This annexure sets out our comments on most of the witnesses who testified in this case.

Those that are not mentioned were either regarded as good witnesses or do not merit attention. The latter is inter alia the case where the point on which they were called is decided in favour of the defence.

Where we do not refer to the demeanour of a witness in the witness-box it indicates that we were satisfied on that aspect. That was the case in almost all instances.

Not each point set out is necessarily a criticism. Some points serve as aide memoire when the evidence is evaluated.

We set out in respect of each witness our general comments first and then enumerate the detail. The criticisms we have set out are not necessarily the sole criticisms which can be raised. We have duly considered all that were raised by state and defence counsel in argument.

For the sake of easy reference we deal with the witnesses in alphabetical order.

Defence counsel seriously criticised counsel for the state on the basis that some 150 witnesses were called for the state but its counsel not once deemed it necessary to make available to the defence an inconsistent witness statement.

There were serious inconsistencies between the statements of some of the witnesses who had been detained and the indictment. That is dealt with in our judgment. Counsel for the defence argued that for this reason the evidence of these witnesses should be disregarded in toto.

In the light of the salutary rule set out by our Appellate Division in R v Steyn 1954 1 SA 324 (A), S v Xaba 1983 3 SA 717 (A) and S v Ramovha en 'n Ander 1986 1 SA 790 (A), counsel for the state was requested by this court to furnish an explanation.

The explanation furnished was that from 3 September 1984 there was chaos in the Vaal Triangle. Numerous people were arrested, statements were taken and they were later released. The police units involved were from various areas and when calm was restored they departed. Mostly the statements did not come to the notice of the investigating team at all. Later when these persons were considered as witnesses in this case fresh statements were taken from which the witnesses were led and to which they adhered. When cross-examined it came to light that there were prior statements of which counsel for the state had no knowledge.

As far as the inconsistency between the statements on violence of certain key-witnesses and the indictment is concerned, counsel for the state assured us that the statements of these witnesses and their evidence were consistent. The indictment did not set out all these particulars as state counsel had decided to omit them. The reasons were that there was doubt about the availability of the witnesses. Some feared for their lives and had to be abandoned as they refused to testify. Some were represented by the attorneys representing the accused. Some had fled. These problems entailed that counsel for the state could not consult prior to the drafting of the indictment and it was decided to omit these allegations and should the witnesses become available lead this evidence and so amplify the allegations in the indictment.

As it turned out this course of conduct came to grief when material evidence of Mohapi was struck out and the state had to seek amendments in other instances.

In view of the explanation given the discrepancies between evidence and indictment cannot be blamed on the witnesses concerned.

A further matter pertaining to the credibility of some of the witnesses which received our due consideration relates to the approach to witnesses who were in detention when their statements were taken by the police.

The defence argued that such witnesses required special treatment. The witnesses referred to in this respect were ic.8, reverend Mahlatsi, Rina Mokoena and Mohapi. It was submitted that in so far as they were contradicted by the accused and defence witnesses they could not be believed. Counsel for the defence apparently sought to apply this rule irrespective of the quality of the contradictory evidence.

In our view the matter cannot be approached in such a simplistic way.

What is clear, however, is that when it is proposed that the evidence of these witnesses (and a number of others) be relied on, a number of warning lights start flashing. They are accomplices and were warned as such in terms of section 204 of the Criminal Procedure Act 51 of 1977. The circumstances under which they came to give evidence are relevant. This is evident from the decisions of our courts. S v Ismael & Others (1) 1965 1 SA 446 (N) 448H-449A, S v Hlekani 1964 4 SA 429 (E), S v Hassim 1973 3 SA 443 (A) 454G-455B, S v Mdingi 1979 1 SA 309 (A) 317C-G, S v Malepane & Another 1979 1 SA 1009 (W) 1016F, S v J C Hoffman and 2 others Case No 475/76 (CPD) 18/3/77 unreported.

On the basis of the decision in the last-mentioned case we were urged to adopt as a rule of law that where a witness has been detained and he alleges that he has been threatened that he does not produce a satisfactory statement he will be locked up and if he does not talk he will be slapped, he is so tarnished as a witness that his evidence has to be automatically disregarded.

We do not go along with that approach. One should not elevate dicta pertaining to the credibility of particular witnesses to general rules of law. They are merely helpful and instructive guide-lines when the difficult task of evaluating the evidence of witnesses is undertaken.

In any event counsel for the defence overstated the matter. The court did not find that proposition as a rule of law, as is evident from the meticulous consideration of a number of other factors and detailed analysis of the evidence of that witness.

We bear in mind that the arrest and subsequent solitary detention accompanied by questioning and accusations of complicity would probably have engendered fear for his future in the mind of the witness and led to a desire to co-operate with the police in order to bring about an amelioration of circumstances and removal of the threat of being charged. In these circumstances there is a real possibility that such witness might succumb to suggestions or relate what he

thinks his captors would like to hear. His version when set out in the form of a statement is affirmed under oath. He is throughout aware that should he deviate from his initial statement he runs the risk of being charged with perjury or incur the displeasure of the court, thereby bringing in jeopardy his chance to obtain an indemnity in terms of section 204. It is evident that such a witness is in a difficult position.

In the case of the witness ic.8 the matter is compounded by his evidence of an assault upon him by the police during his interrogation. This evidence was not disputed.

We approach the evidence of these witnesses with the utmost caution. On aspects where their evidence stands alone and is not bolstered by other reliable evidence or the probabilities, we will disregard it. Where it is so borne out we will consider it as part of all the evidence in the case.

ACCUSED NO. 2

(OUPA JOHN HLOMOKA)

He cannot be faulted on demeanour. Portions of his evidence are improbable and contradictory. He is a wholly unreliable witness.

1. He contradicted himself in answer to the court and advocate Bizos on whether he would have seen had the front rank of the march broken away.

2. His round about route after dispersal of the march seems inexplicably furtive.

3. His attempts to evade the implications and meaning of the policy of AZAPO as set out in exh B.2 - the proceedings of the third annual congress of February 1983 - are to say the least incomprehensible. His statement that "indigenous owners" in exh B.2 p.38 "transferring the land to the indigenous owners" is Blacks in the sense of Blacks, Indians and Coloureds does not make sense historically.

4. It is wholly unclear from his evidence how the policy of AZAPO as set out on exh B.2 p.38 can be attained in South Africa, practically speaking, without blood-shed.

5. His evidence that AZAPO unites against an enemy which is not personified but is just an idea of policy namely apartheid is in conflict with the documentation.

6. His allegation that AZAPO stands for non-violence is not borne out by the AZAPO documentation inter alia exh B.26 and his attempts to explain it are not convincing.

7. The same applies to the subject of negotiation with the government exh B.2 pp.16 and 25. His reference to exh B.2 p.6/7 as support for a view of AZAPO as being in favour of bargaining is not borne out by the document. It is clear that in the present context there is to be no bargaining - only from a position of strength - to attain which the use of violence is not excluded.

8. His evidence that there were no AZAPO branches in Sebokeng and Sharpeville is in conflict with the documentary evidence emanating from himself. Exh AP.14 and AP.15 pp.3 and 4. His explanation that exh AP.14 was printed before he had got the permission of accused No 3 is unlikely.

9. It is highly unlikely that accused No 2 who is the pivot of AZAPO in the Vaal would not attend any meetings of the Boipatong branch of AZAPO - not even its founding meeting - or hear only third-hand of the founding of the Bophelong branch and never attend any of its meetings.

10. His evidence that there was no branch (unit) of AZAPO at Evaton is belied by exh AP.16 - written by Kebi Shabangu, the chairman of Vaal AZAPO.

11. His version that he gave Jabu Tshabalala's speech to the witness ic.8 (a total stranger) to read to the meeting of 19 September 1983 because he looked as if he could read, is far-fetched.

12. His counsel cross-examined the witness ic.8 at length on the basis that he did not know a poem "cry Africa, cry" which he said he had recited, but knew "Africa my beginning" and recited that. When accused No 2 testified he told the court that he heard the witness ic.8 recite "cry Africa, cry" at a meeting.

13. His evidence that AZAPO Vaal was founded in 1980 is in conflict with the minutes of AZAPO's congress of 1982, exh B.17 p.3 where the Vaal branch is not mentioned.

14. Having stated in chief that he had called the candidates in the November 1983 elections collaborators, oppressors and sell-outs, in cross-examination he retracted that, saying he only used sell-outs and when pressed, that he possibly had used the others but that he did not remember.

15. His evidence is conflicting on his acquisition of the tape which he allegedly played to the witness ic.8 and about which there is a serious conflict in their versions. Accused No 2 said he had the tape in his possession when he first spoke to the witness ic.8 just after the meeting of 12 September 1983 about the latter's proposed membership of AZAPO. But the answer is not clear. He says "Yes it was during October". We know he got the tape (if his version is true) on 8 or 9 October 1983.

    The "it was during October" can refer to the obtaining of the tape or the conversation. But if it is the latter then it conflicts with his previous evidence. If it is the former, he could not have had the tape at the time of the conversation. Whichever it is, there is a conflict.

16. The denial of accused No 2 that he knew that the witness ic.8 was also on the committee of the VCA and chaired a public meeting of the VCA on 19 February 1984 is highly

improbable. In fact the witness ic.8's evidence that accused no. 2 referred to his membership of the VCA when they discussed the witness ic.8's participation as a possible speaker at the meeting of 16 June 1984, was never challenged in cross-examination.

17. About the tape which accused no. 2 played for the witness ic.8: It was put to the witness ic.8 that those present were Boykie Moshe, the witness ic.8 and Charles Mabitsela. Accused no. 2 in his evidence said that those present were Victor Maluleka, Tapeli, Charles Mabitsela, Boykie Moshe and the witness ic.8.

18. It was put to the witness ic.8 that his evidence was false that accused no. 2 spoke at the meeting of 2 September 1984. Yet when accused no. 2 testified he gave a detailed version of his own speech there.

19. It is improbable that AZAPO upon hearing of the increased rent would do nothing about it, not even have a committee meeting on it, and wait for the community to do something. The answer that in Sebokeng where the members were resident it would have been difficult to call a meeting is not true. In June 1984 AZAPO held a meeting at Small Farms. When it was put that his evidence that AZAPO would fall in with the

community action in Sebokeng entailed that they work with the VCA he agreed, but then stated that they could not as it was affiliated to the UDF. His statement that AZAPO could not in Sebokeng participate in VCA action and thus was incapacitated, is unacceptable. It would entail a vast loss of support if that were true. In fact both he and the witness ic.8 were in the VCA march.

20. His attitude against councillors is clear from the fact that he never took steps to ascertain the reasons for the increase in rent but called for their resignation.

21. He was evasive on the question whether he knew the people in the house of accused no. 3 prior to the meeting of 19 August 1984 or not.

22. His evidence about the note he allegedly sent to accused no. 3 about the presence of sergeant Koaho at the meeting of 19 August 1984 is suspect. He said in chief he sent it. In cross-examination he said he got up and handed it over. If the latter is true, he could have spoken to accused no. 3 easily and more effectively.

23. If he, when addressing the meeting of 19 August 1984 at Sharpeville, thought it was a local meeting and he did not have in mind a boycott of the whole Vaal's councillors as he says, his mere participation as a speaker and his proposing a resolution becomes preposterous. The fact that he speaks of boycotts of garages, businesses and taxis of councillors when he only knows of one councillor in Sharpeville who had a business (but no garage or taxis) indicates that he had in mind a much wider boycott than Sharpeville alone.

24. When asked about the meeting of 19 August 1984 - whether he had ever been to a meeting where people had been excited - he feigned not to know what excited was.

25. His evidence that he after attending the meetings of 19 August 1984 and 26 August 1984 which were important events did not even mention them to his AZAPO committee members is peculiar as is his evidence that AZAPO would be totally passive in the rent dispute in Lekoa. This is totally <u>contra naturam</u> of AZAPO.

26. The evidence about the petition in Sharpeville only, that councillors resign, does not make sense if, as it is said it was <u>inter alia</u> to meet mayor Mahlatsi's statement that he

would not resign till his electorate asked him to. He is in Zone 11 or 14 and not in Sharpeville so a Sharpeville petition is unlikely to have any effect on him.

27. He contradicted himself on whether at the meeting of 2 September 1984 a petition was signed or not.

28. His evidence is that he did not think the stay-away on 3 September would be a success. And he has nothing to do with the Sharpeville Anti-Rent Committee. And he does not even live in Sharpeville. Yet he proposes that on 3 September 1984 they meet at this church in Sharpeville about the rent. This would be for the fifth time. And just to sign a petition he thought. This version is far-fetched. To this can be added that he made no attempt on 3 September to arrange for transport to take him there, but went to the march instead. It is clear that he never intended to go to Sharpeville otherwise he, the alleged proposer of the meeting on 3 September would have seen to it that he got there. He did not even mention to his friends, the witness ic.8 and Skeneke on 3 September that he wanted to go to Sharpeville.

29. His evidence that on the morning of 3 September at the shops he remembered the pamphlet advertising a meeting and that he then suggested that they go to a meeting at Small Farms is in conflict with his later evidence that he knew of the march and went to Small Farms for that purpose. In the light hereof his denial that the march was mentioned to his companions is nonsense.

30. His evidence that there was no new group in front of the vanguard of the march is in conflict with what was put. His evidence on where the vanguard of the march was when smoke was first seen is also in conflict with what was put. His evidence of the meeting and merging of the group of 300 with the march at the intersection is not clear at all.

31. His alleged discussion with Louis Vilakazi is improbable. Vilakazi tells him of the attack on Ceasar Motjeane's house but he does not ask him anything about it, and says he was not interested. And that when the sole topic of conversation is the reason for the number of people standing around.

ACCUSED NO. 3

(T.J. MOSELANE)

Verbose and the most evasive witness we had in the whole case. His evidence was often contradictory and often untruthful. He is a totally unreliable witness.

1. He was evasive on the work of the Committee of Ten - of which he took over while they were in detention.

2. He stated on 3 June 1987 that at the meeting of 12 August 1984 there had been a banner, brought by Nosipho Myesa. On 4 June 1987 he stated that at that meeting there had been no banner. It had first been at the meeting of 19 August 1984 and that he did not remember that Nosipho Myesa brought it. Later on he stated that at some meetings there had been a banner. At which he did not remember. This should be seen against the material state evidence about the banners at the meeting of 19 August 1984.

3. His answer that Rea Hoboka Morena is a freedom song is in conflict with all evidence, and his explanation is non-sensical. As far as Nkosi Sikelela i Afrika is concerned his version that it is a freedom song may be right depending on the purpose for which it is sung.

4. His explanation of the words of the women on exh V.31 p.8, does not make sense.

5. Asked by the court why he had told the meeting that VTC exploited the people he twice stated that it was because they did not grant bursaries or give anything back to the community. After the tea adjournment he changed his story saying that he had meant the bus fares had been rapidly increased.

6. He denied that his reference in his speech to the fact that the children should give the parents a chance (exh V.31 p.11) referred to the incident of stoning of buses, but the text speaks for itself and his attempt to give his words a different meaning was pathetic.

7. His advice from Mrs Buthelezi, the attorney, was that she was still studying the law to see if there was a case for an interdict. In fact she had not done anything. Yet he

told the meeting (V.31 p.13) "there is a loophole in the law" and when asked by the court about this stated that he had had this advice from Mrs Buthelezi.

8. He stated twice that the purpose of the court interdict was to prevent ejectment of people in arrear with their rent. This is in conflict with exh V.31 p.19 last para where it is stated to be to prevent the increase from becoming legally effective.

9. His evidence is conflicting on whether there were banners in the church at the meeting of 2 September 1984.

10. In chief he said that after the church council it was agreed that in respect of the meeting of 12 August 1984 he would get people to assist him. In cross-examination he stated that it had not been discussed. The success of the meeting was just left to him. This he retracted later.
Asked why he had not asked assistance from his elders or people of his church (instead of going to the union) he gave the nonsensical answer that they work according to regulations. The question why he did not get people from his church to assist him was never answered.

11. He was evasive when asked why he had not in the notice (exh AN.15.5) stated the convenors of the meeting of 12 August 1984 and evasive on discussions at the meeting of churchwardens and evasive and conflicting on whether it was resolved that he should get help in organising the meeting.

12. His evidence that there was no anti-rent committee and that he never was the chairman or acting chairman of a committee (in this connection) is in conflict with the reports in the Rand Daily Mail on the meeting of 12 August 1984 and 19 August 1984, exhs DA.10 and AAQ.6. He read both reports and never corrected them. It is also in conflict with what his counsel put to Koaho - that the meeting of 19 August was called by the anti-rent committee.

13. He first told the court the meeting of churchwardens which decided to hold the 12 August meeting consisted of sixteen persons and they were all present. Later he stated only five were present but that that was a quorum.

14. It seems strange that whereas this is a church initiated meeting he voluntarily on his own initiative relinquishes the chairmanship to Hlube on 19 August, 26 August and 2 September.

15. He denied in cross-examination that there was a platform in the church whereas this had been common cause and he well knew what counsel for the state was talking about and whereas he himself used that word just after that twice.

16. The churchwardens instructed him to arrange a meeting of the church on 12 August 1984 to discuss the plight of forty parishioners who were needy. On his own he co-opted two non-parishioners and converted the meeting into a public political meeting where the problem of the forty receded and the increase in rent and the councillors became the focal points. This remained the position in the following meetings.

17. He contradicted himself on when Hlube was appointed chairman of the meeting of 19 August. On 9 June 1987 he said it was on 19 August just before the meeting. On 10 June he said he had been appointed earlier that week and on 19 August he was only reminded thereof.

18. To the question why Hlube was to be chairman no satisfactory answer was forthcoming bearing in mind it was a church initiated meeting in accused No 3's church. Hlube is approximately 30 - 34 years old and a total outsider.

19. His inability to recollect whether the petition which he drafted contained reasons for the rejection of the increased rent, is curious.

20. He was evasive on whether Nosipho Myesa was told to be at the meeting of 3 September (as Hlube and Mosoane allegedly were).

21. His explanation of the conflict between his evidence and para 9 of the Rand Daily Mail report of 16 August 1984 on the meeting of 12 August 1984 does not make sense.

22. He is unable to produce any form of the petition or mention any helper who had them nor are they shown on the video (exh 41) despite his allegation that 2 000 were produced.

23. His attitude towards the authorities is clear from the cross-examination on his interpretation of the word "oppression". A new hospital for Blacks in a Black township is oppressive as there is a distinction between Black and White. So are local authorities (where there were none) oppressive if they are of blacks for blacks. In fact on this basis everything is oppressive as it stands under the general umbrella of apartheid.

24. He was extremely evasive on who the oppressor was in this so-called oppressive society

and on the meaning of Amandla Awethu

and on the means to be employed to attain his goal for South Africa.

25. On the meaning of "struggle of the people" which he equates with "liberation struggle" and "freedom struggle" he was wholly mendacious. He says these all mean struggle against general sin.

26. His alleged ignorance of the black consciousness movements stance on the leadership of Mandela of the Blacks in South Africa and on the Freedom Charter is unacceptable in the light of his close association with Black consciousness organisations and his adherence to the philosophy.

27. His reason for not voting in the elections for Black local authorities given after a number of evasive answers is that he does not want to participate in politics - being a priest. This answer cannot be true in view of his participation in AZAPO meetings and in the August/September 1984 meetings in his church.

28. His denial that he knew the meeting of AZAPO in his church on 27 November 1983 was to be a protest meeting is unacceptable.

29. There are numerous instances where this witness was very evasive. They are too many to mention.

30. His evidence that nobody blamed or criticised the councillors at the meeting of 12 August 1984, is improbable in the light of the resolution taken and in conflict with his later evidence that the report in the Rand Daily Mail of 16 August 1984 on the meeting is correct (exh DA.10).

31. This witness was often argumentative and had to be warned by the court.

32. He contradicted himself on the question whether councillors had been said not to heed the plight of the pensioners - at the meeting of 12 August 1984.

33. His evidence on exh DA.10 is evasive, illogical and sheer nonsense.

34. His denial that he had been politically active in Soweto was shown to be incorrect when he had to admit he participated as a placard bearer in a protest march against the banning of certain political organisations like SASO and the detention of their leaders. His answer was that that is not political activity. One is only politically active if you are a member of a political organisation.

35. He did not ask accused no. 16 for financial help to alleviate the plight of his poor parishioners - though the SACC renders financial assistance - but instead asks him to address the meeting of 19 August 1984 on how they in Soweto stopped the rent increase. He motivates this cause of action by saying one does not help just by giving. One should arrange it that people do things for themselves.

36. Cross-examined on the meeting of 16 August 1984 between clergy and councillors he first denied that councillor Mahlatsi had proposed a week of goodwill and later said so himself. He first denied that anything had been offered free by the council and later admitted that free tickets to a choir had been offered. He denied that he was spokesman for the clergy yet this was put on his behalf by Mr. Bizos to Jokozela. He could not explain this discrepancy.

37. His evidence that he and his party saw only police vehicles passing his church and house does not support what was put to Koaho - that two police vehicles were parked at the church.

38. His evidence conflicts with what was put to Koaho about accused No 3's entry into the church on 19 August 1984, on the contents of accused No 2's motion, on whether Nosipho spoke at the meeting of 26 August 1984, whether accused No 1 said moneys obtained were used for the benefit of the Whites, and whether accused No 1 said that extra rent would be used for the SADF.

39. His explanation of accused No 16's speech at the meeting of 19 August 1984 that the council and government had to pay the rent themselves as they had built apartheid houses for blacks, is absolute nonsense.

40. His evidence conflicts on several material aspects with exh AAQ.7, the Sowetan of 21 August 1984, which has a report on the meeting of 19 August 1984 which was put as the truth by defence counsel to state witnesses. Yet he mentioned there is nothing wrong with this report.

41. His evidence on the meeting of 26 August 1984 appears to be in conflict with the transcripts exhs V.30 and V.31:

(a) accused No 3's evidence is that no organisations were involved only himself (on behalf of his church) and two individuals in their personal capacities Hlube and Nosipho Myesa. Yet Harris is told by Hlube that organisations had a part in arranging the meetings (exh V.30 p.6) and by accused No 3 that there was a consultation of the churches and the trade unions. Exh V.30 p.6;

(b) his evidence that he was the only (appointed) speaker is in conflict with the chairman Hlube who speaks of speakers (exh V.31 p.4) and introduces accused No 2 after he has called on him to speak as from AZAPO;

(c) his evidence that the speakers were not against councillors is in conflict with exh V.31 pp.3, 4, 5, 6 and 7;

(d) that he did not know that there was talk of a stay-away till 31 August 1984 is in conflict with his reaction to the speech of Mokgema (exh V.31 pp.14 and 15) who speaks of it and of stopping of buses and taxi's;

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