

IN DIE HOOGEREGSHOF VAN SUID-AFRIKA
(TRANSVAALSE PROVINSIALE AFDELING)

A

SAAKNOMMER: CC 482/85

PRETORIA

1988-08-11

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

KONTRAKTEURS :

LUBBE OPNAMES

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COURT RESUMES ON 11 AUGUST 1988.

MR BIZOS : Your lordship will recall that we were dealing with the submission that the state has made to prove that the steps taken by the Vaal Action Committee were not in furtherance of a conspiracy for the formation of the Vaal Civic Association.

Young Vilakazi, the erstwhile accused no. 18, testified that the purpose for which the Vaal Civic Association was brought into being, was in order to take up the problems of the residents. may I pause here for one moment. Your (10) lordship might have noticed that I am not really reading out portions of the record to your lordships. I do it deliberately because I do believe and I have an assurance from Mr Tip whose - much of whose work I am relying on for this argument and these are correct summaries and once I have read out the summary for the purpose of developing the argument, I think it unnecessary to refer your lordship to the actual passages and read them out, unless there is some query. I do believe that your lordship and your lordship's learned assessor have been in this case long enough and if anything outrageously wrong (20) is summarised, it will be picked up by one or other ... (Court intervenes)

COURT : Well, if we do not pick it up now, we will surely pick it up later.

MR BIZOS : As your lordship pleases. So, I would like to proceed on the basis in the interests of expediting the matter but there may be some concessions that have been made by state witnesses from time to time which we may want to highlight by actually drawing your lordship's specific attention to that concession. (30)

One/...

One of the objects was to unite the residents, says Vilakazi, the younger. It was also recognised that councillors were not discharging their duties properly and that at a certain stage it was clear that a call would be made for them to resign. However, it was never discussed in the action committee that the community must be persuaded not to take part in elections. This was all a matter for discussion after the launch of the organisation that that was the purpose of the committee. Your lordship will find that in Vilakazi volume 348 page 19 897 line 11 to 19 898 line (10) 30. The same witness testifies further that the efforts to organise the civic association were not in accordance with the plan to unite people in the townships or on a country-wide basis in order to go over to action against black local authorities and the government in general. Volume 348 page 19 909 line 20 to page 19 910 line 3.

Certainly the longest if not the final nail, we submit, in the coffin containing the remains of the allegation that the Vaal Civic Association was formed as part of the implementation of a conspiracy of violence has been provided (20) by the state itself through its principal witness on this and other issues, the Reverend Lord McCamel.

In its submission the state says that it is "betekenisvol" that Nkondo of the UDF executive should have been present with the people of the Vaal on 8 October 1983 when discussing the launch. The significance is not spelt out, but presumably the innuendo is intended to be that it establishes the conspiratorial nexus between the UDF and the organisers of the VCA launch. We will refer your lordship to the references in due course. In our submission what is significant is that in(30)

the/...

the evidence-in-chief of Reverend McCamel, referred to by the state, there is no suggestion whatsoever in the course of this discussion that there was anything but a bona fide purposes that the VCA should be a lawful organisation with a lawful set of objections and in particular there is no suggestion that a hidden agenda in any fashion formed part of the purpose of those that were present. In the course of his further evidence the Reverend McCamel denies any association with the ANC, the PAC, AZAPO, the South African Communist Party and denies that he joined the VCA in order to be of assistance to the ANC or to conspire to overthrow the government of the republic by violence. He denies absolutely that he as chairman of the VCA conspired with the UDF to overthrow the government by violence. He did not join the VCA in order to promote violence and that remained his attitude throughout the entire period that he was associated with it. At no meeting was there ever any talk of violence.

Your lordship will find all that in volume 35 page 1 602 line 7 to page 1 604 line 8.

As far as he was concerned Reverend McCamel never (20) encountered any suggestion that the policy of the UDF was to overthrow the government by violence. No such suggestion was ever made at any meeting of the UDF or the VCA or any document of the VCA or UDF that he saw or in any discussion with UDF officials or the VCA members. No assistance was ever given by the ANC to the VCA and there was no communication between those parties of any nature. McCamel volume 35 page 1 606 line 12 to page 1 608 line 2.

We submit that this evidence is of far greater significance that the fact that Nkondo was present at the pre- (30)

launch/...

launch planning meeting on 8 October 1983, but the state has not seen fit to refer to it at all. In order that the weight appropriate to it be accorded to this evidence, it is necessary to reiterate certain aspects of the case alleged against the accused.

In the first place it is not the state case that some members of the management of the UDF affiliates were conspirators and others not. The state's allegation in this regard is a non-differentiated one. It takes a very wide broom and says that anybody that had anything to do with the (10) management structures of the UDF was party to this conspiracy or conspiracies and they must be swept into prison. The question of course arises that once a person in the position of Reverend McCamel, who was present at the meeting of 8 October 1983 and on the following day, that is on the 9th at the time of the launch, acted as chairman of the launch and was then elected chairman of the VCA, denies the conspiracy as detailed above, then on what possible basis that the state begins to distinguish the position of the accused from that McCamel. (20)

Once Mr Chaskalson is not here to stop me, I might refer your lordship to what he will argue fully to your lordship in due course. Where there is a organisational conspiracy alleged, the state has to prove that the organisation was party to the conspiracy and that the mere fact that one or other person may be proved or in this case no more than suspected, because nobody has been proved, to have had contact with the African National Congress or any other unlawful organisation or might even have made the violent - a speech advocating violence, does not prove that the organisation (30)

was/...

was party to the conspiracy. You will be referred in detail to the judgment in the Adam's case where the late Chief Albert Luthuli or president of the African National Congress went into the witness-box and said "our organisation was not a violent organisation, despite what the state says. Despite the speeches that they have produced. Despite the documents that have been produced which tend to show that some of them in their enthusiasm went a bit further than good sense may have prevail. Nevertheless, my organisation was a peaceful organisation." That was enough for three judges of the court - of the special court in 1966 and we submit that it will be sufficient for your lordship, if the chairman of an organisation says that we were not party to a conspiracy, we were not involved in any violent action, on what basis can the state ask your lordship to make a finding that what happened in the Vaal on 8 October 1983 was a conspiracy. The main actor there has given evidence and has denied that anything like that has taken place.

What the state has really picked up along the way is a letter - if my memory serves me correctly it is CA128 the one that your lordship questioned our learned friend Mr Jacobs about. We described it as an ANC document.

COURT : Nkondo's letter of 1981?

MR BIZOS : 1981. I am corrected by Mr Fick. It was C130, but we will check on it.

ASSESSOR (MNR. KRUGEL) : Dit is reg.

MR BIZOS : It picked that up along the way and it picked up a bonus in the cross-examination of Vilakazi, the erstwhile accused no. 18 who was in possession of a document or two issued by the African National Congress. It picked up (30) these/...

these two bits of evidence. We will refer your lordship in due course to authority, that the mere fact that a person is in possession of ANC documents, does not make him a member of the ANC, nor does he make him a party to any conspiracy. Rose-Innes, J. - we shall give your lordship the reference in due course - said that being in possession of the New Testament did not make Bertrand Russell a christian.

COURT : I do not think you need authority for that. I have got the Koran myself.

MR BIZOS : It picks up bits of evidence of doubtful (10) admissibility from which no inference can be drawn and says "infer from this that there was a conspiracy", where the main actor or the main conspirator has given evidence for the state and says that there was no such conspiracy. At the risk of being accused of being anecdotal I remember my evidence lecturer. He later became a judge of appeal, Nicholas, J., saying that where there is credible evidence to the contrary you can throw inferences to the wind. If the evidence cannot be - if the direct evidence cannot be rejected, then what is the point of trying to draw inferences in relation to (20) the point in issue from little titbits that you may have picked up along the way.

I want to repeat what has already been foreshadowed in the argument of Mr Chaskalson, that it ought to be borne in mind that the state has not pleaded a conspiracy which arose at some subsequent stage. It has elected to place one conspiracy and one only and to plead specifically that the work towards the formation of the VCA was part of that conspiracy. Once that portion of the case has been laid waste by its own witness, it cannot be permitted even to (30)

attempt/...

attempt to reassemble from the fragments some latter day conspiracy to which one or other of the accused may be alleged to have become a party, but of which the Reverend McCamel was and remained entirely ignorant.

Of course, the argument is strengthened by the concession that the state had to make in relation to the evidence of Mohape. Here we have what one might call the number - in relation to Boipatong ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : Peter Mohape?

MR BIZOS : Yes, Peter Mohape, in relation to Boipatong. (10) My learned friend, Mr Tip, will argue the case on Boipatong in due course, but I am merely drawing attention to this that it is not just an accident of fate that McCamel denies this conspiracy. We have a similar situation in Boipatong. If Mr Mokoena, accused no. 11, was in fact the main actor in Boipatong or one of the main actors, Peter Mohape must of necessity have been his chief lieutenant. The state again tells your lordship "Accept the evidence of Mohape and we accept that Mohape did not know of a plan to go over to violence. Ah, but accused no. 11, Mokoena, he must have (20) known." I think that your lordship will recall that your lordship raised the difficulty with that submission with Mr Jacobs when he was arguing and we have this pattern of direct evidence contradicting the conspiracy and having little bits of evidence from which your lordship is being asked to reject what the state concedes as credible evidence. We would submit that the contention of the state on this issue is in fact arguable and in fact the state was hardput not to concede this but your lordship will, in our submission, have no difficulty in making a finding that no such conspiracy (30)

existed/...

existed.

We now want to turn to the next subheading of the Vaal argument on the launch of the VCA on 9 October 1983. Contrary to the manner in which the state has put the argument - its argument before your lordship, we intend doing it the old and trusted way of again saying to your lordship what the allegation is, looking at the evidence and ask your lordship whether or not the case that was pleaded was in fact proved.

The evidence led by the state and some of the issues that had to be canvassed in this case, were completely (10) outside the indictment, the further particulars and we might say so with respect that your lordship's observation at one stage was that it was becoming more like a commission of enquiry, was not entirely inept, but at this stage, the issues must be as well defined as possible and let us have a look what has been alleged in the indictment, examine the evidence and ask ourselves whether that which was alleged has been proved.

Your lordship will find the allegations in this regard on paragraph 67(6) on page 285 and subsequent pages of the (20) indictment. The important thing to note is that the usual preamble that everything that was done in relation to the launch of the Vaal Civic Association was done in the furtherance of the conspiracy or conspiracies that the state has alleged.

For the state your lordship had two witnesses. IC.8 and Reverend McCamel. A number of the accused have given evidence, a number of defence witnesses have given evidence. We will submit that the overall effect of this evidence is entirely destructive of the state case concerning the launch.

I have already indicated and given your lordship (30) the/...

the reference, that both IC.8 and the Reverend McCamel are described as satisfactory witnesses by the state. We will show your lordship that they contradicted each other on very material respects. We will also in due course advance lengthy argument to your lordship that not a word of what IC.8 has said is contradicted by any other evidence, should really be considered at all, but what is significant is that the state has told your lordship that these two witnesses are satisfactory witnesses. It has not told your lordship which of the two versions that the two of them deposed (10) to on different issues your lordship should select. We will submit that the evidence of IC.8 was so bad for the reasons here to come and he is contradicted by over a dozen witnesses, we will show your lordship in due course how he is contradicted, that if a choice has to be made, most certainly the choice must be in favour of the Reverend McCamel.

Some of these matters may appear minor, but I have noted some of them here almost in self-defence, because the accused in this case have been cross-examined at very great length and a very broad submission is made that your lordship (20) should disbelieve them. Sometimes fairly strong adjectives are used in relation to their credibility. No detailed reasons are given why your lordship should disbelieve the accused, but if one looks at the cross-examination, your lordship will see that the criticisms in the main are the sort of criticisms on detail on which not very great weight should be attached.

The other aspect of the state's argument which I want to draw attention to at this stage is that some five thousand eight hundred pages of the record is concerned with the (30)

cross-examination/...

cross-examination of the accused in this case. That is almost a third of the record, because the record contains not evidence, but argument and judgments. Your lordship has been asked in blanket terms to disbelieve the accused and expects your lordship presumably to go through the five thousand eight hundred pages in order to determine whether the submission made by the state that none of the accused is worthy of belief, is justified or not. We expected if our clients were to be asked - if your lordship was going to be asked to disbelieve our clients, we expected the (10) state to have told your lordship why and to tell us at least in some detail what it is that the state relies on in asking your lordship to disbelieve the accused. We have not been given this opportunity and I am not referring - I must not be misunderstood - to the time that we had available. It just does not exist in the seven volumes and the other loose papers that were handed in towards the end of the argument, so that we have not been able to be of any assistance to your lordship in this regard. We would submit that it is not permissible where well over five thousand pages of (20) cross-examination of the accused persons has been placed before your lordship, to go and sift through that to set up skittles with the intention of knocking them down or to say to ourselves well, let us make as bold an admission as the state has made, which is not going to be of any assistance to your lordship, that they were all good witnesses on all points, but because the state cross-examines in that way, I want to refer your lordship to some of the contradictions between IC.8 and McCamel and submit at the end of it that there are much better reasons for disbelieving IC.8 (30)

than/...

than merely these contradictions.

They contradict each other as to whether there was a public address system or not. IC.8 says that there was no public address system in volume 16 page 740 line 9 to line 12 and the next reference is volume 19 page 880 lines 23 to 25.

COURT : That is McCamel.

MR BIZOS : That is IC.8.

COURT : Oh, I am sorry, are both IC.8?

MR BIZOS : Both the references are IC.8. He puts that the(10) meeting started at 13h00.

ASSESSOR (MR KRUGEL) : Are you dealing with IC.8 first?

MR BIZOS : With IC.8 first.

COURT : I am sorry. Are you not giving McCamel's contradictory evidence on the same points at the same time?

MR BIZOS : No, I am going to now give you - the references that I have given you are both IC.8.

COURT : You are making it difficult for us, because this means we have got to right down twice "public address system". If you say we deal with public address system, we put down(20) the reference to McCamel and we put down the reference to IC.8 together. That helps.

MR BIZOS : That is what I am going to do.

COURT : Very well, but now you were going on to the time?

MR BIZOS : In both. It is in relation to the public address system and the time. I am sorry, I should have said both when I started off before giving the references.

ASSESSOR (MR KRUGEL) : That was the time of starting, is it not?

MR BIZOS : The time of starting. He gives it as 13h00. (30)

The/...

The - McCamel's recollection is that there was a public address system and that the meeting started at 10h00. That is volume 34 page 1 512 lines 17 to 21, volume 36 page 1 622 lines 14 to 22.

This witness, IC.8, came in to meetings very conveniently all over the place. The launch, the couple of meetings where it is common cause that he was there later in various zones. He also happens to come in at the meeting of 2 September 1984 at Sharpeville, also on his own evidence very later, but then proceeds to give your lordship what happened during the (10) whole meeting. We are going to deal with that, but here is a contradiction between a morning meeting and an afternoon meeting. How can your lordship rely on IC.8 when the other evidence supports what McCamel had said? The reason why I am giving it is this. Your lordship had to sit for hours on end to listen to cross-examination of accused no. 8 as to who was to his immediate left and who was to his immediate right at the meeting of 26 August 1984 and how big was the table and how many chairs there were at the meeting and then we are told that because of those contradictions the (20) accused told your lordship "blatante leuens", presumably as a result of those contradictions. I do not know on what other grounds.

They give different sequence to different speakers or rather they give different evidence in relation to the sequence in which speakers spoke. Your lordship will compare that on McCamel, volume 34 page 1 516 lines 18 to 22 ... (Court intervenes)

COURT : I thought you were going to give us IC.8 every time?

MR BIZOS : I am sorry. IC.8 volume 16 page 743 lines 18 (30)
to/...

to 24; McCamel, volume 34 page 1 516 lines 18 to 22.

Again we show these differences because I recall well the amount of time spent with the accused about the sequence of speakers at the launch and other meetings. I think I have said enough. I will try not to refer to it again.

It is not disputed that a number of speakers including those from the principal speakers, Dr Motlana, Mr Nkondo and Mr Shabangu, included components which were critical of the council system and advanced the position that people should not participate in the coming council elections. (10) These views and others expressed by members of the Vaal community were embodied in the resolutions set out in document AN13. We will deal with that in the state's argument in due course.

Other matters, however, are in dispute. At the beginning of paragraph 2 at page 86 of its argument makes what we submit is an incredible statement, that the evidence as catalogued by it given by IC.8 and McCamel is either common cause or not disputed. Nothing could be further from the truth.

COURT : Which is the page in the "betoog"? (20)

MR BIZOS : Page 86 paragraph 2 and it happens regularly in the argument presented by the state. What is catalogued as matters on which evidence has been given, is in fact an amalgam of evidence, often disputed. Hyperbolé is not missing from my learned friend's vocabulary in describing that evidence in the "betoog" and stating as part of the evidence the conclusions which the state would like to draw from them, giving your lordship the impression that what the state - the interpretation of the state of this evidence, is given in so many words in the evidence given by the witnesses. (30)

We/...

We will consider some of these instances.

In paragraph 4 on page 87 of its "betoog" the state says that it is common cause that accused nos. 3, 5, 8, 9, 10, 13, 14, 15, 16, 17 and 22 were present at the launch. The direct evidence was that accused no. 13, Mr Simon Nkoli, was not present at all at this launch. There is also direct evidence of an extremely limited attendance by accused nos. 3, 5 and 16 and we submit with respect that it is misleading for the state to submit to your lordship that this list of accused were present at the launch. (10)

In paragraph 8 on page 87 of the "betoog" the state adds to what would otherwise be an acceptable reflection of the evidence, the statement "die bestuur was verkies soos vooraf beplan was." We have not had very much time to go through it very thoroughly but in the time available to us there is just no evidence to support this statement.

What the state evidently intends to achieve by adding this additional statement is to convey clearly the suggestion that the entire launch of the VCA was manipulated with a clear objective and that the entire executive had been planned before and that the people were simply elected into pre-ordained positions. This is not what the evidence is. Accused no. 10, Mr Vilakazi, has specifically dealt with his reluctance to be elected. He has described how he himself nominated someone else in the hope that that other person's nomination would be successful and accused no. 10 has described also how the nominations of other persons who were elected to the executive were not the only ones including that of accused no. 22. Your lordship will find that in Accused no. 10, volume 159 page 7 795 line 5 to page 7 798 line 23. (30)

Your/...

Your lordship is not told why the evidence of accused no. 10 is to be rejected on this or any other point in relation to this matter, but I am reminded of the evidence in relation to the meeting of 26 August 1984 in Small Farms where again the position really taken by accused no. 10 or for which he stood for election - for which he accepted nomination was as assistant or additional secretary. Your lordship has had an opportunity to see him and observe him as a particularly intelligent and competent person, I would submit and that bit of evidence corroborates his own evidence, that he (10) considers his work in the training of trade union people so important, that he did not want to become involved in any very active role. How the state could say "die bestuur was soos vooraf beplan was" is beyond our comprehension.

In paragraph 6 on page 87 of the "betoog" the state is not contend merely to set out the evidence concerning the role of accused no. 22 at a time that the resolutions were adopted. It has described this as a "belangrike rol tydens die aanvaarding daarvan." What probably the state intended your lordship to understand by this was the (20) innuendo that accused no. 22 was to be singled out as piloting through the resolutions taken there and that this in some senses makes him an instrument of politicisation, mobilisation and organisation of the masses. If this is what is intended, then this is certainly not common cause. This is set out as a common cause fact. On the contrary, the evidence establishes that accused no. 22 really played the role of a scribe in that he collated proposals for resolutions and after the number of resolutions had been adopted, read these out in English and the Reverend McCamel, the chairman, interpreted (30) them/...

them into Southern Sotho. In this as in other instances most of which the defence simply has not had the opportunity to deal with properly, the manner in which the state has reflected the record is not accepted.

In paragraph 7 of the "betoog" the state - that would still be on page 87 - simply declares that some of the resolutions which were accepted were written out beforehand and "om seker te maak dat dit aanvaar word." This, it must be remembered, is still part of what is said to be common cause. It just is not common cause. At best the record (10) is not clear as to whether the action committee wrote out any resolutions beforehand. We are not saying in any sense of apology in relation to the passing of any of those resolutions and we believe that it must be a univeral truth that people who consider proposals before a meeting, hope that those proposals will be adopted and that doubtless this was the position in this case. Many people and I am sure that the evidence has shown that there must be some of the accused among them hope that participation and discussion will amend them or improve them, but that is not the way the state (20) purports to reflect the common cause evidence. It evidently feels constraint to impute once again a manipulative dimension although how the mere act of writing out proposals beforehand will ensure that they will be accepted, certainly escapes us.

There is evidence that accused no. 22 was a student. Apparently he had a job as a research officer. In a community where literacy is at a premium, there is nothing unusual in asking a bright young man to be the scribe at the meeting.

In paragraph 10 of the argument on the same page, (30)
that/...

that is on page 87 the following submission is made as a common cause fact. "Op die vergadering is die gehoor direk en doelbewus gemobiliseer en gepolitiseer om aktief tot die vryheidstryd toe te tree en in die proses die ANC en UDF aktief te steun." It lists as a common cause fact what we have spent two and a half years denying. Nothing could be further from the truth. The somewhat contradictory submission is made in the "betoog" on page 93 paragraph 5 where some analysis of the evidence is attempted and the conclusion there arrived is that the ANC was somewhat subtly promoted.(10) Paragraph 5 says "Dit word 'n vergadering waar die ANC baie subtel bevorder word omdat dit nie openlik gedoen kan word nie." And then sets out a number of things, like singing of songs and the history of the "vryheidstryd." We will deal in greater detail with the contradictory submissions made by the state in cross-examination both in relation to this and other meetings and we will refer your lordship to the references in due course.

The state says you had a policy of violence but you kept quiet about it, so that you would not be banned and that (20) the newspapers did not hear about it. This was actually put to a witness. In due course we will find it for your lordship. So, that the suggestion that there was a small clique that pursued this hidden agenda, we have no evidence about, but this may be another example of the contradictory nature of the state's argument.

We want to deal with the speeches which were made at this meeting. Still under the preamble of common cause facts ... (Mr Krugel intervenes)

ASSESSOR (MR KRUGEL) : Are we now back to the meeting of (30) the/...

the launch?

MR BIZOS : The meeting of the launch of 9 October. We do submit that the state has not summarised or presented the evidence to your lordship either accurately or fairly. It has not taken into account the cross-examination or countervailing evidence of the accused or other defence witnesses. The manner in which it has set out this material we submit your lordship would not find acceptable. We could take line by line criticism of the state's argument, but it is really impossible to do so in the time available or in the time (10) that - even in extra time because of its generalised and inaccurate form.

Once again the state has set out its own interpretation as to being the evidence of fact and then goes on to say that it is common cause. One or two instances of this will suffice.

At the top of page 88 of the document it is said that "Elliot Shabangu" spoke "names UDF". In fact the evidence does not state that Elliot Shabangu spoke on behalf of the UDF. The Reverend McCamel goes no further than to say that he introduced him as a member of the committee of the UDF. (20) This is not the same thing. If your lordship will allow me a personal example. If I speak somewhere and I am described as a member of the Johannesburg Bar, the bar council would then be very surprised and repudiate some of the things I have had to say at places where I have spoken and having been introduced as a member of the Johannesburg Bar.

The summary goes on to say that Shabangu popularised the ANC. At best for the state this proposition can be a slender argument, based on an interpretation of disputed evidence. It most certainly cannot be described as common (30)

cause/...

cause and the state goes on and we submit quite erroneously to say that Shabangu states the history of the "vryheidstry" although the evidence refers merely to the struggle. The state says that this is necessarily also the history of the ANC. This too can inconceivably be described as common cause. It is in conflict with other state witnesses. IC.8 who far from testifying that Shabangu set out the history of the ANC's freedom struggle, testified that the essence of his speech was that the people in the Vaal Triangle had in the past shown the way how attempts should be made to address the grievances of the residents. IC.8, volume 20 page 886 lines 13 to 20. (10)

We may draw your lordship's attention that when IC.8 was asked whether Shabangu had been introduced as a leader of GAWU seemed to think that he had been introduced as a member of the SCA. Certainly the UDF did not bring to his mind, he did remember McCamel speaking about Shabangu, knowing about civic associations as the people from Soweto. Your lordship will find that evidence in volume 19 page 881 lines 18 to 27. (20)

Similarly the submission that it was common cause that Shabangu specifically promoted the UDF/ANC campaign against the black local authorities, is completely unfounded. Not only that, but the submission is in any event not supported by the evidence which is cited.

COURT ADJOURS. COURT RESUMES.

MR BIZOS : We submit that the most telling point to the unreliability of the state's submissions in relation to the launch is a statement contained in the second paragraph on page 88 of the argument. It is there said that Shabangu (30)

said/...

said that the people of the Vaal should elect their own people and in so doing, to advance the revolution. The state refers to IC.8 and the Reverend McCamel in support of the paragraph in which it says this proposition is contained. Your lordship's attention is not drawn to the fact that these two witnesses are in fact diametrically opposed to each other on this issue, but even IC.8 who we will submit in due course obligingly supported the state case of violence, after being programmed for a period of four months in the taking of his statement, but even he does not say that - (10) what the state says is said. The evidence of IC.8 is to the effect that Shabangu used the word "revolution", is squarely denied by the second state witness McCamel as well as the defence witnesses and we submit that a proper construction of the evidence of IC.8 does not permit of the contention that Shabangu was inciting anyone to violence. IC.8's evidence is that Shabangu said that people should not vote for councillors, because voting would help the revolution. In the context of this case and the other evidence that your lordship has heard, either this is evidence that Mr Shabangu(20) did not know what he was saying or that IC.8 did not understand him properly or possibly a combination of both if he used the word "revolution" at all, because your lordship will find the evidence-in-chief IC.8 volume 16 page 744 lines 4 to 27. He was asked in cross-examination what this means, because the state's thesis is that if you do not vote, you will be helping the mobilisation, politicisation and other campaigning in order to make the country ungovernable. If he got it right, this appears to be the opposite of that, but he was asked in cross-examination to explain what this (30)

meant/...

meant and he says the following that those against voting would revolt against those in favour and that it was clear that Shabangu wanted unity and peace in the black community. If your lordship can make sense of that in support of the state's contention that violence was advocated, then we cannot assist in putting up any such interpretation. Your lordship will find his evidence in cross-examination in volume 20 page 887 line 6 to page 888 line 10.

McCamel denies that Shabangu ever mentioned the word "revolution" and he also denies that Nkondo said that (10) some whites should be used to kill other whites. Your lordship will find this in the evidence of McCamel volume 35 page 1 604 lines 9 to 25. That was in relation to that particular issue, but the Reverend Lord McCamel goes on generally to disavow any conspiracy or intent to promote violence and states that in no meeting was there ever a suggestion that the VCA should promote or encourage violence or revolution. Your lordship will find that in McCamel, volume 35 page 1 602 line 7 to page 1 604 line 8.

The defence evidence corroborates the position that (20) nothing was said to the effect that the VCA should render the country ungovernable or that violence of any sort was advocated by any of the speakers at the launch of the VCA.

Accused no. 10 volume 159 page 7 785 line 10 to page 7 786 line 12 and page 7 787 lines 15 to 22.

Dr Motlana testified concerning this meeting, denied that he had in any way called upon the people present to try to achieve anything by the use of violence, nor did he hear any other speaker doing so. Motlana volume 417 page 24 439 line 10 to page 24 440. We also have references (30)

to/...

to the evidence of accused no. 8 in this regard in volume 169 page 8 733 lines 20 to 22 and page 8 735 lines 25 to 28.

The state also relies on publications insofar as it is able whenever dealing with any particular subject and it relies in this regard on EXHIBIT W32. I am not for one moment suggesting that this was deliberately done and in fact there is ample evidence that it was not deliberately done because a submission is made in the argument, but then the passage is actually read out in court to your lordship, so that I disavow any intention to suggest that the state (10) did this with any intention to bring the court under the wrong impression. What I do say, however, is that the state places its own interpretation on documents to fit the allegations in the indictment and disregards the evidence given in regard to those documents and I submit that its reference to EXHIBIT W32 is an example of this and the passage that we are referring to - it has been placed before your lordship. Your lordship will recall that this quotes Dr Motlana at some speech. It is W - I am sorry, my attention is drawn, it is not 32. It is 23. (20)

This is what use the state makes of these words. Dr Motlana said we are interested in power, not a platform to air grievances. We want power to vote, to make the laws of this country and that is then translated into "Hy het dit ook by die gehoor ingeskryf dat hulle slegs belang stel in die oorname van gesag in die land en nie 'n platform om griewe te lug nie. Die mag waarvoor hulle veg is die mag om die land te regeer."

We are interested in power. Dr Motlana explained at length as did a number of other witnesses which means really (30) that/...

that we want a vote, not merely a platform to air our grievances. Some people cannot be faulted, we would submit, if they think that many of their grievances will disappear if they are given a vote and this is their main grievance. We submit the way the state renders it is probably the reason for this prosecution, that people demanding political rights, are guilty of treason. We submit that the allegations in the indictment such as hatred and violence against whites in the RSA were aroused and popularised and the allegation that the masses had to destroy the lawful structures (10) of authority in the area in particular and the republic in general - I am quoting from the indictment - are simply not borne out by the declared purpose of the meeting as emerges from the evidence of the state witnesses themselves and we give your lordship the instances.

IC.8 testified that Reverend McCamel opened the gathering by stating that the purpose of forming the VCA was to take up the people's problems with the authorities. Your lordship will find that in volume 16 page 742 line 29 to page 743 line 17. (20)

At the conclusion of the meeting the Reverend McCamel, the only elected chairman, summarised for the benefit of the audience there present what the chief object of the VCA was, namely that the people elected onto the committee would now do their best to obtain solutions to the problems of the community which had been identified there. Volume 34 page 1 527 lines 8 to 25.

It is also clear that from the evidence of the Reverend McCamel, that criticism of the manner in which councillors had conducted themselves was not a foreign thought. (30)

In/...

In the course of the meeting there was a general airing by members of the audience of complaints in the community including how councillors got businesses overnight and obtained licences where other people had to struggle to get them or had to in effect provide bribes. Your lordship will find that in volume 34 page 1 521 line 20 to page 1 522 line 14.

IC.8 himself confirmed that ex-councillor Mofokeng had spoken critically of the council system and had also urged people not to participate in the forthcoming elections. Your lordship will find that, the evidence of IC.8 in volume(10) 20 page 898 line 30 to page 899 line 27.

The shaky foundation of the state's indictment is brought into focus through examination of paragraph 67(6)(iv) of the indictment. The whole paragraph reads :

"The accused, Thabiso Andrew Ratsomo, Simon Tseko Nkoli and Pelamotse Jerry Tlhopane delivered addresses and particularly called upon the youth to take part in the so-called freedom struggle while (I would not read that IC.8) delivered a recital which in particular popularised and emphasised the suffering of the black masses." (20)

Let us just take that paragraph.

ASSESSOR (MR KRUGEL) : Is that the translation again?

MR BIZOS : The translation. There is no evidence that Thabiso Andrew Ratsomo made any such speech. His evidence was, I was not there and we will show when we deal with the individual accused in due course that there can be no finding other than that he was not there.

There is no evidence that accused no. 14 delivered an address. In fact the state has conceded that it has nothing against accused no. 14 and the witness himself says that he(30) did/...

did not recite any poem. There was certainly no evidence of that.

I want to use this passage on a simple issue. Some two hundred witnesses were listed on the indictment. If we have identified them correctly only about forty of those gave evidence.

COURT : Yes, but there were a large number of admissions?

MR BIZOS : No, that is the point I am making.

COURT : So, many, many witnesses were excluded thereby.

MR BIZOS : Were excluded which I think - and there were (10) admissions made by the defence which excluded something like hundred and sixty witnesses, but in a case in which the state called some hundred and forty witnesses, most of whom who told us that they made more than one statement to the police, we have not had one statement handed over to us by the prosecution as an inconsistent statement of any witness. There are only two possibilities in relation to that, that either the state managed to get the most perfect sets of a hundred and forty witnesses that they have ever gathered to give evidence in any trial, or those statements were not (20) made available to us. From whose statement is this paragraph taken from? On the basis of a statement made by some person accused no. 14 has been before your lordship for two and a half years. If in fact this was in the statement of IC.8 why was it not made available to us. If it was not in that statement, in whose statement was it?

ASSESSOR (MR KRUGEL) : What about Edith Lethlake?

MR BIZOS : I assume that may be a reason. I would accept that, but would Edith Lethlake on the probabilities have spoken about reciting a poem to this effect without it (30)

being/...

being checked by the very person who was going to be a witness in this case before it was incorporated into the indictment and if the person who is supposed to have made this inflammatory recitation does not speak about it, what sort of investigation have we had in this case. I am giving it as one of many examples that we will give as to how this case was investigated before charges of treason and murder were made against these accused. Accused no. 10 says that nothing like that happened. Your lordship will find it at volume 159 page 7 789 lines 6 to 10. (10)

I am prompted to say something about the absent Miss Lethlake. It may excuse some of the things that have not been proved by the state, but of course it has not to be assumed that her evidence would have been against the accused. I would urge your lordship and the court to take into consideration that it might have helped the defence case as much if not more than the Reverend Lord McCamel did. After all, he too was alleged to be one of the conspirators which he himself denies. So, that it would be wrong in our respectful submission to think along the lines that the state case would (20) have been stronger or different if Miss Lethlake had come to give evidence. Your lordship does not know. That is really the point, but I do agree that I cannot carry the argument that I was - too far because of the absence of that and other witnesses and whilst I am on it also let me repay the compliment that my learned friends paid to me in their argument from time to time that counsel of my experience would not have put some of the things that I did put to some of the witnesses. No, let us take the morning example of the 3rd. None of the accused were inside the hall when I put, (30)

your/...

your lordship will recall, as to what Raditsela was supposed to have said inside and I am quoted verbatim in the argument for the state as to what I put about wet "lappies". Your lordship will recall that. That people should have it. I attributed to Raditsela that people should have "wet lappies" for the gas.

COURT : Are we not now jumping about in the argument?

MR BIZOS : I will leave it at that on the basis ... (Court intervenes)

COURT : In defenso advocate. (10)

MR BIZOS : It is a natural inclination. It is further alleged that accused nos. 22, 13 and 14 delivered addresses and in particular called upon the youth to take part in the so-called freedom struggle. On all occasions the role of accused no. 22 was confined to some opening remarks whilst the Reverend McCamel was awaited and to the reading of the resolutions at the conclusion of the meeting. There was no evidence whatsoever that accused no. 22 delivered addresses and called on the youth to take part in the so-called freedom struggle. There is no suggestion anywhere in the evidence (20) that accused no. 14 delivered an address.

IC.8 testified that accused no. 3 did speak, calling on the youth to join COSAS and take up their parents struggle.

IC.8 volume 16 page 746 line 22 to page 747 line 1.

The Reverend McCamel makes no mention of it. Accused no. 8 denies that it took place and accused no. 10 testifies that he neither saw nor heard accused nos. 13 and 14 at the launch. Your reference will find those references, accused no. 8 volume 179 page 9 184 lines 11 to 15; accused no. 10 volume 159 page 7 791 lines 15 to 27. (30)

Accused/...

Accused no. 13 himself testified that he had not even been present at the launch and had therefore neither delivered an address nor taken part in the leading of the singing.

Accused no. 13 volume 243 page 12 956 line 26 to page 12 957 line 3.

We might say that we looked carefully at the cross-examination of accused no. 13 and to the best of our ability we have ascertained that he was not challenged on this denial.

C1479 We could find no reasons in the state's argument as to why so unsatisfactory witness which we hope to establish to (10) your lordship's satisfaction as IC.8, should be believed and accused nos. 8, 10 and 13 should be disbelieved and this will also be one of the numerous examples which we submit your lordship will take into consideration in deciding on the credibility of IC.8 who is really the main witness purporting to support the conspiratorial theory of the state.

Singing has been an important part of this trial from time to time. IC.8 identifies accused nos. 5, the erstwhile accused no. 12, accused nos. 13 and 14 as having performed this role. (20)

ASSESSOR (MR KRUGEL) : Leaders of the singing?

MR BIZOS : The lead singers he calls them.

COURT : Chair leaders. No, actually not.

MR BIZOS : Yes, chair leaders.

ASSESSOR (MR KRUGEL) : Choir masters.

MR BIZOS : Whatever, but any way it is clear that they were there and that they were really leaders of the singing, but now - your lordship will find this evidence in the evidence of IC.8 volume 16 page 741 lines 9 to 31. He nevertheless could not deny that accused no. 5 had come very late to (30)

the/...

the meeting. Your lordship will find that at IC.8 volume 19 page 867 lines 18 to 22.

Although the Reverend McCamel had placed accused no. 5 amongst the singing group on the platform, he could not remember when accused had arrived at the meeting, nor was he certain that he had been on the platform. If we read the two bits of evidence together of McCamel it is rendered completely neutral. In chief it is volume 34 page 1 514 lines 4 to 9. Volume 36 page 1 621 lines 7 to 21.

COURT ADJOURNS UNTIL 14h00.

(10)

THE COURT RESUMES AFTER LUNCH

MR BIZOS: M'lord, none of us in court remembers as to whether we have ever handed to your lordship a copy of the translated indictment.

COURT: No, you did not, but it does not matter because we have been working on two versions for so long, one that you give in English and one that we read in Afrikaans that it makes no difference.

MR BIZOS: Well, if your lordship think it can be of any assistance we can make a copy available in the near future(10 I am sorry, I thought..

COURT: It is really not really necessary but..

MR BIZOS: Because these are the passages that I have been reading to witnesses in cross-examination and it is not my translation. It has served us well because we have not seen any material..but if your lordship wants it, it can be made available.

COURT: Does this mean then that you have to duplicate it again?

MR BIZOS: There may be copies available, m'lord. (20

COURT: If there is a spare copy, but do not go and duplicate it for my purposes.

MR BIZOS: I will ask Miss Potter here m'lord, because it may be of some assistance. It was put to the witnesses in English and I have reason to believe that it is a fairly - as far as all translations go that it is a good translation.

We were dealing with the credibility of IC.8 in relation to the events of the launch on 9 October 1983. Proceeding with that, according to accused no.10 there did not appear to be a particular group of lead singers and as he said in(30

relation/ ..

relation to accused no.13 and 14, he says that he also did not see accused no.5 at the meeting. May I pause here for a moment and remind your lordship that accused no.5 actually gave your lordship a circumstantial account of the wedding that he came to Pretoria on that particular day - it is of some importance to remember that because the state has tried to elevate accused no.5 as one of the leaders. Well, there is some evidence that he played a leading role in the sense that he was a speaker on the 26th and also he was looking into the formation of a youth organisation but (10) you really have to take with that that the friend's wedding was apparently more important to attend than the freedom struggle, attend to the matters of the freedom struggle on 9 October 1983. He was not seriously challenged in cross-examination in regard to that and it may also be of some assistance to your lordship in assessing the probabilities as to why this question of the youth association dragged on for so long, as did the petition in relation to the increase in rental and other matters. Young people often have other things to do. (20)

Accused no.10, volume - your lordship will find the references to this, accused no.10, volume 159 page 7 802 line 26 60 7 803 line 5 and again at vclume 159 page 7 805 lines 3 to 7. We could not find in accused no.5's evidence that he arrived there late as he described in volume 205 page 10 775 lines 20 to 22 was challenged. And of course what does the state make of all this? Did it really realise that IC.8 was a person that it could not rely on? Is that why in its argument it says that it has nothing against accused no.14? Is that the reason why it failed to (30) cross-examine/..

cross-examine accused no.13, that he was at the meeting at all?

Accused no.12 is out of the way so we do not really have to talk about him anymore.

There will be argument as to the nature of the songs that people sung at different meetings and that will be dealt with elsewhere as a separate sub-heading but whilst I am dealing with this meeting there are just a couple of references and submissions that I want to make. Among the songs testified to by IC.8 is the one dealing with Tambo (10 in the bush training soldiers. Your lordship will find that of IC.8 at volume 16, page 742 line 1 to 5. Accused no.10 says that he does not recall this song being sung at this meeting, at volume 159, page 7 799 line 23 to page 7 800 line 1. Even if one is take the evidence of IC.8 at face value it is clear from his own evidence that the singing of this and other songs which were sung at the meeting is in no way - in no way align the singer to the ANC and we submit that although IC.8 agreed with the proposition put by the court that as a member of AZAPO committed to the philoso- (20 phy of the PAC and this was his evidence, that is why I say even if it is taken at face value there is no evidence that AZAPO and PAC have the same philosophy. It was to be expected that he would sing those songs. IC.8 agreed also that the PAC and the ANC are ideologically poles apart. He nevertheless sang songs about Tambo and Mandela with feeling and enthusiasm to use his words or my words adopted by him. It did not imply in any way wanting to be associated with the ANC. Your lordship will find that on volume 19 page 882 line 21 tp page 884 line 7. This compares with the evidence of (30

the / ..

the other state witness the Rev McCamel who testified that freedom songs were sung but he could not specifically remember which songs were sung on a particular day because they usually sing songs like that at various meetings. Your lordship will find that on page 34 - sorry, volume 34 page 1 513 lines 18 to 26, and the Rev Lord McCamel testified further that the singing of freedom songs had been going on for many years before the VCA was established and that it had come as no surprise when they were sung at the VCA meetings. This is McCamel, volume 36, page 1 623 line 9 to page 1 624 line(10 8. It is alleged that ANC slogans were shouted at this meeting. It is clear from the evidence that the only slogan employed was "Amandla aWethu" accompanied by the clenched right fist raised in the air. The witness IC.8 agreed that it was almost a universal rule at these meetings for speakers to start and finish off in this way. He agreed also that it would be nonsense to suggest that a clenched right fist would be the exclusive sign of the ANC. IC.8, volume 20, page 889 line 12 to 29 and volume 19 page 877 line 2 to 18. Merely to foreshadow the argument that is to follow that (20 the state really is asking your lordship to draw in inference because someone sings a song about Tambo or Mandela or "Amandla aWethu", because they sing that, that is evidence of the conspiracy charged - conspiracy or conspiracies charged. May I again repeat the submission that where there is evidence directly contradicting a particular allegation where an inference is sought to be drawn contrary to the credible evidence that has been led it does not help the state to establish a fact if the inference is directly denied by a host of witnesses. But that argument will be (30

developed /..

developed later on.

Dr Motlana, one of the main speakers at the launch is cited at page 286 of the indictment as an activist of the UDF. After first testifying that Dr Motlana suggested that the VCA should associate with other civic associations IC.8 as an afterthought states that Dr Motlana was the person who suggested that the VCA should affiliate with the UDF. Your lordship will find IC.8 on this at volume 16, page 748 line 28 to page 749 line 11; volume 16, page 752 lines 8 to 10. The Rev McCamel has testified that he introduced Dr Motlana(10 as a member of the Soweto Civic Association and as chairman of the committee of ten. There is no suggestion in his evidence that Dr Motlana called for affiliation to the UDF. McCamel's evidence is to be found at volume 34 page 1 516 lines 26 to 31. Dr Motlana testified that he did not suggest affiliation to the UDF. Motlana, volume 417 page 24 440 lines 18 to 20.

The evidence of accused nos.9 and 10 establishes that it was in fact the ex-councillor Mr Mofokeng who initially proposed that the VCA should affiliate with the UDF. (20 Accused 10, volume 159 pages 7 794 lines 11 to 23, accused no.9 volume 181 page 9 359 line 17 to page 9 360 line 21. Despite the weight of this evidence to the contrary the state submits that it is common cause that Dr Motlana said that they should affiliate to the UDF. Your lordship will find the startling submission in the state's heads of argument on page 89. At least that is an explanation as to why no attempt is made as to why your lordship should prefer the evidence of IC.8 to that of Motlana, accused no.9 and accused no.10. The state thought that it was common (30 cause/..

cause. It thought it was common cause because of this boiling pot metaphor used by my learned friend Mr Chaskalson that if you allege something and somebody said something along the way you make it a common cause and say that you have proved it.

Then in relation to the resolutions in view of Dr Motlana there was nothing distinctive in any of the resolutions that were taken there. He described them as the usual type of resolution that you would expect from a civic association. Motlana volume 417 page 24 441 lines 2 to 14. Even IC.8 (10 in cross-examination on the resolutions readily conceded that these reflected complaints and grievances which were current in the Vaal triangle community. Your lordship will find that in IC.8, volume 19 page 840 - I am sorry I cannot give you the line, m'lord, it says 340 here - none of the other pages ever got that long. We will just check it, Mr Tipp will find it. Page 855 line 7.

COURT: Sorry, it is 15 pages?

MR BIZOS: No, m'lord - yes, oh yes, it is, because we went through the resolutions one by one. 840, it is the line (20 that I have wrong.

COURT: I see, yes.

MR BIZOS: To 855 line 7. Your lordship will recall that we went through the resolutions and then the matter was taken up also by your lordship and the learned assessor afterwards about what it had to do with the Ciskei and matters like that. Yes, I give your lordship the complete reference in view of the - it is volume 19, page 840 line 13 to page 855, line 7. The manner in which the resolutions are reflected in paragraphs 67.6(viii) of the indictment (30

does / ..

does not accurately reflect the terms of the resolutions as adopted and contained in EXHIBIT AA.13 and we submit that insofar as these resolutions were neither distinctive nor alien to the concerns of the people of the Vaal triangle it becomes artificial in the extreme to suggest that they correspond with the concerns of the UDF and therefore reflect a conspiratorial intent. May I pause here for a moment? It would appear from the state's argument as a whole that the reason for the calling of witnesses such as Sheena Duncan, Laurie Platsky, prof Douws-Dekker, Dr Hartshorne (10 and others was missed by the state with respect to them. Their argument both on the indictment, the application for a discharge, runs something like well, look what the UDF was doing; you as a civic association were doing the same thing in the sense that look at the resolutions that you passed. Grievances or so-called grievances they were called at one time, are articulated by the UDF and you go and pass resolutions about them, therefore you must have been in an unlawful conspiracy with the UDF to overthrow the state. One of the reasons why all that evidence was placed before (20 your lordship is that these things were said long before anyone dreamt of calling for a united democratic front; that people are heirs to what has been happening in the country for approximately eighty years, since 1910 when the first constitution of the Union of South Africa was adopted we are being excluded, we are being discriminated against. We have grievances which we want redressed. These speeches and resolutions are published in the newspapers, literate fathers tell their sons, whole folklore is built up. Some of it is picked up by supporters of AZAPO, some of it is (30

picked / ..

picked up by supporters of the UDF, some of it is picked up by those who form the VCA, and it is in view of the tremendous amount of resolutions and this sort of language that was placed before your lordship a completely futile exercise to try and draw any sort of inference against or in favour of the state for any particular proposition because people complained about what was happening in the Ciskei. It was a topical matter, they could not have escaped it from the newspapers; people, apparently thousands of them were in the football grounds in the Ciskei. You do not have to (10 go into the rights or wrongs of that situation but it was a matter at the forefront of people's minds and there are apparently hostile dwellers in the Vaal, some of them possibly at this very meeting, so that it is completely a futile exercise to try and submit that the case has been proved on that basis.

The evidence of IC.8 that there was police presence outside the hall and that there were quite a number of police vehicles outside is uncontested. IC.8, volume 20, page 919 lines 19 to 20. This we submit is a factor which has (20 been repeated over and over again at the meetings of the UDF affiliates and organisations, community organisations whether they were affiliated to the UDF or not, from which certain inferences can be drawn. Conspiracies on the general probabilities are affairs hatched in dark rooms or in these days maybe even possibly insulated from sound not the fanfare of the public meeting to which policy vehicles come to the immediate vicinity, where policemen with electronic equipment attached to themselves are known to attend and where a meeting is one of a series of many meetings over a period of (30

two / ..

two and a half years in respect of which no police action is taken whatsoever, for your lordship some four years later to be asked that this was a conspiratorial meeting is taking matters a little too far in our submission.

We submit that the evidence as a whole does not lend itself to the state's contentions that the launch of the VCA is one where issues identified by the UDF were reported and impressed upon the people, coupled with the message that the struggle which they had to embark upon as in respect of these issues, was a struggle of the ANC. It is submitted that the evidence to the contrary shows that the people of the Vaal triangle met in relation to the problems which beset them. The extent to which such problems are common to the black people of the country and there is incontestably a long history of struggle against the imposition contained in these problems is a matter in which lengthy argument is going to be addressed to your lordship. We do not propose to repeat it, but again I would like to make one simple submission. It is not in the written argument of the state, it was something that was said by Mr Jacobs off the cuff so to speak, that we do not say, he said, that it is wrong to protest; it is okay to protest but if you do it together with others as successfully as it was done under the umbrella of the UDF, then that is bad because that shows that it was a conspiracy to embarrass the government. So if we can reduce this down to its logical components the state's argument is this that provided your protest has no effect whatsoever then you can continue protesting, but you had better be careful, you may be charged with treason if you together with others successfully protest and bring

(30)

to / ..

to the notice of the government that something had better be done about the state of affairs in the country - well, if that is treason then I do not know what. In further support of its contention the state says that it is a very important fact that a member of AZAPO in the Vaal, that is the witness IC.8 was elected onto the executive of the VCA - your lordship will find that in the argument, page 94. The process of reasoning has not been revealed but it runs something like this: this is powerful confirmation of IC.8's evidence because it is intended to submit, to establish (10 the co-operation between AZAPO and the VCA. It only shows how little the state really had to support this allegation which must have been made merely for the purpose of saving a nonjoinder objection to the charge and the reasons for that we submit are the following. The witness IC.8 testified about the Vaal branch of AZAPO. His recruitment allegedly by accused no.2 and discussions allegedly held concerning co-operation between AZAPO and other organisations in the Vaal including the VCA. Much of the evidence is disputed and it is submitted that in respect of each and every (20 dispute the evidence of IC.8 has been shown to be false and your lordship will have no trouble in rejecting it outright. The first area of dispute relates to the entry of IC.8 into AZAPO. In respect of this dispute there is real evidence before the court which corroborates the defence version. In resolving this dispute the credibility of IC.8 was decisively rejected. IC.8 describes in detail how as part of his recruitment process Mr Hlomoka, accused no.2 alleged produced and played to him a cassette, a recording of an interview on Radio Freedom with the president (30

and / ..

and vice-president of AZAPO. This was in the course of April 1983. Your lordship will find that in volume 16 page 732 line 19, page 735 line 8. In cross-examination a cassette containing an interview with the two officials on Capital Radio was played to the witness. He denied that this was the cassette in question. We submit that the evidence overwhelmingly establishes that it was the one referred to by him; this cassette is EXHIBIT 25. Your lordship will find the reference to IC.8 in volume 19, page 817 line 18 to page 820 line 8. Accused no.2 has testified clearly (10 about the nature of this tape recorded and its origins. It was a recording on Capital Radio of an interview in October 1983 with Satch Cooper and Lebon Mabasa concerning the referendum. Copies of the interview were distributed at the national council meeting of AZAPO in October 1983. It was this cassette which was played in the presence of the witness IC.8; the evidence of IC.8 that this was played surreptitiously is flatly denied by Mr Hlomoka, accused no.2 your lordship will find that, accused no.2, volume 218 page 11 577 line 21 to page 11 580 line 11. Mabasa himself (20 testified, corroborating the account given by accused no.2 and confirming that the interview was given on Capital Radio; that the cassette was distributed at the national council meeting of AZAPO in October 1983 and that he, Mabasa, had never spoken on Radio Freedom and that he had given no other interview on the subject other than the one recorded on this cassette. Your lordship will find that in Mabasa, volume 421 page 24 652 line 8 to page 24 654 line 27. That the interview in question took place with Capital Radio was confirmed by the witness Hannah, the radio announcer or (30 producer/..

producer who conducted the interview. Hannah, volume 387 page 22 404 line 4 to page 22 405 line 7. I want to pause here for a moment. Leaving aside any fanciful speculation there can be no doubt that the following facts must be established to your lordship's satisfaction in regard to this. Firstly, that there is a sufficiently innocent interview to be broadcast over the air space of the Republic of South Africa from within the Republic of South Africa in Johannesburg. It is common cause that accused no.2 played this, that he obviously had it for recruiting purposes. (10) Once those facts are established then the evidence of IC.8 must be rejected as untrue. Once the evidence of IC.8 is rejected as being untrue the question which I submit with the greatest respect is that your lordship must ask the question why. It is common cause that IC.8 and Hlomoko, accused no.2 were friends. Once it is established as a fact - m'lord, I am being corrected. When I say it is common cause that this cassette was played - that a cassette not this cassette - it is common cause that a cassette was played.

ASSESSOR: Is that what you have said just now? (20)

MR BIZOS: No, I am being corrected by Mr Tipp.

ASSESSOR: You did not say it is common cause that IC.8 and no.2 were friends?

MR BIZOS: Yes, I said that.

ASSESSOR: Oh, you said that?

MR BIZOS: And I stand by that. I stand by that. What I say is that I am being corrected, if I said that it was common cause that this cassette was played to..

ASSESSOR: Yes, you said that too.

MR BIZOS: That is where I am being corrected, I would ask (30)

your / ..

your lordship to correct that. It is common cause that a cassette was played by no.2 to IC.8 and others. IC.8 says that it was not this cassette but some other cassette although he recognises the voice of Lebon Mabasa on this one. Once his evidence is rejected and it is found that this is the cassette that accused no.2 played, the question that must be asked is: why? Why should a damaging piece of evidence be given by one friend against the other which has been established to be false? There is only one answer to that m'lord, and IC.8 has provided the answer; we will refer your lordship to it in great detail - that he was assaulted, that he was compelled, that he was held in isolation, that he became suicidal, that he felt that he had to agree to whatever was put to him and that he was threatened with five years' imprisonment on his own evidence if he did not stand by it. I will not give your lordship references on all this but I will reserve it when I make general submissions in relation to the credibility of IC.8 on more serious allegations that he has made in relation to other accused such as the unpleaded speech of Raditsela on the morning of 3 September, but we will deal with that in greater detail later.

IC.8 testified that accused no.10 attempted to recruit him as a member of - no.2, I beg your pardon, attempted to recruit him as a member of AZAPO in March 1983 and that there was no branch in the Vaal triangle at that time. This is what IC.8 says at volume 16 page 730 line 28 to page 731 line 19. Page 735 line 31 to page 736 line 14. He goes on to testify that accused no.3 became a member of the AZAPO committee. IC.8, volume 16 page 736 line 30 to page 737 line /..

line 24. We again submit that the weight of evidence is completely against the proposition made by accused no... I am sorry, by the witness IC.8. It was submitted that IC.8 was a satisfactory witness without any regard to the evidence that has been placed before your lordship to contradict him. Accused no.2 has testified that the Vaal branch of AZAPO was started at a meeting in May 1980. He positively asserts that accused no.3 never became a member of AZAPO. It was at a commemoration meeting on 12 September 1983 that the witness IC.8 approached accused no.2 with the request that his (10 name be placed on the list of speakers and thereafter IC.8 indicated that he wished to join AZAPO. Your lordship will find that, the evidence of accused no.2 in volume 218 page 11 574 line 7 to page 11 576 line 28. Although unable to furnish the precise date when the Vaal branch of AZAPO was formed, the witness Mabasa could confirm that by 1982 when his restriction order expired that branch was already in existence. Mabasa, volume 421 page 24 654 line 28 to page 24 655 line 7. Accused no.3 testified that he did not become a member of AZAPO. Accused no.3, volume 229 page (20 12 155 lines 1 to 2 and page 12 167 lines 6 to 13. It may be appropriate to ask your lordship to also note at this stage that Mabasa himself gave evidence that he knows accused no.3, that he knew that the Rev Moselane, accused no.3, was not a member of AZAPO and that if he was a member of AZAPO he would have known about it. We might also dispose of the position of Mr Manthata, accused no.16 in this regard. He also knew accused no.16 well, he had been his teacher; that accused no.16 was not a member of AZAPO and that if he had been he, Mabasa, would have known about it. Your (30 lordship / ..

lordship will find this evidence in volume 421 page 24 659 line 14 to line 23, both in relation to accused no.3 and accused no.16. We have not been able to find any argument advanced as to why IC.8 should be believed on this disputed matter in preference to accused no.2 and no.3; corroborated as they are by Hannah and Mabasa - their evidence in accordance with probabilities having regard to the admitted facts. This evidence we submit was probably contrived in order to make accused no.3 in particular a member of the management structures otherwise it would not have fitted into the (10 indictment of the state, and once that fact has not only been proved we submit but on the contrary the opposite has been established at least on a balance of probabilities it must of necessity have an adverse finding not only in relation to this fact but having regard to the fact that the Rev Moselane, accused no.3 really was the person whose actions started the protest meetings during August 1984 in the Vaal must weigh heavily against the conspiratorial allegations that those meetings were held in furtherance of the conspiracy. But we will deal with that later in greater (20 detail when we deal with the Sharpeville evidence. We submit that against this backdrop of question marks hanging over the evidence of the witness IC.8 we consider it indeed as a remarkable assertion by the state in its argument, that is a very important fact that a member of AZAPO was elected to the executive of the VCA. It must be brought to your lordship's attention immediately that even on IC.8's evidence it was only at a later stage that he took over as secretary of the Vaal branch and as from his own account there is no reason to think that anybody in the Vaal triangle would (30

identify / ..

identify him as an important member of AZAPO - I refer your lordship to volume 16 page 737 line 3 to 10. Of course it is not clear on the evidence as to when this happened. It is clear further from the evidence of IC.8 himself that he did not know before the week of 9 October 1983 of the possible launch of the Vaal civic association and that it was only when he saw a poster at the busstop that he became aware of it for the first time. Your lordship will see that, IC.8, volume 16 page 740 lines 2 to 5. It is also clear from the evidence which has already been considered relating to the planning sessions of the Vaal action committee and in particular the meeting of 8 October 1983 that neither AZAPO in general nor the witness IC.8 in particular featured in any way at all. It must therefore be found as conclusively established that the fact that IC.8 was elected as an area representative for Sharpeville at the launch of 9 October 1983 was an event entirely independent of any pre-arranged planning or decision. Indeed the fact that IC.8 was elected far from furthering the state's contentions that this is a very important fact shows that the VCA executive elections were not rigged as earnestly contended by the state elsewhere in its argument. I haven't got a precise reference but I will get it, but it has come to my mind now that IC.8 was actually - I will find the reference but I have a vivid recollection of it, it has just come to my mind as I am developing the argument, he was not a resident of Sharpeville, he lived in Sebokeng your lordship will remember and this matter was canvassed with him in cross-examination. How did he become to be elected as an area representative for Sharpeville on the 9th,

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and / ..

and your lordship will recall that the answer was that there was no-one else from Sharpeville that was there willing and able to become the area representative and because he had been born and brought up in Sharpeville he was the next best thing. So bearing that evidence in mind the state's submission becomes even more inappropriate in my respectful submission. We will try to find that passage - in fact I will have the passage in due course when I deal with his overall credibility. We submit finally in this regard that suggesting that he was an important member of AZAPO and (10) that is why he was elected is not borne out by the evidence and we have a reference in relation to the reason for this election and it is probably there that the passage that I have referred to is to be found, it is IC.8 volume 19 page 811 lines 2 to 9, but not as the reason which I have advanced. He says also of course that he held himself out as a member of the writers' association and it may well be that it was that qualification that won the day that he was brought along. We submit again that there is no evidence whatsoever to prove what is alleged in the (20) preamble, nor is there any evidence that there was any conspiracy or conspiracies in pursuance of which this organisation was formed. It was formed at a time when associations were being formed, at a time when there was much talk of reform, at a time when it was thought that people should articulate their grievances in order to get a better deal for themselves.

We now come to the next.. Mr Tipp has found in the meantime references to why this person was elected in volume 20 page 907 line 4, I will read it to your lordship. It appears (30) that / ..

that my recollection was near enough the mark to make it a valid submission:

"Well now, how did you come to be appointed as zone representative for an area for which you were not even living in? -- What happens is this, whilst this was being done, that is the voting and people were being told what name and area he is to - two ladies who were seated not far from me and then a certain lady who was at the time not known to me and is now known to me as Tebogo Moseneng then asked what my name(10 was. This Tebogo and Dorcas Raditsela they both wanted to know what my name is; I told them what my name is. When they came to ask about the area referred to here as to who can represent those people then these two shouted my name first. That is how I came to be elected as a representative of that area.

Well, did you now say but I am not living in that area? -- I did try and tell those two ladies who have suggested my name to be elected that I am no longer staying there or I am not staying there and they just did not accept(20 that, within myself not uttering that orally I just said they will see to finish whatever that may mean.

Well, will you agree that your position there was in fact a temporary one until the people of Sharpeville had appointed a proper representative? -- As far as I know no such words were said to me that I was there temporarily and therefore I knew myself to have been elected for Sharpeville area. Whether there were no Sharpeville people there I would not say whether they were there or not.

(30)

And / ..

And would you agree that there was a suggestion that the area representatives were going to be interim representatives and they will go back and hold meetings in their area? -- Yes, that is so.

And the area committee will then decide who its representative was going to be on the civic association? -- That is so.

Right, did you as the elected representative carry out elected representatives carry out? -- Unfortunately not.

Do you know whether in fact the others.. " (10 and he said, yes.

So that to say that he was deliberately elected, if my memory did play tricks in relation to some of the little detail, the substance of it is correct, that it was accidental and insignificant basis of his election to that position rather than being a leading member of AZAPO. In fact the passage as usual in the interests of accuracy may make this submission even stronger.

The next section is the meetings and activities of the Vaal civic association. Your lordship will again find (20 these allegations to be contained in paragraph 68 of the indictment. There is the usual preamble charging the conspiracy/conspiracies that were analysed by my learned friend Mr Chaskalson in order to bring about violence and to lead to violent revolution in the Republic. It is on page 291 and subsequent pages of the indictment. Again two witnesses of the state were members of the VCA committee that gave evidence for the state, IC.8 and McCamel and in this instance neither of them gives evidence to bear out the allegation in the preamble to this paragraph of the indictment. In (30

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an oblique and ambivalent piece of evidence IC.8 testified that Raditsela at one of these meetings said that they should continue with the organisation of meetings and the politicisation of the people so that they could be mobilised "as hell is going to break loose in South Africa". The ambivalence of this statement is borne out by the fact that the prosecution found it necessary to ask the witness whether he had tried to find out what he meant to say with this. The answer to this was that the witness had not, and this your lordship will find in volume 16 page 763 lines 12 to 21.

(10)

This piece of evidence is in any event squarely denied by the Rev McCamel, their chairman of the VCA that states:

No such words were ever said at a meeting in his presence. He goes on to state that at no time of the VCA which he attended was there ever mention made of any violence. In similar vein he denied that the VCA was party to any conspiracy as alleged. McCamel, volume 35, page 1 602 line 7 page 1605 line 5. That the evidence of the state should be destructive of the allegation in the indictment is not surprising since it was unable to provide particulars of any specific.. (20)

COURT: What was your volume there?

MR BIZOS: Volume 35 of McCamel, m'lord.

COURT: Yes, thank you.

MR BIZOS: That the evidence of the state should be destructive of the allegation in the indictment is not surprising since it was unable to provide particulars of any specific decision or plan to bring about violence when requested to do so in the request for further particulars. Your lordship will find the further particulars or the lack of further (30

particulars/..

particulars that it is unable to say whether - of any decision having been taken, in paragraph 29 read via paragraph 26.1 paragraph 9.1 of the further particulars. Your lordship will recall the referrals back. Paragraph 29 is on page 87 of the particulars. Accused no.10 who was on the executive of the VCA as an area representative for zone 3 supports the denial furnished by the Rev McCamel and denies that the VCA did anything on behalf of the ANC, the SACP or any other organisation. It at all times operated openly and there was nothing conspiratorial about its activities.(10 Your lordship will find that in accused no.10, volume 158 page 7 738 line 18 to page 7 739 line 2, and volume 159 page 7 786 line 16 to "page 7 787 line 14. The other allegation is to be found in paragraph 68(1)(i) of the indictment which is to be found on page 292 of the indictment, and it is there alleged that it held meetings for the purposes of inciting, intimidating and indoctrinating the black residents to acts of violence.

Although the indictment refers to a period of 9 October 1983 to April 1985 the meeting specified in paragraph 29. (20 1.2 of the further particulars specified the meetings which are relied on by the state. Apart from an undated meeting to form an AZAPO branch and an undated memorial service organised by AZAPO and the COSAS commemoration service of 16 June 1984 the further meetings are those held in connection with the rent protests in August and September 1984.

COURT: What is the second undated one? The first one is for AZAPO, the second one is?

MR BIZOS: A Biko memorial service.

COURT: Biko.

(30

MR BIZOS / ..

MR BIZOS: The meeting of ERPA on the morning of 26 August 1984 is not included. We will have something to say on the probabilities in relation to that on the evidence that the state attempted to lead or was lead and what its value is and how much of an afterthought the evidence of Mokoena must have been in relation to accused no.5 and others. 5 and 6 and others, and there is no suggestion of any meeting having been held in Bophelong in furtherance of this conspiracy.

Now it is important that your lordship should keep this in mind because we in arguing the Vaal case will submit to (10) your lordship that only was violence not advocated at any of these meetings but saying that the violence in the Vaal came about as a result of what was said at these meetings just does not square up with the evidence, for one very obvious reason. The violence in the Vaal did not start on 3 October - 3 September, it started on 2 September. It started at Bophelong where no meetings of the nature alleged by the state were held and it proceeded the opposite way to which the state alleges the violence arose and continued.

The state says that it started off as a result of a march (20) starting off at Small Farms, the march became a murderous mob and then went off from one councillor's house to the other after it set off as a march in order to kill the councillors. That of course on the evidence is absolute nonsense. That is the case that we in our respectful submission made nonsense of by the evidence in this case. That is the case we came to meet, that is the case we have met and that is the case which we have proved to have been false. And for whatever reasons one may speculate the violence started and filtered through to the other townships from (30)

Bophelong/..

Bophelong. It certainly could not have been as a result of the meetings as the state knows of no meetings at which this incitement took place. But let us continue with the more immediate situation. The meetings which have been detailed by the state are dealt with separately in the course of the argument. It is submitted that the evidence in respect of each of those meetings does not establish the allegation made by the state.

A similar allegation is to be found in respect of house meetings in paragraph 68.1.2 which your lordship will (10 find on page 293 of the indictment. In the further particulars and in paragraph 29.1.3 a limited number is cited. again the further particulars..

COURT: Is it 29.3 or 29.23?

MR BIZOS: 29.1.3. Also to be found on page 88 of the further particulars. A very limited number is cited, one possibly two such meetings held at the house of accused no.10 in the course of August 1984 and two meetings held at the house of accused no.11 in the course of August 1984. Accused no.10 gave your lordship a full account of these meetings (20 and let us bear in mind that these meetings are alleged to have been held in the furtherance of the conspiracy or conspiracies of the preamble in paragraph 68 of the indictment. And the specific allegation is that they were held in order to plan violence. That is the allegation. The evidence of accused no.10 is completely different. He said that the VCA executive did discuss such meetings and agreed that they should be held with a view to talking to residents about the VCA and their problems. The town council elections came into the picture inevitably and some campaigning for (30

the / ..

the boycott of the elections did take place at house meetings. Your lordship will find that in volume 163 page 8 139 line 3 to page 8 140 line 5 and volume 163 page 8 144 line 6 to 11. In cross-examination accused no.10 detailed the message conveyed by him at these house meetings, that he explained what the VCA was and how it worked, including the area representative structure so that people could communicate their problems. He explained that the VCA was affiliated to the UDF; he explained that it had been resolved that the VCA should not take part in the town council (10 system as it was seen as another form of apartheid and that people could see whether the VCA was an organisation that could articulate their aspirations in their struggle for peace, security, full political rights in the country and against all forms of apartheid. Of course the state would equate with - as an equivalent to telling people that they should seize power by violence and this is how it has pleaded it. In the course of discussions he and other residents raised the view that the council system in effect was there to deprive people of real political participation, that (20 councillors were in effect puppets of the government without proper powers, and which carried out the bidding of the authorities. Your lordship will find that, accused no.10, volume 163 page 8 144 line 18 to page 8 152 line 5. We submit that this "message" amounts to a measured and a legitimate expression of opposition to apartheid and the town council system which was seen inextricably linked to the programme of apartheid. There was no suggestion in this evidence that accused no.10 in any sense intended to incite intimidate or indoctrinate the residents to take violent (30

or / ..

or other unlawful actions. M'lord, it was - I do not remember whether it was in this argument or in the argument to the opposition for the application for discharge, that somewhere the ANC suggests that house meetings are a good way in which to politicise people. Well, I think that the expression "huisbesoek" in political party language is quite common. It has often been said that it was probably the very basis of getting political office certainly in local affairs. It appears that similar house meetings were conducted by other members of the VCA and that reports were made by them at committee meetings on a very regular basis. It is noteworthy that at such report backs accused no.10 never heard any reports of house meetings having been held at Sharpeville Boipatong, zone 13 - or zone 13 in Sebokeng. Your lordship will find that in volume 163 page 8 152 line 29 page 8 153 line 29. It is clear that the VCA did not establish any presence in Sharpeville. The witness IC.8 did not hold house meetings or attempt to form an area committee there. This was the position as at August 1984 as well. Your lordship will find that in - accused no.10, volume 161 page 7 937 line 16 to page 7 938 line 2. There is no evidence that these house to house visits were conducted for the purpose of intensive political incitement and intimidation and/or indoctrination of residents in order to resort to actual violence as alleged in paragraph 68.1.3. There is also no evidence that there was ever a decision that area representatives would be responsible for steps towards such purposes or that they should organise area committees for that end as alleged in paragraph 68.1(iv) and (v). When requested to particularise the date of such decision the state / ..

state could do no more than state that it was before 3 September 1984. This is in further particulars paragraph 29.1.4 and 29.1.5 at page 88 of the further particulars. Instances are given by accused no.10 of the subject matter of some particular meetings of the VCA executive committee. One of these is the meeting held on 10 October 1983, the day after the launch. The witness IC.8 was not present at this meeting. Your lordship will find that, accused no.10, volume 159 page 7 811 line 18 to 30.

A person who had been elected onto the committee (10 Thabo Radebe - sorry, who had not been elected m'lord - had not been elected onto the committee, Tabo Radebe did not turn up - did turn up, I am sorry. Although there were questions about his bona fides he was allowed to remain as there was nothing to hide at that meeting. Accused no.10, volume 157 page 7 812 line 1 to line 17, that various fund-raising possibilities were discussed. It was agreed that committee members would themselves make contributions from their own pockets. Your lordship would find that at volume 159, page 7 813 lines 4 to 28. Other fundraising avenues (20 discussed with the sale of publications from various organisations and the holding of "stokvels" and membership subscriptions. Volume 159 page 7 816 line 6 to 7 817 line 22. Handwritten notes of the resolutions taken the previous day were presented by accused no.22. Volume 163, page 8 094 line 3, 8 095 line 7. The question of affiliation to the UDF was discussed as was a resolution opposing the elections to the councils. Volume 163, 8 129 line 2 to 27. The state submits on pages 96 to 97 of the argument that the VCA decided on the colours of the ANC. It relies on IC.8 for (30

this / ..

this although his evidence was disputed, although the Rev McCamel was not asked the same question and although at least accused no.10 of the defence witnesses squarely denied it the state asks your lordship without furnishing any reasons to find as a fact that IC.8 is correct. We submit that no such finding can be made. Your lordship will find the evidence of accused no.10 on this at volume 159 page 7 825 line 13, page 7 826 line 9. Indeed other witnesses have said that one of the zones - but we will come to that, m'lord we will deal with that at a later stage. At a subsequent (10 meeting on approximately 19 October 1983 EXHIBIT AN.13 was discussed and corrected.

COURT: N?

MR BIZOS: AN.13, those are the resolutions. The possibility of having these resolutions produced in a book and distributed amongst residents was discussed. Your lordship will find that in volume 163, 8 130 line 15 to 8 131 line 3. That accused no.2 reported on the matter of affiliation to the UDF and presented the declaration and working principles which were then discussed, after which the secretary was mandated to (20 write a letter applying for affiliation.

COURT: Who reported?

MR BIZOS: 22. Your lordship will recall that he was the..

COURT: No, I thought you said no.2.

MR BIZOS: Oh, I am sorry, he was at the meeting where he wrote out the report, the L EXHIBIT. Your lordship will find that in volume 163 page 131, line 16..

COURT: It cannot be, 163 is 8 thousand something.

MR BIZOS: Yes it is 8 131 - the 8 has been left out, page 8 131 line 16 to page 8 132 line 9 and again at page 8 133(30 line / ..

line 24 to 28. The witness IC.8 was not present at this meeting. In fact in all he only attended a matter of three committee meetings. Well on this basis one may describe IC.8 on his record of AZAPO and VCA as a joiner but not a stayer. There is a similar fate in relation to his attendance of meetings of AZAPO as it is, in relation to the VCA. Your lordship will find that evidence at volume 163 page 8 131 line 13, volume 159 page 7 821 line 27, page 7 822 line 3. Accused no.10 attended meetings of the VCA during January 1984. Esau Raditsela never spoke in terms that (10 all hell would break loose. Volume 161 page 7 937 line 11 to 15.

ASSESSOR: Just repeat the last, please.

MR BIZOS: 7 937 line 11 to 15. No argument has been advanced as to why the evidence of accused no.10 should be rejected supported as it is by the evidence of McCamel in preference to the evidence of IC.8. And we submit that in overall terms it is clear that in the collective conception of the members of the VCA committee there exists an overlap between local issues and the impact of broader political questions. (20 This perception cannot be described as a remarkable one and the view that local issues can be engaged entirely independently of political questions must be characterised as naive and unrealistic. However, even an active and concerted effort to underbreak upon the connection between local and political issues that does not lend itself to the conclusion that local issues or as the state phrases it, the day to day issues are being used or exploited in order to obtain an unlawful political result, or a political result unlawfully perhaps would have been a better way of putting it. Cross- (30

examination/..

examination is directed to this end for a very long time and in various ways to accused no.10 and it is consistently denied and it is again based upon the false premise that people who successfully organise protests in order to voice their dissatisfaction with the status quo commit some sort of crime particularly if they do it successfully. Thus in the understanding of accused no.10 the discussion at the launch how the VCA would function included the notion of what he calls "civil political means" being the undertaking of tasks on the mandate of the community. One way of doing (10) this was to present problems to the government structures such as the development board. Let me give your lordship the reference, volume 163 page 8 114 line 6 to 8 115 line 26. If this was unsuccessful then protest action might be attempted. Volume 163 page 8 115 line 27 to page 8 116 line 5. The civic association was to work on a local level with local issues and also such political issues as affected black people especially those in the Vaal. Accused no.10 volume 163 page 8 118 line 28 to page 8 119 line 3. To a significant extent the VCA remained an embryonic body (20) particularly in the sense that it did not come into existence with a detailed and comprehensive programme of action on all the issues which confronted the residents of the Vaal triangle. The means discussed at the launch of the VCA concerning its work was that it should form itself into a strong organisation which would then be in a position to carry out a mandate of the people on particular issues. It has not been possible at this launch itself to work out precisely how the VCA was to set about every problem. Your lordship will find that at volume 163 page 8 111 line 19 to page 8 114 line 5. In (30)

answer / ..

answer to your lordship's suggestion that it was probably common cause - common thought that the VCA would have nothing to do with the puppet body called the community council.

Accused no.10 replied that one of the ways in which it could set about its work would be to deal with the development board. The further point of view that the board would not listen to the VCA amounted to a situation that had not yet arisen. Your lordship will find that at volume 163 page 8 114 line 6 to page 8 115 line 26. May I pause there for one moment m'lord. Many questions were asked of accused (10 no.10 and other witnesses as to why were they not prepared to talk to or negotiate with the town councillors or the town council. There was some hedging by some of them but I think your lordship would not be wrong in finding that there was in the main a reluctance amounting almost to a refusal to negotiate with the town councils, but the same applies to the town councils. Town councils made it quite clear - we will refer your lordship to the evidence in due course - that if anybody wants anything they cannot go through an organisation, we will not talk to the VCA. We will not (20 allow it to use our halls. The premise is that they were elected as a substitute for meaningful political rights. The moment we go and talk to them it will mean that we accept the lower class of citizenship that was decided for us. It is no good in our respectful submission yearning what it might have been if things were otherwise, but that is the situation, that there was no communication between these two bodies and the one was as uncompromising and as stubborn as the other. That is what happens when there are political divisions in the country and that is the time when Van der Linde reminds (30
your / ..

your lordship that one has to be particularly careful that these divisions among men are not adjudged by the courts in a manner which might appear to favour the one side or the other. Your lordship is not being called upon to judge the reasonableness or otherwise of the actions of the VCA as to what might have happened if they talked to the councillors or indeed if Mr Mahlatsi had acted differently. Your lordship is being called upon to find whether a conspiracy to commit serious crimes has been proved or not and not the reasonableness or otherwise of the conduct of either (10 party. We submit that the totality of the evidence establishes also that after an initial flurry of activity in the latter months of 1983 and in zone 7 of the formation of the area committee in February 1984, the VCA level of activity declined. In the view of accused no.10 this decline in activity corresponds with the dismissal from his position as chairman, the Rev McCamel. Your lordship will see the evidence of accused no.10 in volume 160, page 7 842 line 12 to line 20. This resignation coupled with the disenchantment of the committee with Mr Johnny Motete who left the committee after he was (20 criticised for not performing the function of the secretary properly, the reference to which we will give your lordship in due course, really shows that there was in fact no VCA presence in Bophelong when the violence started. And that fact is again destructive of the state's thesis that the violence was started by the VCA, started off with the march on the antipathies of Bophelong. The last executive meeting of VCA before the issue of the rent increase in August 1984 took place in the first week of July 1984. The question of the rent increase did not come up at that meeting and no (30

decision / ..

decision was made on this issue by the executive before the end of August 1984. Your lordship will find that in the evidence of accused no.10 volume 160 page 7 865 line 8 to line 20. We will submit in due course that the VCA far from initiating the rent increase protests in fact reacted to the protests that were organised in Sharpeville independently of the VCA and they reacted to the newspaper reports of the meetings of 12 August 1984 and 19 August 1984 at Sharpeville rather than initiating it themselves in furtherance of any conspiracy with the UDF or anything else arising out of (10 the affiliation to the UDF. We want to interpose here the Bophelong area committee. It is common cause that the area committee was formed in Bophelong in the course of November 1983.

COURT: The course of - November?

MR BIZOS: November 1983. Accused no.10 attended the launch of such a committee. His evidence says there was no incitement to violence or anything untoward that happened there. The activities of the Bophelong committee however declined and it seems to have gone out of existence, and we would (20 suggest the reason for it was that your lordship will recall that McCamel was a teacher there and once he was dismissed and once Motete was in this difficulty that was the end of that committee. Your lordship will find that in volume 159 page 7 829 line 22 to page 7 830 line 17. In the course of this meeting accused no.10 spoke about rent increases and the decision-making powers of the council although he did not refer to councillors as puppets. He said that an area committee might be able to address the rent problem the people in Bophelong were experiencing, namely that it was (30

only/..

only when they went to the office that they were informed what rental had to be paid for that month. Your lordship will find that in volume 166 page 8 403 line 9 to page 8 404 line 1. This of course also negatives the suggestion by the state that there was no rent issue or that there was no question of rent before the increase was announced in the middle of 1984. The evidence of the accused and their witness is that the rent question was always an issue. Accused no.10 also advanced the view that the forthcoming town council elections would be boycotted and that the (10 boycott should be carried out peacefully. The purpose was that with the boycott and the low poll the government would realise that the people were not for that structure. Now that is a far cry from the allegation that opposition to the election or boycott of the election is evidence of a conspiracy to incite people to violent revolution. At the launch the Rev McCamel - I am sorry, did I give your lordship to that? Volume 166 8 404 line 2 to line 16.

At the launch the Rev McCamel also spoke about boycotting the elections saying that too little power had been (20 given to the town councils. Accused no.10, volume 166 page 8 406 line 21 to page 8 407 line 29. Your lordship will recall that your lordship was addressed yesterday by my learned friend Mr Chaskalson about the powers of the councils and also the evidence of Masala and others that rejection on the ground that they were not representative or sufficiently powerful bodies went back for a very long time. The evidence in relation to McCamel is to be found on volume 166 page 8 406 line 21 to page 8 407 line 29. In paragraph 68.2(i) on page 294 of the indictment it is said that the Bophelong (30

area / ..

area committee was very active and cultivated and incited the people in that area to such an extent that protests and revolt ensued against the election of councillors. The only evidence that appears to bear any relationship to this allegation is that councillor Mgcina who testified to some degree of protest and disruption of two electoral meetings held by him, the one meeting was on 16 October 1983 and the second in the second week thereafter, both therefore being more than a month before the launch of the area committee in Bophelong. Your lordship will find that in volume 46 (10 page 2 283 line 30 to page 2 228 line 11.

COURT: I am sorry, 2 283..

MR BIZOS: Volume 46, 2 283 line 30 to 228 line 11. He describes the whole..

COURT: 2 28..?

MR BIZOS: 2 288, line 11. The evidence shows with respect that if there was such disruption it was before the formation of the area committee but it is clear in any event we submit that this evidence is patently unreliable. His evidence really makes very poor reading. Three persons named by (20 him as being present at the meeting of 6 October 1983 were then placed by him at the meeting of..

COURT: 16 October, or 6th?

MR BIZOS: 6 October.

COURT: I am sorry you said the meeting was 16 October and some weeks after..

MR BIZOS: Having been present at the meeting of 16 October three persons - 16 October 1983, were then placed by him at the meeting of 29 August 1984, and he denied having made mention of them in respect of the 16 October meeting 1983.(30

Your / ..

Your lordship will find that Mgcina, volume 47 page 2 328 line 30 to page 2 331 line 13. Submitted m'lord also similarly his evidence that there were people with VCA T-shirts at the meeting of 16 October 1983 must be rejected. It was a mere week after the launch of the VCA, there has been no suggestion elsewhere in the evidence that VCA T-shirts were produced within that week, or apart from some kaftan shirts produced by zone 7 area committee in 1984, that VCA T-shirts were produced at any time. Of course this is significant evidence because he realised that the state had(10 to find a peg on which to hang this bit of unruly behaviour that he described at this meeting. Curiously Mgcina's own evidence is that at the second pre-election meeting where some threats were allegedly made against members of the public, none of the persons present were wearing any T-shirts whether of the UDF or the VCA. Councillor Mgcina testifies also that on election day there were protestors at the polling station and that threats of the same nature as those allegedly made at the second pre-election meeting were made to some of the people who intended to vote. (20 None of these persons is identified in any way, no conclusion can be drawn that there was any connection between these protestors and the Bophelong area committee which evidently shortly before had come into existence. Your lordship will find that in volume 46 page 2 288 line 12 to page 2 289 line 21. I am going on to another area committee.

COURT: We have dealt now with Mgcina?

MR BIZOS: Mgcina and the Bophelong area committee. I am going to go on to the zone 7 area committee.

THE COURT ADJOURSNS UNTIL 12 AUGUST 1988

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