

INQUIRY INTO THE BOIPATONG MASSACRE

VEREENIGING

DATE: 1992-10-20

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 : ADV D J ROSSOUW (SC)
 (Vice Chairman)
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 FORMER CHIEF JUSTICE OF INDIA

ON BEHALF OF:

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INKATHA FREEDOM PARTY : ADV L VISSER (SC)

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 OF CHURCHES : ADV A CHASKALSON (SC)
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THE COMMISSION : ADV J J DU TOIT
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inform Judge Bagwathi of the many occasions on which various members of the public in instances, a good many of them of the sort of client that my learned friends across the table are acting for, who threw up their arms in dismay when the military were to be employed in policing the townships.

Well that I am afraid is, and the obvious anomaly of their saying then that the military should not be there and saying there, yes they should have been there but quicker, that I am not going to level any criticism arising out of that. This is part of the unfortunate situation in which this country finds(10) itself.

I would like to read one other passage from his lordship Mr Stafford, J:

"And the wisdom of using untrained (untrained in the sense of township duty) active citizens for soldiers, national servicemen. (And he says there at page 2912).

Many of the soldiers who testified before me were not only young men under the age of 21 but soldiers whom one could describe as semi-literate. For example young men who had not reached matriculation passes or young men who(20) had reached standard 6 or 8 or 9 at advanced ages for that standard. Most of them were not professional soldiers in the sense that they were going to make the army their career. Most of them have since left the army and most of them were either doing or completing their military service. Booysen was 22. He had been in the army three years, and so on."

No there is something else that, with respect, you should bear in mind when you look at the actions of Vaal Commando that night. Three non-commissioned officers were in charge of the (30) vehicles/

vehicles with which we are principally concerned. Each one of them holds the rank of Corporal. For the rest, their compliment consisted of soldiers holding the equivalent rank of private, officially for their sort or organisation, riflemen, but privates.

You will also bear in mind that unlike policemen who by law are given discretionary powers and are taught in the college and elsewhere to use them, people at the rank of corporal and riflemen have no discretionary powers by law, and although more senior commissioned officers will disagree, I have heard it said(10) by regimental sergeant-major there is no greater danger to the army than a private that wants to think for himself. And that is so. These are not thinkers. They have orders and they must carry them out. They are automatonous and once a man is given the rank of corporal, he is little better. On that night the three groups, consisting as they did of three corporals and three groups of riflemen were about their business and that was described to you when Captain Major van Wyk gave his evidence and you will find it on the record. It is described they had to protect Iscor and for the rest they were given some patrol work in(20) the area, and that is all they had to do. If anything went wrong, they were immediately to supply the intelligence of what was happening on the ground by radio to their headquarters and I shall, a little later on, show you how that was carried out.

Now in the light of that and in the light of those generalities where you have corporal and rifleman who are not trained and are not required to exercise any discretion, I ask you to evaluate their conduct in that light. And also in so doing, not to make the mistake, with great respect which was made across the table. Please when you do so, I am sure you will not use (30)

hindsight/

hindsight which was the weapon across the way. 20/20 hindsight was used to criticise the soldiers for whom I act, and equally you will not in dealing with riflemen and corporals expect from them that they perform their duties according to the tenets of the counsel of perfection.

You will recall Mr Chairman it was once said by an appeal judge: There is no more odious character than the reasonable man. Well how much more odious than the reasonable man is any sort of judgment which implies hindsight and the counsel of perfection in judging people. That must be a lot more odious than(10) the reasonable man.

I want to say this to you, I would like you please to evaluate their conduct. I am going to come back to exactly what they did, each one of them at the different stages, but before doing so, I would like to deal very briefly with the facts, the common cause facts, which my learned friends put up to you.

CHAIRMAN: Can I just ask you one question? I perhaps should not, but actually I had forgotten. What you have referred to as the security duties of the Defence Force in relation to Iscor as a key point, was that the, were both of our commando and Group(20) 21 involved in that, or was it one or the .. (intervenes).

MR MOSTERT: No, only the Vaal Commando. The 21 batallion is under the command of Group 17, which is the local headquarters, and their prime function is patrolling the entire area. Group 17 has jurisdiction in that entire area and for purposes of this investigation, they were there to assist the police when called upon, but then as Major Davidson says, and it is not disputed anywhere, in a minor key, they were to do what the police wanted them to do. And while we are on that, it is very interesting to see what happened. That evening at a certain stage, Captain Roos (30)

phones Commandant Topper who that evening was in charge, you have met Commandant Topper, that evening was in charge of Group 17 in the absence of the officer commanding and he called for assistance and he was immediately given that assistance in the form of Lieutenant Andima and his men whose conduct is nowhere attacked. And that is how it worked.

Obviously, if I may just add this appendage to my answer in relation to Vaal Commando. Let us assume that Iscor itself was under some sort of attack and Vaal Commando was not up to doing its job, it would obviously through Group 17, call on 21(10) batallion and they would assist, but only to that extent. They were as different in relation to this sort of work as chalk and cheese.

CHAIRMAN: I appreciate it, but the daily routine was the Vaal Commando's ..

MR MOSTERT: The daily routine was the Vaal Commando's and it is very interesting to see how it all went because that evening, we know, you know from the evidence that Vaal Commando had three vehicles on the road that evening. It had one, this one which is called a Fish Tank or a Microwave and that is the first vehicle(20) that things were amiss and immediately reported it. In fact, there is some suggestion that they even wanted to go into the area, but that permission was refused, and they went into the area. While the other two, the two Buffels, were escorting the buses from Iscor itself to the other hostel in the area, the KwaMaziza and that is their duty. That is what they normally do. Those buses were ferrying Iscor personnel back and forth.

CHAIRMAN: Thank you Mr Mostert. If you are going on a new subject, perhaps we should take the adjournment now for 20 minutes until 11:15.

(30)

MR MOSTERT: Mr Chairman and gentlemen, I have placed in front of you excerpts of things like the logs and the occurrence books. I shall deal very briefly with them presently, but for the moment, I want to deal with the facts which our learned friends say cannot be disputed.

Well this document is like that little nursery rhyme character who was: when she was good she was very, very good, but when she was bad, she was very, very bad. And the same goes for this document. In the respects that it is bad, it is really very(10) bad, but let me go through that with you.

Would you please commence at page 5, paragraph (h). In about the middle of that paragraph it says:

"They ran back to Cape Gate and stopped a South African Defence Force vehicle to ask for help. They are told that the South African Defence Force vehicle cannot go into the township but that help will be arranged."

That was the evidence of Mr Maesela and is not disputed by the South African Defence Force. Well nothing can be further from the truth. We are going to come back to the evidence on(20) this where it is, where we give you the correct versions of what happened.

Then if you go to page 11, paragraph 12. According to Mr C the group he was with crossed Frikkie Meyer Boulevard and returned to KwaMadala hostel along the same route they had previously used. That is proceeding behind the nursery, up the main road and through the main gate into the hostel. Well, that is the evidence only of one person, Mr C and then he can only talk of the group, the nine people that he was with. He gives you no indication of how the rest travelled and let me correct (30)

something/

something which I told you yesterday. You will recall Mr Chairman, you were asked yesterday which is the east gate. I said with a great deal of confidence it is the main gate. Well I was quite wrong. The east gate is the one that we looked at that day when we went on the first of the inspections. That is the east gate and it is the one nearest Boipatong, and one would imagine that if anybody, any large crowd coming from Boipatong would use that gate rather than .. But I do not want to get involved in that fight, other than to show you what we did at Vaal Commando and what we thought. You will see that the evidence is over-(10)whelming that the Vaal Commando people, including Major Jordaan when he arrived on the scene, were firstly under the impression that the people moving across Frikkie Meyer Boulevard were people from Boipatong on their way to attack KwaMadala. That emerges so clearly and the radio logs record that. And the next thing that we did, was to try and find this group that were going to attack KwaMadala and the fear was that they were going to hide in the rushes at the time, and you would see that spotlights were thrown on the rushes and teargas grenades were fired into the rushes to flush out what were perceived to be the(20) would-be attackers.

Our role was a very different role to that which was sketched yesterday but I shall come to that.

And then again on page 11, at the foot of that page the last sentence:

"This group disperses without searching the hostel and without any arrangements having been made to secure the hostel to ensure that no movement takes place in or out of the hostel or to arrange for the hostel to be entered and searched. Iscor was not informed of the attack which (30)

had/

"had been launched upon the residents of Boipatong or of the fact that the residents of Boipatong claimed that the attackers were from KwaMadala."

Let us take that bit by bit commencing with the last one. This thing that Iscor was not attacked, that is a pure thumb suck. You have the Iscor log, which has been handed in as evidence and recorded on page 3403, the entry 509 which is the last entry, it is not on the logs which I have handed you. It is their log.

CHAIRMAN: It is in the Iscor log.

(10)

MR MOSTERT: And if, when I have read this, I will hand it up to you if you will give it back to me later on. Oh I am indebted to my junior. It is there. In fact, may I take you through it. You will find a document like this which says: voorvalle, Wednesday 17 June 1992, and then you will see an entry 509, and I am going to read that English.

There is an report. The internal stability unit was contacted in order to confirm that Constable Cornelissen had mentioned that a great deal of trouble was brewing in Boipatong since members of Inkatha, of KwaMadala had created a great deal(20) of trouble. So then 511: Romeo berig dat weermag, Romeo is one of their stations, reports that the South African Defence Force has reported that it is not the KwaMadala residents, but apparently a group of youths which is now in the grass, the expression is used in the plural, in the grasses in Afrikaans and they are not visible.

So you will see from that that Iscor was fully informed of the situation and of the misconception.

MR BAGWATHI: These are entries from the log book of Iscor?

CHAIRMAN: Yes.

(30)

MR MOSTERT: From the log book of Iscor. Now let us return to the other part:

"This group disperses without searching the hostel and without any arrangements having been made to secure the hostel, to ensure that no movement takes place in or out of the hostel or to arrange for the hostel to be entered or searched."

Now Mr Chairman and gentlemen, you will remember that what our role is, first of all in so far as the Vaal Commando is concerned, that was the unit which was concerned with protecting(10) Iscor. They had no business to go into Iscor and to search the people, and to the extent that that was a requisite by somebody it was, they could not act and did not act and they were subject to this way of the police at that stage. So no finger can be pointed to them as a result of this and I do not know why we are included.

Then finally 15 on page 12.

CHAIRMAN: Mr Mostert just wait. Can you remind me where did the reference to the east gate come up? It was a quote from somebody's evidence. If your memory is as defective as mine, it is(20) dangerous.

MR MOSTERT: As I recall it, it was when either Mr Chaskalson or Mr Kuny were addressing .. (intervenes).

CHAIRMAN: But as I recall it, they were reading from a report. I do not think .. It was not .. Anyway we can find it. Do you remember ..?

MR CHASKALSON: Can I help you? My recollection is that (inaudible) there was some document which was saying that a message was confirmed there and it is an Iscor document. We will look for it.

(30)

MR MOSTERT: You may well find it in the log before you. Then on

15:

"Three sections of 21 batallion were called at midnight and posted to Boipatong (quite right. And then it says) In order to prevent the residents of Boipatong from moving to KwaMadala hostel .."

That is quite right, and what it does is to give the impression that the Defence Force was used to prevent a counter-attack by Boipatong on KwaMadala. That is not the purpose. The Defence Force was called out as an adjunct to the internal stability unit to stabilise the area. And that is why they went there and that is what they did, and nobody has suggested anything to the contrary. And the strange thing is that if this was to be my learned friend's case, why that was not put to anybody anywhere along the line or any evidence suggested. They have no evidence to suggest it, they have not put it to anybody, but worst of all, they, this piece of putting it as kindly as I kind, this piece of wrong information, is masqueraded as a common cause fact and it is not.

Well I shall come presently to each one of these when I(20) deal with the situation. May I go back now please and deal with what did happen that night, in so far as these people are concerned and I start with Van Wyk. At page 29 of his evidence, at the preliminary hearing, he says this at the foot of paragraph 5.1:

"At the time of this investigation, everything was quiet in the township. It must be mentioned that the occurrence of gunshots in this township at any given time is not a rare occurrence and happens quite often."

Now the reason why I make mention of this, much was made (30)

by/

by Mr Kuny of the fact that when South African Defence Force people were outside Cape Gate, they heard gunshots and he expected them immediately to charge into Boipatong as a result of the gunshots. Well Mr Chairman, gunshots on this evidence, uncontroverted and in many respect supported by the general impression that was sketched of Boipatong by all parties, was that this is not an infrequent occurrence.

Then Mr van Wyk carries on and he says, another passage at page 30, 5.8:

"At this stage Corporal Odendaal saw that the group of(10) blacks was moving in the direction of Frikkie Meyer Boulevard. This was also the direction of the KwaMadala hostel. Lance Corporal Odendaal and the soldiers with him thought that these people were on their way to KwaMadala hostel."

Now that was said at the very early stages that this impression and it was obviously an incorrect impression, but that this impression existed was not attacked, nor suggested that they should have had a very different impression. And again, if one pushes away the 20/20 hindsight, if one pushes away the(20) counsel of perfection, it is a very reasonable thing for national servicemen on duty that night, they know that there has been trouble in Boipatong, they have heard the gunshots, they have seen people running out, as we know injured, and have reported trouble. And then later on they see this movement across. The impression is there, quite legitimately, not using the 20/20 hindsight of people who know that these were the KwaMadala people moving back into the hostel that these were people moving to attack KwaMadala hostel and when we come to the log, you will see that confirmed again and again. (30)

Then/

Then we get to an important part of Van Wyk's evidence at page 32 and you will forgive me if I read at some length:

"Thereafter Major Jordaan ordered one Buffalo to go to .."

And interesting about Major Jordaan he, when he heard about this, came out in a softskin vehicle. You will see how he comes to be there. He comes out and takes command of his men. He quite obviously is also under the impression that these people are going to attack KwaMadala hostel and which is Iscor property, it must be remembered, and they are very concerned as Vaal(10) Commando of an attack on Iscor property. And he patrols extensively in that area and he does two things besides, three things of importance.

There is a patrol along Frikkie Meyer Boulevard in that area between Boipatong and KwaMadala hostel, lights are shone into the area of the grass, die grasse, and grenades, gas grenades are fired in there to flush them out. He is on the scene as soon as he knows and as soon as he can reasonable be expected to be there out on the scene and he stays there, I think on the logs, until about 02:30 the next morning. (20)

He is not concerned about going into KwaMadala hostel, and arresting people for two very good reasons. That is not his job and he should not be doing that job, but there is a more important job. He is going to apprehend and if he can, prevent the attack on KwaMadala hostel which he believed is about to come.

Now again you use clear sight in stead of this hindsight and you see how perfectly reasonable and effective was action taken by the Vaal Commando that night, particularly in the later stage by the major. I continue reading:

"Thereafter Jordaan ordered one Buffalo vehicle to go and (30) investigate/

"investigate along Frikkie Meyer Boulevard what had happened to the group of people. In this regard it must be stressed that the area adjacent to Frikkie Meyer Boulevard on the western side of Frikkie Meyer Boulevard is a very rugged terrain which is inaccessible by vehicles. This area consists of dense reeds, dongas and ditches. Various attempts were made to locate the group of people in this rugged area, but without success. As nothing further happened, Jordaan decided to withdraw all the military personnel and they all proceeded back to Vaal Com-(10) mando headquarters in the early hours of 18 June 1992. (And then he is questioned about this and I think ..)

"Now in your investigation is the question could you establish whether that was in fact the attackers or not, the group of people that were returning to KwaMadala? -- Mr Chairman no, we could not establish if they were the attackers or not. They were just a group of people moving from the black township and we could not find out where to.

This is obviously at the time. Weir to the witness did(20) they see any weapons on them? Did they wear any headgear or anything like that to try to identify them? The witness said, but some of them were the witnesses that I was (inaudible). Some of them said that white headbands were worn and said that knobkieries and spears, and that is confirmed by the evidence.

Then over the page at page 33 is the next passage, about a third of the way down:

"Now did any of the Vaal Commando in fact, went to and asked them what they were doing there? -- No, there was about, at that stage, eight persons on this vehicle and (30) knowing/

"knowing the situation in the area, we did not try and confront them and that is why we let our headquarters know and asked for assistance, to let the police know what is happening."

Now you have got one vehicle at that stage, and again they asked us to do something out of the anals of Hollywood. Well the sort of action prescribed for us by our learned friends may go down very well in Hollywood, but they do not go down at all well in the sort of situation that we had on that night in the area. (10)

The first thing you must remember about a Buffel, a Buffel is an open vehicle, unlike a Caspir or a Hippo or a Nyala. A Buffel is susceptible to effective attack by a handgranade, it is susceptible to effective attack by a petrol bomb and provided that those armed with firearms can get sufficient of an elevation to fire into the vehicle, they can pick off the soldiers in a vehicle like that at random. What can five soldiers do in that sort of vehicle against a mass, variously described as from 239? Am I wrong to say that somebody said 2 000? Somebody said 2 000. Probably the truth is somewhat more than 239 and somewhat less(20) than 2 000. No they could not possibly and that is the simple answer.

Then would you return please to page 35 and you will find this passage about halfway down. Mr du Toit asks a question:

"Am I correct, you are not assuming that it was the attackers that attacked Boipatong going back to Boipatong? -- No we did not about any attack that night at that stage.

Well at that stage did any of the South African Defence Force personnel involved know about what occurred at (30)

Boipatong/

"Boipatong? -- No sir, they were just .. (And then he goes on).

All they were aware of as I understand it, according to your investigation was that they saw this group of up to 200 men crossing the road going in the direction of Kwa-Madala. -- The assumption is correct.

And you say some at least of them, assumed that they were going to attack KwaMadala? -- That is correct".

Now let us have a look at some of the logs. What we have done, we have taken the liberty of photographing the logs, un-(10)derlining the entries which we think are of moment. Can we commence with the pink log of Wednesday 17 June 1992? The entry 3211, 21:50. 31C is the call sign of one of our Buffels, the Vaal Commando. Oh forgive me, I am told it is the Fish Tank. 10 is the call sign of the control room at Vaal Commando and they report that vehicle which was burning and which we now know about.

Then at 22:05 31C calls in and informs that there has been a report of a large crowd at the robot near Iscor and then at 22:30 headquarters control room calls 31C and says: please(20) report on the shooting at Cape Gate. At 22:45 is the next entry and 32B, which is one of the Buffels, says about 500 blacks are seen moving in the direction of KwaMadala and a few minutes later 32B says he wants reinforcements. 31C then says, tells you that he is at the east gate. 23:10, 19A is the first time we have Major Jordaan on the air. Major Jordaan is on the air and he tells them that he is on his way to KwaMadala. At 23:12 a Buffel .. (intervenes).

MR BAGWATHI: 19A was, what was 19A?

MR MOSTERT: Major Jordaan.

(30)

CHAIRMAN/

CHAIRMAN: Major Jordaan.

MR MOSTERT: He was the commissioned officer in charge of the Vaal Commando men that night and travelling in the softskin vehicle.

CHAIRMAN: Sorry just this one thing. This: voertuig besig om uit te brand. Do we know where that vehicle was?

MR MOSTERT: It is the one that everybody else knew. It is in the area of, if I can say it, the top end of Slovo Park, in the veld.

CHAIRMAN: But this was in Boipatong? (10)

MR MOSTERT: Yes, well on the outskirts of Boipatong.

CHAIRMAN: On the outskirts?

MR MOSTERT: In other words .. It is mentioned in Van Wyk's evidence. I think somebody else during the course of the evidence referred to it. If one were to go in the direction along Noble Boulevard away from the intersection and the garage, you would come to a point at the end of that road and in the veld very close to that is where this vehicle was found burning. And then you were given 32B who says that he is carrying on with the South African Police. (20)

Now if you will, the next document is the occurrence book of Iscor, and the first entry is the 499 serial number at 22:55, the report that official S de Brico mentions reports by telephone that he has received a report from official Johans who in turn has received a message from Vaal Commando that approximately 800 blacks were on their way to the east gate, no, were on their way in the direction of the east gate. Now the east gate of Iscor is also where KwaMadala is.

Then there is another report a minute later.

CHAIRMAN: I see. Is the reference to the east gate here .. (30)

MR/

MR MOSTERT: Obviously, it must be the east gate of Iscor.

CHAIRMAN: The east gate of KwaMadala or the east gate of Iscor?

MR MOSTERT: That must be the east gate of Iscor. In general parlance in the area when they talk about, that gate is referred to as the east gate and it is one of the main gates of Iscor.

CHAIRMAN: If I have got my directions correct, the main gate of KwaMadala is the western gate of KwaMadala which is in the vicinity of the east gate of Iscor?

MR MOSTERT: Exactly right. Exactly right Mr Chairman. The report then four minutes later is that a rifleman Du Preez at Vaal(10) Commando is contacted and he reports that the blacks from Boipatong had moved in the direction of KwaMadala. The South African Police and the commando, that is Vaal Commando members are on the scene and they are monitoring the people, or the situation, but literally the people, die mense.

Of importance then is 511 at 23:31, Romeo reports that the South African Defence Force in turn reports that the residents of KwaMadala, that the people there are apparently not the residents of KwaMadala but a group of youths which are hiding in the grass and they are not visible. (20)

Then there is another report at 58, that would be just before 01:00 that the South African Defence Force, that would be Vaal Commando, had fired gas and that the reaction unit had withdrawn from the boundary fence and had returned to the east gate.

Now I assume that the reaction unit is the reaction unit of Iscor as distinct from Vaal Commando, and that they had returned to the east gate of Iscor.

And then you get the pocket book of one of the Iscor guards and two, both entries are of importance. The first one is (30)

that/

that a group of youths were marching, optog, a procession or a march on their way from Boipatong to KwaMadala. And then you can get the confirmation of that, and that is important, confirmation. That is confirmed with Rifleman Du Preez of Vaal Commando and the importance of that is that is the impression that Vaal Commando were in that there was this group of youths moving towards the .. Would you look at, first of all the first entry, the four-line entry under 22:40 (b). It is the next page. Pink log. It says pink log: Vaal Commando reports that approximately 300 blacks were on their way to KwaMadala hostel to attack the(10) hostel. The South African Police were going to investigate. Vaal Commando later reports that the situation has cooled down and RM word uitgestuur, oh, the reaction unit, the reaction unit. Then the next one, Vaal .. (intervenes).

CHAIRMAN: Is that the reaction unit of Iscor or of the police?

MR MOSTERT: That would be, no RM would be the 21 batallion, because we are now back to the pink log, you will remember is the log of the South African Defence Force radio room. Except this is Group 17's pink log, which was Vaal Commando's pink log.

Now Vaal Commando now reports that about 400 people were(20) on their way to KwaMadala hostel. They apparently want to attack KwaMadala and Vaal Commando is monitoring the situation. Geen verdere besonderhede nie, no further details.

May I draw your attention to what is the significance of the numeral letters in the first column? Those are times. 22:40, 17:23, that would be the date and the time, 23:00 is eleven o'clock. 17:30 23:20 on the night of the 17th and so on.

Then the next entry is Captain Roos by radio asks the question about the positioning of Vaal Commando at that time. That is 23:20. He reports that his people are on the scene, but (30) they/

they cannot see Vaal Commando's patrol. He then contacts Vaal Commando and they tell him their patrol is to be found at the east gate of Iscor. He then reports that to Captain Roos and then, ten minutes later the reaction unit of 21 batallion is on its way, or is out to the scene at KwaMadala. There is division in our ranks. There is a possibility that the RM in the first instance may not be the reaction unit of 21 batallion. It may be the Iscor one, but nothing turns on it. It may be that: RM word uitgestuur, is recording what is likely to happen. It is going to be sent out and that the next entry is the action already in(10) process. If you read it that way, nothing turns on it.

Now we get 21 batallion which is the third unit, the third military unit that is involved. They also have a radio room and therefore also a pink log and that is the pink log which you are given. And the entry of 23:40 is of importance and this is obviously I think written by a person in respect of whom Afrikaans is not his first language. I am going to read it and then translate it: Soek drie voertuig. Looking for three vehicles of peleton 2 of the second platoon and they are looking for the person Maseki as soon as possible. Then it says that people(20) at KwaMadala hostel are busy shooting other people.

Now that is obviously not quite what happened but this gives the impression of a civil war within a civil war, but it is quite incorrect.

I want now to deal with the evidence of Maesela and Maesela gives evidence and he says two things, which we say are incorrect, but whether they are correct or incorrect, nothing turns on it and you can accept either version and the result in so far as adjudicating it upon the conduct of Vaal Commando that night, remains exactly the same.

(30)

The first thing is that Maesela says that two people, Hunter and Havenga, were escorted away from Cape Gate by Vaal Commando vehicles. Well statements have been filed by Hunter and Havenga. Hunter denies it specifically and if one reads Haven-ga's statement, then by the strongest implication he went away there not escorted. So we say that did not happen.

But if it did happen, if they were on their way from Cape Gate towards the garage and shots had been fired and there is a situation of danger, that would be the most reasonable thing on earth for them to say well, do not go there by yourselves. We(10) are going there. Look, let us escort you.

And the other thing that Maesela says is that he spoke to Pienaar about the possibility of military action at that level by Pienaar. Now Pienaar is not first of all the commander of the vehicle. He is the driver. Secondly on Pienaar's statement, it should be in file with you, Pienaar was in the cubicle of the vehicle. The driver is an enclosed cubicle and it is bulletproof and he cannot communicate with anybody on the outside, because of his insulation from sound and also the fact that the motor is running. He denies that he spoke to Maesela. (20)

Now either way, if Maesela, let me deal with it this way, if Pienaar is correct, that neutralises Maesela's evidence and there is no reason why Pienaar should not tell the truth on this, but let us assume that in fact, Pienaar was out of his cubicle and that he had alighted and he was talking to Maesela and he said what Maesela said he said, then how can one possibly criticise Pienaar for wanting to do what Maesela wanted him to do?

First of all he was no more than a rifleman. This was not a thinking machine, he had no discretion. He was under, first of (30)

all the command of his corporal and furthermore, under the command of his headquarters through the corporal's radio and he was there to carry out the commands as they emanated from group headquarters. This automaton was driving a vehicle up and down from Iscor to KwaMaziza because that is what he was told to do. Then he was told to drive his vehicle from KwaMaziza to this area, so the automaton then goes into that mode and he is driving from KwaMaziza to there. When he gets to Cape Gate and they stop, and all he is wanting to do is to wait for the next order. He is told to drive his vehicle as he was further along(10) the road. That is what he is going to do and he has no discretion. He is not going to do anything else. So that is Mr Pienaar.

And much the same of course for his corporal (inaudible). Now the other thing is, let us look at Roberts. Now Roberts was the man .. So that takes care in our submission of anything that Mr Maesela may have said and that ends of criticism of what our learned friends had to say.

I want now to deal with two other things. Roberts who was in charge of the Fish Tank kept reporting whatever he saw. So(20) for example he says he radio-ed his signals room and he asks for permission to go into Boipatong to go and investigate the shots and also to see who the people were who had attacked this person. This has not been handed in. We did not think it was necessary and it would not have been necessary but for what had emanated there yesterday and we are quite happy to hand this in.

But this is what he would say, is that he actually offered to go in, but he was told by his signals room not to go in. The main reason obviously that he could not go in is that he had a softskin vehicle and this was the explanation which he gave to (30)

Maesela/

Maesela and that is confirmed by Maesela and we find that at page 299 if you want to look at it.

Now that brings us to the only other thing that we were criticised for doing and that is for blocking off the road. Now you were told why they blocked the road. They blocked off the road at the intersection to prevent motorcars travelling down Frikkie Meyer Boulevard from entering what was perceived to be the danger area of Frikkie Meyer Boulevard, in other words beyond Noble Boulevard and so come into contact with the one or more groups or probably more groups of either combatants or (10) would-be attackers that were in that area. Either way, people with no peaceful motive, and it would be a dangerous thing for vehicles to meet them. And he does, he takes probably his corporal's discretion to the limit and he blocks off the road and do not go down.

Now this is a man who has no discretion, exercises the little, or has very little discretion, exercise it to its limit. Even in hindsight, does the sensible thing and what is he accused of doing? And I now quote Mr Kuny who refers to this bizarre situation he says, and he spells out of that: (20)

"An assistance by Vaal Commando to let the KwaMadala attackers escape and so assist them to get back to KwaMadala."

And he takes it further and he said they must have known that because there they were carrying weapons and television sets. Now where does he come by the television sets, again? And I am sorry, there is no better word from this and that it is: 'n groot boksprong. I translate that in a moment: 'n groot boksprong van die feite tot die fantasie. An enormous quantum leap from the facts to the fantasy. And what are the facts? The facts (30) are/

are that at Boipatong somebody was seen carrying a television set, obviously that had been stolen or looting. There is not a single tittle of evidence that that looter crossed the road to KwaMadala, but even that, one can assume as a matter of probability, but certainly no evidence that that looter and his television set were visible to this Buffel and its occupants or indeed that they were seen. And in order for Mr Kuny to make that submission, the factual underlay must be the following, that the person in the Buffel actually saw the crowd, saw the television set moving across that road and the moment that he(10) has not that factual underlay to support him, he is in the realm of fantasy. And that is exactly what that submission was based on, grasping a small simple fact, inflating it completely out of context and then somehow, on a somehow or other basis bringing it and laying it at the door of these people.

Now we come to the overall situation of Vaal Commando. Now again moving away from the odiousness of this hindsight, preaching the counsel of perfection but having a firm grasp of the facts. What Vaal Commando did that night first of all in two stages when it was under the command of three corporals, it re-(20) ported as it should have done, it asked for permission, did Roberts with the softskin vehicle that he should go in there. It was refused. They reported as they should do, they patrolled along Noble Boulevard. When there was a suggestion that Iscor property may be endangered, they did what was expected of people whose task was to guard property and they went in that direction and patrolled in that direction. It is even supported by (inaudible) who actually found one of their vehicles parked in that very area.

When they see these people moving across, they do the (30)
sensible/

sensible thing and they block off civilian traffic. Under the command of the major who comes out immediately that he hears of this, if you look on the log and elsewhere you will see that he is there within, as long as it would take a person, I think it is about 20 or 25 minutes, and he reports on his way there that he is on the way. He, together with the Iscor people, go down Frikkie Meyer Boulevard. They attempt to find these people in the grass. Lights are shone. These teargas grenades are fired and they stay on the scene. They stay on the scene till the early hours of the next morning. (10)

Now if you take that into account on not only the disputed evidence but the recordings made contemporaneously minute by minute which supports every word of what I say, then there what have we done that is wrong? And with great respect, it is only with the employment of this hindsight and this counsel of perfection that you can come to any sort of contrary conclusion, and I ask therefore Mr Chairman and gentlemen that when you come to make your finding in this matter, that you will exonerate the South African Defence Force completely.

CHAIRMAN: Thank you Mr Mostert. Mr Visser? (20)

MR VISSER ADDRESSES COMMISSION: May it please you Mr Chairman and gentlemen. In order to save time, we have jotted down on paper for your convenience the submissions which we wish to lay before you. While my learned junior is handing them out, perhaps you will allow me a short introduction, by telling you that the KwaZulu Government and the Inkatha Freedom Party have an interest clearly first of all in the subjects of KwaZulu wherever they may be and also the Inkatha Freedom Party would likewise have an interest in their members, wherever they may be.

CHAIRMAN: Mr Visser I think there are a number of people who are/ (30)

are sitting behind you who cannot hear. So perhaps either move your chair or speak louder. I think if you speak louder, we will all hear.

MR VISSER: I will speak louder Mr Chairman. Clearly Mr Chairman and gentlemen the facts show that in the KwaMadala hostel there were certainly Zulu subjects living there, as well as supporters or members of Inkatha. From that point of view, there is a clear interest by my clients in the events and facts, circumstances which affect those people. But Mr Chairman to turn it around as was attempted to be done as we understood the arguments to say, (10) or to attempt to say that the inference in the converse has to be drawn that because people are Zulu and because they come from KwaMadala, they must be members of Inkatha are for obvious reasons falacious argument, with respect.

Mr Chairman we will come a little later to one further point which really ties in with the short introduction that I am giving Mr Chairman and that relates to the interests of the KwaMadala residents quite separately and opposed to the interests of the KwaZulu Government and Inkatha, concerning the evidence that had been presented to this committee and we will ask you at (20) a later stage whether you are interested in hearing certain submissions which we wish to place before you, not because we have a direct interest in it, but because first of all the KwaMadala residents are not represented here before you Mr Chairman. And we believe that there are certain considerations which have not been brought to your attention and of which you should be aware.

We are going to be very short. May I refer to page 3 Mr Chairman? This deals with (a) and (b) of your terms of reference Mr Chairman and we say in short that both in regard to (a) and (b) it is submitted that there is no evidence against our clients/ (30)

clients and secondly there is no evidence of any individual who was involved in either the KwaZulu Government or Inkatha was involved in either the planning, conception planning or the carrying out of any attack and that really is our submission to you.

Attempts however, Mr Chairman, have been made and we refer in paragraph 2.3 to the evidence of Mr C to which we will come back. Clearly his evidence does not exclude the possibility that some planning might have taken place given the short period of time which he resided at the hostel, which was from the previous day, the 16th as we understand his evidence. But we say Mr(10) Chairman that even on his evidence there is no indication that the attack was formally planned. We submit that my learned friend Mr Hattingh is probably correct that in a criminal trial, if this is relevant, it will probably show on the evidence, that this was not a carefully planned and executed attack. In point of fact, we can make the submission to you now. We make it later as well, one would have expected from a carefully planned politically motivated attack for the attack to have been far more scientifically specific.

You have heard no evidence of specific African National(20) Congress targets that were targeted by the attackers. Mr Chairman my learned friend Mr Chaskalson has said it at the inception of this committee in July and has said it again yesterday. We agree with it. This was a random attack. It was certainly not a politically motivated attack and we say Mr Chairman that even if it is assumed .. (intervenes).

CHAIRMAN: Sorry Mr Visser. What do you suggest is the motive them for the attack?

MR VISSER: Mr Chairman that is a problem in the sense that there is really no evidence other than the evidence which my (30)
learned/

learned friend, Mr Hattingh has pointed out to you of violence .. (intervenes).

CHAIRMAN: I understand that there is no evidence. I do not know that (inaudible) submission that it was not politically motivated.

MR VISSER: Mr Chairman we are looking at the probabilities clearly. What are the probabilities here? One of the probabilities are that, as you have heard over and over that Boipatong itself consist of people who reside there who are by and large sympathetic to the African National Congress. Let us assume the(10) same as far as KwaMadala is concerned. Clearly one cannot rule that out as a factor. What I am doing now Mr Chairman is, I am saying that on the evidence regarding the Boipatong attack, there is a lack of evidence to show that it is a purely politically motivated attack. I take it no further than that. And when we address you Mr Chairman under (f) we will tell you also that there are a number of factors which conceivably could have brought about the attack and the violence in general, but we will come to that.

May I just complete my reply to your question? We believe(20) that Mr Hattingh is correct on behalf of the police when he said that there is a background of violence in the whole area and also in this area. A person is attacked Mr Chairman. He has family and relations. A bitterness results. Suddenly you have violence breeding violence. We have heard the evidence. We have seen it in news reports of numerous attacks by the one of the other of the groups, of the residents against KwaMadala, of KwaMadala against the residents. Not to accept that that is a fact, will be closing your eye to the reality of the situation and in that situation we find the attack on the evening of 17 June. But what (30)

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