could you just look at page 5 the concluding page and it appears that the address was completed by the following "Amandla Ngawethu - power to the people." -- That is correct. (10)

That particular slogan, had you encountered it before this occasion? -- Repeatedly, both within Inkatha circles, Saba circles and labour party circles. I have also encountered slogans like "Izwe Lethu" and ... (Court intervenes)
COURT : You are going a bit too fast. You came across it in Inkatha, labour party and? -- Saba which was the South African Black Alliance circles.

And you wanted to add? -- Also slogans such as "Izwe Lethu" came across and at times slogans like "Mayibuye" came across." (20)

MR TIP : I would like you to look at the minutes of the conference proceedings. My lord, again this is a minute which I would ask the court to receive. The minutes of the twelfth annual conference held at Oudtshoorn 27/28 December 1977. Have you had the opportunity to see this document? -- Yes.

And is it again a reflection of the proceedings at the meeting? -- That is correct.

COURT : It will go in a DA120.

MR TIP : Page 3 item 12, "Address by Professor S.M.E. (30)

Bhengu/...

Bhengu on politics of the situation" and it is recorded that "Discussion ensuing. It was resolved: (a) that the labour party of South Africa takes urgent steps to meet with Inkatha leaders with a view to forming a co-ordinating committee immediately, aimed at unifying the strategy of the two movements at all levels as a first step towards total unification of strategy of all such liberatory movements; (b) that the labour party of South Africa rejects outright the new constitutional proposals of the government." I would not read the rest of that resolution. In item 13 immediately below (10) that it is recorded "In thanking Professor Bhengu for his presence and inspiring address, Mr L.G. Renz emphasised the challenge to all organisations involved in the liberatory struggle to consolidate their efforts and strategy to approach their target with sincerity and convey the message to the masses." I want to ask you about the phrase "liberatory movements" and "liberatory struggle". -- Liberatory movements to my mind is all movements committed to a peaceful process of obtaining justice and equity within South Africa. When people spoke about the struggle sometimes it meant that (20) we would willingly give our co-operation to something we saw as oppressive, to something we saw as devious and something we saw as a manifestation of the apartheid policy.

X. Did the ^{notion} ~~national~~ of liberatory movement contain an element of violence as far as you were concerned? -- Never.

Do you know whether it was discussed in terms of it being a process of peaceful process? -- It was always discussed as a peaceful process.

In relation to that, would you please turn to the annual report from the national secretary, Mr F.E. Peters delivered (30)

at/...

at this conference in December 1977. My lord, again, we would be referring to phrases on a number of pages on this report so that the full context can be read. I think it would be equitable to as your lordship again to receive it as an exhibit.

COURT : Yes.

MR TIP : That would be EXHIBIT DA121.

ASSESSOR (MR KRUGEL) : Was Mr Peters the chairman?

MR TIP : National secretary. I would like you please to turn - to identify the document, it is headed "Labour Party of (10) South Africa, twelfth annual conference Oudtshoorn 27/29 December 1977 annual report from the national secretary, F.E. Peters." Could you turn to page 11 please of that report. It is the concluding page. In the third paragraph the following appears. "When immediately things here of the labour continuing its dominant role in the liberatory movement and offering direction to the country in the pursuit of peaceful change." Did that conjunction of the idea of liberatory movement and peaceful change correspond with the discussion and understanding in the labour party? -- (20) That is correct.

Might I just draw attention whilst we have the document to a few other phrases in it. On page 1 in the first paragraph there is again a reference to our role in the liberatory struggle and in the concluding paragraph in the middle there is the following, on the same page, page 1 "Our confrontation politics paid off and we rapidly became a thorn in the flesh of the government." That is in the last paragraph on that page. You indicated to his lordship already in relation to the 1972 resolution what was envisaged by confrontation,(30)

Can/...

Can you confirm wheter or not non-violence was the operative method to ... -- Yes, non-violence was the operative method.

And on page 2 from the top of that page the following appears "We said we would expose. This we did. We said we would embarrass. This we did. We said we would obstruct. This we did. We said we would reveal separate institutions as fraudulent, created to re-echo government sentiments and accept government proposals. This we did. Furthermore, if we had co-operated, agreed to serve on the CPRC liaison committee and not frustrated the implementation of separate(10) development, there would be no need to create a cabinet council and much less devise the new constitutional proposals and in the proceed we have destroyed the CPRC as well." -- That is correct.

Is that a fair statement of the approach of the labour party to the institution throughout your membership of this? -- That is a fair approach.

My lord, there are similar phrases elsewhere in this report. I would not burden the court with specific references to them now. (20)

WITNESS STANDS DOWN.

COURT ADJOURNS.

COURT RESUMES.

MR BIZOS : My Lord, may I hand in the notice of motion signed on behalf of one the instructing attorneys in this case, Mrs Jana. We did communicate with her. She is the attorney who brought that application. I just want to draw certain facts to your lordship's attention which makes this really a non-issue in this application. Your lordship will see the date on that notice of motion. 10 March. Both on the signature and on the registrar's stamp. The affidavits(30) in /...

in this case were signed on 4 March. The notice of motion in this matter was signed on 7 March and your lordship would have seen that Mr Dyason signed our notice of motion on behalf of all three attorneys. These papers for bail were prepared by and I take responsibility for them, myself, assisted Mr Marcus and Mr Dyason and this is a case in which there is division of labour. Mrs Jana had nothing to do with the preparation of these papers. She in fact heard about them after they had been filed. If we understand Mr Jacobs correctly, ... (Court intervenes) (10)

COURT : Before we get to Mr Jacobs. Mrs Jana was in court yesterday. I saw her myself.

MR BIZOS : Yes.

COURT : How is it then that you told me today that she had nothing to do with this application in the Cape?

MR BIZOS : I said I did not know whether she had anything to do with this application in the Cape.

COURT : Well, why did you not ask her? It was one of the main points Mr Jacobs made?

MR BIZOS : I did not ask her because I do not remember (20) seeing her after the point was made by Mr Jacobs yesterday afternoon. There was no ... (Court intervenes)

COURT : But it was made in the papers?

MR BIZOS : Her name was not mentioned in the papers.

COURT : By was it not mentioned in the papers by Mr Jacobs.

MR BIZOS : The name Priscilla Jana in the papers?

COURT : Yes. Was that not your complaint this morning that Mr Jacobs makes the point but Priscilla Jana is not mentioned by Captain Botha?

MR BIZOS : Mrs Jana was here yesterday morning, as far as (30)

I remember. I do not remember seeing her here yesterday afternoon after Mr Jacobs argued. I am assured that she was not here in the afternoon. Her name was mentioned by Mr Jacobs in argument. With the greatest respect, I submit that this is a non-issue in this application.

COURT : But now what about page 34? "Die bona fides van die applikante is verder bevlek deurdat hulle aan hierdie agbare hof voorgee dat hulle steun op die genoemde proklamasie in goewermentskennisgewing." This you read this morning?

MR BIZOS : Yes. (10)

COURT : "As 'n voldwonge feit terwyl een van die opdragewende prokureurs in die saak, te wete Priscilla Jana en Kie besig was om voorbereidings te tref." This was handed in some time ago, was it not?

MR BIZOS : Yes, it was.

COURT : But now on what basis do you tell me that her name was not mentioned in the papers?

MR BIZOS : It is not in the affidavit of Mr Botha.

COURT : Apart from the affidavit? Priscilla's name is mentioned, you have had these papers for a couple of days. (20)

MR BIZOS : Yes.

COURT : She was in court yesterday morning and you are telling me you did not ask her about this fact?

MR BIZOS : I did not.

COURT : And Mr Marcus did not ask her about the fact either?

MR BIZOS : We did not ask her about the fact and we will tell your lordship why.

COURT : And you tell the court that Mr Jacobs is misinforming the court?

MR BIZOS : We did not have any knowledge of this application (30)

in/...

in Cape Town until we were shown this notice. I want to assure your lordship that that was the situation, that we did not know about this application. We have a situation that it is mentioned in the respondents' papers as a fact having come into being after our papers were filed.

COURT : Yes and you get up today in reply and you tell the court that the allegations by Mr Jacobs are unwarranted.

MR BIZOS : Because there is no evidence of it. There was nothing in the affidavit and we did not know of anything about this notice of motion, but may I put this matter (10) into perspective.

COURT : Your argument is it is irrelevant. At the moment - we will get to that - the question is were you being entirely frank with the court when you said that Mr Jacobs was misleading the court?

MR BIZOS : No, I was being completely frank with the court in my state of knowledge, that a person is being frank on the state of knowledge that he has. The state of knowledge of the situation was that we have an affidavit which says that it was sensitive secret information, because no name (20) is mentioned. We make no investigation in relation to it. We say that it is irrelevant. The accused tell your lordship in reply yes, I gave your lordship the page number, we have read about it in the newspapers, but we submit that it is not relevant. I understand the position to be this. Mr Jacobs said that this fact should have been disclosed in the papers and that being an application and if we knew about these facts that this application was brought and that was the criticism that was levelled against us and particularly against Mrs Jana. What other facts, that our application (30)

was/...

was brought before these papers were filed a week before. I submit that Mrs Jana, not having had anything to do with this application on which I will give your lordship an assurance, was accused by Mr Jacobs of non-disclosure. That was the argument. The basis of the accusation of non-disclosure is that because she is an attorney of record she should have disclosed in papers that she knew nothing about and which were filed on 4 March something that happened on 10 March. That was the complaint against Mrs Jana and that complaint is unfounded and no explanation is called for (10) from Mrs Jana as to why she did not do anything before 4 March. Leaving aside the question of whether an attorney is obliged to use knowledge which she has in respect of one client in relation to another, but the fact that this proclamation was being challenged is not denied by the accused. It is common cause on the papers. The only complaint that there can possibly be is why was it not disclosed in the founding papers and the dates clearly indicate that the event happened afterwards and your lordship will see that the client is the Release Mandela Committee, none of whose (20) members are before your lordship nor are they applicants. That was the accusation made against Mrs Jana and I submit that there is no explanation that need be called for from Mrs Jana and in replying to the state's argument in suggesting that Mrs Jana did something which was not entirely correct I submit that I was entitled to make the submissions which I made this morning. I do not know whether your lordship wants to hear me in relation to our own position, because I am prepared to address your lordship on that as well.

COURT : I think you should. (30)

MR BIZOS : We prepared these papers. At the stage that these papers were prepared by the attorney and Mr Marcus, we did not know of any proceedings in this regard. When we got the papers, we thought that the admission by the accused on page 269 was sufficient in an affidavit by the accused as far as the proposed attack upon the validity of the regulations promulgated on the 24th, we have read statements in the press to the effect that lawyers acting for the affected organisations propose to take legal action. We have actually put it wider than in fact the case is, because the UDF is not(10) involved. It is not clear as to why this information should be regarded by Captain Botha as delicate. Apart from what we have read in the press, however, we have no further knowledge of the proposed legal action that has nothing whatsoever to do with it. We do not know what the basis of the challenge to the regulation is, nor do we know when the matter will be heard. In any event we submit that this matter has no bearing upon our application for bail. What charge is being made against us in these circumstances?

COURT : I understood you to say, I may have been wrong, (20) I will have to look at my notes again, but I understood you to attack the correctness of the allegation by Mr Jacobs this morning, that Priscilla Jana in fact brought the application on 10 March 1988 in Cape Town. In fact Priscilla Jana did bring that application as we all now know and I have not yet heard an explanation of your attempt at refuting the allegation by Mr Jacobs?

MR BIZOS : Let me remind your lordship of what I think I remember I said precisely. I referred your lordship to Captain Botha's affidavit and I said that Mrs Jana's name is not in(30) the/...

the affidavit. I want to assure your lordship that I did not know at the time that I referred to the affidavit that Mrs Jana was the attorney in Cape Town in the notice of motion that has been produced by Mr Jacobs. The only submission that I make is this, that Mrs Jana is being accused of allowing an application for bail to be brought here without disclosing that the challenge to the proclamation is being made. This is the point that I make. It turns out that the facts are that at the time that the application was made there was no such action. It turns out that after our appli-(10) cation was filed and if Mrs Jana did know anything about, I have told your lordship ex parte what she says, Mr Marcus telephoned her, but ex post facto it appears that after the event she is the attorney in this application. What were the accused and we who have prepared those papers to do before 4 March? Ask Mrs Jana and her other clients whether they had in mind bringing an application?

COURT : No, I just find it strange, I do not know how you deal with these matters, but I find it strange that you did not tell me yes, surely Mrs Jana brought the application, (20) it was on 10 March and these papers are on 4 March and that is the end of the matter? It is easy enough?

MR BIZOS : But I only learnt about this notice of motion this morning when it was produced by Mr Jacobs.

COURT : Yes, but he had alleged it in his papers at page 34.

MR BIZOS : He had made a submission without there being evidence of it and the only thing that I did was to draw your lordship's attention to the fact that the affidavit purporting to prove the fact did not mention a name and your lordship looked it up at the time and nodded your lordship's approval (30) that/...

that the affidavit did not contain the name.

COURT : That is quite right. I did look it up and you are right.

MR BIZOS : In an application one argues the papers and one argues the application on the papers. Had I known about the fact I can assure your lordship that I would have told your lordship about it, but what I am telling your lordship is that I did not know about this application.

COURT : And Mr Marcus neither?

MR BIZOS : And Mr Marcus neither. In fact it was Mr Marcus(10) who drew my attention to the fact in the affidavit whilst I was on my feet that this affidavit did not have a name and I referred your lordship to it and he quoted the page number.

COURT : I can tell you what my problem is. I find it strange that in the papers by the state whether it is in Mr Botha's affidavit or not is irrelevant, but in the argument which is annexed to the papers by the state, which is filed on you, the allegation is made that your instructing attorney has brought an application on 10 March. That allegation (20) is not checked. The answer is merely given we read about it in the newspaper. Surely in the answer one could have said well, that is quite correct, but it is irrelevant. It is because there are other parties involved or it is much after the time. We submit it is irrelevant.

MR BIZOS : Your lordship will recall how I opened my argument yesterday in relation to this - in relation to Mr Jacobs's submission. We saw it and found it a strange document and nowhere do we deal with that document in our papers. It may well be that if we dealt with that document there may have(30)

been/...

been some criticism, but we do not deal with that document in our papers, because we did not know how to deal with it, because it is a document which we found somewhat novel for application proceedings, but I am urging your lordship to tell me what the inquiry is.

COURT : I am not holding an inquiry. I have told you what my problems are and you have answered my problems. I will consider my position. If you want to add something you are welcome to add something.

MR BIZOS : I would just wish to add this, with the infor-(10) mation that Mr Jacobs had, that this notice was filed after this application was filed and that is the only matter that I understood to be an issue in the bail application which your lordship is concerned with. The allegation was made by Mr Jacobs that it should have been disclosed in the application for bail that this proclamation was being challenged. The simple fact is that the challenge was after the event.

COURT : Yes, I take the point.

MR BIZOS : And I submit that as far as Mrs Jana is con- (20) cerned there is no basis for any criticism. I do not want to say anything further in defence of Mr Marcus and myself.

COURT : I will give judgment on the bail application tomorrow morning at 10h00.

MOHAMMED DANGOR, still under oath

FURTHER EXAMINATION BY MR TIP : Mr Dangor, we had completed the references to the 1977 document. May I ask you please still on the question of language usage to turn to the 1979 annual functions minutes. You will see on page 2 - I do not propose to hand this page in. It is just one (30) phrase/...

phrase. Page 7 addressed by the leader of the party Reverend H.J. Hendrickse and I just draw your attention to this that he begins by saying "Mr Chairman, distinguished guests, comrades in the struggle for liberation." Do you see that?
-- That is correct.

Is that a phrase that he employs? -- That is correct.

Only on this occasion or on others? -- On other occasions as well.

In fact as the minutes will show right through right through to 1983? -- That is correct. (10)

On that occasion he did as well? -- That is correct.

And in the fourth line you will see that he says "May I start by wishing you Amandla for the future." -- That is correct.

COURT : Who is speaking? Mr Hendrickse?

MR TIP : The Reverend H.J. Hendrickse, yes, then leader of the party. On page 12 of those minutes item - perhaps I should identify it, since it is not going in as an exhibit. These are references in the minutes of the Fourteenth annual party conference held at Port Elizabeth, 27 to 29 December (20) 1979 and on page 12 under the item 12(b) arising out of the secretary's report the following appears "Mr. D.M. Curry in his report, anents the meeting with the prime minister said the action of Mr P.W. Botha has demonstrated to you that he and his government are not willing to give the justice that is our due and which we demand. We as leaders and oppressed people have got to find out of this great difficulty and unless we have made ourselves even and equal and have gained the measure of self-respect at the hands of the government no friendly co-operation is possible between (30) them/...

them and us. The only way open to us is the method of non-co-operation." Next paragraph "We have been warned by Mr Botha that non-co-operation is leading us on the path of doing things unconstitutionally. On the contrary, non-co-operation in the things he was telling us to do, is our inherent right as South Africans, a right as human beings and is perfectly constitutional. Even the Afrikaner used this method of non-co-operation to obtain his liberation. We do not believe in violence as a means of change and non-co-operation with the present government is to us peaceful means of change. (10) Violence will never serve or purpose in South Africa." Did that statement reflect thinking in the labour party during your membership? -- That is correct.

And if you will turn just to dispose of these references to page 17 on a somewhat different subject item 6. My lord, I can indicate from the film minute that I have that these are resolutions taken at the conference. Resolution 6 reads as follows "Conference confirms and reiterate its statement of identification with the goals of the ANC and the PAC and expresses its confidence in our membership of (20) the SA Black Alliance. It is only through a united front that we can rid ourselves of discrimination in the country of our birth and therefore conference considers it imperative and a priority that the labour party makes an all out effort to effect unity of purpose in the diverse SA community and formulate a united modus operandum and promote alliances to undo the successful dividing rule tactic, either to employed by the government and its predecessors throughout the history of South Africa. Although there are divergent strategies a common unity could be effected amongst the dispossess and (30) disfranchise/...

disfranchise community and which will be a guarantee for our victory over the minority government in South Africa." Item 7 begins by saying "Conference endorses and identifies itself of the stand taken by the Methodist and Anglican churches of South Africa and the South African council of churches regarding the socio-political problems confronting our country ..." and further. What was the discussion that gave rise to the statement concerning identification with the goals of the ANC and the PAC and expressing confidence in the membership of the SA Black Alliance? -- This was arising(10) out of a discussion that the leader Reverend Hendrickse had and when he spoke about identification with the goals of the ANC and the PAC he went as far as what they wanted was as well I believe one man one vote in a unitary system, but we differed in methods, whereas we would pursue a peaceful process, they had inevitably chosen another process.

Did the labour party at meetings of the national executive council ever expressly declared a position in relation to the adoption by the ANC of violence? -- It was never a matter for discussion. (20)

You have noticed the reference to a united front. I would like you to look at a second document which is a document headed "Report on the talks held by the Inkatha movement labour party and the reform party." It is a three page document, my lord and it might as well be handed in in its entirety.

COURT : This will go in as EXHIBIT DA122.

MR TIP : Did you receive this as an executive member of the labour party? -- Yes, I did.

I want to draw your attention at this stage ... (Court(30) intervenes/...

intervenes)

COURT : Can we date it? Approximately?

MR TIP : Your lordship will see on the first page that the paragraph, the fifth paragraph "Chief Gatsha Buthelezi subsequently fully endorsed the call by Dr Bhengu and extended an invitation to our party for talks on these lines on Wednesday, 11 January 1978." The next paragraph so indicate that the meeting took place and this is a report on those talks. I just want to draw your attention to one statement here on page 2, approximately in the middle of that page (10) you will see that Mr Y.S. Chinsamy thanked Chief Buthelezi for having called this meeting and in the third paragraph following that he says at the conclusion at that paragraph "It is important that there should be proper leadership and this meeting would assist finding such leaders. The white man was driving South Africa to chaos and there was a need for a black united front." Was this notion of a black united front - black alliance something that was an important part of the labour party agenda in these years? -- Throughout the history of the labour party it was an important factor (20) in wanting to create a common alliance to bring the people's problems to the fore.

Incidentally the annual conferences of the labour party were those held in public? -- They were held in public with hundreds and sometimes thousands of people there with the press being present as well.

And in your experience was there any suggestion from the police or authorities that any of the proceedings were illegal or that action would be contemplated? --Not to my knowledge.

(30)

I/...

I would like to resume with you now the history of the labour party leading directly up to the events in 1983 but before we come to that, just for the sake of completeness, did the Coloured Persons Representative Council at some stage come to be closed down? -- That is correct.

COURT : Could you give us a date? -- It was 1979 or 1980.

By closing down you do not mean the appointment of Mrs Jansen. You mean closing down entirely? -- Entirely.

MR TIP : Did chaos result? -- No.

Was it ever the purpose of the labour party that in (10) its attempts to destroy the Coloured Persons Representative Council that chaos should result? -- No.

You have mentioned to his lordship Saba, South African Black Alliance. I would like you to tell his lordship please what the objective was of that alliance?

COURT : Did it come into being or was it merely being mooted? -- It came into being.

When? -- I think it was 19 ... after Oudtshoorn.

ASSESSOR (MR KRUGEL) : Oudtshoorn was 1979? -- Yes, just the year after Oudtshoorn it came into being. (20)

MR TIP : Perhaps I can assist.

COURT : No, 1977 was the Twelfth conference in Oudtshoorn. Was it just after Oudtshoorn? -- Just after Oudtshoorn.

So, it must have been around 1978? -- 1978.

MR TIP : I apologise, in fact I should have done this for the sake of the narrative. EXHIBIT DA122 in fact contains a resolution adopted at the talks, which appears at the foot of page 2. Perhaps I ought to read it onto the record.

COURT : Yes.

MR TIP : "Throughout the history of South Africa the (30)
oppressed/...

oppressed people have been subjected to the policy of divide and rule, conscious of the deliberate attempts and calculated measures aimed at keeping the oppressed people separated and divided and regretfully aware of the support for such division by some people within the oppressed group itself. The labour party, reform party and Inkatha movement met at Ulundi on 11 January 1978 to affirm the belief of the oppressed people in a common destiny in this our land South Africa and to this end unanimously resolve that an alliance be formed by the labour party, the reform party(10) and Inkatha movement on the following basis. (1) These movements are representative of the oppressed people in South Africa. (2) They share common aims and objectives and have the same principles and constitutions. (3) The time is now ripe that the oppressed people of South Africa should come together to formulate a common strategy against apartheid. (4) They pledge themselves to form an interim co-ordinating committee, the purpose of which would give practical effect to the implementation of this alliance. (5) To prepare the ground for the calling and holding of(20) a national convention to which all South Africans will be invited in order to make out a charter for a non-racial community and a new constitution for South Africa." The alliance referred to in that resolution, was that what you referred to as the South African Black Alliance? -- That is correct.

And is that how it came to be known? -- That is how it came to be known.

Did you personally attend meetings of SABA? -- Yes, I did.

(30)

Do/...

Do you recall an occasion at such a meeting when the question of the South African Indian council elections arose?

-- Yes.

Would you tell his lordship what was discussed and decided?

-- At a discussion at the Saba meeting in Ladysmith the question of South African Indian council came up and was discussed amongst the delegates there. That meeting felt that the reform party should not participate within the elections for the South African Indian council and subsequently did not participate on the elections for the South African (10) Indian council.

Was there division between the members of Saba or was that a unanimous view? -- That was a decision reached upon consensus. There was no descenting vote.

COURT : So, the reform party was for the Indian people? -- That is correct.

And the labour only or mainly coloured people? -- Only coloured people.

And Inkatha of course for the Zulu? -- Yes.

MR TIP : We see from EXHIBIT DA122 that three constituent (20) members of the alliance, for the labour party and reform party and Inkatha, was there an attitude amongst those members as to a desired membership of the alliance? -- Yes, I must also add that Iyandza of the Kangwane was also included in the group.

COURT : What is that? -- Iyandza is a political organisation in Kangwane.

You say it was part of a group? -- yes.

But it does not appear so from the report? -- Not in the regional report. It later became part of it. (30)

Did/...

Did it later join? -- Yes.

MR TIP : Do you recall that any other parties at a subsequent stage became members? -- There was a desire expressed to bring other bodies into alliance and the other bodies felt that they would not become part of the alliance because most of the participants within the alliance had some connection with homeland governments or were participating in the institutions of the state.

I would like to come with you now to the year 1982 at a time when there were fresh proposals concerning the (10) constitutional future of South Africa. Can you tell his lordship essentially what those proposals were and what the response was to your knowledge within the labour party? -- That being a discussion for some time before the conference the proposals were that indians and coloureds would form separate chambers of parliament. There was division in the ranks already and many people had left and resigned from the labour party. Some of us remained on in the hope that we could persuade the labour party at that point in time not to participate. However, at the annual conference (20) at Eshowe the overwhelming decision was for participation.

I will come back to the Eshowe conference of 1983 shortly, but just for clarity sake, your attitude to the proposed constitution emerges from what you told his lordship that you were opposed to it? -- I was one of the persons opposed to it.

Would you indicate briefly to his lordship what the essence of your opposition was? -- Yes. In the labour party constitution the right of an individual was seen as paramount. Acceptance of the new constitution was political or group (30) privilege/...

privilege and not individual rights and I saw a conflict between the rights of the individuals and according of group privilege to certain groups and the exclusion of the vast majority of the people from such a constitutional arrangement as being unjust.

Did you speak on a public platform in relation to this issue? -- Yes, I did.

Do you recall approximately when that was? -- It was October 1982 - towards the end of 1982. The month I am not sure. (10)

On what occasion was this? -- It was after the Saba conference that was held in Johannesburg. I as acting leader of the Transvaal at that particular point in time had to invite the delegates to the rally at Jabulani stadium ...

(Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : What year was this? -- 1982.

MR TIP : I could fix the date.

COURT : I do not think it is very important. You are merely telling us what the views are of this witness?

MR TIP : That is so and what he said on this occasion, (20) who was on the platform. Who was on the platform? -- Chief Buthelezi was on the platform, Reverend Allan Hendrickse was on the platform, Mr Chinsamy was on the platform, Mr Curry was on the platform and quite a few other people.

Was this a well-attended rally? -- There could have been 10 000 people at that rally.

COURT : Well, one cannot very well have one party leader on the platform supporting the new constitution and the other party leader on the platform speaking against it. Was that not rather awkward? -- At that point in time in October (30)

1982 and at the Saba conference that was the sentiment that was expressed. Opposition to entering into a new tri-cameral arrangement.

By all these gentlemen? -- By all these gentlemen.

MR TIP : In a line what was your message on that occasion?

-- My message was that all groupings opposed to the tri-cameral system should come together and oppose it. By not participating within that structure would not be lending credibility to it and we had a moral duty to stay away from it.

Incidentally whilst we are dealing with this rally, (10) could you describe to his lordship briefly the conduct of the audience? -- The conduct of the audience was very supportive. I think particularly Chief Buthelezi spoke about the non-acceptance of the constitutional arrangement and they were very supportive while he was talking about it.

Could you describe the manner in which the audience came into the stadium? -- Yes, they would come in in groups, some with assegais, some with spears, some with kieries, singing and chanting. Singing freedom songs and chanting freedom slogans as they came into the Jabulani Amphitheatre. (20)

Was the singing of songs something unusual? -- No, it was something that occurred quite often at Saba rallies.

Did it occur only as people came in or at other stages? -- At other stages as well.

I would like to move to the conference - the Eshowe conference of 1983. My lord, I beg leave to hand in a copy of the minutes of these proceedings as an exhibit. Have you seen those minutes? -- The minutes or the addresses?

Both? -- Yes, I have seen them.

COURT : Have we got two documents or one document? (30)

MR TIP/...

MR TIP : It is one document.

COURT : Just read to us the first line on the first document?

MR TIP : The cover is headed "Labour Party of South Africa Minutes Seventeenth annual party congress Eshowe Natal 3 to 5 January 1983" and a similar appellation on the first page. If your lordship will receive it, that will be EXHIBIT DA123. If I could ask you to turn to page 1 item 5 is headed "Address by Chief Gatsha Buthelezi." Is that correct? -- That is correct.

Did Chief Gatsha Buthelezi in fact deliver the opening (10) address on that occasion? -- That is correct.

Have you had occasion to read through the address? -- Yes, I have.

And does it reflect what was in fact said on that occasion? -- That is correct.

And just for the purpose of narrative could you just indicate to his lordship what the essential message was that came through Chief Buthelezi on that occasion?

COURT : What do you say, Mr Tip. It is a very long one.

Which paragraphs are important to us? (20)

MR TIP : Perhaps it might be the better way to do it, if I could ... (Court intervenes)

COURT : Just tell us to what paragraph we should refer.

MR TIP : The first page ... (Court intervenes)

COURT : What do you say is the gist of it?

MR TIP : I am quite happy to put myself at risk on that. The gist of it is that he earnestly brings to the attention of the labour party delegates the importance and gravity of the decision that they have to make as to the question of participation or non-participation in the tri-cameral (30)

structure/...

structure. He delivers a warning, the one leg of which is that if the labour party decides to participate, it will bring about ^{an irreparable} ~~a new reparable~~ rift in the unity between the coloured and the african people and the second leg of that warning is that if the system is in fact put into operation it will inevitably lead to violence in South Africa.

COURT : Could you refer me to that paragraph?

MR TIP : On page 7, paragraphs 3, 4, 5 and 6 deal with it and perhaps it summarises at the foot of the page in the last two sentences "Connivance and schemes such as the (10) government's constitutional proposals by our coloured and indian brothers and sisters can so easily drive so many africans into the hands of those who have opted for violence. That is the extent of your responsibility today." If I might go back to page 2 in paragraph 4. "There is in my mind no question whatsoever that 1983 could be the year of glory for the indian and coloured community of South Africa if you reject the government's proposals aimed at confederal system. It will be a year of glory not because you will make party political gains. It will be a year of glory if (20) you reject these proposals because rejection of them will stave off a deteriorating political situation which there can only be the evolution of a people against people violence on a large scale." Although, my lord, I do not propose to read it out, on page 23 of the minutes your lordship will find the resolution which is taken amounting to a decision to participate in the tri-cameral system. If we can put aside the document, what was your personal reaction to the decision taken at that conference to participate in the tri-cameral system? -- I was disturbed. (30)

I issued a statement at the conference that I would re-assess my position. I came back and consulted with the branch executive in the area where I lived and a day later resigned from the labour party.

Were you the only one to resign? -- No, I was not the only one to resign.

Are you able to tell his lordship some of the persons at or about the same time? -- Yes, Mr Norman Middleton, Mr Sam Solomons. Mr Norman Middleton was a former leader of the labour party. Mr Sam Solomons was former Transvaal(10) leader of the labour party and Miss Louise Boesak was leader of the Carnavon region of the labour party.

You said to his lordship that there was deep disappointment on your part. What was the disappointment particularly? -- The disappointment was that people had entered into a tri-cameral system now and there was no longer, for me the hope was disappearing of ever getting to the stage of a national convention because other parties would in fact not participate within that convention any longer and the convention idea had become dead. (20)

COURT : Was dead.

MR TIP : Were you present at the meeting of the anti-SAIC conference in the course of January 1983? -- No, I was not.

At that stage had you ever heard about a call emanating from Mr Tambo of the ANC for the formation of a front? -- No, I had not.

Did you hear subsequently of such a call having been made within South Africa? -- Yes, I had heard that Dr Allan Boesak had made such a call.

And what was your response to that? How did you (30)

feel/...

feel about that call? -- I welcomed the call.

Could you tell his lordship very briefly why you welcomed this? -- I then again saw the possibility of a non-violent organisation coming into being that would take up that convention call again.

I want to deal with the question of some of the policy resolutions taken by the labour party. My lord, I do not propose to sift right through the minutes and to extract every resolution, but I would like just to get onto record the kinds of concerns that were expressed at labour party (10) conferences.

COURT : That is now before he left the party?

MR TIP : Before he left the party, yes. Could you take the documents back. We have already read onto record that there was a resolution concerning release of detainees taken as early as 1972. Are you able to tell his lordship whether similar resolutions were taken in the years thereafter whilst you were still a member? -- I think every conference where I was present at, this resolution was tabled and taken.

Would you look please at the 1980 annual report, the (20) national secretary's annual report. I beg your pardon, it is not a document called here in your reports but it is a portion of the minutes of the annual conference held on 27/28/29 December 1980. My, lord again ... (Court intervenes)

COURT : Is it merely a call for the release of detainees?

MR TIP : No, it is not.

COURT : Something else?

MR TIP : Yes, it is something else. Do you see under the sub-heading "National executive committee" at page 16. If I might just read onto the record. It is not necessary to (30)

have/...

have the document. "The national executive committee had two full sessions during the year. In April at Durban and in September at Kimberley, both of which had very good attendances. A large number of matters were given full attention which included political as well as finances and organisation." Could you tell his lordship, were you at those national executive committee meetings? -- I was at the one at Kimberley and possibly at the one at Durban. I cannot recall.

Would you look at the next line "The April meeting - at the April meeting the party identified itself with the (10) campaign for the release of Mr Nelson Mandela, recognising him as one of the leaders of the people." Do you recollect having refreshed your memory here whether or not you were at that meeting? -- Yes, I was. In fact, this call had gone out quite often. It was not the first time that this call in fact was made.

Would you tell his lordship briefly what the motivation was behind making such calls? -- Yes. That if Mr Mandela and others, not Mr Mandela in isolation were to be released and other people were brought back under the nationalist (20) party and/or other interested parties such as the HNP at that particular point in time and the labour party and other parties that got together to talk at a national convention about the future of South Africa.

COURT : [Could I have some clarity about your concept of a national convention. Was the idea that all political groupings would get together, that is all, let us say formal political parties or anybody with an idea could go to the convention? What was the idea of a convention? -- The idea of the convention was that all political groupings would come to such a (30) convention/...

convention.

But now you would have a small study group in one of the suburbs in Pretoria with a certain political line and on the other hand you would have a political party with a very vast following. How would that work out? -- They saw that as a point for that group in fact to work out. There were some ideas on that. The ideas that came forth was political groupings with large followings and I remember specifically the talk about the HNP because they did represent a significant portion of the Afrikaner communities. (10)

MR TIP : On the subject of national conventions we have seen in some of the documents already references and resolutions to the national convention. Was that also something that came up repeatedly? -- It came up repeatedly.

Again, my lord, I do not propose to go through all these minutes to do that. Does the same apply to resolutions concerning boycotts of cultural and sporting events of the Republic festival and the like? -- Yes.

I would like you to look at a resolution on a different topic and that appears in the 1976 minutes, which is before (20) your lordship as DA118, the minutes of the conference held on 6 to 8 January 1976. On page 14 you will see that there is a sub-heading education, there is reference to the fact that the Reverend Hendrickse gave an address on it and that a resolution was subsequently adopted and I would like you to look at the present moment, at the foot of page 14 item (g) which is part of that resolution "That this conference is in full agreement with the basic principles enunciated in the black students manifesto in which racist education is rejected in which the encouragement and promotion of (30)

black/...

black literature is regarded as committal and in which the intellectual and physical development in the liberation of the black peoples of South Africa is laid down as a corner stone of policy." Perhaps you could assist the court by explaining what was said at that time about the black students manifesto. Are you able to tell his lordship what that was? -- Previously on the page, if we just look, preceding which is "education - onderwys", some of the points are in fact enunciated. Basically what it was talking about was the disparity that was being spent upon the white child and(10) what was being spent on the black child in education. The attitude that was coming through and I remember the talk of Dr Verwoerd saying that the purpose of education should be for the black child that there should be use and draws of water and that the content of education was to inculcate a certain kind of thinking within both the white and the black child. Also that the historical context should be said correctly as to what had happened in the Southern content of Africa with the arrival of - since the arrival of Jan van Riebeeck. That the content of what was being taught in the(20) history books was not correct.

Was this the only education on which a resolution on education was adopted by the labour party? -- No. There was continuous resolutions on the quality of education, on the kind of schools there were in the areas, on the shortage of teachers and facilities in most of the areas.

Would you turn in the same document to page 16, please. I would like you to look at the resolution under item 5, the fourth paragraph on that page."That the whole question of housing and group areas be seen as part of our liberatory(30) struggle/...

struggle. Conference encourages all its party formations to work for the abolition of all obstacles and debar all the oppressed people from being permanently settled in their land South Africa." Are you able to expand at all for his lordship how housing and group areas came to be seen as part of the liberatory struggle? -- Possible I must recount of my own personal history. As a young child, we had no home of our own, we lived between two grandmothers, one lived in Newclare and the other lived in Fordsburg. It was not because you could not afford homes. There were just no homes (10) available and the family was split. Subsequent to that my grandmother was moved because they were building a bridge in Fordsburg to Jeppe. Jeppe was a mixed area, an area where whites, coloureds, indians and african people lived. It was a harmonious society and there was never any evidence of any trouble, violence or racial hatred. As was done at that particular point in time, members of the board came along and told them to move without alternative accommodation and they moved in with my paternal grandmother who was living in Newclare and at one stage thirty-two of us was living (20) with us. It was four rooms. Newclare was also a mixed area, an area where no whites lived. It was coloureds, indians and africans. There was no racial hatred amongst people or fear. People lived together and in my early childhood I can recall how some of my neighbours were taken by board officials away from where they had lived and moved to Meadowlands or Diepkloof. This kind of experience for me as a young child was very difficult to deal with. I did not understand why people were taken away. I did not understand why I was - I was at school. The school I went to was an (30) indian/...

indian school. The principal came along to me on a few occasions and said to me "you do not have the right documents to go to the school, you must please go on to another school." Your race classification is not correct and there was a particular poem I remember at that particular point in time which stuck in my mind. It was a poem called "Skoppensboer." I forget who the author was.

COURT : Toon van der Heever. -- Van der Heever. There is one line that goes "En die basterkind het sy siel verag." Ek was daardie basterkind wat hulle in sy siel verag het.(10) Group areas has brought hardship and removal has brought hardship to so many people and so many lives have been destroyed, people do not realise what people had gone through. For years thereafter the labour party had said, I remember Reverend Hendrickse once recalling how his father died when he was moved from the church where he was in Port Elizabeth. I recall that my mother was charged under the group areas act in 1980 for living in Bloemfontein after she had moved there and going there and seeing my mother cry, because she had no alternative, it was then that we set up(20) structures to oppose the group areas act.

You mentioned to his lordship your experience at school. Just for the sake of record, were you able to complete your matric? -- No, I was not.

In what year were you required to leave the school at which you had been? -- Three months into matric.

On the basis of your own observations in the areas that you have related to his lordship now, are you able to say whether or not the opposition to the group areas policy was just by yourself or by others? -- I think it was a general(30)

view/...

view held by everybody.

Have you had occasion to read the resolution adopted by the UDF on the occasion of its national launch on 20 August 1983 in EXHIBIT A1 on the subject of removal and group areas? -- Yes, I have.

Were the sentiments recorded there something that was new to you? -- It was very similar to what was recorded previously in the labour party.

As a child who witnessed the process of removals, did you become aware of the campaigns to resist those removals?(10) -- Yes, I did.

By whom were those campaigns conducted? -- I recall one campaign being conducted by Father Huddleston.

Just again for completeness sake, you have referred to one resolution on the question of housing and group areas. Were resolutions taken on the subject in other years as well at labour party meetings? -- I think at every conference of the labour party a resolution was presented, tabled and adopted about group areas.

In the course of your work in Actstop and with the (20) other organisations involved in housing, have you at any time become aware on the basis of your observations of a UDF campaign in relation to housing, removals and group areas? -- Except for reading in the press about resolutions that the UDF had taken, I did not become aware of any campaign that the UDF had taken up on that score.

Without necessarily referring to particular documents, had the labour party ever taken policy on the question of foreign investment in South Africa? -- Yes, it had. It had taken the view that if they could call successfully for (30)

the/...

the withdrawal of foreign investment, it would be a measure of bringing pressure upon the state to enter into negotiations. They saw that as a peaceful measure to bring about pressure.

On the same page that we were busy with, page 16 of the 1976 annual conference, just for the record, item (L) reads "This conference regards South Africa presence in Angola is unwanted and unwarranted and falls for the immediate withdrawal of South African troupes and police from that situation. So, that the Angolian people in terms of Mr Vorster's own policy of non-interference can find their own solution (10) without foreign interference." Was that resolution adopted? -- That is correct.

And the resolution below that "That the labour party of South Africa (it is item (M), my lord) striving for the complete liberation of all the oppressed people of South Africa and conscious of the fact that God guides and rules the destinies of all men ... (Court intervenes)

COURT : Just to pick up the threads again. That is page 16 (M)?

MR TIP : Page 16 resolution (M) DA118. "... conscious of the (20) fact that God guides and rules the destinies of all men, calls upon the oppressed people of South Africa to unite in a national day of prayer on a day to be decided by NEC." Do you know whether or not a call was in fact implemented for such a day? -- Yes. Sharpeville day was observed by the labour party almost every year.

Were there any other days that were observed? -- Yes, June, the 16th as well.

I want to turn finally to the question of GST and cost of living. Have you had occasion to see the Udf resolution(30) and/...

and EXHIBIT A1 on that subject? -- Yes, I have seen that.

Are you able to comment on the sentiments expressed there as to whether or not you had come across them earlier? -- I think as early as 1969 the labour party had moved a resolution opposing GST. I think we looked at the 1969 minutes that was embodied there.

In the course of your work in the welfare and other organisations which you have enumerated to his lordship have you at firsthand seen the effects of poverty and the impact of a rise in cost of living and the implementation(10) of GST? -- I had worked for Operation Hunger for a year and had gone into the field especially into the Northern Transvaal, in Natal and Namaqualand. In some places in Namaqualand there are no job opportunities, very little food except which comes in from done or agencies. The water is a Nama word, it is called a gora, which is a hole in the ground where the animals drink, where the people would drink thereafter and where you wash your washing in. I had never seen such hopelessness in my life. In the Northern Transvaal I had seen similar situations of mal-nutrition (20) and mal-nourishment and hunger people.

I am interrupt, if need be you can detail those at length, your observations and also in the urban areas. Again in the course of your work with Operation Hunger and the welfare bodies have you as a matter of your own observation ever come across evidence of a campaign by the UDF on that subject? -- No.

And just for completeness sake - my lord, the witness referred to a resolution on GST. Perhaps I might just read it onto the record without tendering the document. It is(30)

in/...

in the resolutions of the third annual conference of the labour party held at Cape Town on 5 April 1969 and item 7 is quoted "This conference records its opposition to the general sales tax imposed in the budget."

COURT ADJOURNS TILL 14h00.

DELMAS TREASON TRIAL 1985-1989

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