

227 P25642-25683

IN DIE HOOGGEREGSHOF VAN SUID-APRIA

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-12

DIE STAAT teen :

PATRICK MABUYA BALEKA EN 21
ANDER

VOOR:

SY EDELE REGTER VAN DIJKHORST en
ASSESSOR : MNR. W.F. KRUGEL

NAMENS DIE STAAT:

ADV. P.B. JACOBS
ADV. P. FICK
ADV. H. SMITH

NAMENS DIE VERDEDIGING:

ADV. A. CHASKALSON
ADV. G. BIZOS
ADV. K. TIP
ADV. Z.M. YACCOB
ADV. G.J. MARCUS

TOLK:

MNR. B.S.N. SKOSANA

KLAGTE:

(SIEN ARTE VAN BESKULDIGING)

PLEIT:

AL DIE BESKULDIGDES: ONSKULDIG

KONTRAKTEURS :

LUBBE OPNAMES

COURT RESUMES ON 12 AUGUST 1988.

MR BIZOS : We were busy with the allegations in the indictment that various meetings were held by the VCA in furtherance of the conspiracy and we dealt with the area committee that was alleged to have been - to have had meetings at Bophelong and I now - the alleged area committee and I now want to turn to zone 7. That is the next area in which the state says that the VCA held meetings in furtherance of this conspiracy and your lordship will find that on page 294 of the indictment in paragraph 68(2)(ii). It is said that during December (10) 1983 and after the so-called success in Bophelong, an area committee was formed in zone 7 Sebokeng and then it sets out who were elected and who attended and what was said. I may merely remark in passing here that your lordship will have observed or must have observed how much detail about neutral matter the state has given in the indictment, very proper, with respect.

COURT : Still you were not satisfied and wanted more.

MR BIZOS : We wanted to know why this was part of the conspiracy. This is really what the questions were all about(20) and mostly we were told that the state does not know but will ask your lordship at the end of the case to infer it from the documents and the evidence. We submit that we have not heard the evidence of a conspiracy and the state has not been able to show in the documents that there was that, but the reason why I mention this detail at this stage, that in due course I will be drawing attention to the fact that where there are allegations of actual violence incited, except in one instance in relation to the meeting of 19 August 1984 where something specific is pleaded in relation to (30)

Mr Manthata/...

Mr Manthata, accused no. 16, in the main the direct allegations of incitement to violence are not pleaded. The most significant of course being that which was said to have been said by Raditsela on the morning of the 3rd. We will in due course submit in that regard that the direct evidence of the calling for violence against the councillors and others was in fact contrived, otherwise it would have been found in the indictment and that judging from the manner in which some of the statements were taken, that it was contrived at a later stage. After the indictment was in fact drawn and the (10) particulars were furnished, but we will make more detailed submissions in this regard.

Also the state is taken up with its own idea of what the case ought to be in relation to this zone 7 area committee. It makes the meeting in 1983, although the evidence is clear that it was not in 1983 but in 1984 and for good reasons, but it says that it was in furtherance of the alleged protest and revolt against the election of councillors. We will submit by the time this meeting was held the elections had already been held, but be that as it may, we say that the (20) evidence shows that this allegation has no foundation of fact or in truth. It is common cause that the area committee was formed at a public meeting of 19 February 1984 and that the witness IC.8 was the chairman of this meeting. We submit that a detailed and circumstantial account has been given to your lordship in relation to this idea of the formation of a zone 7 committee and that is to be found in the evidence of accused nos. 7 and 9 who say that they were concerned about the education of their children and more particularly by the fact that some of them had been let out or had not (30) been/...

been allowed to register because they had failed and the evidence goes on further to say that in January 1984 accused nos. 7, 9 and 17 attended a meeting at the house of Edith Lethlake. The subject under discussion was the fact that a number of school children who had failed had been refused re-admission. This was a meeting of an informal group which had Edith Lethlake, the VCA representative for zone 7, as its nucleus. It was decided at this meeting that Edith Lethlake should approach Esau Raditsela to get hold of Curtis Nkondo to assist with the problem because the latter(10) knew about education matters. Your lordship will find that in the evidence of accused no. 9 volume 179 page 9 223 line 1 to page 9 225 line 23, and accused no. 7's evidence in volume 200 page 10 450 line - I am sorry, I seem to have left out the line number - to page 10 452 line 2.

The evidence goes on that a large number of parents and children went to the school and accused nos. 9 and 17 were among the spokesmen who conducted negotiations with the principal and the school inspector as a result of which the children were re-admitted. As a result of the successful(20) conclusion to these negotiations, it was decided to work towards the election of a VCA committee in zone 7. Your lordship will find that in the evidence of accused no. 9 volume 179 page 9 227 line 18 to page 9 230 line 20.

Accused no. 7 ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : Is it 7 or 17?

MR BIZOS : No, 7. 17 did not give evidence. Accused no. 7 volume 200 page 10 451 line 3 to pag 10 452 line 20.

The logical fallacy of the state's case can best be illustrated by this bit of evidence. The state would (30)
readily/...

readily concede that there is nothing wrong in people getting together to go to the headmaster of the school and as a group complain about a rule which prohibits the children from going back to school. The state says that if Edith Lethlake does it because she is an area committee member of zone 7 of the VCA and if Mr Nkondo suggests what should be done, then that is proof of the conspiracy to which the VCA is a party through the UDF and through the UDF to the ANC to overthrow the state by violence. So, although the nature of the act is neutral, the state's argument is that it depends on who(10) does it and if the person is suspected or there is an allegation, if he is a party to a conspiracy without any evidence as to whether there is - he is or not, then the character of the act changes.

It is the logical fallacy which I think that - I have not seen the state relying on Mr Pruis in any way. If the pope says one thing it is okay. If the secretary of the communist party of Italy says something, the same thing, it is an offence. We do not - it is a much stronger analogy logically in relation to it because one might say that (20) the communist party may be wellknown for its policies. I do not know, but here, there is the same logical fallacy that is being pursued. It is alleged that there is a conspiracy. We deny that there is a conspiracy. We asked why are we guilty of a conspiracy. They say well, because accused no.17 and 9 went and asked Curtis Nkondo as to what they should do about their children not being registered at school.

In paragraph 69 of the indictment it is alleged that the VCA, zone 7 action committee, performed a number of acts in pursuance of the conspiracies and in order to bring (30) about/...

about a violent revolution. Your lordship will find that in the preamble to paragraph 69 on page 299 of the indictment.

Again when asked to do so, the state was unable to particularise any decision or specific plan in this regard. The general allegation, it is submitted, is not borne out by the evidence.

In paragraph 69(1) on pages 299 to 300 of the indictment it is alleged that the issues of rent and fees were used by activists of the action committee in order intensively to condition the residents to form an area committee. Again (10) there is no evidence from the state to support these allegations. To the contrary the evidence of accused nos. 7 and 9 shows that certain matters were taken up by the members of the area committee after it had been elected at a public meeting on 19 February 1984. As a particular instance it is alleged in paragraph 69(1)(i) that activists incited and indoctrinated residents by seeking out people who did not pay their rent and assisting them and recruiting them for the VCA. This allegation is not borne out by the evidence. There is no evidence that there was any rent boycott until (20) much later and indeed if we leave the decision out that the increased rent was not to be paid, which was decided on in the main during the August meetings of 1984, the rent boycott proper about which the defence witnesses were asked, really started long after the arrest of all these accused and I would submit that it has no bearing.

The evidence is that in fact the zone 7 area committee sought to intervene in particular cases where people had been evicted from their homes for failure to pay rent. The example is given of a successful intervention by Edith (30)

Lethlake/...

Lethlake who carried out negotiations with the township superintendent on behalf of such a resident. Your lordship will find that in the evidence of accused no. 9, Mr Ramakgula volume 179 page 9 238 line 11 to page 9 239 line 12.

I may say that there was a suggestion in the questioning of the accused that the VCA did not do very much during this period. That is correct and it is part of the case of the defence that after the sacking as a school teacher of McCamel and the difficulties with Mothete as secretary, there was an ebb in the activities of the VCA. If anything, it is (10) destructive of the state's theory of a general conspiracy. The flurry of activity in August 1984 came about, we will submit, as a result of the rental increase, the manner in which it was handled, the manner in which those responsible did not appear to care what the people felt about it.

In paragraph 69(2) the state alleges that the zone 7 action committee have held small discussion meetings on a regular basis. In this sense it is suggested that the action committee existed as a properly constituted committee before the election of the zone 7 committee on 19 February (20) 1984 as particularised in the subsequent paragraph 69(3). Your lordship will find this 69(2) at the bottom of page 300. of the indictment and 69(3) on page 302.

There appears, however, to be confusion in what the state intends, because the further particulars refer to the meetings of the action committee as having taken place throughout the period of the indictment and insofar as meetings at the house of Raditsela were concerned, during the period December 1983 to September 1984. Your lordship will find that in the further particulars paragraph 30.2.2 (30) and/...

and 30.2.3 of the further particulars on page 92.

The evidence is in fact that there was no properly constituted committee before the formal election and that there were merely people who coming together there to discuss grievances. Your lordship will find the evidence of accused no. 7 in volume 299 page 10 453 lines 14 to 19.

There is furthermore no evidence at all to support the allegations made in 69.2.1 which says personal attacks on councillors who allegedly served their interests and not those of the residents and demands that they resign. (10) The allegation goes further and it says that these discussions were coupled with the discussion according to the allegations of the freedom charter with the needs for a full scale revolution by blacks. There is absolutely no evidence of all that.

In paragraph 69.2.3 of the indictment the allegation is made that there was a decision to take up black education and the aids limits as an issue with the revolutionary purpose alleged and that Curtis Nkondo was brought in to address the parents on this end. The evidence shows that Nkondo (20) addressed parents in order to inform them of education matters and their rights as a preliminary step before the successful negotiations with the authorities, as detailed in the evidence of Mr Ramakgula, accused no. 9, in the references that we have previously furnished to your lordship.

The meeting of 19 February 1984 flowed from the success achieved with the school problem. It was advertised by pamphlets which were paid for by the members of the informal group and the Reverend McCamel was invited as a speaker. Your lordship will find the evidence of accused no. 9 in (30)

volume/...

volume 179 page 9 230 line 21 to page 9 233 line 5.

The evidence of accused no. 7 volume 200 page 10 453 line 20 to page 10 454 line 2.

We do not want to spend too much time on this, because I want to recall to your lordship's memory the handwritten portion of the argument that was handed in by the state in relation to the liability of each one of the accused on the indictment. Certainly, the first one - I have not had time to check very carefully what they say in the amended one, I think even in the amended one much of this has been left(10) out of the state's argument. We do not know what to make of that. Whether the state still relies on this as furtherance of the conspiracy against these accused or not, but we are preparing an argument in answer to the state's argument in relation to the liability of each one of the accused and we will deal with that in greater detail at that stage.

I would ask your lordship to note that in the argument of the state it is alleged that on page 122 of that argument, Mr Malindi, accused no. 5, was at the meeting. It no doubt ... (Court intervenes) (20)

COURT : This is now 19 January?

MR BIZOS : February 1984. It relied on that on the evidence of IC.8 although it does not say so in its heads, but it no doubt relied on the passage in the evidence of IC.8 to be found in volume 19 page 765. It is denied by accused no. 5 in volume 209 page 11027 lines 5 to 9 and no. 5 is obviously correct because even IC.8 conceded that he had made a mistake in relation to placing accused no. 5 at this meeting. Your lordship will find the concession on volume 20 page 935 lines 1 to 9. So, that both in relation to the reliability in (30)

this/...

this instance, I would not say credibility of IC.8, the matter is to be decided in favour of the accused and the suggestion that other people such as accused no. 5 were there is just not on the cards.

Contrary to the allegation of paragraph 69.3 to be found on page 302 of the indictment, that this was a meeting held pursuant to the conspiracy to promote a violent revolution and that the ANC and Terror were popularised, that this - the evidence establishes that this was a completely and unexceptional meeting of residents. No violence or disorder (10) was advocated and the meeting did not take place pursuant to any conspiracy. There were no UDF speakers at the meeting, nor was the UDF discussed in any way. Your lordship will find all that evidence in the evidence of Mr Ramakgula, accused no. 9 in volume 179 page 9 235 line 19 to page 9 236 line 4.

The evidence of Mr David Mphuthi, accused no. 7, volume 200 page 10 460 lines 6 to 26.

Even IC.8 goes no further than to say that there were just ordinary songs which he describes as freedom songs (20) that were sung there. The one bit of evidence that he gives that Mr Mphuthi, accused no. 7, spoke of boycotting high rents and high bus fares is denied by both accused nos. 7 and 9. The evidence of no. 7 is to be found in volume 202 page 10 554 line 9 to page 10 555 line 21. Accused no. 9 volume 179 page 9 233 lines 6 to 29.

We are just checking - it will take a moment - as to whether McCamel dealt with this meeting at all. Our collection, we have no independent recollection of this, but could I ask your lordship merely to note that he was invited (30)

to/...

to be at that meeting and that on his own evidence he knew of no conspiracy to overthrow the state by violence. We will look for that reference and if need be, we will give it to your lordship.

The evidence before the court about the activities of the zone 7 committee after its election in February 1984, we would submit further erodes the allegation that it was formed pursuant to a conspiracy of violence. During the period February to July 1984 the zone committee regularly met on Saturdays although Mr Ramakgula, accused no. 9, was (10) unable to attend all the meetings. The general subject of discussion at these meetings related to the difficulties being experienced by residents in the townships. Your lordship will find that evidence of accused no. 9 in volume 179 page 9 238 line 8 to page 9 238 line 10.

The further evidence is that there were no report made - at these meetings there were no reports made of what was happening at the higher level of the VCA, nor was there any report on what took place at the meeting of the UDF. Your lordship will find that in the evidence of Mr Ramakgula, (20) accused no. 9, in volume 179 page 9 240 line 15 to line 20. The evidence of Mr Mphuthi, accused no. 7, is to a similar effect, that after its formation the zone 7 committee did quite a lot in relation to evictions and transport. Your lordship will find that in the evidence of no. 7 volume 200 page 10 460 line 27 to page 10 463 line 8.

Could I ask your lordship to add to the previous point made in relation to the meeting of the 19th. Reverend McCamel was in fact led by our learned friend, Mr Hanekom in volume 34 page 1 548 starting on line 23 : (30)

"Wat/...

"Wat was die doel van die vergadering? -- Hierdie vergadering se doel was dat mense van zone 7 sou in daardie vergadering bekend gemaak het wat hulle gedoen het in verband met die probleme waarmee hulle te doene gehad het in daardie gebied en die verkiesing van die areakomitee van zone 7.

Wie was die sprekers?"

And then he gives evidence of accused no. 7 and accused no. 17 who spoke.

"Kan u onthou waarom elkeen van hierdie sprekers se toespraak gegaan het of kan u nie onthou nie? -- Ek kan nie (10) een vir een onthou wat hulle gesê het nie, maar die hoof van hulle gesprek was die aanmoediging van mense van zone 7 om by 'n vergadering te wees van die Vaal Civic Association en te sien dat hulle lede moet word van die Vaal Civic Association dat daar 'n komitee kan bestaan van zone 7. Nog 'n ander ding wat daar bekend gemaak moes gewees het, was omdat daar moeilikheid of probleme was aan die begin van die jaar met ander skoolkinders wat nie toegelaat was om terug te keer skool toe nie, aangesien hulle gedop het. Die mense van zone 7 het toe bymekaar gekom en na die skole toe gegaan (20) wat daardie probleme gehad het. Op die ou einde het hulle ooreengekom met die hoofde van die skole, die prinsipale en die kinders was weer geneem in die skole."

Taking that evidence together with the general denial of McCamel in cross-examination, that the VCA was in any way involved in any conspiratorial work and there being no evidence to the contrary, we would submit that the accused have proved beyond any doubt on this as indeed on many other issues that the allegations on the indictment would have no basis of fact.

(30)

Your/...

Your lordship will recall the evidence of IC.8 quoted elsewhere about the use of T-shirts or uniforms in the colours of black, green and yellow which he said were the colours of the ANC. We submit that that is another bit of evidence which has been shown on a preponderance of probability that it was false and again we would say that the reason why it was false is because of that witness's concern to exculpate himself from a difficult situation that he found himself in whilst in detention and even whilst he was in the witness-box ... (Court intervenes) (10)

COURT : Are you going to deal with the witness IC.8 later?

MR BIZOS : Later.

COURT : Well, do not repeat it then, because you will be repeating all this again.

MR BIZOS : As your lordship pleases. We will do that at that stage, but the evidence to the contrary is to be found in the evidence of 7, 9 and 10. We will give your lordship the reference to that together with another. It was suggested that after the launch McCamel was sidelined, but it is significant that this committee continued - if my memory (20) serves me correctly - to use Mr - the Reverend McCamel's box number as its address or as its box number. Your lordship will find that and right up to June when this committee printed membership cards in the hope that not only it as an area committee but other area committees of the VCA used them, printed these cards in June 1984, with the witness's box number on, so we would submit that the suggestion that McCamel was sidelined is just not borne out by the evidence. Your lordship will find the evidence of these matters in the evidence of accused no. 7 in volume 201 page 10 482 line 14(30)

to/...

to 10 483 line 30; Accused no. 9 in volume 179 page 9 247 line 4 to page 9 248 line 20; Accused no. 10 volume 159 page 7 825 line 12 to page 7 826 line 9.

The next heading or subheading that we want to deal with is the relationship between the VCA and the UDF. In paragraph 68.3 which your lordship will find at page 296 of the indictment it is alleged that Mr Ratsomo, accused no. 22 and Mr Hlehluku served as a link between the UDF and the VCA in respect of speakers, pamphlets and placards. The evidence does not support this allegation insofar as (10) accused no. 22 is concerned.

The witness IC.8 identified only Hlehluku as the person appointed to be a link between the VCA and the UDF concerning publications. Your lordship will find that in the evidence of IC.8 volume 16 page 757 line 31 to page 758 line 12.

The role of accused no. 22, Mr Ratsomo, is set out in the evidence of Mr Vilakazi, accused no. 10, who details that accused no. 22 and Hlehluku were mandated to seek further information about the UDF at the VCA committee meeting on 10 October 1983 which, as your lordship will recall, was (20) the day after the meeting at which the VCA was launched. Pursuant to this they brought back the UDF declaration and working principles of the UDF. Accused no. 22 and Hlehluku were invited to sit in on a UDF general council meeting as observers. This was a meeting of 15 October 1983. Whilst there, it was explained that organisations were expected to submit reports. Since these two had no mandate to report on behalf of the VCA, they did so in the name of the Vaal Action Committee and this is why EXHIBIT L7, to which I have referred your lordship yesterday, is drawn up in the manner (30) in/...

in which it is. Your lordship will find that in the evidence of accused no. 10 volume 159 page 7 820 line 11 to page 7 821 line 2.

In the particulars given to paragraph 68.3 nothing further is said about the role of accused no. 22 and this - that this was limited to the one detailed by accused no. 10. Your lordship will find that in the further particulars paragraph 29.3 of the further particulars page 89 of that document. We will give your lordship the detailed reference but it may be in relation to this particular, that the (10) evidence of accused no. 10 was that no. 22 resigned shortly before the academic year was to start at Rhodes University to which accused no. 22 was to go, so that the broad allegation that accused no. 22 was to be the contact man, is in fact not borne out by the evidence, but in dealing with the individual accused, I think we will give your lordship the references then.

It is the state case that the VCA was formed as a part of a conspiracy and that its actions were co-ordinated and directed towards the ends of that conspiracy, namely being (20) the overthrow of the state by violence. The evidence of the Reverend McCamel is entirely destructive of this case and a further rebuttal emerges from the evidence of accused no. 10. Accused no. 10 supported the affiliation of the VCA to the UDF on the principle of peaceful extra-parliamentary opposition to apartheid. Your lordship will find that evidence of accused no. 10 at page 159 - I am sorry, volume 159 page 7 794 line 21 to page 7 795 line 1.

On page 97 to 99 of the state's argument, the "betoog" the state submitted that the presence of the VCA representatives
(30)
at/...

at UDF meetings, proves it participation in the conspiracy. I need do no more than submit what your lordship asked our learned friend Mr Jacobs during this part of the argument. Must he not show, your lordship asked, that what was said at this meeting in the presence of the VCA representatives, must be looked at in order to determine whether the allegation is supported by the evidence available as to what happened at that council meeting. The state has not done that. It was unable to show your lordship any evidence that there was anything said that any UDF meeting at which any (10) representative of the VCA was present in which violence was incited, advocated or even condoned or even spoken about. So that how does it really help the state to say that the evidence of an adherence to the conspiracy is their presence at council meetings?

The evidence for the state is to the contrary and that is the evidence of McCamel which the state ignores. The Reverend McCamel said much destructive of the state case in cross-examination. Not a single reference to those - to that cross-examination or concessions are made in the (20) "betoog".

The little evidence that the state tried to put before your lordship in support of its broad submission that the VCA was party to this conspiracy and we do not want all the time to say that it has been established, but there was no such conspiracy, leaving that aside. The evidence it does present is to a very large extent completely inconclusive and in many instances counterproductive or contrary to the main submission made by the state in the "betoog" and quite a bit of it is just a statement of fact which is not (30) supported/...

supported by the evidence at all. For instance, the state says on page 98 in the "betoog" that the evidence of the Reverend McCamel at page 1 554 volume 34 confirms that the VCA used the ANC/UDF campaign concerning black local authorities in the Vaal in order to mobilise and politicise the people. Well, let us have a look at that passage. It just does not bear this out completely. It does not bear this out at all. There is on page 1 554 which is the reference quoted the following - I am sorry that I have to read it, but it is a typical example of the non-consequential way (10) in which the evidence is quoted.

"Is die onderwerp van affiliasie met UDF op die komitee-vergaderings bespreek? -- Ja, ons het dit bespreek, want daar was n ooreenkoms gewees dat die "civic association" moet affilieer met die UDF. Die aansoek vir die affiliasie was gedoen..

Gaan voort. -- Daar was toe n antwoord ontvang dat die "civic association" aanvaar is en is nou geaffilieer met die UDF.

Wat het hulle gerapporteer oor die affiliasie wat (20) aanvaar is? -- As my geheue my nie in die steek laat nie, is dit Thabiso Ratsomo en Esau.

Beskuldigde nr. 22. Is dit bespreek wat die gevolge is van affiliasie met die UDF? -- Ons affiliasie met die UDF het die volgende verbind vir ons. Daar is sekere fooie wat betaal moes word, affiliasiefooie per jaar as n lid van UDF. Dit is nou die organisasie van ons. Ons is verplig om die UDF op hoogte te hou met wat gebeur in ons organisasie. Die rede daarvoor was dat die lede van die UDF op hoogte moes bly met wat (30) gebeur/...

gebeur het met hulle medelid. Ons is verplig om by te dra tot enige doen en late van die UDF. Byvoorbeeld as daar 'n kampanje is van die UDF, moet ons ook ons bydrae lewer.

HOF: Is dit nou gedeeltelik of moet julle fisies opdaag om by die vergadering te wees? -- Fisies, wat die UDF besig is om te doen of wat die UDF besluit het wat gedoen moet word.

Nog iets? -- Dit is al wat ek nou kan onthou."

I do not have to read the cross-examination of McCamel. (10) in order to indicate that it was not in furtherance of the conspiracy that the state says that this was done.

"Terwyl u gepraat het van die kampanjes, was daar UDF kampanjes wat die VCA toe moes opneem en moes deelneem aan? -- Ja, die "million signature campaign". "The people's festival." Dit is die twee wat ek kan onthou." Then he goes on to ask him for details about what contribution the VCA made in relation to the million signature campaign and what the people's festival was about.

That is the evidence on which it is quoted - the state(20) quotes and says that the evidence of the Reverend McCamel concerning black local - in order to mobilise and politicise the people and your lordship will find that on page 98.

Attributing the description of the ANC/UDF to its own state witnesses who have specifically disavowed such connections and your lordship had heard evidence from accused no. 10 who was on the main committee of the VCA, that that was not so, but that evidence is ignored in the "betoog". Your lordship also heard evidence from the people that were on the area committees, such as accused nos. 8, 9, 7 and other(30) witnesses/...

witnesses, like Mrs Oliphant and others, that they knew of no such conspiracy. All that evidence is ignored.

Similarly at the foot of page 98 of the "betoog" the state represents EXHIBIT O2 paragraph 7 reflecting a discussion that members of the UDF must actively take part in the UDF campaigns. We submit that that is a misreading of the document, that that paragraph refers exclusively to a report from ^ENUSA, the input of which is clearly that ^ENUSA is making attempts to encourage its own members to participate actively in UDF campaigns. The question may well be (10) asked what has this got to do with the Vaal. Your lordship will see on page 2 of the document "NUSA produced a national newsletter in which UDF featured prominently and a discussion on UDF was held at its AGM. At present attempts are being made to encourage members to participate actively in UDF campaigns." What has that got to do with the Vaal or the VCA?

In relation to reports made by the VCA to the UDF it is contended in "betoog" page 101 that in respect of EXHIBIT O3 and says that the end of the report reveals (20) that the VCA was not concerned with local problems, but with the mobilisation of residents for participation in a national freedom struggle. Let me pause for a moment. at The definition of terms as to what the state understands by freedom struggle and what the accused understand by freedom struggle, appear to be different things, but that will be a part of the argument that will be done by others, but we submit that this on any basis is an unwarranted conclusion.

These very portions were canvassed with Reverend McCamel in the course of his evidence-in-chief and his (30) replies/...

replies do not begin to support the inference now drawn by the state and we give your lordship the reference in volume 35 page 1 597 lines 10 to 29.

At the launch of the VCA Edith Lethlake motivated affiliation to the UDF on the basis that the VCA could share experiences with other organisations in how to overcome problems. She also said that the UDF was the forum where organisations expressed themselves against apartheid laws. In all of this there is no suggestion that a conspiracy or a campaign of violence or ungovernability was being (10) promoted and the evidence is clear and satisfactory in that regard of accused no. 10 to be found in volume 163 page 8 099 line 13 to page 8 100 line 10.

What the state sees as evidence of a conspiracy was categorically stated by accused no. 10 to be nothing of the sort. Accused no. 10 without any apology told your lordship that one of the reasons why the VCA affiliated to the UDF was to unite with other organisations in opposition against apartheid and in this respect it is freely acknowledged that the government, the black local authorities and the (20) councils are part of the apartheid system. Your lordship will find that in the evidence of accused no. 10 volume 163 page 8 121 line 1 to line 10.

As different people understand different things about what is the freedom struggle, it is also fairly evident on the evidence as a whole that different people understand different things about apartheid. Accused no. 10 and your lordship will recall how strongly he felt about this question, considers himself a citizen of the Republic of South Africa. At the time that he took part in the activities (30)

of/...

of the VCA, there was a threat that if the Koornhof bills became law, he would lose his South African citizenship and that he would have to go somewhere where he only had a distant cousin. I think it was called Qua-Qua. It is very difficult for a person in that position to say well, I will only confine my protest against the election of councillors or the non-removal of the refuse, when his very existence in his home as a South African citizen, as a resident of a particular area, is threatened. How can he be expected and why should he confine himself, his objection (10) and his protest, to what had been described as the day to day issues and not go for the bigger right that would ensure his safety and the enjoyment of political rights in the place where he was born? He goes further to say that the purpose of such affiliation was to encourage people to unite and to speak out strongly against apartheid in order that support for apartheid should diminish.

He was not alone. People in the government at the time were saying apartheid is dead. They may mean different things when they say apartheid is dead. Accused no. 10 (20) and his articulate colleagues say not to have a vote or to have separate chambers is apartheid. Those who say apartheid is dead understand different things by apartheid and why I say this is that your lordship is placed in a position to make findings of fact in relation to matters that tremendously different perceptions are in existence and it does avail to the state to suggest that because people say that we must destroy apartheid, or we must destroy the black local authorities, that they themselves are parties to a conspiracy to overthrow the state by violence. (30)

Only/...

Only last night, I do not know whether your lordship heard it or not on the SABC Mr Fourie, a wellknown producer of films said that he made a film which is going to be distributed in the United States in order to show that there are moderate people in South Africa busy destroying apartheid. I could not resist the temptation to tell your lordship about it, even though it is not in the evidence, but it is part of the ... (Court intervenes)

COURT : I did not listen.

MR BIZOS : It is part of the common parlance. It actually(10) struck me that a film has been made as to what has been happening in South Africa and it was asked what the purpose of this was. His answer was that there are moderate people in South Africa and there were moderate people on the program. Dr Barnard and some other people. To destroy apartheid that was the purpose of the film that was going to be distributed, but your lordship will find the strength of feeling in relation to this in passages of accused no. 10's evidence such as in volume 163 page 8 121 line 23 to page 8 122 line 1. (20)

The state also assumes that unity in opposition to apartheid or calls of unity to apartheid or to oppose apartheid are tantamount to calls to violence or threats of violence and that people who call for them are therefore supposed to be supporting a policy of violence. Again accused no. 10 in no uncertain terms said that his understanding was that the VCA and the UDF were bent on peaceful protest and we submit that there is no evidence to the contrary, certainly not to the knowledge of accused no. 10 or anybody involved in the VCA. Your lordship will find that(30) evidence/...

evidence in volume 165 page 8 345 line 8 to page 8 346 line 17.

Accused no. 10 stated categorically that he knew of no UDF or VCA decision to make the country ungovernable and when it was put that ungovernability can be achieved only through violence, accused no. 10 reiterated that the UDF were bent on peaceful means. Your lordship will find that in the evidence of accused no. 10 in volume 169 page 8 687 line 4 to page 8 688 line 14.

COURT ADJOURNS.COURT RESUMES.

MR BIZOS : Affiliation to the UDF did not mean that its (10) autonomy became compromised. On the strength of what accused no. 2 explained to the VCA at a committee meeting on 19 October 1983, it was understood by all present that affiliation to the UDF did not mean that the VCA then became obliged to carry out all UDF campaign. Your lordship will find that evidence in the evidence of accused no. 10 volume 163 page 8 132 line 10 to page 8 133 line 23.

May I remind your lordship of the argument advanced by my learned friend, Mr Chaskalson in relation to the structure of the UDF that has already been delivered and (20) also that throughout the record there are sprinklings of evidence from other witnesses from organisations other than the VCA that they were jealous of their independence and that they were only to take up that which they wanted and the further point that I want to make is this, that this apparent jealousy of local independence is destructive of a conspiracy. The last thing that a co-conspirator talks about is independence. By its very nature a conspiracy demands a unity of purpose and if it is - well, conspiracy in its primary meaning means unlawful and it is unlawful (30) that/...

that you keep quiet about it and you may even have to swear an oath of silence in relation to it. This whole insistence of independence and not being obliged to do what the UDF says, ought to be done in referring matters to local regions and back to affiliates, is destructive of the main inference that the state wants your lordship to draw that there was a conspiracy.

In respect of the campaign against the black local authorities, the UDF did not co-ordinate the activities of the VCA, but merely provided some assistance in the form (10) of pamphlets. Your lordship will find that evidence of accused no. 10 in volume 167 page 8 482 line 24 to page 8 484 line 6.

The understanding in the VCA was that as an affiliate they retained their autonomy. If their policies and actions were inconsistent with the policy of the UDF, it would mean that they could no longer remain part of the UDF, but non-participation in the UDF program would not amount to being at loggerheads with UDF policy. The evidence of this is to be found in the evidence of accused no. 10 volume 168 page (20) 8 627 line 9 to page 8 630 line 4.

Your lordship will recall that my learned friend, Mr Chaskalson dealt with EXHIBITS C4 read with EXHIBIT F and more particularly paragraph 8.3 in that part of the argument and I do not intend doing it again. The further reference to accused no. 10's evidence is to be found in volume 168 page 8 633 line 11 to page 8 636 line 4 and at page 8 638 lines 4 to 26.

The evidence of accused no. 10 was that it was not compulsory to report to the UDF on programs concerning (30)
the/...

the campaigns. Volume 166 page 8 447 lines 7 to 27.

An instance of non-participation by the VCA in the UDF campaign is that concerning the referendum. Accused no. 10 volume 168 page 8 639 line 22 to page 8 640 line 14.

Of course, we will be developing this argument ... (Court intervenes)

COURT : I am sorry, what do you mean by non-participation in the referendum?

MR BIZOS : They did not take any part whether people should vote in the referendum or not. That was a campaign of the (10) UDF. There was a campaign as to what attitude people ...

(Court intervenes)

COURT : But how would that be effective in Sebokeng? You cannot participate in something that is not effective.

MR BIZOS : That is the point I am really making.

COURT : But they made a representation to the general council meeting or to the NEC as to what line should be taken on the referendum?

MR BIZOS : Yes. No, what they said was that it was our view and that is how they voted when they were called upon to (20) vote. That our view is that you should not call for a referendum, because it would be lending legitimacy to the tri-cameral system.

COURT : I do not think in any black area there was a do not vote campaign as far as the referendum is concerned.

MR BIZOS : Yes, that is obvious, with respect to your lordship and to us, but it is not obvious to the state and that is why we make the point. The state says that there was a conspiracy at which all the campaigns of the UDF were to be executed in furtherance of a conspiracy including by the (30)

VCA/...

VCA and every affiliate in the country and what I want to add to it is this, but we will develop it in due course, but it does fit into this picture as well. Thousands of people were gathered in various meetings during August 1984 in the Vaal, at Sharpeville and Sebokeng. There is no evidence that the people of the Vaal concerned themselves with anything other than the increased rental and criticism in vociferous terms of the people whom they thought responsible for their plight brought about by the increased rent. Had there been this conspiracy, let me give your lordship some examples. (10) Would your lordship not have expected a resolution for the release of political prisoners at these meetings?

Your lordship knows that in the third week or the beginning of the fourth week of August 1984 the leadership of the UDF was arrested or a better word or more accurately detained. It passed the people of Sharpeville and Sebokeng by. There is no suggestion release our leaders, your lordship knows the slogans, stop the oppression, charge or release. They had a lot to say about the rent and the councillors that they thought were responsible. For the state (20) to allege that those were really meetings under the direction of the UDF, just loses touch with reality.

In relation to the role of the UDF general council meetings accused no. 10 agreed with your lordship's formulation that the purpose of these meetings was to co-ordinate and to plan joined action. He went on, however, to state that this concerned those affiliates who were in favour of participating in a particular campaign, but it did not amount to a loss of autonomy on the part of the individual affiliates. Your lordship will find that evidence in (30)

volume 10 page 167 page 8 477 line 18 to page 8 478 line 15.

Far from there being any evidence as to what was said at any of the general council meetings which would show that there was any conspiracy, the direct evidence of accused no. 7 is also destructive of any knowledge of any conspiracy by the people of the Vaal, even those that attended general council meetings.

C1483

Accused no. 7, Mr Mphuthi, attended a meeting of the general council of the UDF in the Transvaal. He says that this was not in pursuance of any conspiracy to start a (10) revolution or riots. There was no discussion at this meeting about rendering the government ungovernable, nor discussion of any actions which were to lead to riots or violent revolution. An indication of the non-conspiratorial nature of these meetings is conveyed by the fact that although accused no. 7 was unknown to the majority of the persons present, no security check was done in regard to him or apparently anyone else. Your lordship will find all that evidence in the evidence of accused no. 7 volume 201 page 10 487 line 26 to page 10 489 line 27. (20)

Your lordship asked where is the evidence of what was said at this meeting. There is evidence from the defence witnesses that there was no such talk and indeed it would be most surprising if there was. How does one talk about these things on the known facts that the people register, that apparently people either signed as delegates or observers, they do not have to be the same people, alternates come in and out almost at will, observers come in and out almost at will. It is of the very nature of conspiratorial meetings that they should be small, that they should be controlled, (30) you/...

you do not keep minutes, you do not keep registers, you check the people that come, you might even have to beware of a mechanical apparatus. If you are going to have general council meetings where the policy is made and you have open meetings, open in this sense, it is completely destructive of the suggestion of a conspiracy and I submit with the greatest respect that your lordship has been burdened with many documents and a lot of evidence to disprove the obvious and to disprove the allegations made by the state.

A practical insight into the workings of the UDF in (10) relation to its alleged role as co-ordinator and planner is reflected in EXHIBIT T19. This is a VCA report to the UDF general council meeting, dated 22 February 1984. It complains that the UDF was not sending speakers to meetings when invited to do so and cites the zone 7 launch of 19 February 1984.

Accused no. 10 stated that he did not know of that or any other such instance. This led the court to put it to accused no. 10 that it would appear that he did not know much about the discussions about the management of the VCA. (20) Your lordship will find that on page 2 of T19 paragraph 6. There is a complaint about the UDF not responding properly to invitations. "We, for example, expected speakers on Sunday, 19 February. Please notify us in good time if you cannot be represented." The state says that the UDF actually orchestrated and assisted and that that meeting was held in furtherance of violent objects.

This was a matter that was taken up by the court on page 8 193 volume 164 to page 8 195 line 20.

Your lordship in a similar vein made an observation (30)

to/...

to accused no. 10 that he does not know - he did not appear to know much about the UDF policy and that is to be found on page - volume 165 page 8 325 line 23 to page 8 325 line 6. Could I just check which is the correct reference. I am sorry. The first 5 is correct. 6 is the next one. To page 8 326 line 6.

We can understand with respect your lordship's question and your lordship's observation to accused no. 10, but what we cannot understand is the state's attitude to its case, by what happened thereafter. For over four pages accused (10) no. 10 is cross-examined by the prosecutor in order to try and establish how ignorant accused no. 10 was of the UDF's policy. One wonders whether the consequences of that line of cross-examination were appreciated, because there in fact if what is inserted is correct, they make a very strong point in favour of accused no. 10 on this charge and all those who are members of the management structures of the VCA.

If as the state tried to establish through accused no. 10 that he was ignorant of the policy of the UDF, even though (20) he was a duly elected representative at the launch of the UDF and attended most of its executive meetings - the VCA and attended most of its meetings, if he was ignorant of the policy how much of an a fortiori case is there in relation to all the other accused who were connected with the VCA who were one level below? And those include accused no. 7, accused no. 8, accused no. 9, accused no. 15 who really became involved for only two or three days before 3 - well, a week or two before 3 September, accused no. 17.

The state's thesis is that there is an ANC conspiracy, (30) there/...

there is a UDF conspiracy and to your knowledge and it must be to your knowledge, otherwise it is not a conspiracy, the VCA and it is put to the man who is in the main governing body of the VCA, that is ignorant of the policy of the UDF. Perhaps if the state did have a right of replying on the facts, it might have found an answer. I do not think we can think for the state and I submit that your lordship will use this as evidence completely destructive and suggestions completely destructive of the state's case. In my being carried away with rhetoric, I do not remember whether (10) I gave your lordship the reference of these four and a half pages.

COURT : Well, it must be beyond 6 and if it is four and a half pages, it will run to 11.

MR BIZOS : Page 8 336 line 17 to page 8 340 line 10.

Apart from an advance received from the UDF for transport arrangements in respect of attendance at a rally, which amount was retained, the VCA did not receive any financial assistance from the UDF, nor did it receive any support or assistance from the ANC. That has been categorically (20) stated by accused no. 10 in volume 159 page 7 814 line 18 to page 7 815 line 30.

Accused no. 10 and Johnny Mothete represented the VCA at the Port Elizabeth conference on the referendum issue on 17 to 18 December 1983. Your lordship obviously recalls by the question that your lordship asked me earlier, that no consensus was reached on the issue of the referendum and the matter was then referred back to the individual affiliates for further consideration. Accused no. 10 volume 160 page 7 836 line 10 to page 7 838 line 10. (30)

There/...

There was no instruction or influence on delegates from the UDF to come to one position or another. Your lordship will find that in the evidence of accused no. 10 in volume 160 page 7 838 lines 14 to 22.

The evidence of accused no. 10 is that they travelled to Port Elizabeth at their own expense. Volume 160 page 7 838 lines 23 to 29.

In respect of this conference, the state submits in "betoog" page 99 that the EXHIBIT O4 embodied the complete extent to which the VCA had become part of the UDF/ANC (10) strategy. We submit once again that this exhibit was in fact sent by the Reverend Lord McCamel, from whom the state did not seek to elicit the position it now argues and has already observed the Reverend McCamel disavows such a position in general terms throughout his evidence.

The state has attempted to show through the medium of EXHIBIT CA22 that there was a direct correspondence between the expressed concerns of the ANC, of the UDF and the VCA. There are a large number of denials of such linkage on the record and it is appropriate to remark again the (20) evidence of its chairman, the Reverend McCamel. In assessing this argument it is necessary to bear in mind also that there is no evidence to show that EXHIBIT CA22 - your lordship will recall which one it is, it is the one found in possession of the young Vilakazi - or any other ANC publications before any members of the VCA committees. In relation to the documents found in his possession, the witness Vilakazi has specifically testified that none of these was never presented at meetings of the Vaal Action Committee. Your lordship will find that in volume 349 (30)

page 19 938 lines 12 to 17.

We will in due course be referring your lordship to some evidence as to how the ANC made calls for people to infiltrate whenever they possibly could. I am not for one moment suggesting that possession of a document makes one an infiltrator, but even on the assumption that some suspicion may be presented on the evidence as a whole, either that Raditsela possibly or - because he had these documents, young Vilakazi, were sympathisers of the ANC, how does that take the state's case any further? Passages were read (10) to your lordship from one of the IC witnesses who was privy to the workings of the ANC, but the last thing that you do is that you disclose to the people that you are working with that you are such a person. So, that it does not prove knowledge on the part of the others and no ANC documents or any contact with the ANC have been presented in relation to any of the accused from the Vaal.

The state places reliance on the decision allegedly taken at an AZAPO meeting on 10 June 1984 that there should be co-operation with the other organisations in the Vaal, (20) such as the VCA, COSAS and UDF, in order to disturb all the things that have got to do with local authorities and this is a submission of the state to support that there was in fact co-operation amongst these bodies in the Vaal Triangle.

We submit that the manner - that is the evidence of IC.8 to be found in volume - the reference is to be found on page 123 of the "betoog" which is given at pages 767/9. That would be in volume 16. What we submit is that the manner in which the state has reflected the evidence of IC.8 leaves out the important further evidence of the same (30)

witness/...

witness where IC.8 says that he was aware that the organisations COSAS and AZAPO had not been on speaking terms since 1981, although he considered that Hlomoka, accused no. 2 was not the sort of person who was opposed to COSAS. Your lordship will find that evidence of IC.8 volume 20 page 940 lines 6 to 15.

It was the understanding of IC.8 that accused no. 2 was going to invite COSAS and UDF to its commemoration service on 16 June 1984. IC.8 volume 20 page 940 lines 24 to 27. (10)

However, whatever the discussions may have been and accused no. 2 has denied that there was such a discussion, IC.8's own evidence is that by 16 June 1984 the whole thing had fallen flat and IC.8 specifically agreed "it had never taken off or never progressed." IC.8 volume 20 page 942 lines 19 to 24.

The state has also left out of account the pertinent evidence of the executive members of the two organisations. Accused no. 10 has testified that there was no co-operation between the two organisations in the Vaal complex or (20) national. He testified further that the events connected with the funeral of Jabo Shabalala made it clear that there was no basis for any co-operation between them at all. Your lordship will find that evidence of accused no. 10 in volume 160 page 7 849 lines 8 to 24.

Accused no. 10 testified also that there was never an instance where the VCA discussed working together with AZAPO. Accused no. 10 volume 164 page 8 210 lines 14 to 16.

A suggestion was made that the general mandate given at the VCA launch included co-operation with AZAPO, a (30) suggestion/...

suggestion which he denied. Your lordship will find that in volume 164 page 8 214 lines 4 to 25.

The most direct evidence in relation to the denial of this proposition by IC.8 is that of Mr Hlomoka, accused no. 2 who stated that AZAPO in the Vaal did not conspire or co-operate with the UDF, nor was there any co-ordination with the VCA. The AZAPO Vaal branch decided on a campaign opposing the local authority elections even before the VCA was launched. Volume 219 page 11 594 line 26 to page 11 596 line 2. (10)

We will deal with the reasons why IC.8 should not be believed on this as well.

That in relation to events such as the anti-rent meetings during August 1984 and presumably in relation to the events leading up and including 3 September 1984, the state has cited a passage from EXHIBIT W9 in "betoog" page 124. It is there submitted that this passage is said to establish the veracity of IC.8 and the untruthfulness of accused no. 2. I think this is working progress and your lordship during the course of the proceedings, I am not sure whether it (20) was before argument or during argument, but I think it was during the proceedings, remarked well, who is working progress and what notice can we really take of what is said there.

We would draw your lordship's attention - I am sure that the admissibility of this particular document is going to be argued together - but even on the assumption that it is admissible - we read it to your lordship yesterday, they quote an office bearer of AZAPO, Mr Ismail Makabela on page 16. Your lordship will see at the end of the first (30) column/...

column, Mr Makabela says "Makabela and other national officials regularly attend meetings of the Vaal (in the present tense) Civic Association in Sebokeng as an act of solidarity and to take the opportunity of sharing prospectives with them." The present tense for this document is February 1985. By that time all the Vaal accused had been in custody for periods varying from four to six months. So, the weight, if any, to be attached to this statement, is questionable and he says that the relationship between the UDF and AZAPO in Nelspruit and in the Eastern Transvaal something happened, (10) we do not know when, but what has to do with the people in the Vaal escapes us, but it raises the whole question as to whether your lordship is going to find a witness untruthful because some person who has not appeared in court purports to have written something in a document and where there is considerable body of evidence to suggest that what is stated there for the relevant period at any rate is incorrect.

The evidence that none - that at none of the Sebokeng meetings which were really meetings initiated by the VCA the fact that AZAPO was never mentioned at any of the (20) August Sebokeng meetings is a very clear indication that they considered themselves as organisations with different constituencies. We submit that in any event the statement in W9 quoted by the state has been - has to be read with the evidence of the president of AZAPO during the period in question which completely discounts the points ought to be made by the state during 1984. He has testified from the national office perspective that AZAPO as an organisation did not carry out any specific campaign concerning the opposition to rent increase in the Vaal during 1984. He went (30)

as/...

as far as to say they were not even aware of them. Before 3 September 1984 AZAPO as an organisation had no part to play in the Vaal. After that date AZAPO reacted to the crisis by assisting with health services. Your lordship will find that in the evidence of Mabasa volume 421 page 24 657 line 1 to page 24 659 line 23.

The absence of any evidence that accused no. 2 concerned himself in any way with the affairs of the VCA in the Vaal and his own evidence as to the caution with which he joined the march on 3 September, satisfying himself that it was (10) not held out as a VCA march - we will give your lordship the reference in due course when we deal with the march - is a clear indication that there was no co-operation and certainly no agreement or conspiracy between AZAPO and the VCA in the Vaal.

COSAS loomed large in the state's view of the Vaal case. Other than a few COSAS T-shirts from time to time, having regard to the few of them that we saw on the videos, we will submit in due course the number was certainly exaggerated for obvious reasons by some of the witnesses (20) called by the state, there has been no direct evidence from the state of any joint decision making in the Vaal between the VCA and COSAS.

During the period relevant to the state's indictment, 83/84 as far as these accused were concerned, there has been no evidence from the state as to who the people in COSAS were, what their objects were, what the committee did during this period and there is evidence sprinkled in the record that the wearing of a T-shirt does not make one a member of the organisation, but be that as it may, the only direct (30) evidence/...

evidence in relation to COSAS in the Vaal is that accused no. 10 has testified that there were no formal links between the two organisations. His evidence was that from time to time some COSAS members assisted with the menial tasks that are usually assigned to young people but the organisations operated independently of each other. Your lordship will find that in the evidence of accused no. 10 volume 159 page 7 824 line 18 to page 7 825 line 12.

Accused no. 10 went further and has confirmed that no members of COSAS attended meetings of the VCA executive (10) committee. Volume 164 page 8 216 lines 18 to 23.

In fact the paucity of the state's evidence on this issue is to be judged with the incorrect allegation that Mr Malindi, accused no. 5, was a member of COSAS and represented COSAS. This is specifically alleged in the indictment. The evidence of accused no. 5 and we will deal with that when we deal with his position, his personal position that he had been out of COSAS for some time at the beginning of the period of the indictment. The allegation in relation to his membership of COSAS is to be found for example on (20) page 342 of the indictment subparagraph 5 where it is stated that Jacob Masenyane and various members of COSAS among them the accused, distributed the pamphlets on the morning of 25 August 1984 et cetera. He was thought to be the COSAS person. There is no evidence of it. The evidence of the defence is to the contrary and it really shows that - I may also add at this stage that much has been made by the state of the school boycotts as a relevant fact for the origin of the violence and more particularly the blame generally in relation to the school boycotts is laid at the door of (30)

COSAS/...

COSAS and its unreasonable demands, so the state alleges, but what is significant is that the Vaal will have the unfortunate reputation as a place at which violence commenced on the 3rd according to the state. We say 2 September 1984. It happens to be one place where your lordship has heard no evidence of any school boycotts in the Vaal. No evidence of any COSAS activities at any of the schools. No evidence of any of the demands in any of the schools. How does that square up with the conspiratorial theory of the UDF that the UDF used COSAS as the storm troops of its ungovernability(10) policy, when at the place which - at which the unfortunate violence broke out, it could not find a single witness to tell your lordship anything about this very important part of its case.

The next issue that we will want to address your lordship on is the Vaal Civic Association and the Black Local Authorities. Specific allegations were made in relation to this in paragraph 68 subparagraph 4 on page 296 of the indictment which, when read with the preamble, that in furtherance of the conspiracy or conspiracies the - it is alleged that (20) the activists of the VCA disrupted and took over meetings of candidates in the council elections by singing of the so-called freedom songs. Particulars supplied deal largely with meetings which had nothing to do with the elections. I refer your lordship to paragraph 29 subparagraph 4 (i) to (iii) on page 90 of the further particulars. Look at it. The first meeting particularised relates to the meeting held in Bophelong on 29 August 1984. This is a meeting which it is alleged that the activists disrupted the candidates and the council elections. When I said look at it, I was (30) merely/...

merely behold rather I should have said rather than look at it. This is the first meeting that is particularised. The first meeting to this date and it is alleged that unknown activists under the leadership of accused no. 3 behold again, that is the Reverend Moselane, disrupted the meeting by inter alia threatening councillors with death. Well, one wonders on what information and with what care these allegations were made against the accused generally and accused no. 3 in particular.

Your lordship will recall that at this time according (10) to the evidence accused no. 3 was a victim of threats of violence at his home by a posse of councillors and their companions. So, that the victim of the threats of violence is alleged and there is state evidence to support that of Jokozela. We will refer to that in due course. The victim of the threats of violence becomes the inciter.

There follows a reference to other meetings held on days and places unknown to the state, but identifies in the allegations accused no. 22, Mr Ratsomo, as being one of the persons who disrupted these unspecified meetings. There (20) is no evidence whatsoever to support this allegation.

In fact the only evidence concerning election meetings with some measure of disruption - where some measure of disruption took place, was given by councillor Mgcina. We dealt with this evidence when dealing with the happenings at Bophelong at the time of the election and we do not intend - your lordship will recall that he transposed speakers at meetings which took place a year apart. I do not want to repeat the volumes.

The evidence of Mgcina must be weighed against that (30)

of/...

of a number of other councillors who testified for the state in the course of which they mentioned a number of pre-election meetings which they held which had been conducted without any difficulty whatsoever. The evidence of councillor Mokoena in volume 44 page 2 136 lines 7 to 26, that was in Sebokeng; the evidence of councillor Jokozela in volume 48 page 2 413 lines 6 to 30. He spoke in relation to four meetings held in Sharpeville. At page 2 414 lines 2 to 15 in Sebokeng where he spoke about five minutes. Mofokeng volume 49 page 2 416 lines 9 to 26 - in Sharpeville, four(10) to five meetings. Councillor. Posisi volume 52 page 2 677 lines 6 to 20. She speaks of Sharpeville, five to six meetings.

A further meeting allegedly disrupted which should make it three in all, if the evidence is to be believed, is cited in the further particulars and is said to have taken place in approximately June or July 1984 at the Evaton stadium. The identity of the people disrupted at this meeting is unknown to the state, according to the further particulars. There is no evidence at all in relation to this unless it (20) is a loose way of identifying the combined eight years birthday celebrations of Evaton and the victory celebrations of councillor Rabotape in Evaton.

We want to make this submission. Your lordship has heard evidence in relation to about eighteen meetings. Sixteen of them went off peacefully. There is disputed evidence and we submit of very poor quality on behalf of the state that at two of them there was a bit of trouble at election meetings. On the basis of that evidence, if your lordship is to find any merit on the state case, it would mean (30) that/...

that isolated unruly behaviour at two out of eighteen meetings proves a campaign that originated with the ANC that was followed through to UDF which reached the VCA, which in turn reached unknown people and we do not know if there was this disruption at the two meetings, who they belonged to or why, that this was in furtherance of that conspiracy. It has only to be stated in order to satisfy your lordship of the ridiculous extent in which the logical consequence of the state's allegations amount to. Let me say no more than disruption and unruly behaviour at political (10) meetings in South Africa in common with lots of other countries, is not uncommon and two out of eighteen, if there was in fact disruption, that the two is not a bad average.

Also particularised is the protest against the Evaton town council celebrations. Your lordship will find that in paragraph 74.1 of the indictment read together with the preamble which alleges the grand conspiracy or conspiracies and it is said that in order to bring about riots and a violent revolution, the zone 7 committee in conjunction (20) with ERPA organised a protest against the victory celebrations organised by Rabotape and it is alleged that this was accompanied by intimidation. That is the allegation.

The evidence in relation to this is all one way, which again shows the lack of validity in the allegations made by the state.

It is common cause that it was organised jointly by zone 7 committee and ERPA. The evidence is that it was a far cry from being in pursuant to a conspiracy. The protest was directed simply towards the fact that money was being (30) spent/...

spent on a feast at the time when the economic climate was such as to occasion great hardship to a great number of residents.

Boycotting victory celebrations or commemoration of services in the country in which there are deep political divisions is nothing new, nor confined to black or other people. Certainly not confined to the Vaal. Your lordship will find the evidence of accused no. 9 in volume 179 page 9 241 line 13 to page 9 243 line 3.

Mr Mokoena, accused no. 6, the secretary of ERPA, (10) volume 186 page 9 682 line 7 to page 9 683 line 1. Mr Mphuthi, accused no. 7, volume 200 page 10 470 line 24 to page 10 471 line 14.

Far from there being any suggestion of a conspiracy, to use the words of the indictment, to bring about riots and violent revolution, it was arranged that on the day of the protest accused no. 6, Mr Kabi the chairman of ERPA and Mr Esau Raditsela the vice-chairman of the VCA were appointed to supervise the protestors and to assure that they kept the peace. There was no intimidation of any person. Your (20) lordship will find that in the evidence of accused no. 6, volume 186 page 9 685 line 10 to page 9 686 line 20.

The protestors stood apart in compliance with instructions from the police there present. There was no suggestion from the police that they were doing anything wrong or that people were being intimidated. Your lordship will find that evidence in the evidence of accused no. 9, volume 179 page 9 244 line 24 to page 9 245 line 28.

Mr Malindi, accused no. 5, participated in the protest after having been informed about it that morning and having (30) been/...

been invited to attend. He told your lordship that the relationship with the police officers present was good and no people were intimidated. Your lordship will find that in the evidence of accused no. 5 volume 206 page 10 783 line 24 to page 10 785 line 5.

Although they were present as placard bearers, there is no evidence to support the allegation that certain youth organisations participated in this demonstration. If my memory serves me well, I have no specific reference, no one was arrested or did the police do anything at that stage. (10)

If there in fact was disorder and intimidation, the best possible evidence of it could have been given by one of the police officers that was there. There is an ample evidence which was not challenged that there were police officers there and if my memory serves me correctly Mohage was there identified as a member of the security police. Why did Mr Mohage not come and tell us what intimidation there was? There may have been some reason in the case of Mr Mohage but could other police officers not come along and say that people were intimidated? The state thought (20) it a sufficiently important part of the policy of violence to take pains in alleging it in the indictment. Why was there no evidence from a single police officer? Because in our submission in the eyes of the investigators of this case and those are presumably based on statements given to them, that everything that the VCA or ERPA did was in the furtherance of a conspiracy. So, let us just make a list of all the things that they did and say that everything was in furtherance of a conspiracy and that there was intimidation and what not. (30)

DELMAS TREASON TRIAL 1985-1989

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