A

IN DIE HOOGGEREGSHOF VAN SUID-AFRIA

(TRANSVAALSE PROVINSIALE AFDELING)

SAAKNOMMER: CC 482/85 PRETORIA

1988-08-10

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. YACOOB
ADV. G.J. MARCUS

TOLK: MNR. B.S.N. SKOSANA

KLAGTE: (SIEN AKTE VAN BESKULDIGING)

PLEIT: AL DIE BESKULDIGDES: ONSKULDIG

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KONTRAKTEURS : LUBBE OPNAMES

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VOLUME 43

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THE COURT RESUMES ON 10 AUGUST 1988

MR CHASKALSON: May it please your lordship, I want to turn to look at some of the official statements by the United Democratic Front which are relevant to the issue that it was seeking to promote violence or that it sought to use violent means to achieve its goals. First there is the documentation which was prepared at the time of the opposition to the constitution and at the time of the Million Signatures Campaign and we see from this that for instance in the documentation issued and circulated to its supporters at the time of the campaign against the constitution it took steps to ensure that its supporters operated within the law and that they did not function illegally. That was dealt with by Mr Molefe in his evidence at volume 273 page 14 855 line 6 to 14 856 line 14. And he drew attention to the fact that a legal sheet had actually been prepared and were distributed to people who would be active on polling day. He produced the document which was EXHIBIT 28, DA.28. And his own evidence was to the effect that this document had been issued and steps had generally been taken to ensure that people remained within the law. Your lordship will see from the legal advice sheet..

COURT: 1984 - 21 August 1984.

MR CHASKALSON: 1984. I am sorry, I was looking at the wrong document. I had the wrong document in front of me. The attention of the people is drawn to the fact that they are not to be interested in who the candidates - who is being voted for, simply the number of people who cast their votes. If you look under 2, m'lord: "Your only interest is in the number of people who cast their vote. Try not to

speak / ..

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speak to voters. Well that is the antithesis of a suggestion that people should use their influence to intimidate people against voting, that they should engage them and assault them or threaten them. Their specific instruction is not to speak to voters. And there was a similar legal advice sheet which was prepared in October of 1983. It was at a time when the UDF was concerned with the black local authorities campaign. Mr Molefe gives evidence about that at volume 273 page 14 856 line 15 to page 14 857 line 6, and Mr Lekota at volume 286 page 15 740 lines 9 to 12. The document is DA.29. It was prior to the people's weekend that this document had been prepared, and it appears that the legal advice had been taken and advice is given in regard to what is and what is not within the law in regard to the distribution of pamphlets, in regard to the use of vehicles and in regard to the police and let me draw your lordship's attention to the paragraph dealing with the police because we are again told that action against the police and generally a confrontation with the police was one of the goals of the United Democratic Front. If we look at the police we see this under A, this:

> "A police officer may ask you to furnish your name and address and detain you for up to 12 hours to check whether the information given is correct.
>
> B. Generally a police officer is not allowed to search you unless you agree. You should object to being searched. If a police officer persists in searching you do not obstruct him. If asked for an explanation regarding the bills etc. tell the police that you are acting on the instructions of the UDF."

So / ..

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So once again we see that the UDF is acting perfectly openly. It is telling its people this is what you are entitled to do, telling its people even if you are - in the context even if you are searched unlawfully do not obstruct them, call for a lawyer and your lordship will see the following sub-paragraphs deal with the rights of people under arrest and what they should do in such circumstances. And the same theme is addressed in the handbook prepared for volunteers who were involved in the Million Signature Campaign. Evidence about that is given by Mr Molefe in volume 250 page 13 334 line 12 to page 13 344 line 9 and Mr Lekota in volume 286 page 15 740 line 14 to 22. The EXHIBIT is W.52. And your lordship will see going through this exhibit that it is a volunteers' handbook. It is clearly to be distributed to the people who are going to carry out the work, to the activists, and it tells them, m'lord, people who are being brought into the UDF; it tells them what the UDF is. On page, paragraph 3, it gives a history of the UDF where you see that again, I may have referred to this, that it identifies the call by Allan Boesak as the first incident in the history of the UDF. It deals with the Koornhof bills and the constitution - it is basically the Koornhof bills and again when it deals with the police at page 11, there is this statement:

> "It is not illegal to collect signatures but do not coerce people into signing."

It is page 11, I think that the court numbered it, m'lord, it bears the court numbering on it.

COURT: Yes.

MR CHASKALSON: Your lordship will see: "What if police

confront / ..

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confront us as we collect".

COURT: Yes, I have three marks against this passage. This means that I have dealt with it three times already, so much of what you said is not new. Go ahead.

ASSESSOR: I also have a problem Mr Chaskalson, with your reference to accused no.19's evidence on this point.

MR CHASKALSON: Well, perhaps I should get it out. It may be that I have a wrong reference in my note. What page is it?

ASSESSOR: 13 334. (10

COURT: Volume 250. You said it ran up to 44.

MR CHASKALSON: The note I have is 13 343 to 13 344. That is the note I had.

ASSESSOR: 33 to 44?

MR CHASKALSON: That is the note I had. Let me check it. Oh, it is the wrong reference, M'lord. I must apologise, it is the wrong reference. I see that there is a cross next to that reference which means that it is wrong. I think I have got the right reference now, I am sorry, m'lord. It is 13 336. (20

ASSESSOR: 36?

MR CHASKALSON: Yes, I am sorry, it is 13 336. I am so sorry, it is line 1 and following. I apologise for that. I am afraid we were putting notes together from different places and trying to assemble them overnight and I did not correct that though we noted it was wrong. Now the point I make here is that when the UDF addresses its activists, when it addresses the people who are going to go out and do things for them, it is urging them not to be coercive, not to be resistant to the police when they interfere and to act (30

within / ..

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within the law. And in general because our argument to your lordship will be that the policy of an organisation will be determined via documents and also by its public attitudes and its public statements. We will see that there was a perception as expressed through publications and this is confirmed by the evidence that this was the general perception of the UDF as being an organisation committed to non-violence. There was a report of a press conference which was confirmed by Mr Lekota. I have asked Mr Marcus to check as I refer to the references in case there is something wrong, m'lord(10 volume 282 page 15 470 line 3 to 15 471 line 10.

COURT: Are you going back to the DA-series..

MR CHASKALSON: Yes, this will be..

COURT: ..within the foreseeable future?

MR CHASKALSON: Yes, we are going to be dealing with the DA-series. This I believe will be in DA.55. It was reflected in a report in The Star which deals with the press conference on the eve of the launch. Apparently there was a big battery of press people that day and a lot of questions were asked and what is recorded is that the UDF did not advo- (20 cate or condone violence..

> "..neither in the form of spectacular explosions like the ANC nor in the form of institutional violence as the oppressive apartheid system was seen to be by many."

And Mr Lekota confirmed that that is what was said on that occasion at the eve of the launch so it is the publicity which has been given to the organisation at the time it was coming into existence and he confirmed that at volume 282 page 15 471 lines 10 to 29. The circulation of The Star is over 100 000 and there is confirmation of the fact by Mr (30

Lekota / ..

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Lekota that similar reports were carried in the Cape Times and in The Argus each of which have large circulations. That evidence your lordship will find at volume 282 page 15 472 lines 5 to 9. Then there was reference in Mr Lekota's evidence at volume 282 page 15 480 line 29 to 15 481 line 26. I have got the wrong - 283, I am sorry. And he referred to an editorial in The City Press. I have got the wrong reference, I will correct it, I am sorry. Is it the right reference, Da.56, that is the right reference? He referred to an editorial in The City Press. Now The City Press is part of the commercial press. I think there is evidence, I am not sure that it is actually owned by Naspers. I think I will have to look for that, I think there was evidence about that in the course of this case.

COURT: I have heard it before, yes.

MR CHASKALSON: Now the reference to the UDF and again Mr Lekota confirms that these are the perceptions of people within the black community, that the names of the people behind the UDF were all impressive. That they cover people who are very well-known, they point to their own position The City Press that they had over the years stressed that violence will not ever solve the country's problems but that talking will and that the groups who have ranged themselves with the UDF are those who have opted for a realignment of black aspirations in the reduction of the tensions that beset this land especially among blacks. Here is hoping that their deliberations will bear fruit. And Mr Lekota said that this was generally the perception that the UDF had come into existence as a non-violent initiative and one which people saw as different from the organisations that were then

known / ..

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known to be following violent methods and I think I gave your lordship the reference there to volume 283, page 15 480. The circulation of City Press is 98 000. Then The Argus also had an editorial on the emergence of the United Democratic Front. That is EXHIBIT DA.57 and it was referred to in Mr Lekota's evidence at volume 283 page 15 482 line 7 to 15 483 line 21.

In EXHIBIT DA.58 and Mr Lekota's evidence about it, volume 283 page 15 483 line 22 to 15 485 line 18. And it carried a report about the launch, about the impressive (10 nature of the number of people who had attended the launch, about the choice of officials and your lordship will see that what they say is that the choice of officials from the patrons right down to the most junior officer seems splendid and studded with extra-ordinary personalities. Now I am going to come back to this in a different context of my argument but it bears out Mr Lekota's evidence about perceptions within the black community in regard to people like Mr Mandela and others who are in gaol and I will deal with that later in my argument, but it is significant that his (20 evidence is concerned, is confirmed in this regard by the leader again from the commercial press and that same leader draws attention to the fact that:

> "We believe that all the people of South Africa should be made aware that organisations that tend to oppose the government are not necessarily disruptive of progress in the country. It is obvious that the UDF has a responsible agenda and does not look at violence for instance as a tactic for political persuasion. If this kind of confidence is instilled in the minds of (30

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the people particularly if it is stressed that the movement is working towards peace and stability for all, then it will grow."

Now this is a report of the launch, the perception of the launch by the people writing in the commercial press and it confirms again Mr Lekota's and other people's evidence that the general perception of people who came to the launch, who are associated with the launch, that here was a new initiative; here was a non-violent initiative behind which was rallying important people in the community, people who had the confidence of the community and that the patrons were people who were respected by the community. And Mr Lekota's evidence in that regard your lordship will find at volume 283 page 15 483 line 22 to 15 485 line 18. In October of 1983 there was again publicity concerning the fact that the organisations had been peaceful and were putting forward their viewpoints peacefully. That appeared in EXHIBITS DA.59, which is an extract, an editorial in the Rand Daily Mail which refers to the fact that the organisation - that those meetings of these various organisations actually had been peaceful. Indeed the whole purpose of the organisation is to put forward viewpoints peacefully. That is the basis of the creation earlier this year of the two umbrella movements, the United Democratic Front and the National Forum. And Mr Lekota said in this evidence at volume 283 15 485, line 19 to 15 486 line 13, really the extract I want is at page 15 486 where he said, it is at line 7:

"We were generally understood and we had made claim that we were a non-violent organisation and throughout

people/..

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people understood us as a non-violent organisation and we understood that. The masses of the people, in particular our constituents, understood that the UDF was committed to non-violent means of struggle."

Now the question is on what basis is your lordship asked to reject that evidence.

Mr Lekota also referred to an article which appeared in the South African Foundation News and which was reprinted in the Weekend Post. Mr Lekota's evidence is at volume 283 page 15 516 line 3 to 5. Weekend Post of course is a news-(10 paper circulating extensively amongst the black community, and it was said:

"We in the UDF seek a negotiated settlement..

COURT: What is your reference, article reference?

MR CHASKALSON: I am sorry, that is DA.66:

"We in the UDF seek a negotiated settlement because we believe that the less bitter the methods adopted to resolve the present problem, the easier will be the process of reconciliation. The longer the government resist a programme of guided negotiations, the (20 more it creates the chance for a deepening of the conflict and acrimonious circumstances. The process of reconciliation then becomes more difficult. In a country where people carry arms to further their political aims the non-violent UDF cannot be considered radical. Some black groups would deny a place for white in their new society, but we in the UDF still want to go for a negotiated settlement with rights for black and white. We are, I believe, the most reconciliatory organisation presently operating. To (30

ignore /..

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Ignore the UDF now is to ignore the most meaningful black initiative."

Now that is given wide publicity, that is what is being said by Mr Lekota and it is being said - it is reaffirmed by him here in court. So for all the evidence that he gives in court, what he tells your lordship his attitudes were, he can always point to things that he was saying publicly before he was arrested. And m'lord, I think we may have referred to this before, but in this context your lordship will note EXHIBIT DA.72 and Mr Lekota's evidence at volume 284 page 15 606 line 16, to page 15 607, line 7 where on the eve of a national general council meeting of April 1985 when he was explaining the theme "from protest to challenge, from mobilisation to organisation", he indicated what the intention was to be at the meeting and he said the emphasis would be on non-violent means of direct action. There is another statement which he refers to in his evidence at volume 284 page 15 607 line 20, to 15 608 line 18, where he indicated that the opposition to the rugby tour would be conducted by demonstration but that there was no intention to harm the New Zealand players and he says: "That would conflict with our fundamental.." Well, that is not Mr Lekota's statement but one he referred to - "That would conflict with our fundamental non-violent stance".

And again at volume 284 page 15 608 line 19 to page 15 609 line 13, Mr Lekota said that the statement that he made on the eve of the national conference regarding "from protest to challenge" he said that in speaking, in the statement that he made he was speaking on behalf of the United Democratic Front and I read now from line 19 at page

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15 068:

"Did this public statement that you made in relation to the non-violent stance of the UDF reflect the views of those at the conference that had been held at the beginning of April? -- Yes, that is so. The conference in fact had noted that there had been a lot of spontaneous undisciplined action that had been taking place in some of the townships and that it was important that our organisations must attempt to move into the situation and strengthen the organisations, so that when people have got a protest or they have got a complaint they must be clearly disciplined action taken, so that first of all the complaints of the people must be clearly stated so that the government can hear what the complaint is. And another element, of course there was a lot of unruly elements, people who belong to no organisations and who are just doing as they please and it was important to undercut that kind of thing. There must be clear publicly acknowledged organisations that the people would respond to and not to respond to any Tom, Dick or Harry that came around and said he was a leader. So the question of disciplined action was the concern of the conference. It must be disciplined and in that way first of all the government can hear clearly - you can state the complaints and you can be heard clearly, secondly people are not being exposed to anarchy and then people lose their lives unnecessarily."

Now the only evidence given about this conference, about what was said at this conference, about the attitudes of the people at that conference, is the evidence given by the

accused / ..

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accused. It was a public gathering, there is no evidence to the contrary, we know from the evidence and I will give your lordship references later that the police were frequently present at meetings of the United Democratic Front. If there was anything at this meeting which supports the state's thesis that violence was agreed upon or that they were moving into a stage of violent struggle, that the challenge was to be a violent challenge, why didn't we hear some evidence from people who were at the meeting? We didn't the police come and tell us what happened at that meeting or (10 tell us why they could not tell us that. The need for discipline and the danger of spontaneous action is referred to also by Mr Molefe. In volume 256 page 13 755, line 8 to 13 757 line 10, and in volume 273, page 14 875 line 19 to 14 876, line 7. And there is also another passage in Mr Lekota's evidence, volume 289 page 16 065 line 19 to 16 066 line 6. And then in EXHIBIT DA.74 Mr Lekota refers to an interview which he confirms in his evidence at volume 284 page 15 609 line 14 to 15 610 line 28. It is an interview with the Sunday Tribune in which he drew attention to the (20 fact or in which it is recorded that he referred to the UDF as:

"It operated at a non-violent level".

There was also evidence that attempts were made by the UDF to place advertisements in the Afrikaans press and that that did not succeed but later a report about that was published and that in that advertisement the UDF would have declared that "We stand for peaceful change in South Africa". That is referred to by Mr Lekota in volume 285, page 15 644 line 27 to page 15 649 line 11 and then there is EXHIBIT DA.78 (30

which / ..

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which is a press report in The Rand Daily Mail in July 1984 which deals with that story.

And in their own personal conduct both Mr Molefe and Mr Lekota have shown this. Both took steps to avoid confrontation with the police at a commemoration service held in Soweto at the Regina Mundu church on 16 June 1984. According to the evidence the police were at the venue at this meeting with dogs and Hippos - the vehicle, m'lord - and they positioned themselves, almost blocking the way of the people to the entrance.. (10

COURT: If you had not said that I would have thought about a big bite.

MR CHASKALSON: Into computers, m'lord? The evidence is that they positioned themselves, the police were there almost blocking the way of the people to the entrance and Mr Molefe said he thought that they had stationed themselves in a way that there was likely to be confrontation between them and those people who were attending the meeting and so he and Mr Lekota went to see the police and they persuaded them please to move a bit further backward so that the people (20 could freely pass and go to the meeting and we could avoid unnecessary incidents. Now that is volume 252, page 13 496 line 7 to 13 497 line 18 is Mr Molefe's evidence; and Mr Lekota at volume 285, page 15 703, line 23 to 15 704, line 14. Now if their policy was to stir up people into situations of confrontation they should have been pleased to see the police there. They have got - people were coming to this meeting, trouble was going to break out; out of that trouble they would organise and mobilise people, which is what the state says they were planning. Yet their (30

evidence / ..

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evidence and I believe that that is uncontradicted, their evidence shows that on occasions when they were at scenes and involved in situations where confrontation might occur they took active steps to defuse the situation rather than to inflame it. And then there is the passage in Dr Motlana's which I think I have read before but which I think is relevant here, at volume 417 page 24 425 line 23 to 24 426 line 10. Then there is a document AL.30 which was produced by the state. The state's argument is that the document is prima facie evidence of the facts favourable.. (10

COURT: AL.30?

MR CHASKALSON: AL.30. The state's evidence is that the document is prima facie evidence of the facts favourable to the state but there is no evidence of the facts which are not favourable to the state, even though they have produced it. Our argument is that it is evidence only that the document is what it purports to be and it purports to be a United Democratic Front Eastern Cape document and that it records what the United Democratic Front Eastern Cape has said. It was found in the possession of someone called Roland Pite? (20 who was on the executive of the Eastern Cape. And depending upon which of the two constructions adopts your lordship will use it in either way. Now I am asking your lordship at the moment to use this document on the basis that it is what the UDF is saying. And what the UDF is saying, it describes it on the cover as a briefing for field workers. So once again and I stress we have no evidence about it in the sense that it was put to Mr Molefe and he said it was not a document he had seen before. This is what the document on the face of it purports to be. It purports to be a briefing for field (30

workers / ..

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workers and it purports to have been issued with the Million Signature campaign so we can date it approximately within the period of the Million Signature campaign which we know is really basically the first half of 1984; we know that much. And in the introduction your lordship will see in the section "Introduction", the last two lines in that section, the field workers are told:

> "Remember that when we go out in the people's houses we are carrying the name of the UDF and its policies and principles. Carry it well."

and there was evidence given about the - it was important that the UDF should have a good image. At page 3 about house visits there is the statement:

> "We need to learn about our people"

under the question "Why?"..

> "We need to learn about our people. We need to find out about their problems, about how they feel about various issues, their willingness to take part in activity, their level of understanding about the political situation in the country. All this we can do only by speaking to people individually, asking questions and listening carefully when they speak."

And the next page which I think is marked 4, the last two lines of the page:

> "Do not be provoked into arguments, anger or violence. Discipline is important."

That confirms the direct evidence that this was the attitude of the UDF. That is what it was saying at the time, saying it actually to its own people and then they come back into court and they say: that was our attitude, that is what

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we said, that is how we dealt with our people, and the sate says that is a blatant lie, but it does not tell your lordship why it should find it to be a blatant lie. At the top of the next page - well, at the bottom of the next page under the heading: "But remember":

> "Do not argue with people. If they disagree with you try persuasion. If it fails thank the person and leave."

There is a document, EXHIBIT AL.137. Its admissibility will depend upon how your lordship deals with my argument.(10

ASSESSOR: Volume, please?

MR CHASKALSON: It is AL.137.

ASSESSOR: Volume - 6?

MR CHASKALSON: Oh, I am so sorry, it is volume 6. I beg your pardon.

COURT: What was the admission in respect of this document?

MR CHASKALSON: It was found in the NIC offices in Durban. I draw your lordship's attention to page 2 under the item 5 - page 2 of the document. Again it is a document connected with the campaign and under 5 it says: (20

> "The UDF is striving for the achievement of democracy and equality through dynamic non-violent means. The UDF does not believe in violence or militarism."

Your lordship immediately here sees some of the problems that arise in regard to the practical application of parts of the argument that I addressed to your lordship yesterday. If the state tenders this document as prima facie evidence of the contents thereof and it tenders it as prima facie evidence of the truth of the facts contained therein and if this be a fact contained therein that the UDF is striving (30

for / ..

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for the achievement of democracy and equality through dynamic non-violent means, that the UDF does not believe in violence or militarism, if that be correct then there is prima facie evidence in the state's own document of that proposition which far from being contradicted by the defence case is in fact confirmed by the defence case. Now the state then gets driven to saying that where the section says prima facie evidence of the contents, it only means prima facie evidence of the contents that are favourable to the state, and it does not mean prima facie evidence of the contents which are favourable to the defence. Now I suggest to your lordship that that is actually an impossible interpretation to put on those words. And though this proposition I could rely upon for my case, I think that our construction, the submission that we put to your lordship on the proper construction of that section is demonstrated by this.

COURT: Well, this document emanates from the University of Natal, it seems. SRC, University of Natal.

MR CHASKALSON: That does not matter, m'lord.

COURT: No, no, no...

MR CHASKALSON: Because it has got to have been found somewhere.

COURT: No, I have passed your argument already. Your argument I have understood.

MR CHASKALSON: Yes, no, I see.

COURT: Because your argument is that if the state's interpretation of that section is correct one could only take as prima facie proof certain documents because they are unfavourable to the defence and other documents not because they are favourable.

MR CHASKALSON / ..

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MR CHASKALSON: And even portions of documents

COURT: And the same as far as parts of documents are concerned. I understand that argument. I have passed that stage. I am at the bottom of the last page of this document which states it emanates from the University of Natal.

MR CHASKALSON: Yes.

COURT: Now what use can one make of it either way?

MR CHASKALSON: No, I think that all lordship is - that is why I was careful to say to your lordship it has not been dealt with in evidence. (10

COURT: Yes.

MR CHASKALSON: I was anxious to say that to your lordship but on my argument may not be able to make use of this document because it was found in the NIC offices and on my argument it would be no more than saying that the SRC press of the University of Natal, the projects committee of the University of Natal, Durban says this, and since the projects committee of the UDF Natal/Durban has not been referred to in the evidence and it has not been identified as having said that with the authority of the UDF or on behalf of (20 the UDF..

COURT: And is not a co-conspirator?

MR CHASKALSON: And is not alleged to be a co-conspirator and we do not know who the author is, the person who wrote it may have been alleged to be a co-conspirator, but we have got no evidence as to who the author is. So on my argument I would not be able to rely on it, that is why I was careful to say to your lordship it is not referred to in the evidence. Let me put it this way, I have not been able to find anywhere in the evidence to which it has been referred; and that (30

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all that we have is a document having been produced and tendered by the state for the purposes for which it is tendered. Now I think it demonstrates..

COURT: One might say that this is the perception at face value that the projects committee had of the UDF.

MR CHASKALSON: But how it would be of value to your lordship without evidence linking it up I am not sure. I mean it is a very favourable document for me but I am not sure how I can use it. Unless part of the state's argument is right then it can be used. I think on my argument it would go (10 no further than saying that this was a document which was circulated by people supporting the one million campaign who identified themselves with the UDF and they came from the projects committee of the University of Natal/Durban and this is what they said and that is what their perception of the events were. I would have to think again as to whether your lordship can make anything of that evidence. But if the state is right and this evidence because it was found at the NIC offices becomes prima facie evidence of the proof thereof then of course the whole document gets dealt with (20 differently and I introduce it because it depends to some extent upon how your lordship is going to deal with my argument on section 69.

I show you another document which presents another problem on the basis of the evidence. If your lordship would have a look at EXHIBIT W.54. Now this document is again produced by the state..

COURT: What is the admission on this document?

MR CHASKALSON: No, that is what I am going to draw your lordship's attention to. All that we have is that it was (30

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found in Grahamstown.

COURT: Only found in Grahamstown?

MR CHASKALSON: Found in Grahamstown. That is the only admission that we have about it, that it was found in Grahamstown and..

COURT: It has not been referred to before?

MR CHASKALSON: We could not find a reference to it in the evidence.

COURT: Not in the evidence?

MR CHASKALSON: Yes. Now it purports..

COURT: Has the state referred to it in its argument?

MR CHASKALSON: I am not sure, I cannot answer that, but it purports to have been issued on behalf of NUSAS.

COURT: Yes?

MR CHASKALSON: And there is a passage in it and I will have to find the page because I somehow or other did not mark it up, but the passage in it is to the effect that despite government attempts to portray the UDF as a violent organisation UDF has made abundantly clear their non-violent nature. Now on my argument now use could be made of that statement nor of the document at all, because on my argument it was found in Grahamstown which does not trigger the section, though it purports to have been issued by NUSAS. I do not believe that that is sufficient because we do not know who the author of the document is and the accused are not alleged to be members or active supporters of NUSAS, so on my argument I cannot use the document. On my argument I have to show that - on my argument if I want to make use of it I have got to show that the document on the face of it was issued by an organisation which the accused are alleged to have been / ..

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been members or officers or active supporters and I cannot show that. I would also probably have to show who the author of the document was because it is only if it is a co-conspirator that the statement of a co-conspirator could be relevant unless it has been knitted into the evidence by somebody who has given evidence about it and declared what it means. So I on my argument cannot rely on this statement. I have used these two documents because I think they do demonstrate some of the issues which we were arguing yesterday. If I am entitled to rely on them I want to - (10 but I believe I am not entitled to.

Now there is a third document in this sort of category m'lord, which is W.55. Again it is a NUSAS document, NUSAS says "no" to the new constitution.

COURT : What is the admission in respect of (simultaneously)

MR CHASKALSON: This was found at the house of accused no.20. Now that would then figure part of section 69 because I think it was found with the accused. The passage which I would want to rely on if I can is on page 2. There was actually some evidence about this document which I am (20 going to refer your lordship to..

ASSESSOR: On 24 August, yes. Last year.

MR CHASKALSON: Yes, that is why I think we can rely on it, but the second page under the paragraph: "Political Change from Outside Parliament", there is a passage at the bottom of that: "Rejection of the current parliament's legitimacy and its rights to pass laws, resettlement and detention on the people of South Africa does not mean an acceptance of violence as the only other solution. The growth and development of a broad non-racial democratic movement for change in South (30

Africa / ..

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AFrica over the past years has shown that". Now that is a clear statement that the non-racial, the broad non-racial democratic movement for change does not perceive itself as using violence as a means and that it is offering an alternative to violence. Now that is produced in a document which on the face of it is issued by NUSAS. I think that unless there was some evidence about it I would still have difficulty in using it, because we do not know who the author is. But there is some evidence about it. Mr Molefe gave some evidence about it - I am sorry, I may not have noted (10 this as a volume which we are going to use. It is 14 419. Mr Molefe gave this evidence, he says -

COURT: And your volume is?

MR CHASKALSON: I am sorry, it is volume 267, 14 419, and he says:

> "I would like to refer to EXHIBIT W.55, page 2, column 4. This is a NUSAS publication, it says "NUSAS says no to the new constitution. It is not a UDF publication but I think it is important for the purposes of showing perceptions of affiliates. I am really interested in(20 the section under political change from outside parliament. I think this paragraph starts really on column 3 at the bottom of column 3 and then continues on column 4."

and he refers to the passage I have just read to your lordship. Now that was information which Mr Molefe volunteered to your lordship. It was information which Mr Molefe - Mr Molefe went back to the document and he drew your attention to documents from time to time in response to questions from your lordship. This was actually produced by Mr Molefe (30

himself / ..

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himself in response to some question your lordship had asked him a day previously or earlier that day, I cannot remember, he brings it out. That brings it into the evidence and can be relied upon I submit for that purpose. I think I would have had difficulty in relying on it if we did not have that type of linking evidence. But I do rely upon it because of the evidence.

Then the submission that we make to your lordship is this, that there is a very considerable body of evidence both in the direct testimony of the accused and in particularly the two national offices of the United Democratic Front in regard to the fact that only was the UDF's policy a non-violent policy but that there was throughout the whole period of the indictment a consistent and public projection of the policy in that way. When it was put to them that this was really being done to conceal the true state of affairs it was firmly rejected by the offices. Now by pointing to the fact that the documents evidencing this were not simply documents made in, as it were, reaction to statements. They were documents that were being distributed to their own supporters. Now what then does the state say? The state is saying well, though you said this to your own supporters, though you publicly project this image, though you never mention violence in your documents, though we produce no witness to confirm our case by direct evidence, somewhere there were people plotting violence. And they say that all the affiliates of the UDF or all their management committees are alleged to be party to this because they all knew of and supported that. But once the state cannot point to any evidence to show that there was a secretive agenda agreed upon / ..

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upon by management committees of the affiliates, where is its case? Who knew and who did not know? How can the state tell us, it puts up a secret agenda and there is not a bit of evidence from which your lordship can say who knew of this agenda and who did not know. And the fact that the state accepts that persons such as McCamel and I think when my learned friend Mr Bizos deals with the Vaal, and there is an admission in the state evidence - I think it was a Mr Mahape - were not aware of the policy of violence; the fact that the evidence itself canvasses the activities of (10 comparatively few of the affiliates in any depth at all. In fact it is only really the VCA that we have looked at in any depth; to a lesser extent there has been some questioning about the SCA and there has been some peripheral examination of some activities in some of those 22 areas. But in all, there are very few affiliates whom we have looked at in any depth, and the writings of really comparatively few individuals within UDF structures are relied upon by the state. Where is the evidence from which you are going to identify not only the conspiracy but the conspirators? (20

Now we say that in fact there is no such evidence and that your lordship for that reason simply cannot uphold the state case, but we are going to now move on to look at the allegations of violence which the state seeks to bring home to the UDF and that will involve an enquiry first into the evidence concerning the Vaal and then into the evidence concerning the other areas. Before I do that and before we get there and my learned friend, Mr Bizos, will take up the argument when we go to the Vaal; now before we do that there are two propositions I want to deal with, with your (30

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lordship. One is to look at the averments and the evidence concerning the alleged AZAPO connection with the UDF conspiracy and secondly I want to deal with the question as to whether the boycott of the black local authorities would produce chaos.

Now I will take up first the AZAPO/UDF connection. Would your lordship prefer to take an adjournment a few minutes earlier and start a few minutes earlier or would your lordship like me to start with a new section for three or four minutes before the adjournment? (10

COURT: Yes, you can start.

MR CHASKALSON: I can start - as your lordship pleases. Now I think the starting point is the indictment. At page.. this is the alleged UDF/AZAPO connection. The indictment in paragraph 66.6 at page 275 and it is in volume 4 of the annexure to the indictment. There it is essentially alleged (hesitates)

COURT: Yes, go ahead.

MR CHASKALSON: It really is the paragraph which deals with the implementation and promotion of the campaign. It is (20 a sub-paragraph, part of the larger paragraph, dealing with the alleged implementation and co-ordination of activists in pursuit of the black local authorities campaign, and nothing is said there about AZAPO, but when the particulars were requested, in answer to a request for particulars directed to this sub-paragraph we find mention of AZAPO. And I think that the relevant paragraph which emerged after the objection to the indictment is at page 62 of the further and better particulars. It is particulars which are linked back to this 66.6. Now those particulars say this: (30

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"Die koördinasie het geskied by wyse van -

(a) deur ander organisasies wat met UDF geaffiliëer is en wat in die betrokke gebied is, aan te moedig om waar burgerlike gemeenskapsorganisasies 'n kampanje bedryf hulle te steun en te help om 'n verenigde optrede te bewerkstellig.

(b) deurdat UDF organisasies wat nie met die UDF geaffiliëer is nie oorreed het om saam met UDF te werk waar hul belange nie bots nie en in hierdie besondere gebied het UDF op hoë vlak samewerking tussen UDF en AZAPO bewerkstellig en ook met Black Sash".

So the averment is that the UDF had been able to persuade other organisations to work with the UDF where their interests did not clash and that at a high level co-operation had been agreed upon by the UDF and AZAPO. And it was from that, that led to the allegation that accused nos.1, 2 and 3 as members of the management structure of AZAPO Vaal found their way into the conspiracy. So there are a number of propositions which the state have to prove. Let me just assume for the moment if they had a conspiracy, if they had a conspiracy, they would then have to prove first of all the agreement with AZAPO to join the conspiracy; and agreement which was to be implemented through the management committee, which involved the management committee of AZAPO Vaal and that accused nos.1, 2 and 3 were on that management committee and that they knew of all this and that through that knowledge and through that participation they became party to the conspiracy. Now there are many parts at which that chain breaks. Leaving aside all the difficulties the

state / ..

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state had with the establishment of the principal conspiracy upon which its action..

COURT: Could we just recap. You say the state has to prove an agreement with AZAPO to join the conspiracy, involving the management committee of AZAPO Vaal; that nos.1, 2 and 3 were on it, and what else?

MR CHASKALSON: And that they knew of the terms of the conspiracy pleaded by the state, that the UDF's goal was the violent overthrow of the state. So they have got to start off proving the UDF's policy goal, showing that AZAPO knew of that and joined in; that AZAPO Vaal knew of that and joined in and that 1, 2 and 3 knew of all this and identified themselves with it.

COURT: Could we take the adjournment?

MR CHASKALSON: As your lordship pleases.

THE COURT ADJOURNS FOR TEA/ THE COURT RESUMES

MR CHASKALSON: M'lord, I am going to address the allegation that there was this entry into the conspiracy at the high level. I do not intend to deal with the Vaal evidence because it becomes much more complicated at what - Mr Bizos will be dealing with what the state said about what happened actually at the Vaal in the course of his argument to your lordship. I want to address this allegation that AZAPO entered the conspiracy through an agreement concluded at high level. Now the state did not lead any direct evidence of such an agreement at high level between AZAPO and UDF. What it did was to rely upon a number of exhibits which were minutes of meetings and reports of meetings and I think the state case as I have been able to ascertain it not so much from the argument but as from the documents

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is from EXHIBIT D.1. It begins at EXHIBIT D.1, item 14 and that is..

COURT: D.1 - yes?

MR CHASKALSON: It is EXHIBIT D.1 and that is a meeting of the national executive committee on 10 and 11 September. It is item 14 and there is reference to the fact that the NEC decided that discussions with AZAPO should continue through the Transvaal region of the UDF. I will come to the defence evidence later but this is the evidence which was produced by the state. Then there is EXHIBIT M.2, M.2(10 is the minutes of a Transvaal general council meeting held on 12 November and in paragraph 6.9 there is reference to the fact that a UDF delegation met AZAPO on 11 November 1983. AZAPO will not affiliate to the UDF, they will however co-operate with the UDF on issues which do not compromise their principles or policy. They had two reservations, both principles and policy. Then there is a reference to that in EXHIBIT T.3 - I am sorry, I think we found this during the tea adjournment, it was not amongst the list we had.. (20

COURT: That does not matter, we have got our documents available.

MR CHASKALSON: On 21 January 1984 the last item, 5. Now that is secretariat, it is the United Democratic Front Transvaal report to the NEC and it is reporting really on that item which I have just drawn your lordship's attention to. A meeting was held between UDF Transvaal and AZAPO on 11 November 1983. AZAPO said that they have decided not to affiliate with the UDF, they will however co-operate with the UDF on issues which do not compromise their principles(30

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and then there is EXHIBIT T.5. It is a meeting of March 1984 of the national secretariat under page 3 at the bottom: AZAPO:

1. Transvaal motivated against invitation.
2. Matter referred back to the regional executive committee.

COURT: What does this mean?

MR CHASKALSON: I will tell your lordship, it really related, I am going to show your lordship the evidence as I go along that the defence has given, that the witnesses have given (10 but that has been an invitation to take part in a June 16 ceremony - sorry, a Sharpeville commemoration which AZAPO wanted to hold and there had been an invitation addressed to the UDF to participate. The Transvaal committee motivated against it and the invitation was rejected.

Both Mr Molefe and Mr Lekota in their evidence specifically denied that there was any conspiracy between UDF and AZAPO. Mr Molefe's evidence and that is at volume 253 page 13 524 lines 16 to 22, page 13 528 lines 11 to 24; and then Mr Lekota in volume 284, page 15 540 lines 11 to (20 23, and his evidence-in-chief was this, the question is:

"The next matter that the indictment concerns itself with is the relationship between the UDF and AZAPO. What do you say in relation to the allegation that the UDF was in conspiracy with AZAPO?"

And his answer was: "I deny that allegation."

The relationship between the UDF and AZAPO has never been one of co-operation. It has in fact in varying degrees been one of hostility from time to time:

"On our part we have made attempts to win AZAPO and (30

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to win their support for the UDF, but they have always been steadfastly opposed to the UDF especially on the aspect of its policy of non-racialism. It has simply not been possible for us to win their support and it was really impossible for us to have any conspiracy of any kind with them. I can deal with this subject a bit more extensively."

and your lordship suggests that enough had been said.

Now the evidence which was called by the defence was not only the evidence of the senior national officers of the UDF, Mr Molefe and Mr Lekota, but Mr Chikane also gave evidence about this in his evidence and he was an official of the Transvaal region and we also called Mr Mabasa, who was the president of AZAPO at that time; and all of them deny that there was any agreement. The evidence of Mr Molefe and Mr Chikane was broadly to the effect that the UDF wanted to bring in to their ranks as many organisations as possible. They wanted to win as manh affiliates as possible and they would have liked AZAPO to affiliate to the UDF. Now Mr Molefe deals with that in volume 253, line - sorry, it is page 13 524, line 23 to page 13 525 line 2 and Mr Chikane deals with it in volume 300, line 29 - no, page 17 018 line 14 to 18, and really his evidence is to the effect I think that I have just put to your lordship.

Mr Mabasa made it clear that as far as AZAPO was concerned that as a matter of principle they could not really..

COURT: They could not mix with the wives of the bosses.

MR CHASKALSON: Not so much the - well, partly that. It is the sons and daughters of the bosses. It was really the fundamental difference whether you organise non-racially

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or whether you organise only amongst the blacks in the sense that everybody who is not white is black. That is the fundamental difference, not the only difference m'lord but it is a very key difference between the two groups. It was an insuperable difficulty to their co-operation because the one group, the UDF were absolutely adamant that as a matter of principle they had to organise non-racially and AZAPO on the other hand were equally adamant that as a matter of principle they could not join or work with people who were organising along non-racial grounds and that was the fundamental difference. And there is a whole host of discussions and troubles and conflicts which are traced through the evidence with each side saying that the other side was not treating them with adequate respect and was not sending sufficiently senior officials, so they sent junior officials and the next time there was a complaint, but all the time as it appears from the evidence they never really ever got together, that there was a degree of posturing, that there was a degree of statements but everybody understood the position to be that what kept them apart was principle, that as long as AZAPO said that we would work with you where our principles, it is not contrary to our principles, because of their underlying principle not to work with groups who were organising with whites, they could never work together. And it was really a question of not wanting, each side not wanting to be accused of breaking the unity as it were but not wanting to form the unity. The UDF says you come in and join us and affiliate and AZAPO says no, we cannot and then this question of principle became the major obstacle.

COURT: What is your reference to Mabaso's evidence?

MR CHASKALSON / ..

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MR CHASKALSON: Mabaso's evidence is volume 421, page 24 650 line 18 to 24 651 line 14. Part of the cross-examination of Mr Molefe was directed to the suggestion that it was really the national office which was working with AZAPO and he rejected that. He said, and that is at volume 253 page 13 534 lines 2 to 13, his attitude was that the national office really did not have anything to do with this. He said it was not the attitude of the national office, that from the very beginning the national office took up the attitude that AZAPO did not exist in all of the regions, (10 it was not necessary for the UDF to elevate as he put it, the problem of AZAPO to national level and he says that the actual dealings were left to the Transvaal region to handle. And that indeed is reflected by the minutes to which I have already referred your lordship. Then your lordship will see there is references to - it was said both Mr Chikane and - said both by Mr Chikane and Mr Mabaso and Mr Molefe as well to have led to nothing. Mr Molefe in his evidence at volume 253 page 13 533 lines 10 to 18 describes the purpose of trying to get AZAPO to come in with the UDF. Mr Mabaso(20 said well he understood the approaches to be for affiliation and he said that at volume 421 page 24 655 line 22 to page 24 656 line 1 and there is another passage at 24 671 line 26 to 29, but what seems absolutely clear on all the evidence is that no agreement was reached. There are firm denials of any agreement by Mr Mabasa, volume 421 page 24 639 line 14 to 30 and the same volume page 24 656 line 15. Mr Molefe deals with it at volume 253 page 13 533 lines 24 to 25 and Mr Chikane at volume..

COURT: Just give me that reference again to accused no.19(30

evidence/..

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evidence?

MR CHASKALSON: Volume 253, page 13 533 line 24 to 25.

COURT: And accused no.21's evidence?

MR CHASKALSON: Volume 300 page 17 023 line 14 to 26. He is asked:

> "To your knowledge was there at any time any working co-operation between UDF and AZAPO? -- No.
>
> Was there any agreement that there should be such working co-operation? -- No.
>
> What do you say to the allegation that there was such an agreement made at high level that the organisations should work together to further their interests particularly in relation to campaigns against the new constitution and the black local authorities? -- I reject that."

Mr Mabasa confirms that there were no decisions taken at any of the meetings in his evidence at volume 421 page 24 670 line 16 to 24 671 line 25. And Mr Chikane's account of one of the meetings is given at volume 300, page 17 019 line 28 to 17 020 line 20. And Mr Molefe says that once AZAPO had said that they would only co-operate where a matter of principle was not involved, it was clear to those in the UDF who knew AZAPO that that meant that there was really no room for co-operation because of the non-racial policy of the UDF. Mr Molefe deals with that in volume 253 page 13 530 line 6 to 26, and he says in that part of the passage that I have given to your lordship, he says that when it was reported that AZAPO was prepared to co-operate with the UDF provided they did not conflict with principles of AZAPO it was understood by the UDF to be merely really political posturing/..

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posturing in the sense that the principles of AZAPO essentially meant that there could be no participation of whites and the UDF could not compromise on that principle because it forms part of its foundation or its vision of a new South Africa. And there are other passages in his evidence which are to the same effect, volume 253 page 13 532 lines 20 to 28 and volume 273 page 14 851 line 3 to 10, and Mr Lekota's evidence is to the effect. His evidence is in volume 285 page 15 703 line 15 to 22, and Mr Mabasa confirmed that as well. That was really his evidence as well, in volume 421 page 24 673 line 19 to 24 674 line 9. His evidence in that passage, he says:

> "We mean that our principles still remain that they have (this is the passage your lordship was thinking of) the daughters and sons of the bosses in their organisation and they have the wives of the bosses in their organisation so the principle it has already violated, it is not possible..

ASSESSOR: What page is that again, please?

MR CHASKALSON: That is volume 421, page 24 673 line 19 to 24 674 line 9. And he says later in that same passage:

> "What it means if AZAPO put the conditions of its principle in essence says we are not co-operating because principles of the whole foundation of the organisation we violate our principles, we have no organisation."

Mr Molefe also gave evidence to the effect that though there was no invitation to the UDF to attend AZAPO's national conference in January 1984, certain of the affiliates were invited and he subsequently received reports that a blistering attack was launched on the UDF at this conference and that (30

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this had received much publicity. Now this is January of 1984, after the - this is an incident which has taken place after those discussions at the end of 1983. That is in Mr Molefe's evidence volume 253 page 13 525 line 3 to page 13 526 line 23. And Mr Chikane's evidence was to much the same effect, it is volume 300, page 17 018 lines 4 to 11. And your lordship will recollect that there was subsequently the question of the Sharpeville commemoration and that it was rejected and there was then evidence that by June..

COURT: Just a moment, is that now T5? (10

MR CHASKALSON: Yes, that is right I think.

COURT: Yes, thank you, I have got it.

MR CHASKALSON: I think it is right. There is also evidence that by June of 1984 there had been no improvement between - in the relationship between the organisations. If anything there had been a deterioration and that is dealt with by Mr Molefe at volume 253, page 13 527 line 20 to 13 528 line 10. Mr Molefe is asked in chief what was the relationship in June 1984 - I may be wrong, I think - no, it is in chief, I beg your lordship's pardon, it was one of the last issues (20 dealt by Mr Molefe in chief:

> "What was the relationship in June 1984, the commemoration service of 16 June of the people who died in Soweto on 16 June 1976.

The answer given was:

> "The relationship had not been improved between AZAPO and the UDF at that stage, there had been those attacks and so on. By June both organisations wanted to hold commemoration services at Regina Mundi but not jointly. Each one of them would to the venue, none of them (30

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wanted to co-operate with each other or holding their commemoration together. A situation had developed where it was difficult to go ahead with that service because it was clear a confrontation was likely to take place. As a result of that myself and Frank Chikane asked the organisation of priests, ministers united of christian co-responsibility to intervene and the ministers then decided to take over the service, but they took it over on the basis that they would, the whole thing would be under their control. They would have .."

the record says "lactitude" but it means I think lattitude -

"..lattitude to invite whoever they wanted to invite to participate at that meeting. They contended that on an issue such as the commemoration of June 16, a day that was very important to the black community, that the black community could not afford bickering amongst themselves."

and the next question is:

"The allegation in the indictment as amplified by the further particulars is that there was conspiracy presumably secret agreement between the UDF, AZAPO and other organisations to commit the unlawful acts that are set out in the indictment, and they say that it was at high level in the further particulars. You were the general secretary of the UDF during 1983 and 1984, a portion of 1985, do you know of any such secret agreement or any understanding between the UDF and AZAPO? -- No secret agreement took place between AZAPO and the UDF and the policy of the UDF at all material times has / ..

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has always been to advance its goals through a method of non-violent method. It never thought to bring about change through violent means.."

and so on. And there is a passage in Mr Lekota's evidence at volume 285, page 15 701 line 9 to page 15 703 line 4. And he also deals with the considerable strain between AZAPO and the UDF towards the middle of 1984 and he mentions the need for the ministers fraternal to come in and take over the June 16th ceremonies and at 15 702 against the letter 9 he says:

"I am not aware of any agreement reached by the UDF and AZAPO to work together. I may just mention at this stage that the differences between the two bodies went really much further back than 1984 because at the very time when the UDF had been set up there had been accusations already at that time that UDF or those organisations which set up with the UDF were divisive because they had not joined the National Forum which had been set up earlier on. There had indeed been physical clashes between the UDF and AZAPO supporters in 1983 at the University of Natal, at the University of Durban/Westville. I myself together with accused no.19 were invited to a commemoration service of the late Steve Biko at Glen Thomas in the second half of 1983. I was to be a speaker there. Initially as we understood it the meeting was a joint effort between UDF supporters and for AZAPO and the others, and the AZAPO supporters but when we got to the meeting we found, we were told that the AZAPO supporters had pulled out. Well anyway, the meeting went ahead and we addressed, well, I addressed

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the meeting and just after we finished the AZAPO people arrived there in large numbers and the meeting was just thrown into disarray. We ourselves were advised to clear out."

So there was a long history, an acrimonious history of relationship between AZAPO and the UDF. Now the evidence also shows that there were public differences between the UDF and AZAPO over the Kennedy visit and also that AZAPO took a different view on the national convention, that though the UDF promoted the concept of the national conven(10 tion AZAPO by 1984 had taken up the position opposed to it and in fact had a campaign against the idea of a national convention in 1985. That is volume 421, page 24 660 line 27 to 24 669 line 13. Now there were fundamental differences of policy, there were conflicts between the two organisations, there was great difficulty in getting them to get together even on an issue as important as the June 16 commemoration or the Steve Biko commemoration, that the relations have degenerated to name calling, that the UDF had been casti- gated by AZAPO at its national conference; all this be- (20 fore the events alleged to have taken place in the Vaal and there is direct evidence of the principal people in the UDF and AZAPO denying such an agreement. So the submission we make to your lordship is that the allegation made by the state that there was an agreement at high level between AZAPO and the UDF for AZAPO to join in to the UDF's goal of overthrowing the state by violence, by assisting it in particular campaigns had been disproved.

Now may I turn to deal with the question as to whether there was some suggestion canvassed during the course of (30

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the evidence as to whether the boycott of the black local authorities if successful would lead to chaos. Now to do this I need to take your lordship through the Black Local Authorities Act and the Black Community Development Act and I have also got to show your lordship the changes in the law, and the changes in the law m'lord, because in the volume of the Butterworth statutes give us the law as it is now and to find the changes - what I have done is I have gone back to these green volumes which tell you what the section in the statute read prior to the amendment. (10

COURT: What year is the green volume - my clerk would like to get it.

MR CHASKALSON: 1986 and 1985. Now if I can begin with the Black Local Authorities Act which is Act 102 of 1982.

COURT: Number again?

MR CHASKALSON: 102 of 1982. Your lordship will see in section 2(4) that a local authority established under this section or which is deemed thereunder to be a local authority shall be a juristic person. So obviously the local authority has an existence and continues to exist irrespective of (20 the position of its councillors; it exists independently of its councillors. In section 30 your lordship will see that there is a post of chief executive officer. A local authority shall appoint a person in the case of a local authority which is a city council or a town council (now Lekwa was a town council), as town clerk of that city council or town council or in the case of a local authority which is a town committee etc, a secretary...Well, that does not apply so we have to have a town clerk who is the chief executive officer and sub(iv) provides that the chief executive officer shall (30

not / ..

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not be removed from office or dismissed from the service of the local authority and his emoluments or allowances shall not be reduced except under the authority of a resolution adopted by the majority of all the members of the local authority specially convened for that purpose and unless the minister has approved the removal, dismissal or reduction. So the councillors whether they resign; if they were all to resign and even before their resignation they wanted to do something, they could not. The chief executive officer remains on duty. Now the same applies to department heads, that is in section 31 and your lordship will see that and according to Butterworths there was an amendment to sub(i) in regard to the chief executive officer and sub (ii) and I will trace that back, I will try to trace that back but I do not think anything turns on that because sub (v) which is where the chief executive officer..or sub (iv) which provides that the chief executive officer shall not be removed without the minister's authority has been in there since inception, so the language change could not have been anything material to this case as I see it. In 31.4 which deal with department heads the provision of section 30(4) are made to apply mutatis mutandis, so once again the department heads cannot be dismissed without the minister's approval. Then if one turns to section 35, if one turns to section 35 your lordship will see that the minister has power to second state officials to a local authority. If your lordship goes to section 56 your lordship will see that under section 56(1)(p), that seems to have been in there since the inception, the minister may make regulations on any matter which in his opinion is necessary or desirable

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for the effective carrying out of the provisions of the act. Your lordship will see that under section 27(2)(A), the minister may make by-laws on any matter on which a local authority may make by-laws and such by-laws shall apply in the area of each local authority insofar as they are applicable or not excluded by or are inconsistent with the by-laws of the local authority of the area concerned. Now that had been there since 1983. So we see from an examination of the act that the councils will continue to function under the officials who cannot be dismissed save with the minister's(10 permission and we see too that the minister has the power to make all regulations or by-laws which may be necessary.

COURT: What about budgeting?

MR CHASKALSON: Well, there is another provision which deals with that and I will show your lordship when we go to the Black Communities' Development Act how in fact the development board can do that if the minister gives them power to do so. Under section 29(1)(A), that also seems to have been there since the beginning, if the minister is of the opinion (1), that any object of this act is frustrated by a local (20 authority's failure to exercise or perform a power function or duty assigned to it by or under this act, including a failure to make adequate charges in respect of services rendered by such local authority or to meet financial or loan commitments, or (2), that a local authority committed an act or omission which is unlawful etc. he may direct such local authorityafter he has given such local authority an opportunity to submit representations to him to make such resolution or to make such by-law or to take such action within such period as the minister may consider necessary.(30

If / ..

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If a local authority fails to comply with a direction under paragraph (A), the minister may (1), himself take such action as he may consider appropriate to eliminate such frustration or to rectify such unlawful conduct, act or omission or to prevent such maladministration; (2), authorise any other person or body to comply with such direction on behalf of such local authority. So that section would give the minister the power to deal with those matters and section 29 (2)(A), if the minister is of the opinion that the finances of a local authority have become unsound he may direct that local authority to take such steps as the minister may at his discretion determine for restoring the position and there is a whole procedure there where he can remove from office, dissolve the authority and so the provisions of 2(ii) (b) are made applicable.

So the Act itself provides all the structures that are necessary to ensure that the local authorities continue to function and that in effect the minister and the employees who cannot be dismissed without his authority remain there to deal with everything that a local authority may have to deal with.

Then if I could ask your lordship to turn to the Black Communities Development Act, that is Act no.4 of 1984. It came into force in February 1984 - I am sorry, I am wrong it was assented to in February 1984 and it's state of commencement was 1 April 1984. If your lordship wishes me to I can even go back beyond that and trace the bill provisions but I do not think it is necessary to do so because they were on the table for a very long time But your lordship will see here the reference to development boards. The development boards /..

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boards are constituted in terms of section 3 of the act, and under section 3(1)(b) - section 3(1)(a) says a minister may by notice in the gazette declare any area to be a development board area from the date specified in the notice. 3(1)(b) says any such area may include the area of jurisdiction or any portion of the area of jurisdiction of a local government body, but no such area or such portion thereof may be included therein except after consultation with the local government body concerned. So there is provision made for overlapping jurisdictions, that the minister can declare an area where the local authority has power to be an area in which the development boards has powers. Then I have gone to the 1985 green volume to find out what section 29(1) of the act provided prior to its amendment in 1985.

COURT: What is the number of the section you looked at?

MR CHASKALSON: 29(1), m'lord.

COURT: I am sorry, are we back to the first act?

MR CHASKALSON: No, we are at the Black Communities Development Act, section 29 of the Black Communities Development Act as it existed prior to amendments in 1985.

COURT: And we look at what section?

MR CHASKALSON: Section 29(1).

COURT: Page in the green book?

MR CHASKALSON: 395. Your lordship will see that a board, it read there (1), a board shall subject to the provisions of sub-section (2) in respect of a local authority area situated within its development board area - so in other words if the minister gives the overlapping jurisdiction (a), in the case of a board deem to have been established in terms of section 3(1)(d) in respect of that development board

area / ..

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area be vested in charge with all the rights, powers, functions, duties and obligations with which the administration board concerned had been vested or charged immediately before the commencement of the act, (b), in the case of a board established under 3(1) be vested with all the rights, powers, functions, duties and obligations which an administration board would have been vested and charged with in terms of that section, and (c) in the case of a board referred to in (a) or (b) be vested or charged with all the rights, powers, functions, duties and obligations which the minis- (10
ter may from time to time by notice in the gazette determine in respect of boards generally or in respect of that particular board.

Now the administration boards prior to the commencement act had local government powers. So it then became competent for the minister to issue a notice in the gazette declaring the administration - the development board for that area to be the board which would have jurisdiction over the local authority area. That board would then have local government powers and if one goes back now to the Black Local (20
Authorites Act, now this one is prior to the amendment of 1986 so your lordship will now have to look at two green books. The first one is the 1986 change which is at page 589 and then if your lordship looks at the 1985 green book your lordship will see section 23(1)(L)(i) - section 23(2) was not dealt with in that year so in other words this provision which existed prior to the 1986 amendment existed prior to 1985 as well. In other words it was an older provision, and if your lordship looks at section 23(2) at page 589, it says unless in the case of a village council a notice referred (30

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to in 1(L)(i) or in the case of a town council the minister by notice in the gazette generally or in a particular case otherwise provides the rights, power, function, duty or obligation with which a local authority is vested and charged in terms of section 1(L) shall in respect of the area of that local authority devolve upon the local authority to the exclusion of the development board or local government body etc as the case may be. So the structure that one sees is that though there can be these overlapping jurisdictions between the development board and the local authority.. (10

COURT: But does this section not clash with the provisions of the other act, the Community Development Act?

MR CHASKALSON: In what way, m'lord?

COURT: Does this not state that it excludes the jurisdiction of the development board?

MR CHASKALSON: What it is saying is that unless the minister decides to the contrary, the powers which the black local authority has shall take precedence over the powers of the development board. What is really being said is that there are - there can be two bodies, each of which can exercise (20 powers in an area but unless the minister by notice in the gazette proclaims to the contrary, the local authority will exercise its powers or the local authority takes precedence over the development board. If the minister wish to follow the route of giving the powers back to the development board all that the minister needs to do is to proclaim a notice specifically in the gazette saying so. So there two different ways that the minister could operate. He could either exercise control through the officials of the council with himself making by-laws and regulations and seconding anybody (30

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else that he thought necessary; there are other powers that I can show your lordship where he can actually appoint councillors in certain circumstances. I do not think that is relevant, that is the one route. The other route was to follow the route of taking the steps necessary to restore the development board's powers in the area concerned. So those witnesses who said to your lordship that they thought that the minister would just - they did not contemplate chaos and they thought that the minister would reappoint the development board to do it, in fact that is what the law seems to be. Now it is not as if this was in issue - let me put it to you this way, there is evidence that there were pamphlets circulating which made the point that the minister ultimate retained the powers to run these areas. And Mr Lekota in dealing with the question of chaos at volume 284, page 15 553 line 11 to 15 554 line 8 said very specifically that it was not the purpose of the UDF to create chaos. In fact he says where chaos exists ordinary people's lives become more intolerable. And Mr Molefe in his evidence said that they did not envisage chaos, it is volume 251 page 13 431 line 8 to 13 434 line 16 and he specifically referred to an exhibit, DA.26. Now EXHIBIT DA.26 which deals with the Local Authorities Act and which Mr Molefe says was a pamphlet of an affiliate of which he was aware, if your lordship turns to page 5 under the heading: "Still no real representation for township residents", your lordship sees that the pamphlet says the Local Authorities Act..

COURT: I am sorry, my pages are not numbered.

MR CHASKALSON: I am sorry, m'lord, it is printed page 5. Is it 25 or 26?

ASSESSOR / ..

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ASSESSOR: It is 26. Did you say 25?

MR CHASKALSON: I think I might have said 25, it seems to stick in mind, but it is DA.26, it is a pamphlet headed "Koornhoff Bills".

COURT: Yes, thank you.

MR CHASKALSON: I am sorry. If your lordship would go to page 5, now I will tell your lordship after I have read it what the evidence was on this. Under the heading: "Still no real representation for township residents", this appears:

> "The Local Authorities Act and the Black Community Development Bill have a long list of powers and functions of the councils and development boards. However, the minister can by means of a notice in the gazette determine which powers are granted to town councils and which powers remain with the development boards. He can also decide which assets will remain with the development board and whether there will be any transferred to town councils."

So before the community development bill had been enacted, so we know, we can date this at that time, the situation had been investigated. The fact that the minister had this power in terms of the gazette which I have referred your lordship to earlier and was known, and then are a lot of other provision which show the minister's controls, if your lordship would go to page 11, there is a statement that the controls are firmly in the hands of the minister of co-operation and development who will have as much power as before. So if I could then go back to 13 431 to give your lordship the evidence, it is Mr Molefe's evidence, line 15 of 13 431.

"I /..

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"I would like to show you a pamphlet entitled "Koornhof Bills", it is a little booklet actually, are you able to identify that as a document which you know about? -- Yes.

And then it is put in as EXHIBIT DA.26. He is asked do you know who is responsible for it, and he says:

"My recollection is that it is a document that was produced by an affiliate of the UDF for the Johannesburg Democratic Action Committee.

Did you see the document at about that time that it was produced? -- That is so.

Do you know whether it was circulated or not? -- It was distributed. It was even distributed from the Transvaal office of the UDF. Various affiliates also got copies to distribute it.

It contains an analysis of the bills and their impact.." and then it proceeds from there.

So the evidence then shows that the UDF was aware of this, that the legal situation had been investigated, that the minister's powers had been assessed and determined, that the document submitted was circulated in the Transvaal and so if the witness said that he thought that the development board would take over it is not really an afterthought, it was what was being said at the time. And the fact that the minister had powers of appointment under the Black Local Authorities Act which is a different issue. Your lordship will find that that was also mentioned in one of these pamphlets in the Eastern Cape, AL.30, where at page 14 of AL.30 there is a statement:

"If the community boycotts the election the minister can / ..

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can appoint persons until further elections".
So the submission that we make to your lordship is that there was no possibility of chaos resulting from the boycott of the elections, that this was known to the UDF before the boycotts were called; that boycott of elections is a legitimate political tactic; it is a legitimate means of showing to the government that the structures which the government has chosen and which the people affected have not themselves chosen or had any say in choosing, that those structures are rejected. It is possibly the most effective way of bring- (10
ing that forcibly to the government's attention. If the government chooses the structure and the people for whom this is chosen boycott it, because only 5 or 10% of them are willing to take part in it, the government has a very clear message: We are not satisfied, that is not what we want. Do not impose these structures on us, we want something different.

The evidence shows that there was no violence associated with the black local authorities boycott election campaign, the evidence shows instructions to people to act within (20
the law and the submission which we make to your lordship then is that the proposition that the United Democratic Front was organising an election boycott in order to promote chaos and lead people into violent revolution and incite them into violence have been disproved by the evidence and the documents and the law as it existed at the time.

My lord, my learned friend Mr Bizos is going to take up the story in the Vaal.

COURT: I think I will start on a new book.

MR BIZOS: As your lordship pleases. My learned friend (30

Mr / ..

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Mr Tipp and I will be dealing with what has been called the Vaal part of the case. As your lordship well knows by now 14 of the accused before your lordship were residents of the Vaal, two of them visited the Vaal, that is Mr Baleka (accused no.1) and Mr Manthata (accused no.16) and this part of the case is of particular importance to the accused; as distinct from the three others, Mr Molefe, Mr Lekota and Mr Chikane, who are charged with things on a broader scale. We would like to submit to your lordship right at the outset that really ought to have been a different case to the one that my learned friend Mr Chaskalson has addressed your lordship on. The joining of these accused to the three others whom one may call UDF officials was saved at the pleadings stage by broad allegations which have not been substantiated and those broad allegations, not having been proved, have to a very large extent in our respectful submission by the material which has been placed before the court had a prejudicial effect on the defence but we will try our best to try and unravel the facts and circumstances and documents in a way in which we believe the case ought to have been presented against them by the state, if there is in fact a case, and what we have done in order to disprove the allegations. We will deal with it under various headings and the first one that we want to deal with is the one that the state starts off with in the indictment and that is the formation of the Vaal civic association. Now it would appear that the state has inextracable linked the formation of the Vaal civic association to the alleged conspiracies which have been described by my learned friend Mr Chaskalson and to an alleged intention to bring about violence in the

Vaal / ..

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Vaal triangle as part of the process of rendering the public ungovernable and violent revolution.

Your lordship will find the beginning of the Vaal case in paragraph 67 of the indictment, which appears on page 277 of the annexure to the indictment. Your lordship will find what is alleged in the preamble to section 67 which is the preamble that precedes practically every one of the acts set out, that the date that it chooses may be of some importance on the probabilities. It says that during the period 20 August 1983 to the end of April 1985 and for the implementation and/or furtherance of the aforesaid conspiracy/ conspiracies and for the implementation and/or furtherance of the aforesaid aims of the ANC and SACP or UDF or both said aims..and it goes on in the usual way. Your lordship has read this, has given judgments on it at the time of the interlocutary applications, portions of it were read to witnesses, some of whom were rather surprised to hear some of the acronyms and some of the organisations that are referred to in the preamble, and it will not be necessary in our respectful submission to reread it to your lordship The particulars of this run from page 227 to page 285 which really lead with or deal with allegations or what was done in order to form the VCA in furtherance of that conspiracy or conspiracies. Further particulars were sought and your lordship will find certain further particulars given on paragraph 28 which your lordship will find on pages 81 to 82 of the further particulars and there is the referral back your lordship will recall the format of the further particulars, to paragraphs 27.6.1, 27.6.4 and 27.6.5 which your lordship will find on pages 75 to 77 of the further

particulars/..

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particulars. Your lordship might notice in the further particulars that the date is changed from 20 August 1983 to 16 June 1983 where it is specifically alleged that Esther Raditsela called for the formation of the civic association. Now we will submit that although there were steps taken to form VCA the state has not only failed to prove that it was as it alleges at the instance of the UDF or for the purposes of the furtherance or the conspiracy or conspiracies that it sets out in the indictment and the further particulars but that the accused that have given evidence, the documents produced and the probabilities in fact negative the allegation that there was any conspiracy.

The state alleges that the VCA was formed "by activists of UDF and activists connected with the so-called action committee" and what we say in relation to this, is this that it is common cause that the VCA arose from the efforts of the Vaal action committee but there is no evidence whatsoever to support the allegation that activists of UDF formed the VCA. Indeed we submit that the evidence establishes the contrary at least on the balance of probabilities if not beyond reasonable doubt. The origins of the Vaal action committee and thereafter the Vaal civic association emerged clearly, we would submit, from the evidence of accused no.5 and the evidence of the erstwhile accused no.18, Simon Vilakazi. Both Mr Malindi and Mr Vilakazi say that a call for a Vaal residents' organisation was made at the commemoration meeting held on 16 June 1983. They say that this call was made by Mr Philip Masiya and that a number of speakers supported this call and among them including Mr Ratsomo, accused no.22 and Esther

Raditsela /..

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Raditsela but they both deny that it was Raditsela who initiated the call as alleged by the state. The evidence goes further to say that those persons who were interested in the formation of this organisation were requested to meet again on 18 June 1983. Your lordship will find this in the evidence of Mr Malindi, accused no.5, on volume 205 page 10 744 line 26 to page 10 746 line 13. And Mr Vilakazi's evidence at volume 347, page 19 840 line 21 to 30.

The evidence goes on that on 18 June 1983 a group of some 40 to 50 people met again to discuss the proposed residents' organisation. Accused no.5, Malindi and the erstwhile accused no.18, Vilakazi, attended this meeting after a youth organisation's meeting had finished. Your lordship will recall that there was a suggestion that they should really split into two groups and that apparently Miss Edith Letlhaka had something to do with the invitations that were issued to these people. Accused no.5 told your lordship that in fact he intended concerning himself only with the proposed youth organisation and it was decided at this meeting to conduct a survey amongst the residents in order to find out the feelings of residents about such an association. Your lordship will find all the evidence in the evidence of accused no.5 in volume 205, page 10 749 line 3 to page 10 751 line 5. May I pause here for a moment?

It may indeed appear strange that young people should want to hold some sort of a survey. The evidence is there, there is no evidence to contradict it but I could not helped noticing your lordship's assessors drawing to your lordship's attention at a time when document DA.11 was produced, which is the cover of an annual survey of 1983, that one of the (30

researchers/..

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researchers mentioned there is Mr Thabiso Ratsomo, accused no.22, so what may appear improbable in the general sense it is common cause that this was a young man who took an interest in the affairs of his community. He apparently had a job as a research officer in the Institute of Race Relations and although there is no specific evidence as to who really had this idea of going around..

COURT: Your submission is he wanted to get in a bit of practice?

MR BIZOS: Well, not only that, he might even have reported on it, but what I am saying is this that here is an allegation of a grand conspiracy and you have young people getting together somewhere in the Vaal saying well, there is a suggestion that we should have a residents' association or a civic association and young people saying well, let us see whether other people really want it and then your lordship has uncontradicted evidence that they went about asking people what their grievances were and whether they wanted an association to be formed or not. There is no reason in those circumstances in our respectful submission to reject the evidence of these two young people on this point and once it is uncontradicted and probable and there is no reason to reject it how far away from the grand conspiracy or conspiracies that the state alleges that activists of the UDF went about and brought an organisation into existence in furtherance of this conspiracy or conspiracies. And we submit that although it had been the original purpose of Malindi, accused no.5, not to become involved but to form a youth organisation, he nevertheless became involved. He told your lordship that he attended almost all its meetings

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and we submit that he is therefore in a position to testify as to what the work of that committee was. Your lordship will find that evidence in volume 205, page 10 751 line 6 to line 23. The evidence goes on, as had been proposed a survey was conducted concerning various issues, the results indicated dissatisfaction with rents which were felt to be too high, electricity charges, lack of development, the community council system and generally evidence support for the proposed resident organisation. Your lordship was told that some 1 300 people completed forms and they were returned. It is not necessary for us to go into whether this was a proper or statistically valid sample but what is important is that the evidence is uncontradicted. There is nothing improbable in it in the circumstances disclosed by the evidence as a whole and it is again destructive of the allegation of conspiracy or conspiracies. Your lordship will find the results of this survey in the evidence of accused no.5 volume 205 page 10 753 line 14 to page 10 755 line 30. The evidence of witness Vilakazi in volume 347 page 19 842 line 14 to 17, where he says the specific purpose of the survey was to identify the residents' problems.

The evidence of accused no.5 at volume 205, page 10 756 line 1 to 19 was to the effect that the call for the formation of a civic association, the early preparation for its launch and the conducting of the survey had all been done completely independently of the UDF. He goes further and says the persons who were to speak at the public launch of the civic association were invited because of their standing and experience in civic affairs. They have enjoyed a reputation in public affairs long before the launching of the

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UDF. Your lordship will find that evidence of accused no.5 at volume 205, page 10 756 line 23 to 10 758 line 10. The allegation made by the state that Raditsela and Letlhaka travelled to Johannesburg in order to see the Soweto civic association people, that is Nkhondo, Motlana and others before the launch of the VCA is denied by accused no.5, volume 208 page 10 895 line 22 to line 26. We will later be referring your lordship to the evidence of Dr Motlana and the evidence of Mr Mathata, accused no.16 and let me take the opportunity of merely whilst I am on this (10 we will give your lordship the references later, the uncontradicted evidence of both Dr Motlana and Mr Manthata is that Mr Manthata was requested to be a standby for Dr Motlana. Now the state relies on the differences between Dr Motlana and Mr Manthata in relation to their attitude to the UDF. Your lordship will be able to assess the probabilities as to whether they were invited, whether Dr Motlana was invited there as a UDF office bearer who went and arranged for a standby or a first reserve so to speak whom he knew to be opposed to the - at least to the Soweto (20 civic association's affiliation as a de jure or de facto situation at the time. If Dr Motlana had been invited there in his capacity as a leader of the UDF he might have chosen persons other than Mr Manthata - accused no.16 to be his first reserve.

THE COURT ADJOURNS FOR LUNCH

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COURT RESUMES AT 14h00.

MR BIZOS : My lord, the evidence of accused no. 5 is to the further effect that although accused no. 22 supported the call for the formation of the residents association on 16 June 1983, he became - I am sorry, I have got it wrong. He became drawn into the affairs of the action committee when invited by accused no. 5 in the course of September 1983 only. Your lordship will find that in volume 205 page 10 758 line 25 to page 10 759 line 10.

The further evidence is that at the time of supporting(10) the call for the organisation on June, 16 1983 accused no. 22 did not talk about the black local authorities system and he did not say that that system was the cause of the people's problems. Your lordship will find that - the evidence of accused no. 5 in volume 210 page 11 036 lines 22 to 26.

The evidence is further that at the same meeting Raditsela made no mention of local authorities or the community council. Your lordship will find that in the same volume 210 page 11 038 lines 5 to 14.

The further allegation by the state that it is alleged(20) that accused no. 22 and Tembekile Hlehluku were responsible for making arrangements for a meeting in the Vaal at which Mr Molefe, accused no. 19, was to speak and that the action committee confirmed such arrangements. Your lordship will find that in the indictment at page 279 paragraph 67(3) and it is amplified in the further particulars page 81 paragraph 28.1.1.

The evidence does not support this allegation. The meeting of 18 September 1983 at which Mr Molefe, accused no. 19 spoke, was a UDF meeting and the Vaal Action Committee(30)

had/...

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had played no part in its organisation. Your lordship will find that in the evidence of accused no. 5, volume 205 page 10 760 lines 4 to 29.

Your lordship will bear in mind that one of the persons referred to in the further particulars Hlehluku was indeed the organisation of the meeting. However, he was evidently not aware at the time of the proposed formation of the civic association in the Vaal. He only afterwards became aware of the action committee. Your lordship will find that in the evidence of accused no. 5 volume 205 page 10 768 lines 17 to 30. (10)

Mr Molefe, accused no. 19, was cross-examined on this meeting. He was asked about the names of the organisers of the meeting. In his evidence, accused no. 22 is not included among those and it was not even suggested to accused no. 19, Mr Molefe, that accused no. 22 was one of the organisers. It is also clear from the evidence of accused no. 19 that he was not aware at that time that the people in the Vaal were busy forming themselves into an organisation. Your lordship will find that in the evidence of accused no. 19, volume 256 page 13 782 line 21 to page 13 783 line 16. (20)

Some members of the action committee attending the meeting of 18 September 1983, but in any sense as representatives of that committee. That accused no. 5, Malindi, the erstwhile accused no. 19 Vilakazi, Ratsomo accused no. 22, Raditsela and Lethlake were indeed present. It is alleged for some reason or another that accused no. 2 was also present. That is that Mr Hlomoka was present. That was not really pursued with anybody. So, that one does not know how that allegation came to be made. Your lordship will find that in the evidence of accused no. 5, volume 205 page 10 761 lines (30)

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9 to 23.

What follows, we submit, is not contradicted and is completely destructed of the allegations that this was being - that the VCA was formed at the instance of the United Democratic Front. In the course of the meeting, accused no. 19 is said to have whether there were people present who were prepared to form a UDF area committee in the Vaal. Accused no. 22 responded saying that there were at that time people working towards the launching of the civic association in the Vaal and that it was not possible to assist the putting up of (10) an area committee at the same time. Your lordship will find that evidence in volume 205 pages 10 764 lines 15 to 27. This is perhaps consistent with what your lordship knows about accused no. 22 up to know.

Accused no. 22 further made it clear that it would be for the civic association after its formation to decide whether or not to affiliate to or associate with the UDF. No reasons have been advanced as to why accused no. 5 and accused no. 19 should be disbelieved in this. Your lordship will find the evidence of accused no. 5 in volume 205 (20) page 10 765 lines 6 to 12 and it is confirmed by accused no. 19 who has raised the question. Your lordship will find accused no. 19's evidence in volume 251 page 13 460 line 10 to page 13 462 line 8.

The state appears to have accepted the correctness of this version, because by the time Mr Vilakazi came to give evidence, it was put to him as a fact. Your lordship will find that in the evidence of Vilakazi in volume 348 ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : Is that now accused no. 18? (30)

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MR BIZOS : The erstwhile accused no. 18, not as a witness.

ASSESSOR (MR KRUGEL) : Not accused no. 10?

MR BIZOS : Not accused no. 10, no. That is the erstwhile accused no. 18. In volume 348 page 19 906 line 17 to page 19 907 line 7.

This, we submit, is completely inconsistent with the state's allegation that accused no. 22 had played an essential role with the approval of the action committee in arranging for this meeting. If anything, we submit that the evidence shows a jealous independence of the local people in the (10) Vaal of any national umbrella organisation which the UDF was in September 1983 and it also shows what one may call respect for democracy, that it is not for a small number of people held by a person who held no communal position. The person who called accused no. 19 there, had no position in the Vaal Triangle and we would submit that it shows accused no. 22 to be very concerned that things should be done properly and that he wanted his community to have an organisation and that organisation would decide whether or not it would affiliate to the UDF, but the matter goes further. Inconsis- (20) tently with the notion of the Vaal Civic Association having been launched pursuant to the efforts of a conspiratorial group, the action committee members, some forty of them in number according to the evidence, organised a public meeting held on 24 September 1983 in an attempt to get more people involved with their efforts. Your lordship will find that in the evidence of accused no. 5 volume 205 page 10 765 line 22 to page 10 766 line 8. These meetings were open to all to come. There was no suggestion of any screaming of any of the people that came along. Your lordship will (30)

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find that in the evidence of accused no. 5, volume 212 page 11 211 lines 11 to 25.

The evidence goes further that at a meeting of 24 September 1983 Mr Ratsomo, accused no. 22, spoke, outlining the kinds of problems which needed attention and to which a civic association would look into. In this address there was no suggestion that a civic would be formed as part of a campaign against the black local authority system, all the councillors or that any form of violent purpose was contemplated. That evidence is to be found in volume 205 page 10 766 line 16 to page 10 767 line 13. (10)

There is support for this in the state case because the Reverend Lord McCamel was approached by Raditsela and conveyed the purpose of the civic association in the same terms. Your lordship will find that in the evidence of McCamel volume 33 page 1 448 line 20 to page 1 485 line 6. May I pause here for one moment. We will in due course and it is one of the reasons why we have not been able to unfortunately put this down in writing for your lordship in order to speed up matters. The state in its argument submits (20) that McCamel is a satisfactory witness. We would with minor exceptions accept the correctness of that submission. This again shows the disregard of the evidence of their own witnesses by our learned friends for the state, because what is inserted in the indictment and what has been argued is contradicted by the evidence of their own witness and they say he is a satisfactory witness. We will inform your lordship in due course to that when we make the comparison, because they couple him with certain other witnesses, which we are going to say to your lordship are not satisfactory (30)

witnesses/...

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witnesses and we go further and submit that it is clear from the evidence of accused no. 5 that the perception of the Vaal Action Committee, the black local authorities were to be completely rejected in their perception, inter alia because there had been no consultation by the government on the issue. Those who served in the system were unacceptable and seen as puppets and that the opposition to the introduction of the town council system was to be made clear. Your lordship will find this in the evidence of accused no. 5 volume 209 page 10 992 line 20 to page 10 994 line 9. (10)

I will develop the argument later, but let me take this first opportunity to make the following submission. The state takes it own perception of what the function of a community organisation is, assures your lordship in accordance with its own perception that it should really mind its own little affairs within its own little community and not concern itself with national issues and then says well, the accused have told the contrary, therefore they cannot be believed. Look at the resolutions that they passed on 9 October 1983. Therefore they cannot be telling the truth (20) because they were worried about the Ciskei and they were worried about the vote. The state makes all those submissions on a false premise, in our submission. Many of the accused made it clear to your lordship, that they considered their local problems inextricably interwoven with wider political issues of the country as a whole and that there could not be a satisfactory solution, so that what the state has done in our submission in its argument and we will give your lordship details later, is to drawn its own lines, so to speak, its own agenda without regard of what the evidence (30)

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of the accused was. Under further cross-examination accused no. 5 stated that the object of the Vaal Action Committee was not to get rid of black local authority management but to make it known to the government that the system was unacceptable until it had been given greater powers. Your lordship will find that in the evidence of accused no. 5 volume 211 page 11 105 line 27 to page 11 106 line 9.

The evidence of accused no. 5 further is that in order to achieve the unity of the people, there will be no need for the proposed civic assiation to seek out issues. (10) The problems existed already in the townships and everyone was aware of them. Volume 211 page 11 108 lines 14 to 22.

The evidence further shows that after the meeting of 24 September 1983 members of the Vaal Action Committee were approached by Bokala and Valli of the Transvaal UDF with the specific request that the action committee should affiliate. Once again the position is expressed that the question of affiliation was something that was to be left to the civic association itself to decide once it had been formed. That your lordship will find in volume 205 page 10 767 line 14 (20) to page 10 768 line 16. May I remind your lordship that this attitude continued that even at the launch - we will deal with those references at that time - no final decision was made but it was left to the committee that had been democratically elected in order to get the sent off for the declaration and working principles and had a committee meeting.

COURT : Was there not a resolution to affiliate at the launch? It is not AN13.1?

MR BIZOS : Subject to. Subject to the committee getting the - we will refer your lordship to the evidence later. (30)

It/...

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It was subject to the committee making certain enquiries in relation to their independence and also the evidence of accused no. 10. You will recall well that they had the declaration and the working principles. Your lordship will recall that there was even the question what the working principles meant once they brought them to their committee meeting and things like that.

Your lordship does not - or should I recall to your lordship's memory that there was something in writing, and it was scratched off and then put in the form in which I have now described it. That it was really a suspensive condition other than out and out affiliation. It goes without saying that once there was suspensive condition at the time of the launch, that it would be an a fortiori case at the time of these discussions. At the time that preparations were being made for the launch of the VCA, the action committee took an expressed decision that it would not itself propose that the VCA should affiliate to the UDF. This question was to be left to the civic itself to decide. The motivation was that a new civic association would be concerned with building itself up and that it should not allow itself to become involved in more things that it could handle. Your lordship will find that evidence in volume 208 page 10 092 line 22 to page 10 903 line 27.

We submit that it is clear that throughout the period leading up to the launch of the VCA members of the action committee were inclined deliberately towards preserving the autonomy of the proposed civic association vis-a-vis the UDF. This evidence was directly counter to the state's thesis that the formation of the VCA was planned and carried out/...

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out for the purpose of furthering the allegedly conspiratorial objects of the UDF and/or the ANC.

We submit that the fact that the VCA did not emerge as a consequence of an initiative or directive from the UDF is borne out by EXHIBIT L7. This is a report to the UDF Transvaal General Council meeting of 15 October 1983 made in the name of the Vaal Action Committee and he goes further, accused no. 10, and explains that this report had been presented in the name of the action committee. Your lordship will recall this would have been six days after the official launch, (10) because there had been no mandate from the VCA to report on it to the UDF. Your lordship will find the evidence of accused no. 10, Mr Vilakazi, at volume 165 page 8 367 lines 3 to 17. Your lordship will see that in the heading of that report it is headed "The Vaal Action Committee". The evidence was that they reported that they got there and they said "No, you must have a written report" and they said "Well, we have no authority to report to you on behalf of the Vaal Civic Association. We were members of the action committee" and they reported on behalf of the action committee (20) deliberately so, so that they would not run foul of their organisation that had not authorised them to report to the UDF because the affiliation had not yet taken place.

COURT : Well, it says here a few resolutions including that of joining the UDF were passed?

MR BIZOS : Yes, but if we go to the resolution itself it was with the suspensive condition on information being obtained. But be that as it may, it shows a reluctance to merely accept directives from outside. Your lordship may be want to note that EXHIBIT 26 records - the register records that accused (30)

no. 22/...

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no. 22 is present as an observer - sorry, that Hlehluku is an observer and no indication is made in the ... (Court intervenes)

COURT : Sorry, accused no. 2 is present?

MR BIZOS : No, 22 and Hlehluku.

COURT : Were they both observers?

MR BIZOS : No, one is an observer and in respect of accused no. 22 there is nothing. If your lordship looks at EXHIBIT 26 your lordship will see no prior entry in relation to any one from the VCA, unlike some of the other areas that(10) I may recall to your lordship's memory like Huhudi where certain people were actually attending meetings and representing the civic association which according to the evidence had not been formed.

Then if your lordship looks at EXHIBIT L1 paragraph 2 as present on 15 October, there is the Vaal Civic Association but in paragraph 6 we are not affiliated to the UDF.

COURT : Who says that? In paragraph 6 it is said "Reports from affiliates." Then we have the Vaal Action Committee, who is not present according to paragraph 2. So, it seems(20) to me that they used these names interchangeable.

MR BIZOS : It was explained in the evidence of accused no. ... (Court intervenes)

COURT : But was it explained that the Vaal Action Committee had affiliated? Because so far we have not had any evidence that the Vaal Action Committee had affiliated.

MR BIZOS : The evidence is to the contrary that it had not.

COURT : But here it is stated to be a report from the affiliates?

MR BIZOS : If we could have a look - the heading of the (30)

report/...

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report ... (Court intervenes)

COURT : Is Vaal Action Committee.

MR BIZOS : Vaal Action Committee and it was explained that they did not have - that they reported back that they expected to report but that they did not want to do it because they did not have a mandate from the newly elected civic association, but once they were there, they reported in respect of the - but the matter ... (Court intervenes)

COURT : Yes, but the difficulty is, does one expect a report from an observer? You normally get reports from your affiliates. (10)

MR BIZOS : It was a period immediately after the formation of the VCA formed on 9 October. This meeting is on the 15th. They accept to be affiliated because there is a suspensive condition to their affiliation and those are the circumstances. They do not suggest that the direct evidence is incorrect, but if we may go to L7 ... (Court intervenes)

COURT : This is 15 October. Was O2 not the one that was relevant on this 15 October minute? EXHIBIT O2?

MR BIZOS : I will have to look at it, but Mr Tip assures me that it is not, but L7 says specifically 15 October. (20)
If your lordship has a look at L7 the first paragraph "Although we are not affiliated to the UDF, our committee supports the UDF." The committee that is referred to there is the action committee, because that is the capacity in which they are reporting and any ambiguity in the first paragraph of the minute of reports of the affiliates, that that report is done away with by the first paragraph of EXHIBIT L7.
It is also proof of the understanding of those there that there was only a condition of affiliation on the afternoon (30)

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of Sunday, 9 October.

COURT : But now, at what meeting were they taken up in the fold?

MR BIZOS : The next paragraph. It was only at the UDF general council meeting of 12 November 1983 that there is recorded an application to affiliate and membership by the VCA and your lordship will find that in EXHIBIT M2 item 3.1.

May I pause there for a moment. There is much in the state's argument of the conspiratorial bringing into being of yet another civic association to do the bidding and (10) carrying out the instructions of the UDF. We submit that the documentary evidence, the viva voce evidence, logic and common sense are completely destructive of the suggestion made by the state.

We submit that the evidence shows that Mr Thabiso Ratsomo, accused no. 22 and Hlehluku went to the UDF meeting on 15 October 1983 because of the resolution that the VCA should affiliate to the UDF and that therefore went there in order to obtain further information. To suggest as the state does and your lordship will find this, I will refer (20) to it as "betoog", because that is the heading of the document without wishing any disrespect in mixing the languages. I will refer to the state's argument as "betoog", because that is the heading it has.

COURT : Because you do not want to refer to it as an argument?

MR BIZOS : No disrespect is tendered. I merely was apologising in relation to the mixing of the languages. "Betoog" page 83 paragraph 3. That this, and to use their words, represents a "vroeëre verbintenis" with the UDF. Evidently (30)

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in the belief that there is some consequence, sinister consequence, we submit it is not a fair reflection of the facts.

Your lordship will have seen that EXHIBIT L7 goes on to make clear the initiative of the formation of the Vaal Action Committee - arose from the call made at the meeting of 16 June 1983, where people showed the need of a civic association in the Vaal complex. Mention in the report, this is L7, is made of the UDF and the Soweto Civic Association. It is clear in the report that they were not the only organisations approached for assistance and further that (10) such approaches came from the side of the action committee and not vice versa. The state's thesis is that the UDF - it says at the bottom of page 1 of L7 "A series consultations and meetings were organised. Among others, members of the UDF were consulted and suggestions and advices from them and members of organisations like the Soweto Civic Association were welcomed." To ask or to have discussions if you are forming a civic association from an association that pioneered the formation of civic associations long before the UDF was thought of, is not support of a conspiracy. (20) We submit that the evidence establishes that the origins of the Vaal Civic Association lay with the formation of the action committee pursuant to the calls made at the public meeting on 16 June 1983 and not as a result of the election to boycott campaign referred to on page 6 of EXHIBIT C110.

Documents and I do not intend saying anything more than has been said by my learned friend Mr Chaskalson in relation to the admissibility of documents, nor do I want to enter into any vertical, lateral or diagonal dissection. Let me just for one moment illustrate what the state's approach (30)

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in this case to the evidence has been. EXHIBIT C110 is a schedule. Your lordship will recall that. I understand that specific argument is going to be addressed in relation to its admissibility in due course to your lordship by my learned friend, to that and other documents, specific documents, but that document says that the Vaal Civic Association was formed as a result of the election boycott campaign on page 6 of EXHIBIT C110. Whatever its admissibility - well, if it is inadmissible, it is the end of the story, but I am prepared to assume for the moment that it is admissi-(10) ble. Your lordship has direct viva voce evidence, documentary support for that and somebody somewhere in some office in relation to document C110 took newspaper cuttings, interviewed witnesses or we do not know what he or she might have done and came and wrote this thing down. The state's approach has been that this is an unimpeachable witness. Numerous of the accused and a great number of defence witnesses have been cross-examined on the basis "How can you say X, Y or Z happened when SASPU National says that something else happened?" I think that more has been put out of SASPU (20) National to the defence witnesses, accused and non-accused the like, than anything else that could possibly have been gathered in any trial against a group of people. Your lordship will hear as to whether SASPU National is or is not admissible, but I want to take this opportunity of indicating to your lordship that many of the criticisms of the defence witnesses during the course of the cross-examination were bases on what we submit is an incorrect premise that what these documents say is the truth. Some of the witnesses were even embarrassed by it being suggested if they (30)

admitted/...

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admitted membership of an affiliate, that they were reminded "Well, this your affiliate that says this. Therefore it must be the truth." But we will refer to that in due course, which is in our submission that whatever the admissibility questions may be or whatever answer there may be to the admissibility questions, it is not a fair way of cross-examining an accused or a defence witness.

In fact your lordship will recall that we have an almost illiterate accused in this case. I am glad to be able to inform you that the three years has put to some good use (10) by accused no. 9, Mr Ramakgula. C110 was put to him as evidence to contradict him as to what happened in the Vaal and matters at which he was present. Your lordship will find it in his evidence in volume 185 page 9 577 line 21 to page 9 578 line 1. Roundabout that area and I do not intend again referring to it. Your lordship will notice that some fifteen of eighteen documents were put to Mr Ramakgula in an attempt to contradict him in his evidence by what was said in these documents, which due to his unfortunate circumstances when young, he did not even learn to read. (20)

The contention of the state in "betoog" page 83 paragraph 1 is that it provided prima facie proof that the VCA came into existence as a result of the UDF campaign against the black local authorities, has no basis other than what appears in C110, a document which my learned friend, Mr Tip and the notes has described of dubious heritage. In any event the prima facie case even if it did create such a prima facie case is put to rest by the evidence of accused nos. 5, 10 and 18, the erstwhile accused no. 18. Your lordship will find the evidence of Mr Vilakazi, accused no. 10 in volume 165 (30)

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page 8 375 line 22 to page 8 376 line 11 and the witness Vilakazi, the erstwhile accused no. 18, volume 349 page 19 939 line 22 to page 19 940 line 11.

The further contention by the state in "betoog" page 83 paragraph 2 is that this prima facie evidence is confirmed by the report of the Vaal Action Committee to the UDF meeting on 15 October, contained in EXHIBIT L2 and I have already made a submission in relation to that document.

Insofar as L2 records inter alia amongst others members of the UDF were consulted and suggestions and advices from(10) them and members of organisations like the Soweto Civic Association were welcome, we submit that on a fair assessment this statement conveys nothing more than the persons concerned with the launch of the VCA themselves sought and obtained some assistance from other established bodies. Advice was solicited by these persons and welcomed when it was received. It is clear in context that this relates to the details of getting an organisation on the way. It is in fact an indication we submit of the poussette of the state case in its unpremised conviction that there existed a conspiracy that(20) it should from its entirely neutral statement of some communication derive the belief that the statement provides confirmation that the VCA resulted from the UDF campaign on black local authorities.

Of course one might say here we have the launch on 20 August and shortly thereafter the VCA was formed. The evidence, however, is that it was there since 16 June. The answer may well be but we know that the Transvaal UDF was really an embryonic body from April/May. Even that would be conceded, but one has to take as a fact that the (30)

Soweto/...

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Soweto Civic Association existed independently of the UDF since 1977. So, the idea of a civic association was not something noval and your lordship will be referred to this evidence later on. Your lordship will recall that a pro forma constitution had been drawn by the Soweto Civic Association in the hope of having a federation of civic associations even before the UDF was formed, but we will give your lordship those references when we deal with the defence of Mr Manthata, accused no. 16, who gave evidence about these matters and will refer your lordship to the evidence of (10) Dr Motlana, so that there is not even a slight probability to be drawn from the coincidence of time. We submit that certainly there was no conspiracy pursuant to which this took place.

The logic or I would submit the lack of it in the state case runs something like this, that in a conspiracy people communicate and co-conspirators talk to each other. Here is a case where there is communication between the UDF and the VCA. It follows therefore that there is a conspiratorial nexus between the UDF and the VCA. I do not think that (20) I have to address your lordship any further on lack of logic and that.

At a meeting of the action committee it was said that proper people will be people who will be trustworthy, would have to be elected to the committee of the civic association Your lordship will find this on the evidence of accused no. 5 volume 205 page 10 772 lines 14 to 22.

There is an echo of this in the evidence of McCamel who made mention of it being said at a meeting of 8 October 1983. That it was necessary that those elected should be(30)

people/...

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people who display an interest or "belangstelling" in the words of the interpreter at the time. That Raditsela said that he had looked into how this could be done. The substance given was that the nominators should seek themselves invisible positions in order to nominate the people that would go onto the committee. Your lordship will find the evidence of McCamel in volume 33 page 1 487 lines 5 to 27.

This evidence does not support the suggestion that the election was in any way rigged. We submit that there is nothing sinister about members of the action committee having (10) an interest in who would be elected to the committee of the civic association. If there had been and if it were the intention to use Reverend McCamel as a front, it is highly improbably that he would have been made privy to this discussion, that it was really a conspiratorial meeting. It is submitted that the state seeks to make far more of the evidence than that the evidence would bear. A sinister connotation is suggested that Nkondo was present at this discussion and they say well, therein lies the conspiracy. This is said in "betoog" page 84 - pages 84 to 85 and it (20) is there stated that this was really a conspiratorial plan so that Raditsela should decide who should really be on the committee. We know from the state's other submissions that Raditsela, if the black consciousness people will forgive the expression, was the bete noire of the peace in the Vaal as far as the state was concerned. There may even be some validity in the suggestion, but we will deal with Mr Raditsela's position in due course, but the evidence does not support that there was any rigging of this election. May I remind your lordship of some of the evidence, that first of all (30)

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there were three nominees for the position of chairman. Raditsela stood for the position and was defeated. What sort of thing was that. The evidence was that other people were put up for other posts and the ordinary electoral process took place. We will in due course submit to your lordship that the witness IC.8 is not a worthy witness on whom anybody should place any reliance at all and give your lordship reasons for it, but even he, the most enthusiastic supporter of all the serious allegations made against the accused, both of which we will try and show to your lordship, have(10) been proved to be false beyond any reasonable doubt. Even he says that the elections were freely and fair, to us an in expression. Your lordship will find that evidence in the evidence of IC.8 - I have not got the volume, I looked it up last night, it is page 904 - I will give your lordship the volume number in a moment - lines 19 to 24 to 906 lines 7 to 13. I may say that in the "betoog" volume 1 page 86 paragraph 3 both McCamel and IC.8 are said to be satisfactory witnesses. We will in due course show your lordship the conflict between IC.8 and McCamel on most material issues(20) and that the submission made in the "betoog" page 86 paragraph 3 could not have been made very carefully if they say that they were both satisfactory witnesses. The volume is volume 20.

Some attempt was made to suggest to your lordship that the choice of McCamel was in itself part of the rigging process to merely get support, but his own evidence discounts that completely. He says that there was nothing sinister in his being approached to act as master of ceremonies at meetings and more particular inaugural meetings. This was a (30)

customary/...

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customary practice in the Vaal Triangle and the reason for it was that he is a high profile religious leader in whom people have respect and your lordship might have noticed that he is a man of some considerable presence. Your lordship will find his evidence in this regard in volume 33 page 1 485 lines 13 to 20.

We submit that, very fairly, accused no. 5 told your lordship that on the action committee there had been discussions as to who should really be elected on the VCA, but not to what specific positions they should really be nominated or elected for. Your lordship will find that in volume 209 page 11 009 line 26 to page 11 010 line 3. (10)

There is another piece of evidence which is completely inconsistent with the conspiratorial hand being present. Accused no. 5 told your lordship that Esau Raditsela did not want to stand for the executive, because he was very busy in his work in the Industrial Aid Society and he had made his position clear at a meeting approximately one week prior to the meeting of 8 October. Your lordship will find that in volume 209 page 11 010 lines 10 to 18 and page 11 006 to 11 008 lines 17 to 22. There are actually two references, I am sorry. It is actually lines 9 to 15 in 11 006 and lines 17 to 22 in 11 008. (20)

Not consistent with a rigging process that has been suggested, there was a specific request that people that stood for election should not sit on the platform, lest it is be thought by the community that leaders were being pushed onto it rather than being elected by them. Your lordship will find that in volume 290 page 11 010 line 22 to page 11 011 line 7. (30)

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In relation to the resolutions that were to be put to the - again accused no. 5 has testified that there was discussion among members of the action committee concerning the proposals put to the meeting on 9 October 1983. These included con demning community councillors as puppet bodies and he says that this was not something new in the community. Your lordship will find that on volume 205 page 10 772 line 26 to page 10 774 line 26.

We submit that the fact that proposals were discussed and put forward for adoption does not imply that the (10) audience was being manipulated. Indeed it would have been most uncommon for something of this sort not to have happened at all. The evidence of accused no. 5 cannot be doubted in this regard.

Pamphlets advertising the launch of the VCA on 9 October 1983 were produced by MARS and paid for at least in part by members of the action committee. Again accused no. 5, volume 205 page 10 769 lines 14 to 27.

Vilakazi confirmed this at volume 348 page 19 896 line 12 to page 19 897 line 10. (20)

It was McCamel's understanding that the UDF paid for these pamphlets. He had not been aware of accounts having been submitted to the VCA by MARS. Your lordship will find that in McCamel's evidence, volume 33 page 1 485 lines 21 to 26; volume 36 page 1 626 line 23 to page 1 628 line 1.

Accused no. 5 was cross-examined at some length about the costs of pamphlets and posters. It was, however, not put to him that the UDF paid or even contributed to the cost thereof. Your lordship will find that in volume 209 page 11 022 line 29 to page 11 025 line 14. (30)

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If your lordship compares the evidence given by Lord McCamel in cross-examination where he says that - this is an example. In its argument, in its "betoog" page 85 paragraph 9 the state simply ignores the evidence that the UDF did not provide these advertising materials and the evidence-in-chief of Reverend McCamel is cited as if it is the last word. On page 1 626 under cross-examination "He also spoke to us about the or told us about the production of pamphlets by the VCA, yes." "Is it correct that VCA had very little money? - That is true." "And it in fact operated on a (10) shoestring? - That is so." "The churches gave the halls free? - Yes." "The people who held meetings and tried to find recruit members, gave their service free? - That is so." "The only expense it had was when it got pamphlets printed? - I have knowledge about that UDF was given assistance pertaining to pamphlets." "That means did UDF pay for the pamphlets? - Yes, I do not know of the VCA paying for pamphlets." "Now, yes, I was going to come to that. Is it correct that the UDF arranged for MARS to do the printing? - That is so." "Do you know whether there were any other (20) printers or was it only MARS that you know of? - I know only about the MARS." "Do you know exactly what the arrangements were between the UDF and MARS in relation to the printing accounts? - No, I do not know that." "Do you know that MARS in fact rendered accounts to the Vaal Civic Association? - No, I do not know about that. I have never seen it." "Well, I want to put it to you that in fact MARS did render accounts but that we have no knowledge of those accounts ever been paid? - Well, I understand that." Then the court asks "Could I just get clarity. Was there at any stage by the (30)

committee/...

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committee of VCA obtained a quotation for printing? Did you ask for quotations? - I do not know about that and if that happened, then it may have happened when I was not there." Then your lordship asks a number of other questions.

What we do want to make of this is this. That the allegation of financial assistance to the VCA by the UDF was pleaded in the further particulars. The nearest they ever got to anything like it was that there was a request by the UDF to MARS. The affiliation or the membership of MARS or the affiliation of MARS to the UDF is a matter which we (10) will address your lordship in due course, but making arrangements with MARS is not - an account being sent, is not rendering financial assistance. The evidence of accused no. 5 is clear. In volume 208 page 10 897 lines 15 to 24, that it was members of the action committee itself who provided for this operation.

The other bit of evidence that your lordship will find in the state's argument is look at EXHIBITS AN3 and AN5 and says the state look at the word - let us take AN5 as an example. They are really the same. "Asinamali" as if (20) that was an invention of the UDF. I am assuming that the next word is of similar meaning in another language.

COURT : No, it is not. Let us get together it means.

MR BIZOS : I am sorry. That too I do not think that the UDF can claim exclusivity for. "No to high rent. No to community councils." The inference that the state wants to draw from that is you see, these are UDF slogans, therefore you adopted the UDF slogans, therefore you were in conspiracy of the UDF therefore the conspiracy of the UDF was a conspiracy to overthrow the state by violence. That is really what it (30)

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all means. It just bears no reality to the facts that have been placed before your lordship. We will address your lordship in greater length and give your lordship the reference later for this and other purposes, but that high rents was a deeply felt grievance and not an invention of the UDF either in April/May 1983 or 20 August 1983. It is proved beyond any doubt by a plethora of evidence. Your lordship will recall the evidence of Mr Masala that one of the reasons why councils were to be rejected was because they had to finance themselves out of increasing the rentals. (10) There were objections to the increases of rentals in Soweto. Court applications had been in order to declare them invalid in Soweto and in Pretoria. In the survey that had been done according to the evidence the top complaints of the people in the Vaal were the question of rentals and the behaviour of the councillors in that area and that, the question of the increase in rental, was coupled with the local administration set-up. I do not want to repeat it all over again. We will refer your lordship to the concessions made by the town councillors of the Lekoa town council and other (20) evidence in relation to all that, but to say that a conspiracy is proved, because there were similar slogans used in relation to rental and councillors by the UDF and the action committee, is not supportable.

The inferences that the state seeks to draw, we submit, are not supported by the facts.

The other is that the state says look who were invited to speak and according to the argument placed before your lordship they are described as prominent UDF activists who came to the launch in order to disseminate UDF thinking. (30)

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It goes against the evidence. Accused no. 5 has generally denied that there was contact with the UDF by the action committee in relation to the early preparations for the calling of the launch. It goes on to make clear that the persons who were invited to speak were thus invited because of their knowledge concerning civic affairs and their standing in the community. That it was clearly - that there was clearly no connection they had with the UDF that was the reason and these persons enjoyed reputations in the community - from the community before the launch of the UDF. The (10) reference to that is volume 206 page 10 756 line 1 to page 10 758 line 10.

The evidence is corroborated by the evidence of Simon Vilakazi, the erstwhile accused no. 18 in volume 348 page 19 899 line 1 to page 19 901 line 7.

We do not have to rely on the evidence of these two young people only. One of the speakers, Dr Motlana, had testified making it absolutely clear that he was invited to the Vaal Civic Association launch as the president of the Soweto Civic Association and that this invitation was no different(20) to invitations which he had received prior to the launch of the UDF. He has confirmed further that he was not deputed by the UDF to go to this launch. Dr Motlana's evidence is to be found in volume 417 page 24 437 line 15 to line 28 and again at page 24 440 lines 16 yo 17.

I have already referred your lordship to who he chose as his deputy if he could not make it because of his busy medical practice.

The contents of EXHIBIT AN3 and AN5 are elevated by the state in its argument as equivalent to making the UDF (30)

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campaign against black local authorities the central theme of the launch. Then similarly the reference to high rents. These documents are described as the "UDF voorgeskrewe knelpunte." Even if, says the state - even before there was talk of rent increases, but this submission just has no regard to the evidence as a whole. Let me just give your lordship the headings. We will give the references later under other headings.

Your lordship will recall that the Bafutsana Party was formed and was campaigning at the time. The party of the poor was on the field campaigning against the periodic increase in rentals. People did not have to take instructions from the UDF, from Khotso House or anywhere else. They had poor people who could not afford to pay their rent, telling them all about it in their own community. They did not need any prescription (is that voorgeskrewe) from the UDF to know that they could not afford to pay the rent and the statement by the state ignores the evidence that it emerged from the survey.

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The evidence of a great number of witnesses that the rent was a high burden and we submit that in the light of the evidence and the submission by the state that rent issue was one prescribed by the UDF even before the question of the rent increase, must simply be rejected by your lordship. Its submission again reflects the states inability to acknowledge the existence of long standing grievances in a vast number of communities including the Vaal Triangle and a similar inability to distant itself from the continuing conviction that any people who organise and mobilise around such issues will do so other than from within a

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conspiratorial network.

The state at one stage of its argument before your lordship and overcome by some form of liberality actually conceded that there may even be some trouble somewhere that all is not well in the state of Denver, but they came back the next day and they withdrew the admission. We will place evidence given before your lordship in systematic form in one of the next sections of our argument of how well founded these matters were and they are really relevant on a number of issues and the state's persistent rejection that these(10) existed, but that they were artificially manufactured, "knelpunte" by the UDF, is really part of the problem and not a solution in finding any answers to any problem. But be that as it may. Let me confine myself at this stage to merely say that it is certainly no evidence of any conspiracy.

The evidence of accused no. 10, Mr Vilakazi was that at that time he did not know what planning the UDF was involved in and that the resolutions that were taken at the meeting were resolutions of matters which people there felt about. Your lordship will find that in volume 163 page 8 119 lines(20) 4 to 10.

The evidence was that the action committee had not concerned itself with the question of what sort of government there should be in the country as a whole. There had been no discussion concerning of an ideal government. All that they had expressed was that the government should institute a local authority system which met with the needs of the people. Volume 209 page 10 996 lines 4 to 15.

It was alleged as part of the further particulars as to what - how the conspiracy with the African National (30)

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Congress was taking place. It was alleged that the members of the action committee had listened to Radio Freedom when meeting at the house of Raditsela. This was denied - there was no evidence to the contrary. The allegation was denied. Your lordship will find denials of accused no. 5 in volume 208 page 10 897 lines 11 to 14 and the evidence of Simon Vilakazi, the erstwhile accused no. 18, in volume 348 page 19 889 lines 8 to 20.

Contrary to the allegation in the indictment and further particulars that house meetings or house to house(10) visits had taken place other than in relation to the survey were denied. Your lordship will find the denial of accused no. 5 in volume 209 page 11 003 lines10 to 24.

The allegation that the Vaal Civic Association and the Vaal Action Committee had their roots in a conspiracy to produce violence and that the organisations were formed for that purpose, is in our submission completely destroyed by the evidence of a number of defence witnesses. Although it is alleged in paragraph 67.1 of the indictment that accused no. 2, a member of AZAPO, was part of the Vaal (20) Action Committee, is completely knocked out. The evidence of accused no. 2 is that he did not even know of the launch of the Vaal Civic Association. Your lordship will find that in volume 219 page 11 595 line 10 to page 11 596 line 2.

The evidence of accused no. 3 was that he went to the launch of the VCA, the Reverend Moselane, whilst en route to another destination. He had read that there would be this launch. Your lordship will find that in volume 229 page 12 168 lines 10 to 24. There is no suggestion that he had anything to do with the organisation, other than (30)

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expressing his wishes for the well being of the Vaal Civic Association. Your lordship will no doubt recall his request that people should not smoke in church where the meetings were held, because the halls were not made available to the people there and they had to use the churches.

Accused no. 5 denied that he made a contribution to the action committee or to the bringing of the VCA to its official launch in furtherance of any conspiracy. Your lordship will find that in volume 205 page 10 775 line 23 to page 10 776 line 1. (10)

It is interesting that Mr Malindi, accused no. 5, who played a role in the action committee, did not actually become a member of the VCA. He explained the reasons for your lordship. He thought that he should form a youth organisation and that he had other concerns at the time. Your lordship will find that in volume 205 page 10 777 lines 11 to 29.

There is no suggestion that Mr Mokoena, accused no. 6, was in any way involved with the preparation for or the launch of the VCA itself. He has testified that he and (20) others in the Evaton Ratepayers Association learnt about it after they received a report from Kabi, their chairman, concerning it. The evidence is destructive that Mr Kabi represented ERPA there. The mere fact that he was the chairman of ERPA and went to a meeting does not mean that he was representing that association there. Your lordship will find that evidence, the evidence of accused no. 6, in volume 186 page 9 669. I am sorry, I have not got the lines to that. It is an omission.

Accused no. 7 was not at the launch of the VCA and (30)

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was not involved in this preparation. Your lordship will find that in volume 200 page 10 444 lines 15 to 24; volume 200 page 10 447 lines 10 to 30.

Accused no. 8 has testified that he had nothing to do with the Vaal Action Committee. Volume 169 page 8 731 lines 22 to 24.

May I just indicate here for a moment that we will be advancing argument to your lordship in relation to the meeting of 26 August 1984 in due course at which accused no. 8 resided. He became involved in the VCA in August (10) 1984 more than a year later. Up to - due to circusmtances presided over one of the most important meetings on the state's theory. He was made there to preside at a conspiratorial meeting when he was so new to it all, but that we will submit later.

Accused no. 9 knew nothing of the organisation responsible for the launch of the VCA and had at that stage not even heard of the UDF. Your lordship will find the evidence of accused no. 9 in this regard at volume 179 page 9 207 lines 22 to 25. (20)

Accused no. 10 took no part in the preparations for the launch of the VCA. Your lordship will see that in volume 159 page 7 782 lines 24 to 27.

Accused no. 11 - there has never been any suggestion that he was in any way involved in this committee.

Accused no. 14 similarly no suggestion that he was involved in this committee.

Accused no. 15, similarly no connection with this action committee.

Accused no. 16 was there for a short while as a (30)

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possibly deputy for Dr Motlana.

Accused no. 17 was not in any way involved with this committee.

Accused nos. 19, 20 and 21 not in any way involved in this committee.

Accused no. 22 - we have already indicated and we will show your lordship that he was actually writing the resolutions at this launch. He was a member of the committee and took an active part.

I will give your lordship some references in relation(10) to it. Accused no. 13 volume - there is no suggestion that he was involved in the committee. He did not attend the launch of the VCA nor was he at the meeting at which a call was made for its formation. Your lordship will find accused no. 13's evidence in volume 243 page 12 956 lines 26 to 29; volume 244 page 13 010 lines 1 to 12.

Accused no. 19's denial that there was any assistance from the UDF your lordship will find in volume 256 page 13 783 line 17 to page 13 784 line 5.

Accused no. 20 told your lordship that he became aware(20) that the VCA had been formed but he had no direct connection with it. Volume 286 page 15 780 lines 5 to 10.

Accused no. 21 had no discussions or arrangements concerning the formation of any organisation in the Vaal Triangle. Volume 300 page 17 035 lines 14 to 21.

If I may go back, Mr Baleka, accused no. 1, there has not been any suggestion that he had anything to do with the committee.

My lord, I am at a convenient stage as far as these notes go. I understand that my learned friend, Mr Chaskalson (30)

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wants to address your lordship in relation to his comings and goings.

MR CHASKALSON : My lord, I intend not to be in court tomorrow. I want to work with Mr Marcus on sections of the argument, but your lordship did indicate to me previously that should the occasion arise to request time, that I should address that request to you. We will be working on sections of the argument. If the situation should be that Mr Bizos should finish before I am ready, does your lordship wish me to come back to court to make the request or could (10) Mr Bizos address that request to your lordship at that time?

COURT : If Mr Bizos has proper knowledge of the facts he can make that request.

MR CHASKALSON : I will keep him informed. Can I tell your lordship what we plan to do. We plan to - though I would have liked to have been here during the argument, I am not going to. I am going to stay out of court with Mr Marcus and keep working. We would plan to try to do our work in sections. If we can get something ready, we will go ahead with it, but if we go ahead with it, it does not necessarily (20) mean we have got everything ready and if we - what we thought would make things go quicker, is that if we say need a day to complete a section, would might take us some time to deliver, that it will be better to deliver our sections and take a short break, a day or whatever may be needed rather than to ask your lordship for a long period of time to complete the whole argument.

COURT : Yes, but bear in mind that I do not require you to present written argument, because the compilation of a written argument takes much more time than compiling a (30)

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couple of notes.

MR CHASKALSON : I do understand that, but the complexity of the record is such that one really - it takes a great deal of time to find the interlocking pieces which we are looking for and we have to look for quite a lot.

COURT : Let us see how far we get and what we can do.

MR CHASKALSON : But what I am suggesting to your lordship is that I should not say that I think I need X days to complete my entire argument. I should keep working in sections. Mr Bizos should do the same and then we should rather ask(10) for time from time to time during the argument to keep it to a minimum and to keep the flow going than to ask for one long period of time.

COURT : And you can leap frog with Mr Bizos.

MR CHASKALSON : But as long as your lordship does not mind more than one request we feel we needed rather than saying I have now assessed my position and I think I need X days. I think it will go quicker that way.

COURT : I do not mind a request from time to time for a particular section of the argument.

MR CHASKALSON : As your lordship pleases.

COURT ADJOURNS UNTIL 11 AUGUST 1988.

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